



**MULTI-STEP BID NO.:  
IFB-PAG-003-21**

**CCTV SURVEILLANCE SYSTEM & ACCESS CONTROL SYSTEM (ACS)  
REPLACEMENT PROJECT AND PREVENTATIVE MAINTENANCE  
SERVICES**

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

**RORY J. RESPICIO  
General Manager**

**MAY 2021**



**PORT OF GUAM**

ATU'RIDATI I PUTITON GUAHAN

Jose D. Leon Guerrero Commercial Port

1826 Cabras Highway Suite 201 P.O. Box 96925

Telephone 671-477-5951-38 Facsimile 671-477-2689-4445

Website: www.portgum.net



Accountability \*

Impartiality \*

Competence \*

Openness \*

Value

**MULTI-STEP BID NO.: IFB-PAG-003-21**

**DESCRIPTION:**

**CCTV SURVEILLANCE SYSTEM & ACCESS CONTROL SYSTEM (ACS) REPLACEMENT PROJECT AND PREVENTATIVE MAINTENANCE SERVICES**

**SPECIAL REMINDER TO PROSPECTIVE BIDDERS**

Bidders are reminded to read the Sealed Bid Solicitation and Instructions, and General Terms and Conditions attached to the Multi-Step Bid to ascertain that all of the following requirements checked below are submitted in the bid envelope, in duplicate, at the date and time for bid submission.

- [X] **BID GUARANTEE (15% of Bid Amount)** May be in the form of;  
**Reference #21 on page 11.**
1. Cashier's Check or Certified Check
  2. Letter of Credit
  3. Surety Bond – Valid only if accompanied by:
    - a. Current Certificate of Authority issued by the Insurance Commissioner;
    - b. Power of Attorney issued by the Surety to the Resident General Agent;
    - c. Power of Attorney issued by two (2) major officers of the Surety to whoever is signing on their behalf.

- [X] **AFFIDAVIT DISCLOSING OWNERSHIP and COMMISSION (AG Form 002)**
1. Date of signature of the person authorized to sign the bid and the notary date must be the same.

- [X] **BROCHURES/DESCRIPTIVE LITERATURE**

- [X] **OTHER REQUIREMENTS:**

Procurement Checklist – Reference page 51

**NOTE:** TECHNICAL AND BID COST SHALL BE SUBMITTED IN SEPARATE ENVELOPES LABELED "TECHNICAL BID" AND "BID COST." ALL REQUIRED FORMS AND AFFIDAVITS SHALL BE SUBMITTED IN THE ENVELOPE LABELED "TECHNICAL BID". REQUIRED BID BOND SHALL BE SUBMITTED IN THE ENVELOPE LABELED "BID COST".

**DO NOT INCLUDE BID COST WITH TECHNICAL BID PACKAGE.**

**IF BID COST IS INCLUDED WITH THE TECHNICAL PROPOSAL IT WOULD BE DEEMED AN AUTOMATIC DISQUALIFICATION OR REJECTION.**

**This reminder must be signed and returned in the bid envelope together with the technical bid. Failure to comply with the above requirements may be cause for disqualification and rejection of the bid.**

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, I, \_\_\_\_\_,

authorized representative of \_\_\_\_\_ acknowledge receipt of this special reminder to prospective bidders with the above referenced IFB.

\_\_\_\_\_  
Bidder Representative's Signature

**Multi-Step Bid: IFB-PAG-003-21**

**CCTV SURVEILLANCE SYSTEM & ACCESS CONTROL SYSTEM (ACS) REPLACEMENT PROJECT AND  
PREVENTATIVE MAINTENANCE SERVICES**

**ACKNOWLEDGEMENT RECEIPT FORM**

Please be advised that to be considered a prospective bidder you must fill out this Acknowledgement receipt form.  
Please submit by fax form to **(671) 472-1439** or email to: **pkrideb@portofguam.com, algsablan@portofguam.com**  
and **pagprocurement@portofguam.com**.

**Acknowledgement Receipt Form must be submitted no later than three (3) days upon receipt of IFB package.**

<b>Name</b>	_____
<b>Signature</b>	_____
<b>Date</b>	_____
<b>Time</b>	_____
<b>Contact Number</b>	_____
<b>Fax Number</b>	_____
<b>Contact Person regarding IFB</b>	_____
<b>Title</b>	_____
<b>E-Mail Address</b>	_____
<b>Company/Firm</b>	_____
<b>Address</b>	_____

Note: PAG recommends that prospective bidders register current contact information with PAG Procurement office to ensure they receive any notices regarding any changes or update to the IFB. The PAG will not be liable for failure to provide notice to any party who did not register current contact information.

All questions and concerns in regards to this bid must be submitted to the PORT AUTHORITY OF GUAM via e-mail **pagprocurement@portofguam.com, algsablan@portofguam.com** addressed to the GENERAL MANAGER, Mr. Rory J. Respicio, Attention Ms. Priscilla Rideb, email: **pkrideb@portofguam.com** by no later than **4:00 PM Monday, May 24, 2021**.

## INVITATION FOR BID

RORY J. RESPICIO  
General Manager

ISSUING OFFICE: THE PORT AUTHORITY OF GUAM  
GOVERNMENT OF GUAM  
1026 CABRAS HIGHWAY, STE. 201,  
PITI, GUAM 96925

DATE ISSUED: May 10, 2021

**MULTI-STEP BID NO: IFB-PAG-003-21**

**BID FOR: CCTV SURVEILLANCE SYSTEM & ACCESS CONTROL SYSTEM (ACS) REPLACEMENT PROJECT AND PREVENTIVE MAINTENANCE SERVICES**

SPECIFICATION: **SEE BELOW**

DESTINATION: PORT AUTHORITY OF GUAM

MANDATORY PRE-BID CONFERENCE: **9:00 a.m., TUESDAY, MAY 18, 2021.** MANDATORY SITE-VISIT WILL BE CONDUCTED SOON AFTER.

REQUIRED DELIVERY DATE: Completion of Installation 210 Days Upon Receipt of Purchase Order. The terms of the Preventive Maintenance Services shall commence acceptance of CCTV Surveillance System and Access Control System (ACS) for two (2) years with an option to renew one (1) additional year not to exceed five (5) years.

**INSTRUCTION TO BIDDERS:**

INDICATE WHETHER: \_\_\_\_ INDIVIDUAL \_\_\_\_ PARTNERSHIP \_\_\_\_ CORPORATION

INCORPORATED IN: \_\_\_\_\_

Each bidder shall submit one (1) original, three (3) copies and one (1) CD or USB containing electronic file copy (in PDF format) of the Unpriced Technical bid submission no later than the Date: **Monday, June 7, Time: 4:00 p.m.** The unpriced technical bid submission (one original and three copies) shall be submitted in a sealed envelope marked conspicuously with the bidder name and address, bid number, and the type of proposal (Unpriced Technical Bid). The unpriced technical bid and priced bid submission shall be submitted in separate envelopes labeled "Unpriced Technical Bid" and "Priced Bid." All required forms and affidavits shall be submitted in the envelope labeled "Unpriced Technical Bid". Required bid bond shall be submitted in the envelope labeled "Priced Bid". Bid submitted after the time and date specified above shall be rejected. See attached general Terms and Conditions. Unpriced Technical Bids will not be publicly opened.

The undersigned offers and agrees to furnish within the time specified, the articles and services at the price stated opposite the respective items listed on the schedule provided, unless otherwise specified by the bidder. In consideration to the expense of the Government in opening, tabulating, and evaluating this and other bids, and other considerations, the undersigned agrees that this bid remain firm and irrevocable within 90 calendar days from the date opening to supply any or all the items which prices are quoted.

NAME AND ADDRESS OF BIDDER:

SIGNATURE AND TITLE OF PERSON  
AUTHORIZED TO SIGN THIS BID:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

AWARD: CONTRACT NO.: \_\_\_\_\_ AMOUNT: \_\_\_\_\_ DATE: \_\_\_\_\_

ITEM NO(S). AWARDED: \_\_\_\_\_

NAME AND ADDRESS OF CONTRACTOR:

CONTRACTING OFFICER:

Signature & Title of Person Authorized to Sign  
This Contract: \_\_\_\_\_

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

**Volume 1**  
**INSTRUCTION TO BIDDERS AND**  
**GENERAL INFORMATION**

## GENERAL INFORMATION

### **I. INTRODUCTION**

The Port Authority of Guam ("PAG") currently owns a comprehensive KANTECH EntraPass Corporate Edition Closed Circuit Television (CCTV) Surveillance System and Access Control System (ACS) that provides automated maritime security protection and monitoring capabilities for the entire Jose D. Leon Guerrero Port of Guam. Funded by the PAG's Federal Emergency Management Agency (FEMA) Port Security Grant Program (PSGP), the KANTECH system was deployed on June 12, 2014. Supported by the FUTUREFLEX Air-Blown Fiber Optic Cabling System, the KANTECH provides seamless command and control integration of all security systems.

To ensure that this state of the art system remains operational and in optimal working condition now and in the future, the PAG applied for and was awarded funding to replace existing Analog cameras with Digital IP High Resolution cameras and to upgrade the Port's KANTECH System.

The grant award will fund: 1) the acquisition and installation of new digital cameras and supporting components, 2) ensure connectivity and operability between and amongst all cameras and CCTV and ACS equipment at strategic Port property locations, 3) ensure that software support encapsulates all law enforcement requirements, 4) include removal of existing analog CCTV components and installation of new hardware and related components, 5) upgrade Port ACS and CCTV software, 6) repair existing support hardware, 7) provide for warranty, maintenance, and service of the system upon completion, and 8) deliver training, user manuals, as-built drawings, and final close-out documentation.

The PAG is inviting firms licensed to perform business on Guam to participate in this Multi-Step Bid (IFB) to perform the abovementioned services. Potential bidders must provide supporting documentation demonstrating commensurate experience and expertise as well as certification in providing and installing, and training for the ACS and CCTV surveillance systems.

Please note that the act of submitting a bid to this IFB constitutes acceptance on the part of the Bidder that they have read each and every provision; and thus agree to all terms and condition contained within this bid and that they understand the detailed requirements and expectations of the PAG in the acquisition of a Digital IP High Resolution camera system to replace the existing Analog camera system, as well as integration with the ACS.

The following details and instructions making up the Scope of Work are intended to provide guidance to potential bidders in the preparation of bid proposals. The project scope of work encompasses related work at control office and at all related locations. All necessary cabling/wiring/sockets and allied infrastructure conforming to respective quality/standard norms are also included in this scope of work. The scope consists of four separate project area by funding.

This document was prepared in accordance to the guidelines of FEMA's Grants Program Directorate, U.S. Department of Homeland Security (USDHS) and the Cooperative Agreement between the PAG and U.S. Department of Transportation (USDOT) Maritime Administration (MARAD). Points of view or opinions in this document are those of the authors and do not necessarily represent the official position or policies of FEMA, USDHS, MARAD, or USDOT.

Due to funding requirements and to ensure there will be no co-mingling of funds, the Project consists of three (3) separate project areas and one (1) optional location – Agat Marina:

- 1) COMMERCIAL PORT (FEMA funded – Grant No. EMW-2018-PU-00441) – acquisition of digital CCTV cameras to replace existing analog CCTV cameras at all Port facilities
- 2) CONTAINER YARD (MARAD funded – PAG/MARAD Cooperative Agreement No. 693JF718500004) – installation of additional digital CCTV cameras at the container yard and wharf area;
- 3) PCC (MARAD funded – PAG/MARAD Cooperative Agreement No. 693JF718500004) – acquisition and upgrade of PAG ACS and CCTV systems and hardware;
- 4) Optional Bid Item: Agat Marina- acquisition and installation of CCTV cameras and hardware.

Potential bidders must be present during the project site visit on the date scheduled by the PAG Procurement Division.

### **II. INSTRUCTIONS TO BIDDERS:**

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

The Multi-Step bid is defined as a two-step process consisting of a pre-qualification phase in which the bidder submits technical information to be evaluated by the PAG and a second pricing phase in which the bidders who are determined to be acceptable during the pre-qualification phase submit price proposals.

**TABLE 1 - Bid Schedule:**

Bid Process	Milestone	From Date	To Date
	Bid Announcement	05/10/21	
	Bid Documents Available	05/10/21	6/07/21
	Submit Questions	05/10/21	05/24/21
	Mandatory Pre-Bid Conference	05/18/21	05/18/21
	Mandatory Site Visits	05/18/1	05/18/21
	Cut Off Date for Receipt of Questions	05/24/21	05/24/21
	PAG Review and Answer Questions	05/25/21	05/28/21
	Vendor Prepare Bids	05/07/21	06/07/21
	Cut Off Date for Receipt of Unpriced Technical Proposal and Price Proposal Bid	06/07/21	
Phase I:	Bid Submission Deadline of Unpriced Technical Proposal and Price Proposal	06/07/21	
	Unpriced Technical Proposal Bid Evaluation	06/08/21	06/11/21
	Determine & Notify Qualified Bidders	06/14/21	
Phase II:	Opening of Price Proposal Bid	06/15/21	
	Evaluation Approval / Recommendation	06/16/21	06/18/21
	Contract Approval, Award & Signing	To Be Determined	
	Contract Mobilization	To be Determined	

**GENERAL PROCEDURES****1. PROCEDURE FOR PHASE I**

- A. Receipt and Handling of Unpriced Technical Bid(s): Unpriced Technical Bid Submission shall not be opened publicly, but shall be opened in front of two or more procurement officials. Such submissions shall not be disclosed to unauthorized persons. All required forms and affidavits shall be submitted in the envelope labeled "Unpriced Technical Bid".
- B. Evaluation of Unpriced Technical Bid(s): The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bid.
- C. The General Manager may initiate Phase II of the procedure if, in the PAG 's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without technical discussions. If the PAG finds that such is not the case, the PAG shall issue an amendment to the invitation for Bids or engage in the technical discussions as set forth in 2 GAR Div 4 §3109(t)(5) of this section.
- D. Discussions of Unpriced Technical Bid(s): The Procurement Officer may conduct discussions with any bidder potentially acceptable technical offer. During the course of such discussions, the Procurement Officer shall not disclose any information derived from one unpriced technical offer to any other bidder. Once discussion have begun, any bidder who has not been notified that its offer has been finally found unacceptable may submit supplemental information amending



its technical offer at any time until the closing date established by the PAG. Such submission may be made at the request of the PAG or upon the bidder's own initiative.

- E. Notice of Unacceptable Unpriced Technical Offer: When the PAG determines a bidder's unpriced technical offer to be unacceptable, such Bidder shall not be afforded an additional opportunity to supplement its technical offer.

## 2. PROCEDURE FOR PHASE II

- A. Upon the completion of Phase I, the PAG shall: Open priced bids submitted in Phase One from bidders whose unpriced technical offers were found to be acceptable. Required bid bond shall be submitted in the envelope labeled "Priced Bid".
- B. Conduct. Phase II shall be conducted as any other competitive sealed bid procurement except.
- i. As specifically set forth in 2 GAR Div 4 § 3109 (r) (Multi-Step Sealed Bidding) through this section.
- C. No public notice is required of this invitation to submit priced bids, as such notice was previously given;
- D. Pursuant to 2 GAR Div 4 3109 (v)(2)(c), after award, the unpriced technical offer of the successful bidder shall be disclosed. bids that are not selected shall not be disclosed except per 2 GAR Div 4 3109 (v)(2)(c).

## 3. EVALUATION CRITERIA

The following outlines the requirements for pre-qualification for proposals submittal. Pursuant to this multi-step sealed bid invitation, the General Manager shall appoint an evaluation committee. The committee shall be tasked to review, evaluate and score all aspects pertaining to this multi-step sealed bid invitation, and forward its recommendation to the General Manager.

## 4. PRE-QUALIFICATION OF BIDDERS

- A. In addition to the requirements in the Special Provisions and General Conditions, the following applies:
- i. Project Methodology: the bidder shall submit with its proposal a methodology for the supply and installation if the CCTV and Access Control systems located throughout the Port compound.
- ii. Competency of bidders.
- iii. Only unpriced technical offers will be opened in the pre-qualification phase.
- iv. Price bids will be considered only in the second phase and only from short-listed bidders whose unpriced technical offers are found to be acceptable in the pre-qualification phase.
- v. The PAG may conduct oral or written discussions of the pre-qualification unpriced technical offers.
- vi. The services being procured shall be furnished generally in accordance with the bidder's technical offer as found to be acceptable and shall meet the requirements of the MS IFB.
- vii. Bidders shall provide descriptive examples of previous similar work that they have accomplished.
- viii. The bidders may designate those portions of the unpriced technical offers which contain trade secrets or other proprietary data which are to remain confidential.
- B. The evaluation for the pre-qualification phase of this Project shall entail the following:

**Table 2 – Evaluation Criteria**

Categories	Subject Matters	Points
1	Expertise & Experience in Access Control and CCTV Security System	25
2	Implementation plans and drawings for performance required services to include time and personnel resources and scheduled activities	15
3	Ability, Capacity, Flexibility, Financial Stability and skill of the bidder to perform the scope of services	20
4	Record of Past Performance	10
5	Project Understanding and approach of the Scope of Services	20
6	Presentation	10
	<b>Total</b>	<b>100</b>



- C. Pre-Qualification Point System is as follows: Not Acceptable – 60 and below; The PAG shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file. Potentially Acceptable – 61 to 70; that is, reasonably susceptible of being made acceptable or Acceptable – 71 to 100.
- D. The PAG will request the next phase pricing bids from those short-listed bidders determined to have best met the criteria set above.

5. RECEIPT OF BID OFFERS

Unpriced Technical Bids and Priced Bids, in sealed and separate envelopes, will be received at the Procurement and Supply Division, 1st Floor of the Port Authority of Guam (PAG) Administration Building, no later than 4:00 P.M. Chamorro Standard Time (Guam Time), Monday, June 7, 2021. Short-listed bidders, for supply and installation equipment and preventive maintenance services described in Section II. Bid opening for the Price Bids will be at 2:00P.M., Tuesday, June 15, 2021, in the PAG Board Room, located on the 1<sup>st</sup> Floor of the Port Authority of Guam (PAG) Administration Building. In response to this Multi-Step Invitation for Bid (MS IFB), interested parties shall submit bids in the format described in these bid documents and shall be addressed to the General Manager, Rory J. Respicio, Port Authority of Guam, 1026 Cabras Highway, Suite 201, Piti, Guam 96925.

One (1) original, three (3) copies, and one (1) CD or USB containing electronic file copy (in PDF format) of the Unpriced Technical Bid shall be enclosed in a sealed package or envelope, clearly labeled on the outside as **"Multi-Step Invitation for Bid IFB-PAG-003-21"**. The package or envelope must be clearly labeled with the name of the Bidder. Subsequent requested Priced Bid submission will be clearly labeled in a similar manner.

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

6. PRE-BID CONFERENCE, INQUIRIES, AND COMMUNICATIONS

A mandatory pre-bid conference is scheduled on Tuesday, May 18, 2021, at 9:00 A.M. Chamorro Standard Time (Guam Time) at the PAG Board of Director's Conference Room and a mandatory site visit begin immediately after. All prospective bidders are required to attend. Identification to enter the Port compound is required 24 hours prior to the site visit, meaning it must be submitted no later than 12:00 P.M. Monday, May 17, 2021. Please bring your hard hat, safety vest, closed toed shoes, rain coat, writing material, camera and measuring tools as the Port will not provide it.

All Questions and Concerns (Q&C) (inquiries, clarifications or questions) must be submitted in writing no later than 5:00 P.M. Monday, May 24, 2021. Questions and concerns shall be submitted to the PAG General Manager, Mr. Rory J. Respicio at [rjrespicio@portofguam.com](mailto:rjrespicio@portofguam.com) and may be sent via facsimile to (671) 472-1439 or emailed to the attention of Ms. Annie Sablan, Acting Procurement and Supply Manager at [algsablan@portofguam.com](mailto:algsablan@portofguam.com) or [pkrideb@portofguam.com](mailto:pkrideb@portofguam.com). The Port will respond in writing to all written inquiries and/or clarifications via an addendum to this MS IFB. All formal communications shall be issued through the addendum process only and shall be distributed to all recognized document holders.

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

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

7. MS IFB DOCUMENTS

MS IFB Documents or PDF electronic copies of the MS IFB are available at no charge and can be obtained at the Procurement & Supply Office on the 1<sup>st</sup> floor of the Port Authority of Guam, Administration Building located at 1026 Cabras Highway, Suite 201, Piti, Guam 96925 or via the Port's website at [www.portofguam.com](http://www.portofguam.com).

Volume 1	Instruction to Bidders and General Information
Volume 2	Special Provisions and Sample Agreement
Volume 3	Required Forms and Affidavits - Appendices

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

8. **BID DOCUMENTS:** The Bid Documents include every document submitted by Port Authority to the Bidder in conjunction with this Invitation for Bid, and all terms contained therein are incorporated into the bid, unless such document is a routine notice or reminder other than official notices related to award or otherwise specifically deemed as not being included in the Bid documents by Port Authority.

9. **BID SPECIFICATIONS:** The Bid Specifications incorporated herein as the technical requirements of this Invitation for Bid for Port Authority, IFB No. IFB/PAG-003-21 - CCTV Surveillance System & Access Control System (ACS) Replacement Project and Preventive Maintenance Services, were drafted by the Port Police, IT Division with collaboration from CIP Division and Facilities. Technical manuals and/or literature used in drafting these Specifications are: MARAD/PAG Cooperative Agreement. Bidders shall comply with these Specifications and all other requirements of the solicitation. Bids submitted shall address all of the requirements of these Specifications.

10. **STATUS OF FUNDING AND COMPLIANCE WITH FUNDING TERMS AND CONDITIONS:** Funds are presently available for this solicitation. These funds are reasonably expected to be made available from FEMA and MARAD grant by the time of contracting. The government's obligation under any proposed contract is contingent upon the availability of funds from which payment for contract purposes can be made. The issuance of this solicitation does not compel the award of any contract.

All Bidders are required to comply with the terms and conditions of Port Authority's applicable funding requirements for the FEMA and MARAD grants including the Federal Award Terms and Conditions attached hereto in the Appendices located at Volume 3, Appendix T. Bidders are also required to submit the Appendices pertaining to the Federal Award Terms and Conditions listed in Appendix T.

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

12. **PREPARATION OF BID:** Each Bid must be submitted on the prescribed Bid Form contained within Appendix A and shall be accompanied by all of the required forms and documents required in these Specifications. Failing to provide the correct documents or other submittals may result in disqualification of the bid.

All blank spaces in the Bid forms must be correctly filled in where indicated for each and every item for which a quantity is given, and the bidder must state the prices (written in ink, both in words and numerals) for which he proposes to do each item of the Work contemplated or furnish each item of the materials required. In case of conflict between words and numerals, the words, unless obviously incorrect will govern. The bidder must sign their Bid correctly and in ink.

If the Bid is offered by an individual, their name, office, and address must be shown. If made by a firm or partnership, the name, office and address of each member of the firm or partnership must be given; if offered by a corporation, the person signing the Bid must give the name of the State under the laws of which the corporation was chartered, and the name, titles, and business address of the president, secretary, and the treasurer. Anyone signing a Bid as agent must file legal-evidence of their authority to do so, and that the signature is binding upon the firm or corporation.

Conditional bids will not be accepted. Each Bid must be submitted in a sealed envelope bearing on the outside the name of the bidder, his address, and the name of the bid number and project name for which the Bid is submitted. If forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed as specified in the bid form.

Telegraphic bids will not be considered unless specifically authorized by this Solicitation. However, bids may be modified or withdrawn by written or telegraphic notice, provided such notice is received prior to the hour and date specified for receipt (see Modification of Bids section of these instructions).

Bidder shall be required to acknowledge receipt of all Addenda/Amendments to the Bid Specifications in writing.

13. **INTERPRETATION OF APPROXIMATE ESTIMATE:** Bidders are cautioned that, for unit price Contracts, the estimate of quantities attached to Bid is approximate only and is prepared for the comparison of bids and is not a guarantee of minimum quantities to be purchased by Port Authority. The basis of payment for unit price Contract will be actual quantities of work performed and accepted. If, upon completion of the project, the actual quantities show either increase or decrease from the quantities shown in the approximate estimate, the unit price mentioned in the Bid will still prevail.

14. **EXAMINATION OF PLANS, SPECIFICATIONS, SPECIAL PROVISIONS, AND SITE OF WORK:** The bidder is required to examine carefully the site of the proposed work, the Bid Plans, Specifications, and proposed Contract form. They shall satisfy themselves as to the character, quality, and quantities of work to be performed, materials to be furnished, location, accessibility and general character of the site, and as to the requirements of these Specifications and the Proposed Contract. The submission of a bid shall be prima facie evidence that the bidder has made such an examination and has no objection to such. No extra

compensation will be made by reason of any misunderstanding or error on the part of the Contractor as regards the site, the conditions thereof or the amount and kind of work to be performed. Any information shown on the plans as to the soil or material borings or test of existing materials is for the convenience of the Contractor and the information is not guaranteed, and no claims for extra work or damages will be considered if it is found during construction that the actual soil or material conditions vary from those indicated by the borings.

Bidders are hereby notified that the Plans and Specifications contain Brand Name Specifications and Brand Name or Equal Specifications. Use of Brand Name Specifications or Brand Name or Equal Specifications is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

The Contractor accepts the conditions at the construction site as they eventually may be found to exist and warrants and represents that the Work can and will be performed under such conditions, and that all materials, equipment, labor and other facilities required because of any unforeseen conditions (physical or otherwise) shall be wholly at the Contractor's own cost and expense, notwithstanding anything in these Bid Specifications or Contract to the contrary.

15. EXPLANATION TO BIDDERS: No oral explanation of the meaning of the drawings and specifications will be made and no oral instruction will be given before the award of the Contract. Discrepancies, omissions, or doubts as to the meaning of drawings and specifications must be communicated in writing to the person or persons specified in the section entitled "Addenda and Interpretations" below. Bidders should act promptly and allow sufficient time for a reply to reach them before the submission of their bids. Any interpretation made will be in the form of a response to a Request for Information or an Addendum (a.k.a. Amendment) to the specifications which will be forwarded to all bidders and its receipt by the bidders should be acknowledged on the Bid Form.

16. REJECTION OF IRREGULAR BIDS: Bids containing any omission, alterations of forms, additions or conditions not called for, incomplete bids, or bids otherwise deemed irregular which are not accompanied by an appropriate Bid Bond and other mandatory documents will be rejected. The Port Authority reserves the right to waive technicalities as to the changes, alterations, or reservations, and make the award based upon the best interest of the Port Authority as determined by its Procurement Official.

17. ADDENDA AND INTERPRETATIONS: Every request for any interpretation or for a modification must be in writing addressed to both parties below:

Port Authority of Guam  
Rory J. Respicio, General Manager  
1026 Cabras Highway, Suite 201,  
Piti, Guam 96925

In order to be given consideration, any written request for interpretation must be received by Port Authority at least seven (7) days prior to the date fixed for the opening of bids. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the Contract Documents which, if issued, will be either be mailed by certified mail with return receipt requested to all prospective bidders (at the respective addresses furnished for such purposes) or sent via facsimile or e-mail to the number or e-mail address provided to Port Authority at the time the bidder picked up the bid, and in no event such responses shall be sent to bidders not later than three days prior to the date fixed for the opening of bids.

Failure of any bidder to receive any such addendum or interpretation shall not relieve such bidder from any obligation under this bid as submitted.

All addenda so issued shall automatically become part of the Contract document, whether expressly set forth in the Contract or not. Addenda shall be available on Port Authority of Guam's website which is: <https://portofguam.com/bids-and-rfps>. Vendors are advised to check Port Authority's website often for amendments, regardless of whether notice is received by the vendor or not.

18. ACKNOWLEDGMENT OF AMENDMENTS TO SOLICITATIONS: Written receipt of an amendment to a Solicitation by a bidder must be acknowledged by signing an acknowledgment of receipt of the amendment. Such acknowledgment must be received prior to the hour and date specified for receipt of bids.

19. MODIFICATION OF BIDS: Any bidder may modify his bid in writing at any time prior to the schedule closing time for receipt of bids, provided such written communication is received by Port Authority prior to the closing time, and, provided further, Port Authority is satisfied that a written confirmation of the written modification over the signature of the bidder was mailed prior to the closing time. The written communication should not reveal the bid price, but should provide the addition or subtraction or other modification so that the final prices or terms will not be known by Port Authority until the sealed bid is opened. If written confirmation is not received within two days from the closing time, no consideration will be given to the written modification.

20. REQUESTS FOR NON-DISCLOSURE OF TRADE SECRETS AND PROPRIETARY DATA: Bidders may declare portions of their bid as being confidential material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. However, prices and makes and models or catalogue numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary.

Port Authority may review the material declared to be confidential to determine the validity of any requests for nondisclosure of

trade secrets and other proprietary data identified in writing. If the parties do not agree as to the disclosure of data, Port Authority shall inform the bidders in writing what portions of the bids will be disclosed. All bids shall be opened to public inspections subject to any continuing prohibition on the confidential data.

21. **BID BOND:** All bids must be accompanied by a Bid Bond in the amount of fifteen percent (15%) of the total bid amount. Bid security may be in the form of: (1) a bid bond issued by a surety licensed on Guam and having such bond being presentable on Guam and issued using the exact form contained in Appendix A; or (2) either a certified check or cashier's check made payable to the Port Authority.

The Bid Bond is used to ensure the Bid supplied by the vendor remains valid for the period of time specified in the bond and that the bidder will enter into a Contract on terms and conditions acceptable to Port Authority.

22. **RETURN OF BID BOND:** As soon as the bid prices have been compared, the Port Authority Procurement Official will return the Bid Guaranties accompanying the Bids of all except the three (3) lowest bidders.

The remaining bid guarantees will be returned to the three lowest bidders within three days after the Port Authority and the accepted bidder have executed a Contract and the executed Performance and Payment Bond and other required documents have been approved by the Port Authority. If the required Contract and bond have not been executed within one hundred and twenty (120) days after the date of the opening of bids, then the bid guarantee of any bidder will be returned unless it is mutually agreed between the Port Authority and the Bidder that this time limit be extended.

23. **NOTICE REGARDING FORM OF BONDS:** The Bid Bond, Performance Bond and Payment Bond require the signatures of the Vendor, two (2) major Officers of the Surety and the Resident General Agent, if the Surety is a foreign or alien surety. When the form is submitted to Port Authority, it must be accompanied with copies of the following:

- a. Current Certificate of Port Authority to do business on Guam issued by the Department of Revenue and Taxation.
- b. Power of Attorney issued by the Surety to the Resident General Agent.
- c. Power of Attorney issued by two (2) major Officers of the Surety to whoever is signing on their behalf.

Bonds submitted without signatures and supporting documents are invalid and the accompanying bids will be rejected.

24. **POWER OF ATTORNEY:** Attorneys-in-fact who sign Bid Bonds or Performance and Payment Bonds must file with each bond a certified and effectively dated copy of their power of attorney.

25. **NON-COLLUSION AFFIDAVIT:** Each person submitting a bid for any portion of the work covered by the bidding documents shall execute an affidavit, in the form provided with the proposal to the effect that he has not colluded with any other person, firm or corporation in regard to any bid submitted. Such affidavit shall be attached to the Bid and Bidders shall use the form contained in Appendix C.

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

In addition, the affidavit shall contain the name and address of any person who has received or is entitled to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the bid for the bidder and shall also contain the amounts of any such commission, gratuity or other compensation. The affidavit shall be open and available to the public for inspection and copying, and shall be submitted on or before the bid opening. Bidders shall use the form contained in Appendix D.

27. **RECEIPT AND OPENING OF BIDS:** The Port Authority (hereafter called the "Owner" or "Port Authority"), invites bids on the Bid Schedule located in Appendix A. All blanks must be appropriately completed. Bids must be submitted in duplicate no later than 4:00PM, Chamorro Standard Time, JUNE 7, 2021 at 4:00PM, at Port Authority Procurement Division, 1<sup>st</sup> Floor, PAG Administration Building, 1026 Cabras Hwy, Ste. 201, Piti, Guam 96925.

28. **OBLIGATION OF BIDDER WITH RESPECT TO SITE CONDITIONS:** At the time of the opening of bids, each bidder will be presumed to have inspected the Work site, or sites, to have read and to be thoroughly familiar with the Bid Specifications, reports, plans, and other information provided by Port Authority or to which Bidder should avail themselves from other Government agencies or through other sources. The failure or omission of any bidder to examine any form, instrument or document shall in no way relieve any Bidder from any obligation in respect to his bid.

29. **COMPETENCY OF BIDDERS:** The PAG will require bidders to present satisfactory evidence that he has sufficient experience and past performance and is fully prepared with the necessary capital, material, machinery, and skilled workmen and supervisory staff to carry out the contract satisfactorily. The information is required for the Prime Contractor and each subcontractor,

if any.

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

Accordingly, in the Port's determination of a responsive and responsible bidder, the Contractor and its sub-contractors must submit for review the following documents and statements:

- a. Organizational Structure identifying the Prime Contractor and all its sub-contractors;
- b. Past performance of firm or key (to be assigned to this project) staff in accomplishing government projects or other client projects of this nature in the agreed time. Bidders and its sub-contractors must include a listing of past performances of key personnel with similar projects;
- c. Availability of plant, machinery and other equipment necessary for work;
- d. References who can attest to the quality of work on past or ongoing projects being performed for Local and Federal Government and other organizations/clients;
- e. References who can attest to Contractor's diligence in carrying out responsibility;
- f. References who can attest to, or documents that can illustrate, record of good Owner Contractor relationship;
- g. Statement about previous record of bids qualification, for example: no loss of bid bonds and/or no rejections following responsibility checks;
- h. Record of past performance of government contracts including record of default and nonpayment of obligations;
- i. Possession of Government of Guam appropriate contractor's license
- j. Appendix E – Bidder Qualification Form.

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

The PAG reserves the right to investigate the validity of the information submitted or request more information as it deems appropriate before an Award is made. Port Authority also reserves the right to disqualify any Bidder for lack of responsibility (i.e., capacity) if the Port Authority Procurement Official determines that doing so is in the best interest of Port Authority.

30. CAPITALIZATION/FINANCIAL RESPONSIBILITY OF BIDDERS: In order to prove that the Bidder has the financial capacity to perform the Work in a timely manner, each bidder must prove that it has at least \$500,000.00 USD in either cash or irrevocable credit through one or more of the following:

- a. Having a minimum of \$500,000.00 USD on deposit in financial institutions in accounts which the Bidder has direct control over; or
- b. Possession of an Irrevocable Letter of Credit from a financial institution having an available balance of at least \$500,000.00 USD in a form satisfactory to Port Authority; or
- c. Any combination of items 1 and 2 which proves the contractor can meet the \$500,000.00 USD threshold.

Proof of financial capacity shall be submitted with Bid, as this issue bears directly on determining responsibility. Bidders shall be required to provide a letter from the financial institution(s) where the cash is being held proving the balance in the account(s), dated within seven (7) days of the Bid submission (including showing pending withdrawals). With respect to the Letter of Credit, Bidders shall provide a letter from the issuing institution indicating the balance of the Letter of Credit dated within seven (7) days of the Bid submission along with any pending drawdowns on the balance.

33. LICENSURE: All bidders are reminded that they are required to submit proper proof of licensure for all types of work required by this Invitation for Bids, including professional licensure and the appropriate Contractor's license, along with their Bid. Failure to provide the proper proof of licensure will result in such Bid being deemed non-responsive. Bidders are reminded that they should confirm with the Guam Contractor's License Board or the Guam Professional, Architects Engineers and Land



Surveyors (PEALS) Board or other appropriate licensing entity prior to submitting their bid as to whether or not they possess the correct license to perform the work hereunder.

34. CONSIDERATION OF BIDS: After the bids have been opened and read, and if necessary the quantities will be extended and totaled in accordance with the bid prices of the accepted bids, and the results of the prices will be made public. Until the final award of the Contract, the Port Authority reserves the right to reject any or all bids, or any portion thereof, to waive technicalities and to advertise for new bids, or proceed to do the work otherwise when the best interests of the Port Authority will be promoted thereby.

35. DISQUALIFICATION OF BIDDERS: Any one or more of the following causes may be considered as sufficient for the disqualification of the bidder and the rejection of his bid or bids:

- a. More than one Bid for the same work from an individual, firm partnership, or corporation under the same or different names or any firm, individual or groups of persons acting in concert to provide multiple bids.
- b. Unbalanced Bids in which the prices for some items are out of proportion to the prices for other items.
- c. Unusually low bids.
- d. Failure to submit a unit price for each item of work for which a bid price is required by the Bid or Proposal.
- e. Lack of responsibility as shown by past work judged from the standpoint of workmanship, capacity, safety and progress.
- f. Lack of responsiveness to the requirements set forth in the Invitation for Bid or Bid Specifications.

36. RIGHT TO REJECT BIDS AND CANCEL SOLICITATION: Port Authority reserves the unqualified right, in its sole and absolute discretion, to reject any and all bids, in whole or part, if doing so is in the best interest of Port Authority. This IFB/solicitation may be cancelled in whole or in part in accordance with the Guam Procurement Law and the Guam Procurement Regulations.

37. METHOD OF AWARD: If the bid is within the amount of funds available to finance the Contract, then the award will be made to the lowest responsive and responsible bidder. Failure to submit a bid that conforms to the requirements of the Bid Specifications in every respect may subject the bidder to being deemed non-responsive and therefore having their bid rejected. Bidders are advised to completely fill out the forms provided in the Bid Forms completely and fully and to provide all documents or other information otherwise required under the Bid Documents and Specifications in a timely manner and in the form requested.

The Port Authority Procurement Official will notify the successful Bidder by letter, fax, or e-mail (depending on method of contact provided to Port Authority when picking up the bids), that he/she has been Conditionally Awarded the Bid and that a Contract on terms and conditions acceptable to Port Authority shall be entered into between the parties since Port Authority may need to secure the approval of other regulatory bodies and that entering into a Contract is dependent upon submission of documents required under the Bid Specifications such as insurance and proof of licensure.

38. CONTRACT TYPE AND TERM:

- a. The Contract to be awarded under this solicitation is a Firm Fixed-Price Contract. Work to be performed by Contractor under the Contract shall commence upon issuance of a Notice to Proceed ("NTP") by Port Authority and continue until the completion of the Scope of Work, in accordance with the A/E Drawings (if applicable) and Technical Specifications. Contractor agrees to complete the Scope of Work within 210 days from receipt of the NTP from the Port Authority.
- b. At the option of Port Authority, the contract is subject to a review by the Procurement Official for determination of the continued need for such contract, and availability of funds. Funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds thereof.

39. PERSON AUTHORIZED TO EXECUTE CONTRACT: The Bidder shall provide with their Bid the name, address, telephone number and e-mail address of the person who is legally authorized to bind the Bidder to the terms of the Contract and whom the Bidder intends to have execute the Contract with Port Authority.

40. EXECUTION OF CONTRACT: In the event that the successful bidder fails to execute the Contract containing terms and conditions acceptable to Port Authority that has been provided to them within twenty (20) days of receipt of such, or to furnish the required document required to be submitted after the bid, including, but not limited to insurance in the amounts, types and form specified in Section B, subsection 8, proof of licensure to perform the specific Work called for, requests for sub-Contractors, etc., Port Authority, after declaring forfeited the security deposit of such bidders, reserves the option to accept the bid of any other bidder within five (5) days from such default, in which case such acceptance shall have the same effect as to such bidder as though he were the originally successful bidder.

41. APPROVAL OF CONTRACT: No contract is binding upon the Port Authority until it has been executed by the Port Authority, the Attorney General of Guam, and the Governor of Guam.

42. CONTRACT DOCUMENTS: It is hereby mutually agreed that the following list shall constitute the Contract Documents,

all of which shall eventually collectively evidence and constitute the Contract between Port Authority and the Bidder as if they were set out verbatim and in full within the Contract:

- a. All terms and conditions of this Invitation for Bid.
- b. Bid Specifications as defined in this Invitation for Bid.
- c. Bidder's Bid and all documents provided in response to the Invitation for Bid, unless such documents conflict with the Bid Specifications in which case they shall have no effect (conflict may be in part or in whole).
- d. Contract Terms and Conditions attached to this Invitation for Bid.
- e. Port Authority's responses to RFI's and Addenda/Amendments to the Invitation for Bid.
- f. Notice of Award and other documents sent to Bidder following Port Authority's receipt of the Bid.
- g. Change Orders or Amendments to the Contract.

43. **PERFORMANCE AND PAYMENT BOND:** Simultaneously with the delivery of the executed Contract, the Contractor shall furnish a Performance and Payment Bond or bonds for 100% of the Bid amount as security for faithful performance of this Contract and for the payment of all persons performing labor and furnishing materials in connection with this Contract. The surety on such bond or bonds shall be a duly authorized surety company licensed to provide such services on Guam and who is satisfactory to Port Authority. All bonds must be capable of being presented on Guam. The Contractor shall utilize the Performance and Payment Bond form in Appendix B.

The Bidder shall ensure that the Performance and Payment Bond shall remain in place and be effective throughout the life of the Contract, which includes, until all warranty periods expire for any good, equipment, structure, building or materials supplied pursuant to the Bid Specifications. Port Authority may agree to reduce the value of the Performance and Payment Bond to correspond to work performed, where warranties have expired and upon a showing of proof that all subcontractors and labor have been paid in full by the Contractor.

44. **LAWS AND REGULATIONS:** The bidder's attention is directed to the fact that all applicable Guam and Federal laws, regulations, rules, licensure requirements, and permit requirements of all authorities having jurisdiction over this project shall apply to the Contract throughout, and they will be deemed to be included in the Contract and performance thereunder the same as though herein written out in full. Failure on the part of any bidder to become aware of the applicable laws, rules, regulations, permits and licensure requirements shall not relieve the Bidder to either meet the requirements of this Bid or performance under a Contract.

45. **TIME OF COMPLETION AND LIQUIDATED DAMAGES:** Bidders must agree to commence work on or before a date to be specified in a written "Notice to Proceed" of the Owner and to fully complete the project within sixteen consecutive months thereafter; otherwise the Bidder shall pay to Port Authority the sum of \$1,000.00 per day, in accordance with the Liquidated Damages Clause in the Contract, not as a penalty, but as a reasonable liquidated damages for breach of its duty to perform the Work proscribed in the Bid Specifications by his failing, neglecting or refusing to complete the work within the time herein specified. The sum above shall be paid for each consecutive calendar day the Contractor shall be in default after the time stipulated in the Bid for completing all of the Work, ready for use and/or operations. Sundays and legal holidays will be excluded in determining the number of days liquidated damages will be assessed once the Work has not been completed on time.

In assessing liquidated damages, Port Authority, may, at its option, withhold such amounts from any amount due to the Bidder for performing Work called for under this Bid.

46. **CONDITIONS OF WORK:** Each bidder must inform himself fully of the conditions and legal requirements relating to the services required and the employment of labor thereon. Failure to do so will not relieve a successful bidder of his obligation to furnish all materials and labor necessary to carry out the provisions of this Contract. Insofar as possible, the Contractor, in carrying out his work, must employ such methods or means as will not cause any interruption of or interference with the work of any other Contractor.

47. **NOTICE OF IMPORTANT CONDITIONS:** Attention is particularly called to those parts of the Contract Documents and Bid Specifications which deal with the following:

- a. Inspection and testing of materials
- b. Insurance Requirements
- c. Minimum Wage Rates set by the U.S. Department of Labor
- d. Permit Requirements.
- e. Licensure
- f. Required submittals and forms

This section shall not be taken to mean any other section of the Bid Specifications is not important.



48. **SUBCONTRACTORS:** The bidder is specifically advised that any person, firm, or other party to whom it is proposed to award a subcontract under this Contract:

- a. Must be deemed to be acceptable by the Port Authority in writing in advance of any work being performed. Bidders shall submit a list of proposed sub-Contractors that they intend to use along with the bid. All sub-Contractors will be bound to the same terms and conditions that are contained herein and in any subsequent Contract formed between the parties.
- b. Must submit "Certification by Proposed Subcontractor Regarding Equal Employment Opportunity." Approval of the proposed sub-contract award cannot be given by the Owner unless and until the proposed subcontractor has submitted the certification and/or other evidence showing that it has fully complied with any reporting requirements to which it is or was subject.

Although the bidder is not required to attach such Certifications by proposed subcontractors to his bid, the bidder is hereby advised of this requirement so that appropriate action can be taken to prevent subsequent delay in sub-contract awards.

In the event the bidder's subcontractors are not deemed acceptable to Port Authority, the Bidder shall replace the non-acceptable subcontractors with acceptable subcontractors at no additional cost to Port Authority. Thus, bidders are advised to prepare bids with competent and dependable subcontractors capable of performing the work from the outset. Port Authority will examine the capacity of the Contractor's subcontractors during the bid review process. If the Bidder is unwilling to substitute a subcontractor per this provision, Port Authority may reject the Bidder's proposal and move to the next lowest responsive and responsible bidder.

49. **COMPLIANCE REVIEW:** If the bid is in the amount of five hundred thousand dollars or more, the bidder and his proposed sub-Contractors who are not exempt from the EEO Compliance requirements may be subject to full pre-award equal opportunity compliance reviews before the award of the Contract for the purpose of determining whether the bidder and his sub-Contractors are able to comply with the provisions of the equal opportunity clause of Executive Order 11246.

50. **COMPLIANCE WITH FUNDING SOURCE TERMS AND CONDITIONS:** All Bidders are required to comply with any applicable terms and conditions of Port Authority's financing and federal funding source for the project. Failure to comply with the requirements of the federal funding may result in termination of the Contract in the event of non-compliance with such terms throughout the term of the Contract. **See Item #10 above.**

51. **DETERMINATION OF RESPONSIBILITY OF BIDDERS:** The Procurement Official reserves the right to secure from bidders information to determine whether or not they are responsible, including information concerning: the ability and capacity of the Bidder to perform the Work; whether the Bidder can perform promptly or within the specified time; a satisfactory record of performance; a satisfactory record of integrity; whether Bidder has supplied all necessary information in connection with the inquiry concerning responsibility; and the sufficiency of the financial resources and ability of the Bidder to perform the Work. The Procurement Official reserves the right to inspect Bidder's plant site, place of business, records, supplies and services as necessary to determine responsibility.

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

53. **MULTIPLE OR ALTERNATE BIDS:** Multiple or Alternate Proposals will not be accepted, and any multiple or alternate Proposals submitted will be rejected.

54. **"ALL OR NONE" BIDS:** Bids may not limit acceptance to the entire bid offering. Bids that violate this provision shall be deemed to be nonresponsive.

55. **LOW TIE BIDS:** If the lowest priced bids are identical in price and meet all of the requirements and criteria set forth in the Invitation for Bids for the same unit price or total amount in the whole or in part, the Procurement Official has the authority to award the bid to any one of the bidders by drawing lots in public in accordance with 2 GAR, Div. 4, § 3109(o)(2) and (3).

56. **REPRESENTATION REGARDING ETHICAL STANDARDS FOR GOVERNMENT EMPLOYEES AND FORMER GOVERNMENT EMPLOYEES:** The bidder, offeror, or contractor represents that it has not knowingly influenced and promises that it will not knowingly influence a government employee to breach any of the ethical standards set forth in Article 11 (Ethics in Public Contracting) of the Guam Procurement Act and in Article 11 of the Guam Procurement Regulations. See Appendix L.

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

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

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

58. REPRESENTATION REGARDING GRATUITIES, KICKBACKS, AND FAVORS: The bidder, offeror, or contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks and favors set forth in §161107 (Gratuities and Kickbacks) of the Guam Procurement Regulations. **See Appendix N.**

59. PROHIBITION OF CONTINGENT FEES: It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a hospital contract upon 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.

60. PROSPECTIVE CONTRACTOR'S REPRESENTATION REGARDING CONTINGENT FEES: The prospective contractor represents as part of such contractor's bid or proposal that such contractor has not retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. **See Appendix M.**

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

62. RIGHT TO ACCESS, AUDIT, AND INSPECT:

The Port Authority, the Federal Emergency Management Agency, US Maritime Administration, Inspectors General, the Comptroller General of the United States, and any of their authorized representatives must have the right of access to any documents, papers, or other records of the Contractor which are pertinent to the contract, in order to make audits, examinations, excerpts, and transcripts, and to inspect supplies and services and audit records at any Contractor or proposed subcontractor's facility or place of business and perform tests both: prior to award of a contract, to determine responsibility and capability of performing any contract to be awarded under a solicitation, and to determine whether the Contractor's or subcontractor's facilities, supplies, or services conform to solicitation requirements; or after award, to determine whether the awarded contractor is conforming to contract requirements, and its performance is therefore acceptable. This right also includes timely and reasonable access to the Contractor's personnel for the purpose of interview and discussion related to such documents. The Contractor agrees to abide by the following access, audit, and inspection terms:

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

B. **Right to Audit.** Contractor shall establish and maintain a reasonable accounting system that enables the Port Authority or the Federal Emergency Management Agency, or US Maritime Administration to readily identify Bidder's assets, expenses, costs of goods, and use of funds. The Port Authority, the Federal Emergency Management Agency, US Maritime Administration, the Comptroller General of the United States and any of their authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to its Proposal, the solicitation, or this Agreement, which are kept by or under the control of the Contractor, including, but not limited to those kept by the Contractor, its employees, agents, assigns, successors, and

subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files (including bids of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back-charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Contractor shall, at all times during the term of any awarded contract and for a period of three (3) years after the date of final payment under any awarded contract, maintain such records, together with such supporting or underlying documents and materials. The Contractor shall at any time requested by Port Authority, the Federal Emergency Management Agency, US Maritime Administration, the Comptroller General of the United States and any of their authorized representatives, whether before, during, or after completion of an awarded contract, and at Contractor's own expense make such records available for inspection and audit (including copies and extracts of records as required) by Port Authority, the Federal Emergency Management Agency, US Maritime Administration, the Comptroller General of the United States and any of their authorized representatives. Such records shall be made available to Port Authority, the "Federal Agency", the Comptroller General of the United States and any of their authorized representatives during normal business hours at the Contractor's office or place of business without prior notice. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for Port Authority, the Federal Emergency Management Agency, US Maritime Administration, the Comptroller General of the United States and any of their authorized representatives. Contractor shall ensure Port Authority, the Federal Emergency Management Agency, US Maritime Administration, the Comptroller General of the United States and any of their authorized representatives has these rights with Contractor's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Contractor and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Contractor's obligations to Port Authority, the Federal Emergency Management Agency, US Maritime Administration, the Comptroller General of the United States and any of their authorized representatives. Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by Port Authority, the Federal Emergency Management Agency, US Maritime Administration, the Comptroller General of the United States and any of their authorized representatives unless certain exemption criteria are met. If the audit identifies overpricing or overcharges (of any nature) by the Contractor to Port Authority, the Federal Emergency Management Agency, US Maritime Administration, the Comptroller General of the United States and any of their authorized representatives in excess of one-half of one percent (.5%) of the total contract billings, the Contractor shall reimburse the Port Authority or the entity that conducted the audit for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, the Port Authority may recoup the costs of the audit work from the Contractor. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of Port Authority, the Federal Emergency Management Agency, US Maritime Administration the Comptroller General of the United States and any of their authorized representatives' findings to Contractor.

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

63. **COST OR PRICING DATA:** Cost or pricing data is required to be submitted when adjusting the price of any contract, including a contract awarded by competitive sealed bidding, whether or not cost or pricing data were required in connection with the initial pricing of the contract, if the adjustment involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed one hundred thousand dollars (\$100,000). In addition, if cost or pricing data is required under this Section, a Certificate of Cost or Pricing Data must be submitted by the Contractor immediately after negotiation of the price adjustment. Port Authority may request whatever forms of proof it deems appropriate to determine whether a price adjustment is proper, including, but not limited to the following, cancelled checks/proof of payment, vendor invoices, quotes, price sheets and financial records.

64. **INSTALLMENT PAYMENTS:** Progressive installment payments will be offered for the performance of this contract. This type of payment method is being offered for this contract in order to achieve economy for the procurement of construction work and not to avoid budgetary restraints. No statutory or other prohibitions are violated by the use of installment provisions in this contract, and all budgetary, funding, or other required prior approvals have been obtained.

65. **DESCRIPTIVE LITERATURE:** Descriptive literature of any proposed item(s) that are not as specified in this solicitation must be furnished as part of the bid and must be received at the date and time set for Bid opening. The literature furnished must clearly identify the item(s) in the Bid. The descriptive literature is required to establish, for the purpose of evaluation and award, details of the product(s) the bidder proposes to furnish including design, materials, components, performance characteristics, methods of manufacture, construction, assembly or other characteristics which are considered appropriate. Rejection of the Bid will be required if the descriptive literature does not show that the product(s) offered conform(s) to the specifications and other requirements of this solicitation. Failure to furnish the descriptive literature by the time specified in the Solicitation will require rejection of the Bid.

66. **SAMPLES:** If proposed Bid item is not as specified in this solicitation, sample(s) must be furnished as a part of the bid and must be received at the date and time set for Bid opening. The sample(s) should represent exactly what the Bidder proposes to furnish and will be used to determine if the item(s) offered complies with the specifications. Rejection of the Bid will be required if the sample(s) do not show that the product(s) offered conform(s) to the specifications and other requirements of this solicitation. Failure to furnish the sample(s) by the time specified in the Solicitation will require rejection of the Bid.

67. **GUARANTY OF MATERIALS, SUPPLIES, AND EQUIPMENT:** The successful bidder shall guarantee all supplies, materials, and equipment used in the Work against defective parts, workmanship, and performance for a period of not less than one (1) year after use or installation of the supplies, material, or equipment. All parts found defective within that period shall be repaired or replaced by the Contractor without cost to Port Authority or the Government. Repairs, adjustments or replacements of defective parts shall be completed by the Contractor within six (6) working days after notice from Port Authority or the Government.

68. **MULTI-TERM PROVISIONS:** Bidders must submit prices for the entire time of performance only. A unit price shall be given for each type of service, and such unit prices shall be the same throughout any resulting contract except to the extent price adjustments may be provided in the solicitation and resulting contract.

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

69. **BUY AMERICA ACT:** Awarded bidder shall comply with Buy America Act – 41 U.S.C. § 8301-8305 and the Davis-Bacon Act – 40 U.S.C. §§ 3141, and 2 CFR Section 200.216 **Prohibition on certain telecommunications and video surveillance services or equipment.** There are two separate funding sources for this project: 1) Port Security Grant Program, and 2) US DOT Maritime Administration (MARAD). The PAG requires that all portions of the IFB must adhere to the Buy America Act and Davis-Bacon Act and ensure compatibility and uniformity of the CCTV and ACS systems;

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

**71. 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.
- v. See Appendix K.

**Volume 2**  
**SAMPLE CONTRACT AND SPECIAL**  
**PROVISION**

## CONTRACT TERMS AND CONDITIONS

Final Contract may not be in exact form as provided.

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

### AGREEMENT

### BETWEEN

**JOSE D. LEON GUERRERO COMMERCIAL PORT**

### AND

### CONTRACTOR

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

### RECITALS

A. The Port issued a Multi-Step Invitation for Bid seeking for a firm to supply, replace and install a CCTV Surveillance System and Access Control System, as well as provide preventive maintenance services under the Multi-Step Invitation for Bid **IFB-PAG-003-21**, a copy of which is attached to this Agreement as **EXHIBIT 1** and incorporated herein by this reference (the "IFB").

B. Pursuant to the IFB, the Port solicited sealed bids from qualified bidders for the **CCTV SURVEILLANCE SYSTEM AND ACCESS CONTROL SYSTEM (ACS) REPLACEMENT PROJECT AND PREVENTIVE MAINTENANCE SERVICES**.

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

D. The Port and Contractor have agreed to execute this Agreement in order to memorialize the terms and conditions on which Contractor shall provide the repairs and design/build services to the Port.

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

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

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

**1.2 Contractor Provisions of Resources** Contractor agrees to furnish all qualified personnel, facilities, tools, equipment, materials and transportation to perform the services and work provided for in this Agreement. Contractor represents and warrants that it and its employees possess the professional and technical expertise and knowledge, resources and experience to perform the services described herein in a professional, skillful and diligent manner. The Port may, in its sole discretion, provide staff assistance to Contractor in furtherance of this Agreement. Contractor acknowledges and agrees that its employees, agents

and all other personnel engaged to provide the services hereunder shall be informed of all relevant provisions of this Agreement.

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

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

## **2. TERMS OF AGREEMENT**

**2.1** Completion of Services. This Agreement shall be effective on the last signature date set forth on the signature page below, and shall continue until Contractor completes all services required hereunder unless earlier terminated in accordance with the terms of this Agreement. Contractor shall commence the performance of services required hereunder upon its receipt of a Notice to Proceed issued by the Port, and Contractor shall complete all required services under this Agreement within **Two Hundred and Ten (210) days from the issuance of a Notice to Proceed by the Port.**

**2.2** Liquidated Damages. Contractor acknowledges and agrees that any delays in the completion of the services required hereunder shall subject Contractor to liquidated damages. For each day beyond the expiration of the **Two Hundred and Ten (210) day** period after the issuance of the Notice to Proceed, Contractor agrees to pay, not as a penalty but as liquidated damages, **One Thousand Dollars and Zero Cents (\$1,000.00)** per day to the Port. The parties agree that the foregoing amount is a reasonable amount for liquidated damages under the circumstances existing at the time this Agreement is entered into and constitutes a reasonable estimate of damages to the Port for any delays in the completion of services.

## **3. COMPENSATION**

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

### **3.2** Payment Terms

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

(b) Final Payment. Final payment shall be made upon satisfactory performance of all services required to be performed by Contractor under this Agreement. Prior to the final payment due Contractor, and as a condition precedent thereto, Contractor shall execute and deliver to the Port a release in a form approved by the Port of claims against the Port arising under this Agreement. Contractor agrees to expressly waive the provision of section 82602 of Title 18, Guam Code Annotated, which states:

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

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



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

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

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

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

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

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

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

(i) any completed construction; and

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

d) Compensation

(i) Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data, submitted to the extent required by section 3118 (Cost or Pricing Data) of the Guam Procurement Regulations, bearing on such claim. If Contractor fails to file a termination claim within one year from the effective date of termination, the Port may pay Contractor, if at all, an amount set in accordance with Section 4.1(d)(iii), below.

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

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

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

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

(C) the reasonable settlement costs of Contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of this Agreement and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Agreement. The total sum to be paid to Contractor under this Section 4.1(d)(iii) shall not exceed (x) the Compensation under this Agreement, plus settlement costs, less (y) any payments previously made by the Port, the proceeds of any sales of construction, supplies, and construction materials under Section 4.1(c), above, and the portion of Compensation remaining for services not terminated.

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

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

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

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

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

(d) Time Extension. Contractor's right to proceed shall not be so terminated nor Contractor charged with resulting damage if:

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

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

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

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

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

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

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

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

**4.6** Additional Provisions. The termination of this Agreement by any party pursuant to the provisions of this Section 4 shall not constitute, or be deemed to constitute, the waiver or release by such party

of any rights or claims such party may have against the other party by reason of actions or omissions occurring on or before the effective date of termination. The parties acknowledge and agree that in the event of termination, the Port may issue a new Invitation for Bids with respect to such terminated services.

## **5. CONTACT PERSON.**

Contractor agrees that, during the term of this Agreement, it shall identify a primary contact person who is familiar with the services being performed hereunder and who shall be responsible for responding to the questions and direction of the Port. The contact person must be identified in writing within five (5) days after full execution of this Agreement by all parties. The Port reserves the right to request replacement of the contact person designated by Contractor under this Agreement.

## **6. CONFIDENTIALITY**

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

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

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

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

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

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

**7.1** Contractor warrants and covenants that it has not violated and will not violate Guam's procurement law or regulations pertaining to ethics in public contracting.

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

## **8. COMPLIANCE WITH LAWS**

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

**8.2** Non-Discrimination in Employment. Contractor agrees (i) not to unlawfully discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap, and (ii) to post and to cause any subcontractor to post in a conspicuous place available to employees and applicants for employment, a notice setting forth the substance of clause (i), above.

### **8.3 Davis Bacon Requirements**

#### **8.3.1 Minimum Wages**

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

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

**8.3.1.2 (A)** The Port shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Port shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

**8.3.4.2 Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually

registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**8.3.4.3 Equal Employment Opportunity.** The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

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

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

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

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

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

**8.3.9. Certification of Eligibility.**

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

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

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

#### **8.4 DOMESTIC PRODUCTS PREFERENCE**

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

#### **8.5 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES AND EQUIPMENT**

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

#### **8.6 NONSEGREGATED FACILITIES**

The Contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The Contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The Contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the Contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The Contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

#### **8.7 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

As used in these paragraphs, the terms laborers and mechanics include watchmen and guards.

**8.7 (A) Overtime requirements.** No contractor or subcontractor contracting for any part of the contract Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess

of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**8.7 (B) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of this section, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this section.

**8.7 (C) Withholding for unpaid wages and liquidated damages.** The Port Authority of Guam shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in this section.

**8.7 (D) Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

## **8.8 SAFETY: ACCIDENT PREVENTION**

**8.8 (A)** In the performance of this contract the Contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation. The Contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

**8.8 (B)** It is a condition of this contract, and shall be made a condition of each subcontract, which the Contractor enters into pursuant to this contract, that the Contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

**8.8 (C)** Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

### **8.8 (D) Hazardous Materials.**

**8.8. (D) 1** The Contractor is responsible for compliance with any applicable Federal, State, and local laws or requirements regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in this Agreement and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall,

upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Port Authority of Guam and the Project Manager in writing.

**8.8 (D) 2** The Contractor shall indemnify the Port Authority of Guam for the cost and expense incurred: (1) for remediation of a material or substance the Contractor brings to the site and negligently handles; or (2) where the Contractor fails to perform its obligations, except to the extent that the cost and expense are due to the Port Authority of Guam's fault or negligence.

**8.8 (E) Emergencies.** In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss.

## **8.9 DRUG FREE WORKPLACE**

**8.9 (A)** The Contractor shall, within 30 days after award:

**8.9 (A) 1** Publish a statement notifying its [employees](#) that the unlawful manufacture, distribution, dispensing, possession, or use of a [controlled substance](#) is prohibited in the Contractor's workplace and specifying the actions that will be taken against [employees](#) for violations of such prohibition;

**8.9 (A) 2** Establish an ongoing drug-free awareness program to inform such [employees](#) about -  
(i) The dangers of drug abuse in the workplace;  
(ii) The Contractor's policy of maintaining a [drug-free workplace](#);  
(iii) Any available drug counseling, rehabilitation, and [employee](#) assistance programs; and  
(iv) The penalties that may be imposed upon [employees](#) for drug abuse violations occurring in the workplace.

**8.9 (A) 3** [Provide](#) all [employees](#) engaged in performance of the contract with a copy of the statement required by paragraph (1) of this clause;

**8.9 (A) 4** Notify such [employees](#) in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the [employee](#) will -  
(i) Abide by the terms of the statement; and  
(ii) Notify the employer in writing of the [employee's conviction](#) under a [criminal drug statute](#) for a violation occurring in the workplace no later than 5 days after such [conviction](#).

**8.9 (A) 5** Notify the Procurement Officer in writing within 10 days after receiving notice under subdivision (4)(ii) of this clause, from an [employee](#) or otherwise receiving actual notice of such [conviction](#). The notice shall include the position [title](#) of the [employee](#);

**8.9 (A) 6** Within 30 days after receiving notice under subdivision (4)(ii) of this clause of a [conviction](#), take one of the following actions with respect to any [employee](#) who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such [employee](#), up to and including [termination](#); or  
(ii) Require such [employee](#) to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, [State](#), or local health, law enforcement, or other appropriate [agency](#);  
and

**8.9 (A) 7** Make a good faith effort to maintain a [drug-free workplace](#) through implementation of paragraphs (1) through (6) of this clause.

**8.9 (B)** The Contractor, if an [individual](#), agrees by award of the contract or [acceptance](#) of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a [controlled substance](#) while performing this contract.

**8.9 (C)** In addition to other remedies available to the Port Authority of Guam, the Contractor's failure to comply with the requirements of paragraph (B) or (C) of this clause may render the Contractor subject to suspension of contract [payments](#), [termination](#) of the contract for [default](#), and suspension or debarment.

## **8.10 DEBARMENT (GUAM AND FEDERAL)**

**8.10 (A) Guam Debarment and Suspension.** Contractor warrants that it will comply with the provisions of 5 GCA Chapter 5 Articles 9 and 11, subject to debarment or suspension, and that it will not employ any subcontractors who have been federally debarred or debarred by the Government of Guam.

**8.10 (B) Federal Debarment and Suspension (Executive Orders 12549 and 12689).** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110. The Contractor certifies that it and its principals: 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency; 2) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; 3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated above; and 4) Have not within a three-year period preceding this application had one or more public transactions (federal, state, or local) terminated for cause or default. Contractor further warrants that it is not a party listed on the government wide exclusions in the System for Award Management (SAM), and will comply with the provisions of Subpart C of 2 CFR Part 1326, "Nonprocurement Debarment and Suspension," (published in the Federal Register on December 21, 2006, 71 FR 76573) which generally prohibits entities that have been debarred, suspended, or voluntarily excluded from participating in nonprocurement transactions either through primary or lower tier covered transactions, and which sets forth the responsibilities of recipients of federal financial assistance regarding transactions with other persons, including subrecipients and contractors. Contractor will provide a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion, Lower Tier Covered Transaction (Sub-Recipient), which is a material representation of fact. Submission of this certification is a pre-requisite for entering into this Agreement, imposed by Executive Order 12549, 28 CFR Part 67, Section 67.510.

## **8.11 FEDERAL LOBBYING**

**8.11.2** The Contractor certifies, to the best of his or her knowledge and belief, that:

**8.11 (A)** 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 this Agreement, 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 this Agreement or any Federal grant, loan, or cooperative agreement.

**8.11 (B)** If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to 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 Agreement, or any Federal grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq .)]

**8.10 (C)** The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors shall certify and disclose accordingly.

**8.10 (D)** 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 Agreement. The Contractor certifies or affirms the truthfulness and accuracy of each statement of this certification and disclosure. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure.

**8.11 IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS EXCEEDING \$100,000).**

**8.11.1** Contractor agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC, 1857H), Section 508 of the Clean Water Act (33 USC, 1368), Executive Order 11378, and Environmental Protection Agency regulations (40 C.F.R., Part 15), which prohibit the use under nonexempt federal contracts, grants, or loans of facilities included on the EPA list of Violating Facilities. Contractor shall report violations to \*Agency\* and to the USEPA Assistant Administrator for Enforcement (ENO329).

**8.11.2** By executing this contract, and any subcontracts, as appropriate, the Contractor and any subcontractors will be deemed to have stipulated as follows:

**8.11 (A)** That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

**8.11 (B)** That the Contractor agrees to include or cause to be included the requirements of paragraph (A) of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

**8.12 PROCUREMENT OF RECOVERED MATERIALS**

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

**8.13 UNALLOWABLE COSTS**

Contractor agrees to comply with all applicable laws, regulations, policies, and guidance (including specific cost limits, prior approval and reporting requirements, where applicable) governing the use of federal funds. Costs that are expressly unallowable under federal funding laws, or costs which specifically become designated as unallowable as a result of a written decision furnished by a contracting officer pursuant to contract dispute procedures, or costs which are mutually agreed to be unallowable, including mutually agreed to be unallowable directly associated costs, shall be identified and excluded from any invoice, billing, claim, or proposal applicable to a federally funded contract. A directly associated cost is any cost which is generated solely as a result of incurring another cost, and which would not have been incurred had the other cost not been incurred. When an unallowable cost is incurred, its directly associated costs are also unallowable. Contractor agrees to pay any penalties associated with any unallowable costs.

**8.14 RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**



**8.14 (A)** The Contractor must comply with all applicable requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the OEA. The interpretation of this clause and this Agreement is subject to the definitions located at 37 CFR § 401.14.

**8.14 (B)** The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

**8.14 (C) Invention Disclosure, Election of Title and Filing of Patent Application by Contractor**

**8.14 (C) 1** The Contractor will disclose each subject invention to the OEA Federal Emergency Management Agency and Maritime Administration within two months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

2. The Contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within two years of disclosure to the Federal agency. However, in any case where a patent, a printed publication, public use, sale, or other availability to the public has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

3. The Contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. If the Contractor files a provisional application as its initial patent application, it shall file a non-provisional application within 10 months of the filing of the provisional application. The Contractor will file patent applications in additional countries or international patent offices within either ten months of the first filed patent application or six months from the date permission is granted by the Commissioner of Patents to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

4. For any subject invention with Federal agency and Contractor co-inventors, where the Federal agency employing such co-inventor determines that it would be in the interest of the government, pursuant to 35 U.S.C. 207(a)(3), to file an initial patent application on the subject invention, the Federal agency employing such co-inventor, at its discretion and in consultation with the Contractor, may file such application at its own expense, provided that the Contractor retains the ability to elect title pursuant to 35 U.S.C. 202(a).

5. Requests for extension of the time for disclosure, election, and filing under paragraphs (1), (2), and (3) of this clause may, at the discretion of the Federal agency, be granted. When a Contractor has requested an extension for filing a non-provisional application after filing a provisional application, a one-year extension will be granted unless the Federal agency notifies the Contractor within 60 days of receiving the request.

**8.14 (D) Conditions When the Government May Obtain Title**

The Contractor will convey to the Federal agency, upon written request, title to any subject invention:

**8.14 (D) 1** If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (C) of this clause, or elects not to retain title.

**8.14 (D) 2** In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (C) of this clause; provided, however, that if the Contractor has filed a patent

[application](#) in a country after the times specified in paragraph (C) of this clause, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country.

**8.14 (D) 3** In any country in which the Contractor decides not to continue the prosecution of any non-provisional [patent application](#) for, to pay a maintenance, annuity or renewal fee on, or to defend in a reexamination or opposition proceeding on, a patent on a [subject invention](#).

**8.14 (E) Minimum Rights to Contractor and Protection of the Contractor Right to File**

**8.14 (E) 1** The Contractor will retain a nonexclusive royalty-free license throughout the world in each [subject invention](#) to which the Government obtains title, except if the Contractor fails to disclose the [invention](#) within the times specified in (C), above. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal agency except when transferred to the successor of that party of the Contractor's business to which the [invention](#) pertains.

**8.14 (E) 2** The Contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious [practical application](#) of the [subject invention](#) pursuant to an application for an exclusive license submitted in accordance with applicable provisions at [37 CFR part 404](#) and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved [practical application](#) and continues to make the benefits of the [invention](#) reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve [practical application](#) in that foreign country.

**8.14 (E) 3** Before revocation or modification of the license, the funding Federal agency will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed thirty days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in [37 CFR part 404](#) and agency regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

**8.14 (F) Contractor Action to Protect the Government's Interest**

**8.14 (F) 1** The Contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to: (i) establish or confirm the rights the Government has throughout the world in those [subject inventions](#) to which the Contractor elects to retain title; and (ii) convey title to the Federal agency when requested under paragraph (D) above and to enable the government to obtain patent protection throughout the world in that [subject invention](#).

**8.14 (F) 2** The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each [subject invention made](#) under contract in order that the Contractor can comply with the disclosure provisions of paragraph (C) of this clause, to assign to the Contractor the entire right, title and interest in and to each [subject invention made](#) under contract, and to execute all papers necessary to file [patent applications](#) on [subject inventions](#) and to establish the government's rights in the [subject inventions](#). This disclosure format should require, as a minimum, the information required by paragraph (C)(1) of this clause. The Contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting [inventions](#) in sufficient time to permit the filing of [patent applications](#) prior to U.S. or foreign statutory bars.

**8.14 (F) 3** For each [subject invention](#), the Contractor will, no less than 60 days prior to the expiration of the statutory deadline, notify the Federal agency of any decision: Not to continue the prosecution of a non-provisional [patent application](#); not to pay a maintenance, annuity or renewal fee; not to defend in a reexamination or opposition proceeding on a patent, in any country; to request, be a party to, or take action in a trial proceeding before the Patent Trial and Appeals Board of the U.S. Patent and Trademark Office, including but not limited to post-grant review, review of a business method patent, *inter partes* review, and derivation

proceeding; or to request, be a party to, or take action in a non-trial submission of art or information at the U.S. Patent and Trademark Office, including but not limited to a pre-issuance submission, a post-issuance submission, and supplemental examination.

**8.14 (F) 4** The Contractor agrees to include, within the specification of any United States [patent applications](#) and any patent issuing thereon covering a [subject invention](#), the following statement, "This [invention](#) was [made](#) with government support under the Agreement for Professional Technical Advisory Services between Contractor and OOG, awarded by the OOG under Federal Award Number HQ0005171035. The government has certain rights in the [invention](#)."

#### **8.14 (G) Subcontracts**

**8.14 (G) 1** The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a subcontractor. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

**8.14 (G) 2** The Contractor will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required by the FAR or the Terms and Conditions of Federal Award Number HQ0005171035.

**8.14 (G) 3** In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the OEA, subcontractor, and the [Contractor](#) agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (J) of this clause.

#### **8.14 (H) Reporting on Utilization of Subject Inventions**

The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a [subject invention](#) or on efforts at obtaining such utilization that are being [made](#) by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the [Contractor](#), and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (J) of this clause. As required by [35 U.S.C. 202\(c\)\(5\)](#), the agency agrees it will not disclose such information to persons outside the government without permission of the Contractor.

#### **8.14 (I) Preference for United States Industry**

Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any [subject inventions](#) in the United States unless such person agrees that any products embodying the [subject invention](#) or produced through the use of the [subject invention](#) will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been [made](#) to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

#### **8.14 (J) March-in Rights**

The Contractor agrees that with respect to any [subject invention](#) in which it has acquired title, the Federal agency has the right in accordance with the procedures in [37 CFR 401.6](#) and any supplemental regulations of the agency to require the Contractor, an assignee or exclusive licensee of a [subject invention](#) to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request the Federal agency has the right to grant such a license itself if the Federal agency determines that:



**8.14 (J) 1** Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.

**8.14 (J) 2** Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee or their licensees;

**8.14 (J) 3** Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee or licensees; or

**8.14 (J) 4** Such action is necessary because the agreement required by paragraph (I) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

## **8.15 ACCESS TO RECORDS, INSPECTION, AND AUDIT REVIEW**

**8.15 (A) Access to Records.** The Contractor, including its subcontractors, if any, shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at their respective office at all reasonable times during the contract period and for three (3) years from the date of final payment under this Formal Agreement, for inspection by \*AGENCY\*. Each subcontract by the Contractor pursuant to this Agreement shall include a provision containing the conditions of this Section.

**8.15 (B) Right to Audit.** Contractor shall establish and maintain a reasonable accounting system that enables the Port Authority of Guam to readily identify Contractor's assets, expenses, costs of goods, and use of funds. The Port Authority of Guam and its authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this Agreement kept by or under the control of the Contractor, including, but not limited to those kept by the Contractor, its employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; backcharge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Contractor shall, at all times during the term of this Agreement and for a period of ten years after the completion of this Agreement, maintain such records, together with such supporting or underlying documents and materials. The Contractor shall at any time requested by the Port Authority of Guam, whether during or after completion of this Agreement, and at Contractor's own expense make such records available for inspection and audit (including copies and extracts of records as required) by the Port Authority of Guam. Such records shall be made available to the Port Authority of Guam during normal business hours at the Contractor's office or place of business and [subject to a three-day written notice/without prior notice]. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for the Port Authority of Guam. Contractor shall ensure the Port Authority of Guam has these rights with Contractor's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Contractor and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Contractor's obligations to the Port Authority of Guam. Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by the Port Authority of Guam unless certain exemption criteria are met. If the audit identifies overpricing or overcharges (of any nature) by the Contractor to the Port Authority of Guam in excess of one-half of one percent (.5%) of the total contract billings, the Contractor shall reimburse the Port Authority of Guam for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, the Port Authority of Guam may recoup the costs of the audit work from the Contractor. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the Port Authority of Guam's findings to Contractor.

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

#### **8.16 No Obligation by the Federal Government**

**8.16.1** The Port Authority of Guam and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Port Authority of Guam, Contractor, or any other party (whether or not a party to the contract) pertaining to any matter resulting from the underlying contract. Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal funds under this Agreement. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### **9. Prohibition Against Gratuities and Kickbacks**

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

**10. RETENTION AND ACCESS TO RECORDS AND OTHER REVIEW.** Contractor, including subcontractors, if any, shall maintain all books, documents, papers, accounting records and other evidence pertaining to the services performed and costs incurred, and shall make such materials available at its respective offices at all reasonable times for inspection by the Port for the period ending six (6) years following the expiration or termination of this Agreement. The Port agrees to comply with Contractor's reasonable requests for access to all documents and Port property reasonably necessary to the performance of Contractor's services under this Agreement.

### **11. INDEMNIFICATION**

**11.1 Indemnification.** Contractor shall indemnify and hold the Port and each of its officers, agents, Board members and employees, harmless from and against all claims, losses, expenses, injuries, damages, actions, lawsuits, judgments, and all other liabilities, including reasonable attorneys' fees for the defense thereof, arising from or relating to (i) Contractor's breach or failure to perform any of its obligations under this

Agreement, (ii) the inaccuracy of any representation or warranty of Contractor under this Agreement, (iii) any violation of or noncompliance with any federal or local law or regulation by Contractor, or (iv) any act or omission of Contractor or its employees, officers, directors, contractors, agents, representatives, successors, or assigns, in the performance or nonperformance of services under this Agreement.

**11.2 No Liability.** The Port assumes no liability for any accident, loss, claim, judgment, action or injury that may occur with respect to Contractor, Contractor's officers, directors, agents, servants, subcontractors or employees, or to the personal property of any such person or entity, arising out of the performance of services under this Agreement except to the extent caused by the willful misconduct of the Port. No Board member, officer, agent, or employee of the Port shall be personally liable to Contractor under or by reason of this Agreement or any of its provisions.

## **12. SUSPENSION OF WORK**

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

**12.2 Adjustment of Cost.** If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of Port in the administration of this Agreement, or by the failure of the Port to act within the time specified in this Agreement (or if no time is specified, within reasonable time), an adjustment shall be made for any increase in the cost of performance of this Agreement necessarily caused by such unreasonable suspension, delay, or interruption and this Agreement modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent:

(a) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of Contractor; or

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

**12.3 Time Restriction on Claim.** No claim under this Section 11 shall be allowed:

(a) for any costs incurred more than twenty (20) days before Contractor shall have notified the Port in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and

(b) unless the claim is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the contract.

**12.4 Adjustments of Price.** Any adjustment in the Compensation payable under this Agreement made pursuant to this Section 11 shall be determined in accordance with Section 12, below.

## **13. PRICE ADJUSTMENT**

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

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

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

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

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

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

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

## **14. DISPUTES**

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

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

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

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

## **15. CLAIMS BASED ON PORT ACTIONS OR OMISSIONS**

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

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

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



(ii) within 30 days after Contractor knows of the occurrence of such action or omission, if Contractor did not have such knowledge prior to the commencement of the services; or

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

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

(b) The notice required by Section 13.1(a), above, describes as clearly as practicable at the time the reasons why Contractor believes that additional compensation, damages, or an extension of time may be remedies to which Contractor is entitled; and

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

**15.2 Limitations of Clause.** Nothing in this Section 13, however, shall excuse Contractor from compliance with any rules of law precluding any territorial officers and any contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of this Agreement.

**15.3 Adjustments of Price.** Any adjustment in the Compensation payable under this Agreement made pursuant to this Section 13 shall be determined in accordance with Section 12, above.

**16. MODIFICATIONS INCLUDING THOSE DUE TO PUBLIC WELFARE, CHANGE IN LAW OR CHANGE IN MARKETING CONDITIONS.** The Port shall have the unilateral power to modify this Agreement at any time subject to the written agreement of Contractor. The Port shall have the power to make changes in this Agreement and to impose new rules and regulations on Contractor under this Agreement relative to the scope and methods of providing services as shall from time-to-time be necessary and desirable for the public welfare or due to a change in law. The Port shall give Contractor notice of any proposed change in this Agreement and an opportunity to be heard concerning those matters. The scope and method of providing services as referenced herein shall also be liberally construed to include, but is not limited to, the manner, procedures, operations and obligations, financial or otherwise, of Contractor. In the event the Port materially alters the obligations of Contractor, or the benefits to the Port, then this Agreement shall be amended consistent therewith. Should these amendments materially alter the obligations of Contractor, then Contractor or the Port shall be entitled to an adjustment in the rates and charges established under this Agreement. Contractor shall be entitled to terminate this Agreement rather than accept modified terms. Nothing contained in this Agreement shall require any party to perform any act or function contrary to law. The Port and Contractor agree to enter into good faith negotiations regarding modifications to this Agreement, which may be required in order to implement changes in the interest of the public welfare or due to changes in law. When such modifications are made to this Agreement, the Port and Contractor shall negotiate in good faith a reasonable and appropriate adjustment for any changes in services or other obligations required of Contractor directly and demonstrably due to any modification in this Agreement under this Section 14.

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

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

**17.2 Limitation on Authority.** Contractor (a) shall not be an agent of the Port and shall have no authority to bind the Port or incur any liabilities in the name of the Port, and (b) shall indemnify, defend, and hold the Port free and harmless from and against all claims, costs, damages, and expenses arising from or related to a breach by Contractor of the limitation set forth in this Section 15.2.

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

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

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

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

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

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

Contractor warrants that no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated, or of an offense defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated, or who has been convicted of an offense with the same elements as heretofore defined in any other jurisdiction, or who is listed on the Sex Offender Registry, shall provide services on behalf of the Port while on the Port or Government of Guam property, with the exception of public highways. If any employee or agent of Contractor is providing services on government or Port property and is convicted subsequent to the effective date of this Agreement, then Contractor warrants that it will notify the Port of the conviction within twenty-four (24) hours of the conviction, and will immediately remove and prohibit such convicted person from providing services on government or Port property. If Contractor is found to be in violation of any of the provisions of this Section 18, then Contractor shall take corrective action within twenty-four (24) hours of the notice from the Port, and Contractor shall notify the Port when corrective action has been taken. If Contractor fails to take corrective steps within twenty-four (24) hours of the notice from the Port, then the Port in its sole discretion may suspend the performance of services until corrective action has been taken.

## **21. MISCELLANEOUS**

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

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

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

**21.4 Fees and Expenses.** Each of the parties shall bear its own expenses in connection with the negotiation and consummation of the transactions contemplated by this Agreement.

**21.5 Notices.** All invoices, reports, correspondence, notices, requests, demands and other communications hereunder shall be in the English language, in writing. All notices required to be given under this Agreement by either party to the other may be effected by personal delivery, or by mail (registered or certified, postage, prepaid with return receipt requested). Notices delivered personally shall be deemed communicated as of actual receipt. Mailed notices shall be deemed communicated as of the day of receipt or the fifth (5<sup>th</sup>) day after mailing, which occurs first. Notices shall be addressed and delivered to the parties as follows, provided that each party may change the address by giving the other party written notice in accordance with this Section 19.5:

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

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

TO CONTRACTOR:

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

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

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

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

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

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

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

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

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

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

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

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

**JOSE D. LEON GUERRERO  
COMMERCIAL PORT**

\_\_\_\_\_

General Manager

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

**CONTRACTOR/CONSULTANT**

\_\_\_\_\_

**(CONTRACTOR NAME)**

President

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

**APPROVED AS TO FORM:**

\_\_\_\_\_

Port Legal Counsel  
Jose D. Leon Guerrero Commercial Port

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

**CERTIFICATION OF AVAILABILITY  
OF FUNDS:**

\_\_\_\_\_

Financial Affairs Controller  
Jose D. Leon Guerrero Commercial Port

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

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

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

## SPECIAL PROVISIONS

**1. General Intention:**

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

**2. Bid:**

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

**3. Specifications and Standards:**

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

**4. Time for Completion:**

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

**5. Liquidated Damages:**

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

If the said Contractor shall neglect, fail or refuse to complete the work within the time herein specified, the Contractor does hereby agree, as part of the consideration for the awarding of this contract, to pay to the Port Authority of Guam the amount of \$1,000.00 per calendar day, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default of the time stipulated in the contract for completing the work.

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

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

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

Provided further that the Contractor shall, within seven (7) calendar days from the beginning of delay, give written notice as to the causes of the delay to the Contracting Officer, who will ascertain the facts and extent of the delay and notify the Contractor within reasonable time of his decision in the matter.

Contractor must note that Guam by nature has frequent rainfall causing suspension of work. Said suspensions shall not qualify for time extensions unless the weather is unusually severe.

**6. Disposal:**

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

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

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

**7. Material Standards:**

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

**8. Contractor Furnished Equipment:**

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

**9. Owner Furnished Materials:**

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

- a. The Contractor shall repair or replace these items if damaged during transport to the site. In addition, the Contractor shall repair any damage to public and private property caused by the transport of these items.
- b. All materials and equipment if furnished by the Port Authority of Guam are in good condition. Prior to the start of project, the Contractor shall inspect these items and acknowledge the receipt thereof. The Contractor is responsible for repairing and replacing any damage or theft of equipment or damage which causes the equipment to be inoperable from the date it was received and prior to final acceptance of this project. All expenses shall be the Contractor's responsibility.

**10. Underground Utilities Clearances if Applicable:**

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

**11. Surplus Materials:**

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

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



# Volume 3

## REQUIRED FORMS

### LIST OF APPENDICES:

Appendix A –	Bid Bond
Appendix B –	Performance and Payment Bond
Appendix C –	Non-Collusion Affidavit
Appendix D –	Major Shareholder Disclosure Affidavit
Appendix E –	Bidder Qualification Form
Appendix F –	Wage and Benefit Certification
Appendix G –	Instructions EEO Report PR 1391 Guam *construction only*
Appendix H –	Employment Data *construction only*
Appendix I –	Certificate of Bidder Regarding Equal Employment Opportunity*construction only*
Appendix J –	Certification of Bidder Regarding Non-Segregated Facilities
Appendix K –	Certification of Non-Employment of Convicted Sexual Offenders
Appendix L –	Affidavit re Ethical Standards
Appendix M –	Affidavit re Contingent Fees
Appendix N –	Affidavit re No Gratuities or Kickbacks
Appendix O –	Federal Anti-Lobbying Certification *federal funds only*
Appendix P –	USDOL Federal Debarment Certification *federal funds only*
Appendix Q –	Clean Air Act & Federal Pollution Control Act Certification *federal funds only*
Appendix R –	Current USDOL Wage Determination for Guam
Appendix S –	Davis-Bacon Wage Determination for Guam *construction and federal funds only*
Appendix T –	[Any Applicable Terms and Conditions of any Funding Source]
Appendix U –	Conflict of Interest Guidelines
Appendix V –	Conflict of Interest Form
Appendix W –	Bid Proposal Form
Appendix X –	Priced Bid Form/Schedule of Values

**PROCUREMENT CHECKLIST**

**CHECKLIST OF FORMS AND DOCUMENTS REQUIRED TO  
BE SUBMITTED IN CONJUNCTION WITH BIDS**

**A. Form or document that must be submitted with "Unpriced Technical Bid"      Initial if Submitted:**

- |  |       |
|--|-------|
| 1. Bidder Qualification Form   | _____ |
| 2. Non-Collusion Affidavit   | _____ |
| 3. Affidavit re Ethical Standards  | _____ |
| 4. Affidavit re Contingent Fees  | _____ |
| 5. Certification of Bidder Regarding Equal Employment Opportunity            | _____ |
| 6. Certification Regarding Non-Segregated Facilities                         | _____ |
| 7. Sex Offender Certification  | _____ |
| 8. Wage and Benefit Certification  | _____ |
| 9. US DOL Wage and Benefit Determination for Guam                            | _____ |
| 10. Major Shareholders Disclosure Affidavit                                  | _____ |
| 11. Proof of All Licensure to Perform Work Called for by the IFB             | _____ |
| 12. Financial Statements (including information required under Section 1-23) | _____ |
| 13. Forms or Documents Required by IFB or Amendments not referred to above   | _____ |

**B. Form or document that must be submitted with "Priced Bid" submission**

- |   |       |
|---|-------|
| 1. Bid Bond Equal to 15% of total amount of bid         | _____ |
| 2. Bid Proposal (Priced Bid Submission)                 | _____ |
| 3. Priced Bid Form/Bid Schedule (Priced Bid Submission) | _____ |

I, \_\_\_\_\_, a duly authorized representative of \_\_\_\_\_, do hereby certify, that the forms listed above have, in fact, been submitted with my firm's bid. I acknowledge that failure to submit any of the above documents will result in my firm being deemed non-responsive and having my firm's bid rejected.

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

**B. Forms or documents that must be submitted by the successful bidder upon award are as follows:**

1. Proof of Insurance (complete insurance policies) per Section B-8.
2. Performance and Payment Bond(s).
3. \*Other Forms as Required by Port Authority

Most forms or documents above must be submitted on forms supplied by Port Authority. Failure to use the correct form, or submit a form when required, could result in the vendor being deemed to be non-responsive which would require Port Authority to reject the bid. Failure to submit the correct forms or documents that are required after award, but prior to contract, are a condition precedent to Port Authority entering into a contract. Failing to provide the forms or documents could result in loss of award.

## APPENDIX A

### BID BOND

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_ as Principal,  
herein (Name of Contractor)

after called the Principal and \_\_\_\_\_ as a corporation duly licensed under  
the (Name of Surety)

laws of Guam, as Surety, hereafter called the Surety, are held and firmly bound unto the Port Authority ("Port Authority") and the \*Bank\* \_\_\_\_\_ ("\*BANK\*") for the sum of \_\_\_\_\_ United States Dollars (\$ \_\_\_\_\_), for payment of which sum will and truly to be made, the said Principal and the said Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally firmly by these presents:

WHEREAS, the Principal has submitted a bid for:

\_\_\_\_\_  
NOW, THEREFORE, if the Port Authority shall accept the bid of the Principal and the Principal shall not withdraw said bid within one hundred twenty (120) calendar days after the opening of bids, and shall within twenty (20) calendar days after the prescribed forms are presented to him for signature, enter into a Contract with the Port Authority in accordance with the terms of such bid and give such bond or bonds as may be the specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and materials furnished in the prosecution thereof, or in the event of the failure of the Principal to enter into such Contract and give such bond or bonds, if the Principals shall pay to the Port Authority and/or \*BANK\* the difference not to exceed the penalty hereof between the amounts specified in said bid and such larger amount for which the Port Authority may in good faith Contract with another party to perform work covered by said bid or an appropriate liquidated damage amount as specified in the Invitation for Bids then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

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

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

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

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

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

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

\_\_\_\_\_  
(PRESIDENT GENERAL AGENT)

## APPENDIX B

### PERFORMANCE AND PAYMENT BOND

KNOW ALL MEN BY THESE PRESENT, that \_\_\_\_\_ hereinafter called the Contractor  
(Name of Contractor)  
and \_\_\_\_\_ a corporation or company duly organized under the laws of  
(Name of Surety)

Guam and otherwise authorized to transact business in Guam, as Surety, are held and firmly bound unto Port Authority and \*BANK\* as obligees, hereinafter collectively called the "Port Authority," for use and benefit of claimants as herein below defined, in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the payment whereof the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Contractor has, or will have, entered, or will enter into a Contract with the Port Authority for the

\_\_\_\_ \*Project\*, pursuant to Invitation for Bids No. \_\_\_\_\_ in accordance with Drawings and Specifications prepared by Port Authority, which Contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

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

A. The Surety hereby waives notice of any alteration or extension of the time made by the Port Authority provided the same is within the scope of the Contract.

B. Whenever the Contractor shall be and is declared in default by the Port Authority to be in default under the Contract, the Port Authority having performed its obligations hereunder, the Surety may promptly remedy the default or shall promptly:

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

C. A claimant is defined as one having a direct Contract with the Contractor or with a sub-contractor of the Contractor for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

The above named Contractor and Surety hereby jointly and severally agree with the Port Authority that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date of which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due the claimant, and have execution thereon. The Port Authority shall not be liable for the payment of any costs or expenses of any such suit.

D. No suit or action shall be commenced hereunder by any claimant unless claimant, other than one having a direct Contract with the Contractor, shall have given written notice to any two (2) of the following:

1. The Contractor, the Port Authority, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be personally served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Contractor at any place the principal maintains an office or conducts its business.

2. After the expiration of one (1) year following the date on which the last of the labor was performed or material was supplied by the party bringing suit.
3. Other than in a court of competent jurisdiction in and for Guam.

E. The amount of the payment bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder.

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

IN THE PRESENCE OF:

*(Note: If the Principals Are Partners, each must execute the Bond)*

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

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

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

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

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

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

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

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

APPENDIX C

NON-COLLUSION AFFIDAVIT

**AFFIDAVIT**

(Prime Bidder)

TERRITORY OF GUAM )

) s.s.

HAGATNA, GUAM, M.I. )

\_\_\_\_\_ being first duly sworn, deposes and says:

That he is \_\_\_\_\_ (a partner or officer of the firm of, etc.) the party making the foregoing proposal or bid, that such proposal or bid is genuine and not collusive or sham, that said bidder has not colluded, conspired, connived or agreed, directly or indirectly, with any bidder or person, to put in a sham bid or to refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the bid price of affiant or of any other bidder, or to fix any overhead, profit or cost element of said bid price, or of that of any other bidder, or to secure any advantage against the Port Authority or any person interested in the proposed Contract; and that all statements in said proposal or bid are true.

\_\_\_\_\_  
Signature of

Bidder, if the bidder is an individual;

Partner, if the bidder is a partnership;

Officer, if the bidder is a corporation

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

\_\_\_\_\_ NOTARY PUBLIC

My commission expires \_\_\_\_\_, 20\_\_\_\_.

**APPENDIX D**

**MAJOR SHAREHOLDER DISCLOSURE AFFIDAVIT**

TERRITORY OF GUAM}

HAGATNA, GUAM }

I, the undersigned \_\_\_\_\_, being first duly sworn, depose and says:

1. That the persons who have held more than ten percent (10%) of the company's share during the past twelve months preceding the submission of the bid are as follows (if none, so state):

<u>NAME</u>	<u>ADDRESS</u>	<u>% OF SHARES HOLD</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

TOTAL NUMBER OF SHARES \_\_\_\_\_

2. 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 for which this affidavit is submitted are as follows:

<u>NAME</u>	<u>ADDRESS</u>	<u>AMOUNT OF COMMISSIONS, GRATUITY OR OTHER COMPENSATION</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

Further, affiant sayeth naught.

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

\_\_\_\_\_  
Signature of individual if bidder is a sole proprietorship;  
partner, if the bidder is a partnership;  
officer, if the bidder is a corporation (or other authorized person)

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

Signature of Notary Public in and for the Territory of Guam \_\_\_\_\_

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



**APPENDIX E  
BIDDER QUALIFICATION FORM**

Submitted to: \_\_\_\_\_

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

Submitted by (Name of Firm): \_\_\_\_\_

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

1. **TYPE OF WORK** (File separate form for each Classification of Work):

☐ \*Specify a type of Work\*

☐ \*Specify a type of Work\*

☐ Specialty Contractor: (please specify specialty below)

☐ Specialty (Please Specify): \_\_\_\_\_

**CLASSIFICATION OF WORK WITH OWN FORCES** (List trades):

\_\_\_\_\_

2. **TYPE OF FIRM:** ☐ Corporation ☐ Partnership ☐ Sole Proprietorship

Years in Business: \_\_\_\_\_

3. **OFFICERS, PARTNERS OR OWNERS & CONSTRUCTION EXPERIENCE:**

**Years of Experience**

**Name:**

**Title:**

**In Classification Work Listed:**

_____	_____	_____
_____	_____	_____
_____	_____	_____

4. **NUMBER OF PERSONNEL IN ORGANIZATION:**

Administrative: \_\_\_\_\_ \*Specify\*: \_\_\_\_\_ Office: \_\_\_\_\_ Shop: \_\_\_\_\_ Field: \_\_\_\_\_

5. **REFERENCES:**

Bank(s) Maintaining Account(s):

Surety/Underwriter:

_____	_____
_____	_____
_____	_____

Other References:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. **TYPICAL CONTRACTS COMPLETED DURING LAST FIVE YEARS:**

<u>Year</u>	<u>Name of Project</u>	<u>Client</u>	<u>Contract Amount</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

7. **AVERAGE ANNUAL BILLING FOR LAST FIVE YEARS: \$** \_\_\_\_\_

8. TOTAL WORK IN PROGRESS AND UNDER CONTRACT: \$ \_\_\_\_\_

9. LAST MAJOR WORK UNDER CONTRACT:

<u>Percent Completed</u>	<u>Name of Project</u>	<u>Client</u>	<u>Amount</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

10. LIST CURRENT PROJECTS ON WHICH YOUR FIRM IS THE CANDIDATE FOR CONTRACT AWARD:

\_\_\_\_\_  
\_\_\_\_\_

11. HAVE YOU AT ANY TIME FAILED TO COMPLETE A CONTRACT? ☐ Yes ☐ No

ARE THERE ANY JUDGMENTS, CLAIMS OR SUITS PENDING OR OUTSTANDING AGAINST YOU?

☐ Yes ☐ No

IF THE ANSWER TO EITHER QUESTIONS IS YES, SUBMIT DETAILS ON SEPARATE SHEET.

(See Attachment "B") ☐ Yes ☐ No

LIST ALL LAWSUITS YOUR FIRM HAS FILED DUE TO \*\*\* CONTRACTS IN THE LAST FIVE YEARS:

\_\_\_\_\_  
\_\_\_\_\_

12. FINANCIAL STATEMENT

Current Assets	\$ _____
Fixed Assets (Depreciated)	\$ _____
Other Assets	\$ _____
Cash on hand in accounts	\$ _____
Available Line of Credit	\$ _____
TOTAL ASSETS	\$ _____
Current Liabilities	\$ _____
Long Term Liabilities	\$ _____
TOTAL LIABILITIES	\$ _____
NET WORTH	\$ _____

Date of Latest Balance Sheet:

Prepared by: \_\_\_\_\_  
(a Certified Public Accountant, and available or request)

Dated at: \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

13. HAVE YOU AT ANY TIME FAILED BEEN CITED BY ANY GOVERNMENTAL ENTITY FOR SAFETY VIOLATIONS?  
☐ Yes ☐ No

ARE THERE ANY PENDING SAFETY CLAIMS OR SAFETY RELATED LAW SUITS PENDING OR OUTSTANDING AGAINST YOU? ☐ Yes ☐ No

IF THE ANSWER TO EITHER QUESTION ABOVE IS YES, SUBMIT DETAILS ON SEPARATE SHEET.

(See Attachment "C") ☐ Yes ☐ No

LIST ALL SAFETY RELATED ACCIDENTS YOUR FIRM HAS HAD IN THE LAST FIVE YEARS  
(use a separate sheet of paper if necessary):

\_\_\_\_\_  
\_\_\_\_\_

---

Pursuant to information for prospective bidders for above mentioned proposed project, the undersigned is submitting the information as required with the understanding that it is for Port Authority's use only to assist in determining the qualifications of this organization to perform the type and magnitude of work included; and further, guarantee the truth and accuracy of all statements herein made. The surety herein named, any other bonding company, bank, sub-Contractor, supplier, or any other persons, firms or corporations with whom we have done business, or who have extended any credit to us are hereby authorized to furnish you with any information you may request concerning our organization including, but not limited to, information concerning performance on previous work or credit standing with any of them. We hereby release any and all such parties from any legal responsibility whatsoever of having furnished such information to you.

Name of Organization:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

Attested by: \_\_\_\_\_

Title: \_\_\_\_\_

**APPENDIX F  
WAGE AND BENEFIT CERTIFICATION**

Invitation for Bid No. \_\_\_\_\_

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

I, \_\_\_\_\_ hereby certify under penalty of perjury as follows:

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 below and that I will ensure that I and my sub-contractors will comply with said provisions which read as follows:

**§ 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 and its sub-contractors are now, or will be prior to beginning performance and throughout the Contract term, in full compliance with 5 GCA § 5801 and § 5802.
4. That I have attached the most recent wage and benefit determinations applicable to Guam issued by the U.S. Department of Labor and that I will ensure all of my employees and the employees of my sub-contractors will be provided a minimum of ten (10) paid holidays per annum.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## APPENDIX G

### INSTRUCTIONS

#### EEO REPORT PR 1391 GUAM \*FOR CONSTRUCTION ONLY\*

This Report should be submitted to the Port Authority by each Contractor or Sub-Contractor for the first three (3) months of their work, and for the month of July. Sub-Contractors should report Contract and employment data pertaining to their sub-contract work only.

The manpower figures to be reported under employment data should represent the Project work force on board in whole or in part for the last payroll period preceding the end of the month.

The manpower figures to be reported in Table A should include **all employees of the bidder**, including managers, administrative personnel, journeyman, apprentices, and all on the job employees including journeyman, apprentices and trainees

The manpower figures to be reported in Table B should **only** include all "**on-the-job**" employees (employees who are or will be working on this project).

<input type="checkbox"/> Contractor	NAME AND ADDRESS OF FIRM:	PROJECT:
<input type="checkbox"/> Sub-Contractor(s)		

TYPE OF CONSTRUCTION:

VILLAGE AND TERRITORY:

PERCENT COMPLETED:

LAST AMOUNT:

BEGAN CONSTRUCTION:

ESTIMATED PEAK EMPLOYMENT:

MONTH & YEAR:

NUMBER OF EMPLOYEES:

## APPENDIX H

### EMPLOYMENT DATA \*FOR CONSTRUCTION ONLY\*

Please indicate whether your employees meet the following: Caucasian, Chamorro, Hawaiian, Filipino, Chinese, Micronesian, Japanese, Korean, Malaysian, Other (specify).

JOB CATEGORIES:	<u>TABLE A</u> All employees of bidder	<u>TABLE B</u> All on-the-job employees
-----------------	--	---

Managers  
Supervisors  
Foremen  
Clerical  
Equip. Operators  
Mechanics  
Truck Drivers  
Iron Workers  
Carpenters  
Cement Finishers  
Electricians  
Plum.-Pipe Fitters  
Painters  
Laborers, Semi-Skilled  
Laborers, Un-Skilled

---

#### TOTALS:

Summarize new hires for the current month indicating Minorities and Non-Minorities by job categories (Use reverse side if needed)

Prepared by: \_\_\_\_\_

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

\_\_\_\_\_  
(Signature and Title of Contractor's Representative)

Approved by: \_\_\_\_\_  
(Signature and Title of Port Authority Official)

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

## APPENDIX I

### CERTIFICATION OF BIDDER REGARDING EQUAL EMPLOYMENT OPPORTUNITY \*FOR CONSTRUCTION ONLY\*

#### GENERAL

In accordance with Executive Order 11246 (30 F.R. 12319-25), the implementing rules and regulations thereof, and orders of the Secretary of Labor, a Certification regarding Equal Opportunity is required of bidders or prospective Contractors and their proposed sub-contractors prior to the award of Contract or sub-contracts.

#### CERTIFICATION OF BIDDER

Bidder's Name: \_\_\_\_\_

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

Internal Revenue Service Employer Identification No.:

1. Participation in a previous Contract or sub-contract.

- a. Bidder has participated in a previous Contract or sub-contract subject to the Equal Opportunity clause  
[ ] Yes [ ] No
- b. Compliance reports were required to be filed in connection with such Contract or sub-contract  
[ ] Yes [ ] No
- c.
- d.
- e. Bidder has filed all compliance reports required by Executive Orders 10925, 11114, 11246 or by regulations of the Equal Employment Opportunity Commission issued pursuant to Title VII or the Civil Rights Act of 1964 [ ] Yes [ ] No

d. If answer to item 1 is "NO", please explain in detail on reverse side of this certification.

2. Dollar Amount of Bid: \$ \_\_\_\_\_.

- a. Anticipated performance period \_\_\_\_\_ days.

3. Expected total number of employees who will perform the proposed construction:

4. Non-segregated Facilities

- a. Notice to Prospective Contractor.

- i. A Certification of Non-Segregated Facilities, as required by the May 9, 1967, order (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted to the recipient prior to the award of a Contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity Clause.
- ii. Contractors receiving Contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause will be required to provide for the forwarding of the following notice to prospective sub-contractors for supplies and construction Contracts where the sub-contracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity Clause.

- b. Notice to Prospective sub-contractors of Requirements for Certification of Non-Segregated Facilities.

- i. A Certification of Non-Segregated Facilities, as required by the May 9, 1967, order (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted prior to the award of a sub-contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity Clause.
- ii. Contractors receiving sub-contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause will be required to provide for the forwarding of this notice to prospective sub-contractors for supplies and construction Contracts, where the sub-contractors exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity Clause.



iii. Certification of Non-Segregated Facilities.

The Contractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, or housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin because of habit, local custom, or otherwise. The Contractor agrees that (except where he has obtained identical certifications from proposed sub-contractors for specific time periods) he will obtain identical certifications in duplicate from proposed sub-contractors prior to the award of sub-contracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that he will retain the duplicate of such certifications in his files. The Contractor will include the original in his Bid Package.

6. Race of ethnic group designation of bidder. Enter race or ethnic group in the appropriate box:

- |                          |                                     |                          |                  |                          |          |
|--------------------------|-------------------------------------|--------------------------|------------------|--------------------------|----------|
| <input type="checkbox"/> | African American                    | <input type="checkbox"/> | Spanish American | <input type="checkbox"/> | Oriental |
| <input type="checkbox"/> | Aleut                               | <input type="checkbox"/> | American Indian  | <input type="checkbox"/> | Eskimo   |
| <input type="checkbox"/> | White (other than Spanish American) |                          |                  |                          |          |
| <input type="checkbox"/> | Pacific Islander                    |                          |                  |                          |          |

**REMARKS:**

Certification: The information above is true and complete to the best of my knowledge and belief.

Name and Title of Signer:

\_\_\_\_\_  
(Please Type)

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

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

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

## APPENDIX J

### CERTIFICATION OF BIDDER REGARDING NONSEGREGATED FACILITIES

(Applicable to Contracts and related sub-contracts \$10,000 which are not exempt from the Equal Opportunity Clause.)

The Contractor certifies that he does not maintain or provide for his employees any segregated facilities in any of his establishment, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The Contractor certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location under his control, where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. The Contractor agrees that (except where he has obtained identical certifications from proposed sub-contractors for specific time periods) he will obtain identical certifications exceeding \$10,000 which are not exempt from the provision of the Equal Opportunity Clause, and that he will retain such certifications in his files.

Name and Title of Signer:

\_\_\_\_\_  
(Please Type)

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

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

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

## APPENDIX K

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

Pursuant to Guam Public Law 28-24, as amended by Guam Public Law 28-98, if a Contract for services is awarded to the bidder or offeror, then the service provider must warrant that no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated or of an offense defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated, or who has been convicted in any other jurisdiction of an offense with the same elements as heretofore defined, or who is listed on the Sex Offender Registry, shall provide services on behalf of the service provider while on government of Guam property, with the exception of public highways. If any employee of a service provider is providing services on government property and is convicted subsequent to an award of a Contract, then the service provider warrants that it will notify the Government of the conviction within twenty-four 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 hours of notice from the Government, and the service provider shall notify the Government when action has been taken. If the service provider fails to take corrective steps within twenty-four hours of notice from the Government, then the Government in its sole discretion may suspend temporarily any Contract for services until corrective action

---

I, \_\_\_\_\_ being a duly authorized representative acknowledge the directive as  
(Print Name)  
described above and ensure the Bid Proposal as submitted addresses the directive.

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

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

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

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

APPENDIX L

**AFFIDAVIT re ETHICAL STANDARDS**

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

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

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

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

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

\_\_\_\_\_  
NOTARY PUBLIC

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

APPENDIX M

**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 411108(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 411108(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

## APPENDIX N

### AFFIDAVIT re NO 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 § 11107(e). Further, affiant promises, on behalf  
of offeror, not to violate the prohibition against gratuities and kickbacks as set forth in 2 GAR Division 4  
§ 11107(e).

3. To the best of affiant's knowledge, neither affiant, nor any of the offeror's officers,  
representatives, agents, subcontractors, or employees have offered, given or agreed to give, any  
government of Guam employee or former government employee, any payment, gift, kickback, gratuity or  
offer of employment in connection with 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 \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires \_\_\_\_\_, \_\_\_\_\_.

## APPENDIX O

### FEDERAL ANTI-LOBBYING CERTIFICATION

\*For federal funds only\*

#### 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

**THIS STATEMENT MUST BE COMPLETED AND RETURNED IN THE ENVELOPE CONTAINING THE BID**

## **APPENDIX P**

### **FEDERAL DEBARMENT CERTIFICATION**

**\*For federal funds only\***

**Instructions for Certification – First Tier Participants:** By signing and submitting this bid/proposal, the prospective first tier participant is providing the certification set out below:

The prospective first tier participant further agrees by submitting this bid/proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

The prospective first tier participant agrees by submitting this bid/proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

---

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.



## **APPENDIX Q**

### **CLEAN AIR ACT & FEDERAL POLLUTION CONTROL ACT CERTIFICATION**

**\*For federal funds only\***

By submission of this bid/proposal the bidder will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

---

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.

## APPENDIX R

### 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

## USDOL Wage Determination for Guam

### "REGISTER OF WAGE DETERMINATIONS UNDER | U.S. DEPARTMENT OF LABOR THE SERVICE CONTRACT ACT | EMPLOYMENT STANDARDS ADMINISTRATION

By direction of the Secretary of Labor | WAGE AND HOUR DIVISION  
| WASHINGTON D.C. 20210

| Wage Determination No.: 2015-5694

Daniel W. Simms Division of | Revision No.: 11

Director Wage Determinations| Date Of Last Revision: 12/23/2019

Note: Under Executive Order (EO) 13658 an hourly minimum wage of \$10.80 for calendar year 2020 applies to all contracts subject to the Service Contract Act for which the contract is awarded (and any solicitation was issued) on or after January 1 2015. If this contract is covered by the EO the contractor must pay all workers in any classification listed on this wage determination at least \$10.80 per hour (or the applicable wage rate listed on this wage determination if it is higher) for all hours spent performing on the contract in calendar year 2020. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

States: Guam Northern Marianas Wake Island

Area: Guam Statewide

Northern Marianas Statewide

Wake Island Statewide

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

##### OCCUPATION CODE - TITLE FOOTNOTE RATE

01000 - Administrative Support And Clerical Occupations  
01011 - Accounting Clerk I 13.57  
01012 - Accounting Clerk II 15.23  
01013 - Accounting Clerk III 17.04  
01020 - Administrative Assistant 19.48  
01035 - Court Reporter 17.40  
01041 - Customer Service Representative I 10.89  
01042 - Customer Service Representative II 12.25  
01043 - Customer Service Representative III 13.37  
01051 - Data Entry Operator I 12.15  
01052 - Data Entry Operator II 13.25  
01060 - Dispatcher Motor Vehicle 14.37  
01070 - Document Preparation Clerk 13.85  
01090 - Duplicating Machine Operator 13.85  
01111 - General Clerk I 10.35  
01112 - General Clerk II 11.29  
01113 - General Clerk III 12.68  
01120 - Housing Referral Assistant 19.39  
01141 - Messenger Courier 11.37  
01191 - Order Clerk I 12.57  
01192 - Order Clerk II 13.71  
01261 - Personnel Assistant (Employment) I 15.95  
01262 - Personnel Assistant (Employment) II 17.85  
01263 - Personnel Assistant (Employment) III 19.89  
01270 - Production Control Clerk 21.78  
01290 - Rental Clerk 11.10  
01300 - Scheduler Maintenance 15.55  
01311 - Secretary I 15.55  
01312 - Secretary II 17.40  
01313 - Secretary III 19.39  
01320 - Service Order Dispatcher 12.73  
01410 - Supply Technician 19.48  
01420 - Survey Worker 15.26  
01460 - Switchboard Operator/Receptionist 9.67  
01531 - Travel Clerk I 12.77  
01532 - Travel Clerk II 13.83  
01533 - Travel Clerk III 14.78  
01611 - Word Processor I 14.53  
01612 - Word Processor II 16.31  
01613 - Word Processor III 18.26  
05000 - Automotive Service Occupations  
05005 - Automobile Body Repairer Fiberglass 13.58  
05010 - Automotive Electrician 13.06  
05040 - Automotive Glass Installer 12.10  
05070 - Automotive Worker 12.10  
05110 - Mobile Equipment Servicer 10.27  
05130 - Motor Equipment Metal Mechanic 13.71  
05160 - Motor Equipment Metal Worker 12.10  
05190 - Motor Vehicle Mechanic 13.71  
05220 - Motor Vehicle Mechanic Helper 10.12  
05250 - Motor Vehicle Upholstery Worker 12.10

05280 - Motor Vehicle Wrecker 12.10  
 05310 - Painter Automotive 12.87  
 05340 - Radiator Repair Specialist 12.10  
 05370 - Tire Repairer 11.44  
 05400 - Transmission Repair Specialist 13.61  
 07000 - Food Preparation And Service Occupations  
 07010 - Baker 10.47  
 07041 - Cook I 11.45  
 07042 - Cook II 13.33  
 07070 - Dishwasher 9.12  
 07130 - Food Service Worker 9.34  
 07210 - Meat Cutter 11.86  
 07260 - Waiter/Waitress 9.19  
 09000 - Furniture Maintenance And Repair Occupations  
 09010 - Electrostatic Spray Painter 16.40  
 09040 - Furniture Handler 9.95  
 09080 - Furniture Refinisher 16.40  
 09090 - Furniture Refinisher Helper 12.06  
 09110 - Furniture Repairer Minor 14.27  
 09130 - Upholsterer 16.40  
 11000 - General Services And Support Occupations  
 11030 - Cleaner Vehicles 9.35  
 11060 - Elevator Operator 9.29  
 11090 - Gardener 12.90  
 11122 - Housekeeping Aide 9.29  
 11150 - Janitor 9.29  
 11210 - Laborer Grounds Maintenance 9.74  
 11240 - Maid or Houseman 9.22  
 11260 - Pruner 8.72  
 11270 - Tractor Operator 11.80  
 11330 - Trail Maintenance Worker 9.74  
 11360 - Window Cleaner 10.37  
 12000 - Health Occupations  
 12010 - Ambulance Driver 17.77  
 12011 - Breath Alcohol Technician 17.77  
 12012 - Certified Occupational Therapist Assistant 24.38  
 12015 - Certified Physical Therapist Assistant 24.38  
 12020 - Dental Assistant 14.21  
 12025 - Dental Hygienist 32.84  
 12030 - EKG Technician 25.10  
 12035 - Electroneurodiagnostic Technologist 25.10  
 12040 - Emergency Medical Technician 17.77  
 12071 - Licensed Practical Nurse I 15.88  
 12072 - Licensed Practical Nurse II 17.77  
 12073 - Licensed Practical Nurse III 19.81  
 12100 - Medical Assistant 12.26  
 12130 - Medical Laboratory Technician 18.82  
 12160 - Medical Record Clerk 13.61  
 12190 - Medical Record Technician 17.77  
 12195 - Medical Transcriptionist 15.88  
 12210 - Nuclear Medicine Technologist 39.04  
 12221 - Nursing Assistant I 11.03  
 12222 - Nursing Assistant II 12.43  
 12223 - Nursing Assistant III 13.54  
 12224 - Nursing Assistant IV 15.22  
 12235 - Optical Dispenser 17.77  
 12236 - Optical Technician 15.88  
 12250 - Pharmacy Technician 15.49  
 12280 - Phlebotomist 15.22  
 12305 - Radiologic Technologist 22.69  
 12311 - Registered Nurse I 22.53  
 12312 - Registered Nurse II 27.56  
 12313 - Registered Nurse II Specialist 27.56  
 12314 - Registered Nurse III 33.34  
 12315 - Registered Nurse III Anesthetist 33.34  
 12316 - Registered Nurse IV 39.96  
 12317 - Scheduler (Drug and Alcohol Testing) 22.01  
 12320 - Substance Abuse Treatment Counselor 22.01  
 13000 - Information And Arts Occupations  
 13011 - Exhibits Specialist I 19.45  
 13012 - Exhibits Specialist II 24.09  
 13013 - Exhibits Specialist III 29.47  
 13041 - Illustrator I 19.45  
 13042 - Illustrator II 24.09  
 13043 - Illustrator III 29.47  
 13047 - Librarian 26.68

13050 - Library Aide/Clerk 15.48  
 13054 - Library Information Technology Systems Administrator 24.09  
 13058 - Library Technician 16.64  
 13061 - Media Specialist I 17.38  
 13062 - Media Specialist II 19.45  
 13063 - Media Specialist III 21.67  
 13071 - Photographer I 17.38  
 13072 - Photographer II 19.45  
 13073 - Photographer III 24.09  
 13074 - Photographer IV 29.47  
 13075 - Photographer V 35.65  
 13090 - Technical Order Library Clerk 18.74  
 13110 - Video Teleconference Technician 17.38  
 14000 - Information Technology Occupations  
 14041 - Computer Operator I 15.71  
 14042 - Computer Operator II 17.22  
 14043 - Computer Operator III 19.19  
 14044 - Computer Operator IV 21.33  
 14045 - Computer Operator V 23.62  
 14071 - Computer Programmer I (see 1) 15.73  
 14072 - Computer Programmer II (see 1) 19.50  
 14073 - Computer Programmer III (see 1) 23.84  
 14074 - Computer Programmer IV (see 1)  
 14101 - Computer Systems Analyst I (see 1) 24.23  
 14102 - Computer Systems Analyst II (see 1)  
 14103 - Computer Systems Analyst III (see 1)  
 14150 - Peripheral Equipment Operator 15.71  
 14160 - Personal Computer Support Technician 21.33  
 14170 - System Support Specialist 21.24  
 15000 - Instructional Occupations  
 15010 - Aircrew Training Devices Instructor (Non-Rated) 24.23  
 15020 - Aircrew Training Devices Instructor (Rated) 29.32  
 15030 - Air Crew Training Devices Instructor (Pilot) 34.91  
 15050 - Computer Based Training Specialist / Instructor 24.23  
 15060 - Educational Technologist 27.61  
 15070 - Flight Instructor (Pilot) 34.91  
 15080 - Graphic Artist 20.47  
 15085 - Maintenance Test Pilot Fixed Jet/Prop 34.91  
 15086 - Maintenance Test Pilot Rotary Wing 34.91  
 15088 - Non-Maintenance Test/Co-Pilot 34.91  
 15090 - Technical Instructor 17.65  
 15095 - Technical Instructor/Course Developer 21.58  
 15110 - Test Proctor 13.87  
 15120 - Tutor 13.87  
 16000 - Laundry Dry-Cleaning Pressing And Related Occupations  
 16010 - Assembler 9.78  
 16030 - Counter Attendant 9.78  
 16040 - Dry Cleaner 11.30  
 16070 - Finisher Flatwork Machine 9.78  
 16090 - Presser Hand 9.78  
 16110 - Presser Machine Dry Cleaning 9.78  
 16130 - Presser Machine Shirts 9.78  
 16160 - Presser Machine Wearing Apparel Laundry 9.78  
 16190 - Sewing Machine Operator 11.94  
 16220 - Tailor 12.44  
 16250 - Washer Machine 10.24  
 19000 - Machine Tool Operation And Repair Occupations  
 19010 - Machine-Tool Operator (Tool Room) 16.40  
 19040 - Tool And Die Maker 20.61  
 21000 - Materials Handling And Packing Occupations  
 21020 - Forklift Operator 13.96  
 21030 - Material Coordinator 21.78  
 21040 - Material Expediter 21.78  
 21050 - Material Handling Laborer 11.37  
 21071 - Order Filler 9.66  
 21080 - Production Line Worker (Food Processing) 13.96  
 21110 - Shipping Packer 14.47  
 21130 - Shipping/Receiving Clerk 14.47  
 21140 - Store Worker I 14.48  
 21150 - Stock Clerk 20.34  
 21210 - Tools And Parts Attendant 13.96  
 21410 - Warehouse Specialist 13.96  
 23000 - Mechanics And Maintenance And Repair Occupations  
 23010 - Aerospace Structural Welder 20.69  
 23019 - Aircraft Logs and Records Technician 16.09

23021 - Aircraft Mechanic I 19.70  
 23022 - Aircraft Mechanic II 20.69  
 23023 - Aircraft Mechanic III 21.74  
 23040 - Aircraft Mechanic Helper 13.70  
 23050 - Aircraft Painter 18.50  
 23060 - Aircraft Servicer 16.09  
 23070 - Aircraft Survival Flight Equipment Technician 18.50  
 23080 - Aircraft Worker 17.38  
 23091 - Aircrew Life Support Equipment (ALSE) Mechanic 17.38  
 I  
 23092 - Aircrew Life Support Equipment (ALSE) Mechanic 19.70  
 II  
 23110 - Appliance Mechanic 16.40  
 23120 - Bicycle Repairer 13.17  
 23125 - Cable Splicer 19.59  
 23130 - Carpenter Maintenance 15.10  
 23140 - Carpet Layer 15.33  
 23160 - Electrician Maintenance 18.05  
 23181 - Electronics Technician Maintenance I 15.33  
 23182 - Electronics Technician Maintenance II 16.40  
 23183 - Electronics Technician Maintenance III 18.31  
 23260 - Fabric Worker 14.27  
 23290 - Fire Alarm System Mechanic 15.43  
 23310 - Fire Extinguisher Repairer 13.17  
 23311 - Fuel Distribution System Mechanic 17.46  
 23312 - Fuel Distribution System Operator 13.17  
 23370 - General Maintenance Worker 11.96  
 23380 - Ground Support Equipment Mechanic 19.70  
 23381 - Ground Support Equipment Servicer 16.09  
 23382 - Ground Support Equipment Worker 17.38  
 23391 - Gunsmith I 13.17  
 23392 - Gunsmith II 15.33  
 23393 - Gunsmith III 17.46  
 23410 - Heating Ventilation And Air-Conditioning 17.16  
 Mechanic  
 23411 - Heating Ventilation And Air Conditioning 18.25  
 Mechanic (Research Facility)  
 23430 - Heavy Equipment Mechanic 17.64  
 23440 - Heavy Equipment Operator 16.26  
 23460 - Instrument Mechanic 17.46  
 23465 - Laboratory/Shelter Mechanic 16.40  
 23470 - Laborer 11.37  
 23510 - Locksmith 16.40  
 23530 - Machinery Maintenance Mechanic 23.13  
 23550 - Machinist Maintenance 17.46  
 23580 - Maintenance Trades Helper 10.67  
 23591 - Metrology Technician I 17.46  
 23592 - Metrology Technician II 18.56  
 23593 - Metrology Technician III 19.66  
 23640 - Millwright 17.46  
 23710 - Office Appliance Repairer 16.40  
 23760 - Painter Maintenance 13.95  
 23790 - Pipefitter Maintenance 17.64  
 23810 - Plumber Maintenance 16.57  
 23820 - Pneudraulic Systems Mechanic 17.46  
 23850 - Rigger 17.46  
 23870 - Scale Mechanic 15.33  
 23890 - Sheet-Metal Worker Maintenance 16.09  
 23910 - Small Engine Mechanic 15.33  
 23931 - Telecommunications Mechanic I 19.01  
 23932 - Telecommunications Mechanic II 19.76  
 23950 - Telephone Lineman 18.24  
 23960 - Welder Combination Maintenance 17.92  
 23965 - Well Driller 17.46  
 23970 - Woodcraft Worker 17.46  
 23980 - Woodworker 13.17  
 24000 - Personal Needs Occupations  
 24550 - Case Manager 14.54  
 24570 - Child Care Attendant 10.09  
 24580 - Child Care Center Clerk 12.58  
 24610 - Chore Aide 10.56  
 24620 - Family Readiness And Support Services 14.54  
 Coordinator  
 24630 - Homemaker 16.12  
 25000 - Plant And System Operations Occupations  
 25010 - Boiler Tender 17.46

25040 - Sewage Plant Operator 19.63  
 25070 - Stationary Engineer 17.46  
 25190 - Ventilation Equipment Tender 12.06  
 25210 - Water Treatment Plant Operator 19.63  
 27000 - Protective Service Occupations  
 27004 - Alarm Monitor 10.90  
 27007 - Baggage Inspector 9.40  
 27008 - Corrections Officer 12.05  
 27010 - Court Security Officer 12.05  
 27030 - Detection Dog Handler 10.90  
 27040 - Detention Officer 12.05  
 27070 - Firefighter 12.05  
 27101 - Guard I 9.40  
 27102 - Guard II 10.90  
 27131 - Police Officer I 12.05  
 27132 - Police Officer II 13.40  
 28000 - Recreation Occupations  
 28041 - Carnival Equipment Operator 12.79  
 28042 - Carnival Equipment Repairer 13.97  
 28043 - Carnival Worker 9.45  
 28210 - Gate Attendant/Gate Tender 13.18  
 28310 - Lifeguard 11.01  
 28350 - Park Attendant (Aide) 14.74  
 28510 - Recreation Aide/Health Facility Attendant 11.84  
 28515 - Recreation Specialist 18.26  
 28630 - Sports Official 11.74  
 28690 - Swimming Pool Operator 17.71  
 29000 - Stevedoring/Longshoremen Occupational Services  
 29010 - Blocker And Bracer 21.47  
 29020 - Hatch Tender 21.47  
 29030 - Line Handler 21.47  
 29041 - Stevedore I 19.98  
 29042 - Stevedore II 22.96  
 30000 - Technical Occupations  
 30010 - Air Traffic Control Specialist Center (HFO) (see 2) 38.78  
 30011 - Air Traffic Control Specialist Station (HFO) (see 2) 26.74  
 30012 - Air Traffic Control Specialist Terminal (HFO) (see 2) 29.45  
 30021 - Archeological Technician I 17.49  
 30022 - Archeological Technician II 19.56  
 30023 - Archeological Technician III 24.21  
 30030 - Cartographic Technician 23.18  
 30040 - Civil Engineering Technician 23.08  
 30051 - Cryogenic Technician I 25.57  
 30052 - Cryogenic Technician II 28.24  
 30061 - Drafter/CAD Operator I 17.49  
 30062 - Drafter/CAD Operator II 19.56  
 30063 - Drafter/CAD Operator III 20.77  
 30064 - Drafter/CAD Operator IV 25.57  
 30081 - Engineering Technician I 14.84  
 30082 - Engineering Technician II 16.66  
 30083 - Engineering Technician III 18.64  
 30084 - Engineering Technician IV 23.08  
 30085 - Engineering Technician V 28.24  
 30086 - Engineering Technician VI 34.16  
 30090 - Environmental Technician 23.08  
 30095 - Evidence Control Specialist 23.08  
 30210 - Laboratory Technician 20.77  
 30221 - Latent Fingerprint Technician I 25.57  
 30222 - Latent Fingerprint Technician II 28.24  
 30240 - Mathematical Technician 23.34  
 30361 - Paralegal/Legal Assistant I 19.44  
 30362 - Paralegal/Legal Assistant II 23.68  
 30363 - Paralegal/Legal Assistant III 28.99  
 30364 - Paralegal/Legal Assistant IV 33.88  
 30375 - Petroleum Supply Specialist 28.24  
 30390 - Photo-Optics Technician 21.93  
 30395 - Radiation Control Technician 28.24  
 30461 - Technical Writer I 23.08  
 30462 - Technical Writer II 28.24  
 30463 - Technical Writer III 34.16  
 30491 - Unexploded Ordnance (UXO) Technician I 24.65  
 30492 - Unexploded Ordnance (UXO) Technician II 29.82  
 30493 - Unexploded Ordnance (UXO) Technician III 35.74  
 30494 - Unexploded (UXO) Safety Escort 24.65  
 30495 - Unexploded (UXO) Sweep Personnel 24.65  
 30501 - Weather Forecaster I 25.57

30502 - Weather Forecaster II 31.09  
 30620 - Weather Observer Combined Upper Air Or (see 2) 20.77  
 Surface Programs  
 30621 - Weather Observer Senior (see 2) 23.08  
 31000 - Transportation/Mobile Equipment Operation Occupations  
 31010 - Airplane Pilot 29.82  
 31020 - Bus Aide 8.15  
 31030 - Bus Driver 9.69  
 31043 - Driver Courier 9.69  
 31260 - Parking and Lot Attendant 9.55  
 31290 - Shuttle Bus Driver 10.59  
 31310 - Taxi Driver 9.43  
 31361 - Truckdriver Light 10.59  
 31362 - Truckdriver Medium 11.61  
 31363 - Truckdriver Heavy 13.92  
 31364 - Truckdriver Tractor-Trailer 13.92  
 99000 - Miscellaneous Occupations  
 99020 - Cabin Safety Specialist 14.54  
 99030 - Cashier 9.33  
 99050 - Desk Clerk 9.70  
 99095 - Embalmer 24.65  
 99130 - Flight Follower 24.65  
 99251 - Laboratory Animal Caretaker I 2.25  
 99252 - Laboratory Animal Caretaker II 24.31  
 99260 - Marketing Analyst 21.54  
 99310 - Mortician 24.65  
 99410 - Pest Controller 14.61  
 99510 - Photofinishing Worker 12.95  
 99710 - Recycling Laborer 14.32  
 99711 - Recycling Specialist 21.66  
 99730 - Refuse Collector 13.63  
 99810 - Sales Clerk 9.66  
 99820 - School Crossing Guard 16.44  
 99830 - Survey Party Chief 22.02  
 99831 - Surveying Aide 12.52  
 99832 - Surveying Technician 16.27  
 99840 - Vending Machine Attendant 22.25  
 99841 - Vending Machine Repairer 28.30  
 99842 - Vending Machine Repairer Helper 22.25

Note: Executive Order (EO) 13706 Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Service Contract Act for which the contract is awarded (and any solicitation was issued) on or after January 1 2017. If this contract is covered by the EO the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness injury or other health-related needs including preventive care; to assist a family member (or person who is like family to the employee) who is ill injured or has other health-related needs including preventive care; or for reasons resulting from or to assist a family member (or person who is like family to the employee) who is the victim of domestic violence sexual assault or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

**ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:**

**HEALTH & WELFARE:** Life accident and health insurance plans sick leave pension plans civic and personal leave severance pay and savings and thrift plans. Minimum employer contributions costing an average of \$4.54 per hour computed on the basis of all hours worked by service employees employed on the contract.

**HEALTH & WELFARE EO 13706:** Minimum employer contributions costing an average of \$4.22 per hour computed on the basis of all hours worked by service employees employed on the covered contracts. \*

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

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

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

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

1) **COMPUTER EMPLOYEES:** Under the SCA at section 8(b) this wage determination does not apply to any employee who individually qualifies as a bona fide executive administrative or professional employee as defined in 29 C.F.R. Part 541. Because most Computer System Analysts and Computer Programmers who are compensated at a rate not less than \$27.63 (or on a salary or fee basis at a rate not less than \$455 per week) an hour would likely qualify as exempt computer professionals (29 C.F.R. 541.400) wage rates may not be listed on this wage determination for all occupations within those job families. In addition, because this wage determination may not list a wage rate for some or all occupations within those job families if the survey data indicates that the prevailing wage rate for the occupation equals or exceeds \$27.63 per hour conformances may be necessary for certain nonexempt employees. For example, if an individual employee is nonexempt but nevertheless performs duties within the scope of one of the Computer Systems Analyst or Computer Programmer occupations for which this wage determination does not specify an SCA wage rate then the wage rate for that employee must be conformed in accordance with the conformance procedures described in the conformance note included on this wage determination.

Additionally, because job titles vary widely and change quickly in the computer industry job titles are not determinative of the application of the computer professional exemption. Therefore, the exemption applies only to computer employees who satisfy the compensation requirements and whose primary duty consists of:

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



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

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

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

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

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

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

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

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

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

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

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

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

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

**Conformance Process:**

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

The process for preparing a conformance request is as follows:

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

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

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

## APPENDIX S

### Davis-Bacon Wage Determination for Guam

"General Decision Number: GU20210001 01/01/2021

Superseded General Decision Number: GU20200001

State: Guam

Construction Types: Building, Heavy, Highway and Residential

Excludes any projects funded under the National Defense  
Authorization Act 2010 - Guam Realignment Fund - Defense  
Policy Review

County: Guam Statewide.

BUILDING, HEAVY, HIGHWAY AND RESIDENTIAL

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) N for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number    Publication Date  
0                      01/01/2021

SUGU2020-001 03/05/2020

	Rates	Fringes
CARPENTER.	\$ 15.48	
CEMENT MASON	\$ 14.92	
ELECTRICIAN	\$ 18.52	
Heavy Equipment Mechanic.	\$ 18.32	
Heavy Equipment Operator	\$16.58	
IRONWORKER, REINFORCING	\$15.61	
IRONWORKER, STRUCTURAL	\$14.90	
PAINTER	\$12.86	
PIPEFITTER	\$16.52	
PLASTERER	\$22.89	
PLUMBER	\$16.52	
REFRIGERATION MECHANIC (including Heating, Air conditioning (HVAC) Mechanic Work)	\$18.43	

SHEET METAL WORKER \$16.73

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a New survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION  
"

## APPENDIX T

2 CFR Chapter I, Chapter II, Part 200, et al. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final Rule - Procurement Standards (UPDATED 2021).

### CONTRACT CLAUSE STATUTES

§ 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) See Public Law 115-232, section 889 for additional information.

(d) See also §200.471.

§ 200.317 Procurement by states.

When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with §§200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by § 200.327. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§200.318 through 200.327.

§ 200.322 Domestic preferences for procurements.

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

§ 200.323 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation Act. The requirements of § 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the

highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeding \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

#### § 200.327 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in appendix II to this part.

#### Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

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

(J) See §200.323. (Procurement of Recovered Materials Clause)

(K) See §200.216. (Prohibition on Certain Telecommunications and Video Equipment)

(L) See §200.322. (Domestic Products Preference Clause)

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014; 85 FR 49577, Aug. 13, 2020]

**APPENDIX U**  
**Section XVI. CONFLICT OF INTEREST GUIDELINES**

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

**1. Definitions.**

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

**2. Required Disclosures.**

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

- an Offeror or any of its Associates have any Apparent, Potential or Actual Conflicts of Interest per these COI guidelines or per the criteria of any COI Form included as part of a Procurement or Contract;
- a Procurement or Contract document specifically requires submittal of a COI Disclosure Form (e.g., if the prospective Project includes preparation of an Environmental Impact Statement or Environmental Assessment, submittal of COI Disclosure Forms is always required.);
- an Offeror has any changes to its staffing or organization (whether before or after entering into a Contract) that result in an Apparent, Potential or Actual Conflict of Interest per these guidelines or per the criteria of any COI form associated with a particular Procurement or Contract. Any such changes shall be disclosed within 10 business days via submittal of a complete and signed COI Disclosure Form.
- the response to any of the following questions is "yes" (with respect to a Procurement or current Contract with Port Authority):
  1. Is any Associate of the Offeror a former employee of Port Authority (within the last year)?
  2. Is any Associate of the Offeror a Relative or Member of the Household of a current employee of Port Authority who had or may have a role in this Procurement, Authorization of the Contract, Contract administration, or oversight of the Contractor's performance?
  3. Does the Offeror or any Associate of the Offeror have an Actual, Apparent or Potential Conflict of Interest ("Individual" or "Organizational") with regard to any member of an Port Authority Procurement evaluation or selection team?
  4. Did the Offeror or any Associate of the Offeror conduct prior work on the Project described in the Procurement, or participate in preparing any part of the Procurement or any documents or reports related to the Procurement or to which the Procurement refers?
  5. Does the Offeror or any Associate of the Offeror have any past, present or currently planned interests which are an Actual, Apparent or Potential Conflict of Interest ("Individual" or "Organizational") with respect to performing the work for Port Authority?
  6. Has the Offeror or an Associate of the Offeror offered to a Public Employee, or is the Offeror aware of any Public Employee that has solicited or received, directly or indirectly, any pledge or promise of employment or other benefit based on the understanding that the Public Employee's vote, official action or judgment would be influenced thereby?
  7. Has (or will) the Offeror or an Associate of the Offeror provided a direct beneficial financial interest to any person within one year after the person ceased to hold a position as a Public Employee who was involved in the Procurement or Authorization for the Contract, or is the Offeror aware of any such person or Public Employee who has or will receive a direct beneficial financial interest within the one-year period?
  8. Is the Offeror aware of any current or former Public Employee that has an Actual, Apparent or Potential Conflict of Interest with respect to the Procurement or award of this Contract or performing the work for Port Authority?
  9. Does the prospective Contract include development of an environmental assessment (EA) or environmental impact statement (EIS)?
  10. If a Procurement is to obtain personal services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract, is the Offeror or an Associate or an Affiliate of the Offeror a party to the subject public contract?
  11. Has the Offeror or any Associate of the Offeror entered into any contract(s) with Port Authority for the purpose of advising or assisting in developing any part of the solicitation documents, including specifications, requirements, a scope or statement of work, an invitation to bid, a request for proposals or other documents and materials used in, or related to this procurement?



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

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

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

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

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

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

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

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

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

#### **Standards of Conduct Regarding Current Port Authority Employees Conflicts of Interest**

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

- The policies of the Guam Procurement Law (5 GCA § 5001, et seq) encourage public contracting competition that supports openness and impartiality to the maximum extent possible, while recognizing that the nature of effective and meaningful competition depends upon the service being procured.
- According to 5 GCA §§ 5001(b), 5003, and 5625, a sound and responsive public contracting system should instill public confidence through ethical and fair dealing, honesty, and good faith on the part of government officials and those who do business with the government.
- Article 11 of the Guam Procurement Law, Ethics in Public Contracting, and Article 2 of the Standards of Conduct for Elected Officers, Appointed Officers and Public Employees of the Government of Guam prohibit conflicts of interest of Public Employees and prohibit Public Employees from obtaining outside financial benefits for the exercise of their official duties. Among the prohibitions are offering a public employee a fee, a pledge of future employment, or anything valued in excess of \$200 based on an understanding that the offer would influence the public employee's official action or judgment.
- 5 GCA § 5632(a) provides the following: "Contemporaneous Employment Prohibited. Except as may be permitted by regulations pursuant to this Chapter or pursuant to Title 4 GCA, or rulings of the Civil Service Commission pursuant to this Chapter, it shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement process to become or be, while such an employee, the employee of any person contracting with the

governmental body by whom the employee is employed. Notice of this provision shall be provided in accordance with regulations promulgated by the Civil Service Commission."

- 5 GCA § 5632(c) and (d) provide the following: "(c) Disqualification of Business When an Employee Has a Financial Interest. It shall be a breach of ethical standards for a business in which an employee has a financial interest knowingly to act as a principal, or as an agent for anyone other than the Territory, in connection with any:

- (1) judicial or other proceeding, application, request for a ruling or other determination;
- (2) contract;
- (3) claim; or
- (4) charge or controversy; in which the employee either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or which is the subject of the employee's official responsibility, where the Territory is a party or has a direct and substantial interest.

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

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

- 4 GCA § 15201 states: "No employee shall solicit, accept, or receive, directly or indirectly, any gift valued singly or in the aggregate from a single source in excess of \$200, whether in the form of money, prize, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, when a reasonable person would infer that the gift is intended to influence the employee in the performance of that individual's official duties or is intended as a reward for any official action on that individual's part."
- 4 GCA § 15204 (a), (b), (c), and (d) provide: "No employee shall use or attempt to use an official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for himself or herself, a spouse, children, or others, including but not limited to the following:
  - a. seeking other employment or contract for services by the use or attempted use of the individual's office or position;
  - b. accepting, receiving, or soliciting compensation for the performance of official duties or responsibilities except as provided by law;
  - c. using government time, equipment, or other facilities for private business purposes;
  - d. soliciting, selling, or otherwise engaging in a financial transaction with a subordinate or a person or business whom the employee inspects or supervises in official capacity."
- 4 GCA § 15205 (a), (b), (c), (d), and (e) provide: "Conflicts of Interest.

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

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

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

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

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

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

- 4 GCA § 15206 states: "Contracts.

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

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

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

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

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

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

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

- A conflict of interest exists when an Offeror that provides systems engineering and technical direction for a system is awarded a contract to supply the system or any of its major components; or is a subcontractor or consultant to a supplier of the system or any of its major components; even if the Offeror did not have overall contractual responsibility for the system's development, its integration, assembly, and checkout, or its production. In this example, systems engineering includes a combination of substantially all of the following activities: determining specifications, identifying and resolving interface problems, developing test requirements, evaluating test data, and supervising design. Technical direction includes a combination of substantially all of the following activities: developing work statements, determining parameters, directing other contractors' operations, and resolving technical controversies. In performing these activities, a contractor occupies a highly influential and responsible position in determining a system's basic concepts and supervising their execution by other contractors. Therefore, this Offeror should not be in a position to make decisions favoring its own products or capabilities.
- A conflict of interest exists when an Offeror prepares and furnishes complete specifications covering non-developmental items, to be used in a competitive procurement, and submits a proposal or bid to be allowed to furnish these items, either as a prime contractor or as a subcontractor, for a reasonable period of time including, at least, the duration of the initial production contract.
- If a single contractor drafts complete specifications for non-developmental equipment, that contractor should be eliminated for a reasonable time from competition for production based on the specifications. This should be done in order to avoid a situation in which the contractor could draft specifications favoring its own products or capabilities. In this way

the Government can be assured of getting unbiased advice as to the content of the specifications and can avoid allegations of favoritism in the award of production contracts.

- When an Offeror prepares, or assists in preparing, a statement of work, scope of services, or technical specifications to be used in competitively acquiring a system or services, or provides material leading directly, predictably, and without delay to such a statement of work, scope of services, or technical specifications, it is a conflict of interest if that Offeror submits a Proposal or bid to supply the system, major components of the system, or the services, unless:
  - (i) It is the sole source;
  - (ii) It has participated in the development and design work; or
  - (iii) More than one contractor has been involved in preparing the statement of work, scope of services, or technical specifications.
- Agencies should normally prepare their own statements of work, and scopes of services. When contractor assistance is necessary to prepare the statement of work or scope of services, the contractor is in a position to favor its own products or capabilities. To overcome the possibility of bias, Offerors are prohibited from supplying a system or services acquired on the basis of a statement of work or scope of services growing out of their services, unless:
  - (i) It is the sole source;
  - (ii) It has participated in the development and design work; or
  - (iii) More than one contractor has been involved in preparing the statement of work, scope of services, or technical specifications.
- It is a conflict of interest for a contractor to participate in the evaluation of products or services that it offers. Contracts for the evaluation of offers for products or services shall not be awarded to an Offeror that will evaluate its own offers for products or services, or those of a competitor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

An Offeror shall certify its compliance with these COI Guidelines at the time of submitting a Proposal to Port Authority, during the Procurement Process, and during the time of performance of any awarded Contract with Port Authority. If submittal of COI Disclosure Form(s) is required per these COI Guidelines or a specific Procurement or Contract, an Offeror shall represent the correctness of a completed COI Disclosure Form. If an Offeror has any changes to its staffing or organization (whether before or after entering a Contract) that result in an Actual, Apparent or Potential Conflict of Interest (Individual or Organizational) per these

COI Guidelines or per the criteria of any COI form associated with a particular Procurement or Contract, any such changes shall be disclosed within ten (10) business days via submittal of a Correct and signed COI Disclosure Form.

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

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

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

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

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

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

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

1. A Design-Build solicitation requires the responding teams to propose how to manage site features that were uncovered by a geotechnical engineering Offeror. The Offeror's reports to Port Authority on the Project are available to the public. A multi-specialty engineering Offeror that is the parent company of the geotechnical engineering Offeror submits a proposal to design the overall Project. Depending on the particular mitigating facts, Port Authority might determine in writing that the multi-specialty engineering Offeror is eligible to propose.
2. Port Authority seeks comprehensive project management services for a series of Transportation Projects. One of the proposing Offerors employed a senior official from Port Authority who played a significant role in providing direction for the solicitation, six months ago. Port Authority initially assesses this situation as a potential Organizational Conflict of Interest and provides information to potential Proposers of this assessment through an addendum to the RFP. In its proposal, the Proposer provides mitigating information and written assurances that this individual works in an area of the company that will not be working on their program management proposal and that the individual will be isolated inside the company from any information associated with the program, will not be lobbying Port Authority, will not engage in any activities that would violate the Port Authority Code of Conduct Policy for the prescribed one-year period, and for a period of one year will not have a direct beneficial interest in the contract. Depending on the particular facts, Port Authority might determine that, while the proposing Offeror has a potential Organizational Conflict of Interest, that conflict has been adequately mitigated and the Offeror will not be disqualified from submitting a proposal.
3. Port Authority issues an RFP for design and oversight of an intelligent system to collect bridge tolls. The RFP provides that companies having a financial interest in the relevant telecommunications hardware will be excluded from bidding. A company under common ownership with a major electronics manufacturer desires to bid. Port Authority initially assesses this situation as an Organizational Conflict of Interest, because it cannot know in advance whether the hardware products of this electronics manufacturer would be used in the Project, and Port Authority informs potential Proposers of its concern related to this type of conflict via addendum to the RFP. In its proposal, the company offers no mitigating facts or organizational plans that address Port Authority's concerns about the conflict. Depending on the particular facts, Port Authority determines that the company has an actual conflict of interest.
4. Port Authority seeks advice of an industry advisory committee to formulate the specifications for an information technology (IT) RFP. An IT Offeror that participated in the advisory committee wishes to submit a proposal in response to the RFP. Depending on the particular facts, Port Authority might determine that the role of the Offeror was to represent the industry in the context of a public meeting where other Offerors were invited to submit comments, and that the Offeror therefore does not have an Organizational Conflict of Interest.
5. Port Authority contracts with an A&E Offeror to develop "low-level" documents prior to establishing a schedule for an RFP in which the "low level" documents, still under development, will be used by prospective Proposers. The A&E Offeror has attended the pre-proposal meeting and wishes to propose on the RFP. Port Authority determines that the company has a potential Organizational Conflict of Interest because of the fact that the low-level documents have not been made public and the Offeror will still be developing the documents during the solicitation. The company then mitigates the potential conflict of interest by suspending development of new reports during the open period of the solicitation and making all data and information sources available on an Port Authority website prior to the RFP release. Port Authority determines

that the potential conflict has been adequately managed and the Offeror will not be disqualified from submitting a proposal or being part of the proposing team.

6. Port Authority contracts with a consulting Offeror to assist Port Authority in the development of an RFP and sample Contract for a Design-Build Procurement for construction of certain Transportation Projects. The Offeror has close contact with Port Authority decision-makers in the development of the evaluation criteria for the RFP and the proposed Contract terms, and that information is shared throughout the Offeror with all management and technical personnel. The Offeror will not be able to submit a proposal in the design-build Procurement, or participate as a team member with an Offeror submitting a proposal in response to the RFP.
7. Port Authority seeks comprehensive program management services for a series of Transportation Projects. Prior to release of the RFP, Port Authority shared its interpretation of the applicable conflict of interest requirements with the industry. One of the proposing Offerors has a related entity with a planned interest in future design-build construction work related to the transportation program. The COI Disclosure Form does not clearly state whether the related entity is a subsidiary, major partner, Subcontractor, or affiliate of a Subcontractor. The proposing Offeror describes its intent to restrict the flow of information concerning construction Projects to the related entity and thereby to its affiliate construction company but does not clarify how much information will be shared between the principal and its Subcontractors and affiliates or the controls placed on the principal Subcontractor-affiliate relationship. Furthermore, the proposing Offeror has provided mitigation information, indicating that the related entity will not participate in providing services under the program management Contract (i.e., design, source selection, award of Contract, etc.). Port Authority may conclude the proposing Offeror does not have a conflict of interest that detracts from its eligibility for the program management award. Port Authority may determine that the related entity has a conflict of interest in future design-build construction work related to the bridge repair and replacement program that has not been adequately mitigated by the measures and information provided by the proposing Offeror. As a result, if the proposing Offeror is awarded the program management Contract, the related construction company will be ineligible for construction work under the program. This determination will depend upon the precise relationship between the related entity and the Proposer.
8. Completion of a project may encourage construction of a shopping center or industrial park from which an Offeror stands to benefit. If an Offeror is aware that it has such an interest in the decision on the proposal, it will be disqualified from preparing an EIS to preserve the objectivity and integrity of the NEPA process.
9. Port Authority issues an RFP for A&E services to prepare plans, specifications, and estimate (PS&E) to replace a bridge. The PS&E will be completed as part of a design-bid-build process. One of the A&E firms proposing on the design services owns XYZ Inc., a subsidiary that provides program management services to Port Authority under a separate contract. Port Authority's intent, as advertised in the RFP, is to use XYZ Inc. for administration and oversight of the A&E design services for the bridge replacement project. The A&E firm that is the parent of XYZ Inc. would be ineligible for award of the A&E design contract.
10. Port Authority issues an IFB for construction services to replace a bridge. The replacement is being done using the design-bid-build process. One of the construction firms bidding on the public improvement project owns XYZ Inc., a subsidiary that provides construction contract administration and inspection services to Port Authority under a separate contract. Port Authority's intent, as advertised in the IFB, is to use XYZ Inc. for administration and inspection of the bridge replacement project. The construction firm that is the parent of XYZ Inc. would be ineligible for award of the construction contract.



## **DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**"Organizational Conflict of Interest"** means that a relationship or situation exists whereby an Offeror or any of its Associates has past, present, or currently planned interests or activities that either directly or indirectly (through a client, contractual, financial, organizational or other relationship) may relate to the work to be performed under the proposed Contract with Port Authority and



which: (a) diminish the Offeror's or an Associate's capacity to give impartial, technically sound, objective assistance or advice; (b) may impair the Offeror's or an Associate's objectivity in performing the Contract; (c) may impair Port Authority's objectivity in oversight of the Contractor's performance; or (d) may result in an unfair competitive advantage. It does not include the normal flow of benefits from the performance of the Contract.

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

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

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

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

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

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

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

**"Relative"** (of a Public Employee) means:

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

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

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

**Port Authority of Guam MSB No. IFB-PAG-003-21**

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

This COI Disclosure Form is submitted in response to:

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

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

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

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

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

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

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

**Telephone:** \_\_\_\_\_

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

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

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

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

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

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

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

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

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

4. Does the Offeror or any Associate of the Offeror have any past, present or currently planned personal or financial interests which are an Actual, Apparent or Potential Conflict of Interest ("Individual" or "Organizational"), with respect to the Procurement or award of this Contract or performing the work for Port Authority or acquisition of any real property for the Project?

No ☐ Yes ☐ Comments:

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

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

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

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

If yes, in accordance with the disclosure statement requirements of Council on Environmental Quality Regulation, 40 C.F.R. 1506.5(c), does the Offeror have any financial or other interest in the outcome of this Project; and/or does the Offeror have any agreement, enforceable promise, or guarantee to provide any future work on this Project?

No ☐ Yes ☐ Comments:

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

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

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

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

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

<b>Part A: Employees that left Port Authority in the last year.</b>			
Employee Name/Signature	Job Performed for Port Authority	Current Role with Offeror	Date left Port Authority
Name: _____  Sign: _____  <ul style="list-style-type: none"> <li>Involved with this Procurement on behalf of Port Authority? No <input type="checkbox"/> Yes <input type="checkbox"/></li> <li>Involved with Proposal development for this Procurement? No <input type="checkbox"/> Yes <input type="checkbox"/></li> </ul>			
Name: _____  Sign: _____  <ul style="list-style-type: none"> <li>Involved with this Procurement on behalf of Port Authority? No <input type="checkbox"/> Yes <input type="checkbox"/></li> <li>Involved with Proposal development for this Procurement? No <input type="checkbox"/> Yes <input type="checkbox"/></li> </ul>			
Name: _____  Sign: _____  <ul style="list-style-type: none"> <li>Involved with this Procurement on behalf of Port Authority? No <input type="checkbox"/> Yes <input type="checkbox"/></li> <li>Involved with Proposal development for this Procurement? No <input type="checkbox"/> Yes <input type="checkbox"/></li> </ul>			
<b>Part B: Identify Associates of the Offeror that are Relatives or Members of the Household of Port Authority employees currently working for Port Authority, if the Port Authority employee had or will have any involvement with this Procurement or Contract.</b>			
Offeror Associate's Name	Name and Relationship of Relative or Member of Household Employed at Port Authority	Role at Port Authority	Port Authority employee's Role with this Procurement

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

# **Volume 4**

## **SCOPE OF WORK**

## **SCOPE OF WORK**

### **IFB-PAG-003-21 CCTV SURVEILLANCE SYSTEM & ACCESS CONTROL SYSTEM (ACS) REPLACEMENT PROJECT AND PREVENTATIVE MAINTENANCE SERVICES**

#### **GENERAL STATEMENT OF WORK**

##### **PROJECT LOCATION**

The project location includes various areas throughout the Port Authority of Guam properties to include the Cargo Terminal (Container Yard), Administration Building, Port Police Building, Port Command Center (PCC), Warehouse 1 (WH1), Equipment Maintenance & Repair (EQMR) Building, Gatehouse, Container Freight Station (CFS), and the optional bid item for the Agat Marina.

##### **GENERAL REQUIREMENTS AND RESPONSIBILITIES**

**Note: BIDDERS ARE REQUIRED TO INDICATE COMPLY BY EACH LINE ITEM CONFIRMING THAT THEY SHALL COMPLY TO THE SCOPE OF SERVICES AND REQUIREMENTS.**

1. Bidders shall investigate and assess the project sites and verify existing conditions and measurements prior to submitting bid cost proposal. Failure to do so shall not be a cause for additional claims against PAG;
2. Bidders shall comply with 5 GCA CH. 5 § 5212. Bid security shall be a bond provided by a surety company authorized to do business in Guam, or the equivalent in cash, or otherwise supplied in a form satisfactory to the government of Guam in an amount equal to fifteen percent (15%) of the total amount bid;
3. Awarded bidder shall comply with Buy America Act – 41 U.S.C. § 8301-8305 and the Davis-Bacon Act – 40 U.S.C. §§ 3141 and 2 CFR Section 200.216 Prohibition on certain telecommunications and video surveillance services or equipment. There are two separate funding sources for this project: 1) Port Security Grant Program, and 2) US DOT Maritime Administration (MARAD). The PAG requires that all portions of the IFB must adhere to the Buy America Act and Davis-Bacon Act and ensure compatibility and uniformity of the CCTV and ACS systems;
4. Bidder to submit, within seven (7) days after Notice to Proceed (NTP) issuance, the insurance coverage on:
  - b. Commercial General Liability including Broad Form Property Damage and Contractual Liability \$1,000,000.00 combined single limit of liability
  - c. Worker's Compensation – Statutory
  - d. Automobile Liability - \$1,000,000.00 combined single limit of liability; PAG shall be an additional insured to the policy;
5. Bidders to submit final schedule of values, material submittals, submittal status logs, construction schedule and personnel listing after completed and successful negotiations with PAG Procurement for approval by the PAG;
6. Bidder's personnel assigned to this project are required to have a Transportation Worker Identification Credential (TWIC) and attend the mandatory Maritime Security (MARSEC) Level Briefing. Contractor to inquire with the PAG Port Police Division on these requirements. No work will commence without TWIC cards. Personnel assigned to this project shall be subjected to a criminal background check both local and/or federal and must sign a Non-Disclosure Agreement (NDA), as provided by the Port Police Division, while working on this project;
7. Bidder to submit phase plan and work schedule to coordinate with PAG Operations, PAG Engineering, PAG Information Technology, and Port Police divisions and ensure no disruption or blackouts to occur of operations occurs;
8. Services rendered will be based on Bidder's fixed fee schedule for travel, labor (regular & overtime), tools, materials, and other related services.

9. Bidder will include in every invoice: detail of work performed, date and time period of work performed, technician name(s) performing work, and must receive concurrence from the Port Police Chief or his/her designee, as well as the Information Technology Division Head or designee.
10. At the end of this contract agreement, all rights to software and hardware licensing shall revert to the PAG as the owner and/or registered user;
11. In addition to communicating with the Bidder on any system related concerns, the PAG can communicate directly with the manufacturer on any and all software and/or hardware inquiries provided the Bidder is aware of such communication;
12. To maintain operability of the system, successful bidder must ensure CCTV and ACS system services are uninterrupted throughout the duration of the project period. All systems must run parallel to each other to ensure continuity of operations. Exceptions to this must be approved by the Port Police Chief or his/her designee;
13. Bidder must provide comprehensive quarterly reports of all activity performed during the period, as well as a final report upon completion of the project. Quarterly reports are to be submitted on or before the 5<sup>th</sup> day of January, April, July, and October. Final report must be submitted within 14 days after completion of the project.
14. As highlighted in the Introduction of this General Statement of Work, the PAG owns a comprehensive Command and Control System that is currently in place that provides CCTV monitoring as well as an ACS that provides security protection to PAG personnel and assets. To ensure that the PAG does not jeopardize or void the existing warranty on the system, the Bidder must ensure that any and all updates and upgrades are interoperable.
15. Bidder must provide list of and descriptive literature of all hardware and software in the technical proposal as well as the cost breakdown for each item. Itemized cost breakdown must be separate from technical proposals and be submitted with price offer.
16. Bidder must comply with the following:
  - a. Bidders price offer shall consider the cost of shipping and handling as PAG will not be responsible for such after bid award.
  - b. Completion time to include purchase of all equipment, supplies, materials, and installation (to include any/all construction, permitting, etc. if applicable), removal/disposals and successful completion of project: 210 days upon ARO.
17. Bidder must provide written plan, design, timeline and approach for each project location.

**NOTES:**

Selected locations for camera installation may have limitations insofar as logistic and/or infrastructure capability that may require additional work to complete the installations. Such limitations or challenges include:

- Lack of electrical power sources
- Lack of infrastructure to run power and/or communication wiring
- Extreme distances that may require signal-boost accommodations
- Required permitting to perform construction type work (e.g. trenching)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, I, \_\_\_\_\_,

authorized representative of \_\_\_\_\_ acknowledge receipt of this general requirements and responsibilities with the above referenced IFB and will comply to items 1 to 17.

\_\_\_\_\_  
**Bidder Representative's Signature**

**(A) SCOPE OF WORK/SERVICES – COMMERCIAL PORT (FEMA FUNDED)**

**DESCRIPTION**

The PAG is procuring twenty-four (24) fixed wide angle and twenty-six (26) Pan/Tilt/Zoom (PTZ), high resolution digital cameras with 360-degree visibility to be installed at various locations throughout Port properties to ensure the safety, security, and accountability of all persons on the premises. This project will include the installation of the new cameras, along with all the necessary accessories, all necessary connections between devices, and all connectivity to the Port Command Center and components to ensure full functionality of the intended purpose of the installation and use of the cameras with the CCTV/ACS solution, as well as the removal of existing analog cameras. The Bidder shall ensure compatibility between the newly installed cameras and the existing ACS software and hardware. All systems shall run parallel to each other to ensure continuity of operations until the CCTV solution is fully operational. Definitions: Unit of measurement (UOM); Quantity (Qty.); Each (EA); Lot (LT). 1 LT includes all indicated items and/or services per category

**REQUIREMENT:** Bidder shall comply with Buy America Act – 41 U.S.C. §8301-8305 and 2 CFR Section 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.

**BREAKDOWN OF SERVICES:**

	<u>QTY.</u>	<u>UOM</u>
<b>1.1 Removal Services</b>	<b>1</b>	<b>LT</b>

Bidder will perform the following services:

- a. Bidder must provide materials, labor, and equipment for the removal of thirty-eight (38) existing analog cameras and components (to include all mounts, cabling, and other components **EXCLUDING** servers/digital video recorders/network video recorders (NVR), network switches, and other essential network equipment not covered in this scope of work) at various PAG properties.
- b. Bidder is responsible for disposing all unusable equipment/debris from existing analog cameras upon completion of all documentation and accountability of equipment to be removed from the Port Authority of Guam. These documents must meet all requirements as indicated in the Port Authority of Guam's Rules and Regulations for the disposal of port property. All cameras and other functional equipment (to be determined by PAPD personnel) will be retained by the PAG.
- c. Bidder must ensure all work areas are kept clean and safe at all times.

	<u>QTY.</u>	<u>UOM</u>
<b>1.2 Digital IP Cameras &amp; Software License to include Mounting and Housing Hardware</b>	<b>50</b>	<b>set</b>

Bidder will provide the following digital IP cameras, software, and components required to operate within the existing CCTV surveillance system.

- a. Contractor will provide twenty-six (26) long-range, PTZ cameras with a minimum line of sight of 300-feet and 360-degree visibility both day and night.
- b. Contractor will provide twenty-four (24) fixed wide angle cameras with a minimum line of sight of 100-feet, and 360-degree visibility both day and night.
- c. Cameras must have a minimum resolution of true/native 1080p with digital zoom and a minimum 30x optical zoom with no loss of quality.
- d. Cameras must have a minimum Ingress Protection (IP) rating of IP66, equivalent or better.
- e. Cameras, replacement parts, and components must be commercially available.
- f. Cameras and components must be compatible with existing video wall equipment.
- g. Camera firmware and software must be compatible with all equipment.



- h. Contractor will ensure all software is fully compatible with all security equipment, including the ACS software.
- i. Software will provide real-time, user-friendly interface
- j. Software utilized must include optional add-on features, to include: integrated access control, TWIC readers, badging, and CCTV surveillance.
- k. Contractor will provide and install necessary software updates for life of contract/warranty.
- l. All video feeds must be integrated into a single software/application with the ability to view any video feed from one screen and all allow the user to have full control of the movement, capturing and functionality of the camera.
- m. All software/hardware licensing shall revert to the PAG as owner and/or registered user.
- n. Mounting hardware are to be comprised of materials sufficient to withstand a harsh, corrosive marine and industrial environment, as well as harsh weather conditions (i.e.. typhoons, earthquakes. Etc...)
- o. Mounting hardware must be made of non-ferrous materials or grade 316 stainless steel.
- p. Mounting hardware must be universal/compatible with other commercially available products.
- q. Mounting hardware shall be installed at the designated location, as identified by the Port Police, and shall include electrical wiring and outlets as deemed needed for operation of the cameras.

**QTY.**                      **UOM**

**1.3      Installation Services**

**1                      LT**

Bidder will perform the following services to ensure interoperability of digital IP cameras with the PAG's existing ACS and CCTV surveillance system and software

- a. Bidder must provide materials, labor, and equipment for the installation of fifty (50) new digital IP cameras at various PAG properties (locations to be designated by PAPD personnel).
- b. Bidder must ensure all work areas are kept clean and safe at all times.
- c. Bidder shall ensure that once cameras are installed, the Port Police Division shall be able to view, retrain and retrieve security video at the designated locations.

**QTY.**                      **UOM**

**1.4      Connectivity**

**1                      LT**

Bidder will ensure all fifty (50) cameras are operable and connected to the primary and secondary servers and connected to an integrated CCTV surveillance system.

- a. No less than CAT-6 or fiber optic cabling of sufficient quality will be used to ensure no loss of video quality when connected to the network and shall be installed to withstand harsh, corrosive marine and industrial environment, as well as, harsh weather conditions. Should a wireless solution be utilized, bidder shall ensure all transmission is on a secured network with controlled access, wireless solution shall ensure no loss of video quality.
- b. All network and power cables that are located outdoors must be sealed with weatherproofing/waterproofing grommets to protect from inclement weather.
- c. Repeater(s) shall be used in the event a camera is located further than 300 ft. from a network switch/repeater to ensure no loss of video quality.

**Note: Warranty/Maintenance – Cost for the following specifications below must be inclusive of the unit price.**

Bidder will ensure all hardware, software, and equipment are free of any defects and installation work is performed according to the manufacturer's specifications.

- a. Bidder will include warranty of products for one (1) year after installation to cover any/all hardware, software, and equipment defects and installation/connectivity issues. To maintain operability of the system, bidder must ensure CCTV and ACS system services are uninterrupted throughout the duration of the warranty period at no cost.
- b. Bidder will identify/troubleshoot issues and repair and/or replace parts covered under warranty at no additional cost to the PAG. All recommended work is to be reviewed and approved by the PAG's IT and Port Police Divisions.
- c. Bidder must be available on an "on-call/as-needed" basis and shall respond within two (2) hours after first contact/report to resolve troubleshoot call or request for assistance. Failure to do so may result in procedures to resolve in accordance to terms and conditions.
- d. Bidder shall identify personnel assigned to conduct maintenance, identify and troubleshoot issues and repairs. Personnel assigned to this project shall be subjected to and pass a criminal background check, both local and/or federal, and must sign a non-Disclosure agreement (NDA), as provided by the Port Police Division, while working on this project. Should personnel change, a written notification must be made 72-hours prior to personnel conducting work with the PAG, and must be approved by the Port Police Chief or designee. All new personnel shall adhere to this process and requirement.

**(B) SCOPE OF WORK/SERVICES – CONTAINER YARD (MARAD FUNDED)**

**DESCRIPTION**

In order to maximize safety and security within all Port properties, twelve (12) additional cameras and infrastructure will be installed in the Container Yard to assist the Port Police Division, Harbor Master, and Operations divisions in carrying out their responsibilities. The PAG is also procuring storage and connectivity equipment, to include NVRs, switches, controllers, and other necessary equipment to ensure optimal performance and operability of all CCTV system components. The Bidder shall ensure compatibility between the newly installed cameras and the existing ACS software and hardware. Definitions: Unit of measurement (UOM); Quantity (Qty.); Each (EA); Lot (LT). 1 LT includes all indicated items and/or services per category.

**REQUIREMENT:** Bidder shall comply with Buy America – 41 U.S.C. §8301-8305 and Davis Bacon Act – 40 U.S.C. §3141 and 2 CFR Section 200.216 Prohibition on certain telecommunications and video surveillance services or equipment

**BREAKDOWN OF SERVICES:**

	<u>QTY.</u>	<u>UOM</u>
<b>2.1 Digital IP Cameras &amp; Software License to include Mounting, Mounting Hardware, and Housing Hardware</b>	<b>12</b>	<b>set</b>

Bidder will provide the following digital IP cameras, software, and components required to operate within the existing CCTV surveillance system.

- a. Bidder will provide twelve (12) long-range, PTZ cameras with a minimum line of sight of 300-feet and 360-degree visibility both day and night.
- b. Cameras must have a minimum resolution of true/native 1080p with digital zoom and a minimum 30x optical zoom with no loss of quality.
- c. Cameras must have a minimum Ingress Protection (IP) rating of IP66, equivalent or better.
- d. Cameras, replacement parts, and components must be commercially available.
- e. Cameras and components must be compatible with existing video wall.
- f. Camera firmware and software must be compatible with all equipment.

- g. Bidder will ensure all software is fully compatible with all equipment, including the ACS software.
- h. Software will provide real-time, user-friendly interface.
- i. Software utilized must include optional add-on features, to include: integrated access control, TWIC readers, badging, and CCTV surveillance.
- j. Bidder will provide and install necessary software updates for life of contract/warranty.
- k. Additional twelve (12) cameras at the Container Yard must be integrated into existing software/application with the ability to view any of the sixty-two (62) total video feeds from one screen and all allow the user to have full control of the movement, capturing and functionality of the camera.
- l. All software/hardware licensing shall revert to the PAG as owner and/or registered user.
- m. Mounting hardware are to be comprised of materials sufficient to withstand a harsh, corrosive marine and industrial environment, as well as harsh weather conditions (i.e.. typhoons, earthquakes, etc.).
- n. Mounting hardware must be made of non-ferrous materials or grade 316 stainless steel.
- o. Mounting hardware must be universal/compatible with other commercially available products.
- p. Mounting hardware shall be installed at the designated location, as identified by the Port Police, and shall include electrical wiring and outlets as deemed needed for operation of the cameras.

## 2.2. Installation Services

<u>QTY.</u>	<u>UOM</u>
1	LT

Bidder will perform the following services to expand camera coverage to new locations within the Container Yard and provide additional infrastructure for future expansion of CCTV system:

- a. Bidder must provide materials, labor, and equipment for the installation of twelve (12) new digital IP cameras on identified high-mast, structures and light posts, to include pulling cabling through existing conduits.
- b. Bidder must ensure all outdoor connections are sealed with weatherproof/waterproof grommets.
- c. Bidder will install all NVRs, servers, switches, controllers, and other necessary components and ensure operability.
- d. Bidder must ensure all work areas are kept clean and safe at all times.
- e. Bidder will include warranty of installation for one (1) year after installation to cover any/all defects of installation/connectivity issues. To maintain operability of the system, bidder must ensure CCTV and ACS system services are uninterrupted throughout the duration of the warranty period at no cost.

## 3.3 Connectivity/Storage

<u>QTY.</u>	<u>UOM</u>
1	LT

Bidder will ensure additional twelve (12) cameras are operable and connected to the unified CCTV Surveillance system.

- a. No less than CAT-6 or fiber optic cabling of sufficient quality will be used to ensure no loss of video quality when connected to the network and shall be installed to withstand harsh, corrosive marine and industrial environment, as well as, harsh weather conditions. Should a wireless solution be

utilized, contractor shall ensure all transmission are on a secured network with controlled-access. Wireless solution shall ensure no loss of video quality.

- b. All network and power cables that are located outdoors must be sealed with weatherproofing/waterproofing grommets to protect from inclement weather.
- c. Repeater(s) shall be used in the event a camera is located further than 300 ft. from a network switch/repeater to ensure no loss of video quality.
- d. Sufficient number of network switches with capacity to accommodate all cameras.
- e. NVRs with sufficient capacity to store camera feed from all sixty-seven (67) cameras for at least 90 days at no less than 30 frames per second (FPS), 24 hours a day recording, with H.265 encoding or better, with no loss of video quality (1080p or better) and allow for video extraction to a removable media (i.e. DVD, Flash drive, CD, etc...)
- f. NVRs must be on Redundant Array of Independent Disks Mode 5 (RAID 5) configuration.
- g. Hard drives in NVRs must be Network Attached Storage (NAS) or surveillance drives.

**Note: Warranty/Maintenance – Cost for the following specifications below must be inclusive of the unit price.**

Bidder will ensure all hardware, software, and equipment are free of any defects and installation work is performed according to the manufacturer's specifications.

- a. Bidder will include warranty of products for one (1) year after installation to cover any/all hardware, software, and equipment defects and installation/connectivity issues. To maintain operability of the system, bidder must ensure CCTV and ACS system services are uninterrupted throughout the duration of the warranty period at no cost.
- b. Bidder will identify/troubleshoot issues and repair and/or replace parts covered under warranty at no additional cost to the PAG. All recommended work is to be reviewed and approved by the PAG's IT and Port Police Divisions.
- c. Bidder must be available on an "On-Call/As-Needed" basis and shall respond within two (2) hours after first contact/report to resolve troubleshoot call or request for assistance. Failure to do so may result in procedures to resolve in accordance to terms and conditions.
- d. Bidder shall identify personnel assigned to conduct maintenance, identify and troubleshoot issues and repairs. Personnel assigned to this project shall be subjected to and pass a criminal background check, both local and/or federal, and must sign a non-Disclosure agreement (NDA), as provided by the Port Police Division, while working on this project. Should personnel change, a written notification must be made 72-hours prior to personnel conducting work with the PAG, and must be approved by the Port Police Chief or designee. All new personnel shall adhere to this process and requirement.

**(C) SCOPE OF WORK/SERVICES – PORT COMMAND CENTER (MARAD FUNDED)**

**DESCRIPTION**

The PAG will be acquiring software, hardware, and materials to upgrade its ACS and CCTV systems. This includes the purchase and upgrade of system software, acquisition of new servers and work-stations to support said systems, repair of current system infrastructure as needed, and installation of any additional hardware and software as needed. The Bidder shall ensure compatibility between all newly installed software and hardware and existing ACS infrastructure. The ACS and CCTV systems shall allow for future growth. Definitions: Unit of measurement (UOM); Quantity (Qty.); Each (EA); Lot (LT). 1 LT includes all indicated items and/or services per category.

**REQUIREMENT:** Bidder shall comply with Buy America – 41 U.S.C. §8301-8305 and Davis Bacon Act – 40 U.S.C. §3141 and 2 CFR Section 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.

**BREAKDOWN OF SERVICES:**

	<u>QTY.</u>	<u>UOM</u>
<b>3.1 ACS Software Installation</b>	<b>1</b>	<b>LT</b>

Bidder will perform the following services to upgrade the PAG's ACS system software:

- a. Bidder must provide materials, labor, and equipment for the Installation of ACS software.
- b. Bidder will ensure that ACS software integrates with all new and existing hardware, software, and systems. This includes all existing ACS hardware located at strategic points throughout the Port
- c. Bidder must provide materials, labor, and equipment for any additional software necessary to ensure all system components function optimally. This includes software that allows interoperability with CCTV software and potential expansion into other security functions (e.g. TWIC card readers).
- d. Bidder must ensure all work areas are kept clean and safe at all times.

	<u>QTY.</u>	<u>UOM</u>
<b>3.2 CCTV Software Installation</b>	<b>1</b>	<b>LT</b>

Bidder will perform the following services to upgrade the PAG's CCTV system software:

- a. Bidder must provide materials, labor, and equipment for the installation of CCTV software.
- b. Bidder will ensure that CCTV software integrates with all new and existing CCTV hardware, software, and systems. This includes all sixty-two (62) CCTV cameras located at strategic points throughout Port properties.
- c. Bidder must provide materials, labor, and equipment for any additional software necessary to ensure all system components function optimally. This includes software that allows interoperability with ACS software.
- d. Bidder must ensure all work areas are kept clean and safe at all times.
- e. Bidder shall ensure that the CCTV solution at a minimum allows for the viewing/monitoring, retention and retrieval of video footage, time date and stamping, quick search, export of footage.
- f. Bidder shall ensure CCTV software shall include intrusion detection notification and access control alarm notification.

	<u>QTY.</u>	<u>UOM</u>
<b>3.3 Servers/Storage</b>	<b>4</b>	<b>EA</b>

Servers will be housed in the Port Command Center's (PCC) server room. The servers will house all software Necessary for the ACS and CCTV systems to function optimally. Servers and/or storage shall be capable of storing all CCTV and ACS software, footage retention of no less than 90 days with 24-hour surveillance from all 67 cameras with no less than 30 frames per sec (30fps) in a format with no loss of quality of viewing.

- a. Acquisition and installation of four (4) servers.
  1. **Server Specification: (CCTV)** Processor Up to four 2nd Generation Intel® Xeon® Scalable processors with up to 28 cores per processor; Operating System Microsoft® Windows Server® 2019 Standard, 16 CORE or equivalent; Memory\*64Gb; Hard Drive 480 GB Solid State Drive; Storage 14TB Storage; Optical Drive DVD RW+/-, SATA, Internal, Client Access License Microsoft SQL Server 2019, Standard or equivalent; Network 10GbE Base-T & 5720 Dual Port 1GbE Base-T 2 Lan Ports; Rack Rails 2U Combo Drop-in/Stab-in Rail or equal or better.

**2. Server Specification: (ACS)** Processor Up to four 2nd Generation Intel® Xeon® Scalable processors with up to 28 cores per processor; Operating System Microsoft® Windows Server® 2019 Standard, 16 CORE or equivalent; Memory\*64Gb ;Hard Drive 480 GB Solid State Drive; Storage 4TB Storage; Optical Drive DVD RW+/-, SATA, Internal; Client Access License Microsoft SQL Server 2019, Standard or equivalent; Network 10GbE Base-T & 5720 Dual Port 1GbE Base-T 2 Lan Ports; Rack Rails 2U Combo Drop-in/Stab-in Rail or equal or better.

- b. Servers will be set up in two primary and redundant servers. Configurations for the ACS and the CCTV systems respectively.
- c. Bidder must ensure interconnectivity and compatibility between newly installed servers, infrastructure, and existing network video recorders (NVRs) currently owned by the PAG.
- d. Bidder must provide materials, labor, and equipment for the installation of server components
- e. Bidder shall ensure a back-up solution is installed, configured and operational to ensure no loss of data for the CCTV solution.

<b>3.4 Supporting Infrastructure to include installation</b>	<u><b>QTY.</b></u>	<u><b>UOM</b></u>
	<b>1</b>	<b>LT</b>

Bidder will repair/replace the following video wall infrastructure:

- a. Purchase and installation of four (4) new computers; for existing video walls to ensure all CCTV feeds are viewable with no loss of quality. One (1) for the Emergency Operations Center (EOC) video wall and three (3) for the CCTV Room video wall.
- b. Computer Specification: Windows 10 Professional; M.2 500Gb Solid State Hard drive; 16Gb RAM; Intel Core processor i9 or equivalent; 4 USB 2.0 Gen Ports; 2 USB 3.1 Gen Ports; Universal Audio jack; USB Keyboard Port with Keyboard; USB Mouse Port with Mouse; Video Port; Knockout Slots for wireless antennas; Power connection with cables; Bluetooth capable; HDMI port; Integrated Graphic Card; NIC (Ethernet Jack); Small Form Factor System; 8x DVD+/- RW Optical Drive; Battery Backup Power Source; 32in Dual Monitors or equal or better.
- c. Ensure connectivity between the newly acquired computers and the corresponding video walls.
- d. Repair the CCTV Room video wall to full functionality with the newly installed CCTV system.
- e. Assess all ACS card readers, electric locks, power supplies, and field controllers and make repairs as necessary.
- f. Bidder must provide materials, labor and equipment for installation of all ACS and CCTV supporting infrastructure.

<b>4.4 Connectivity</b>	<u><b>QTY.</b></u>	<u><b>UOM</b></u>
	<b>1</b>	<b>LT</b>

Bidder will ensure optimal system connectivity as determined by the PAG IT and Port Police divisions.

- a. Bidder will identify, troubleshoot, and correct issues with connectivity and functionality of the entire ACS and CCTV systems at no additional cost to the PAG.
- b. Bidder will provide any additional hardware and software as necessary to ensure connectivity between system components of both the ACS and CCTV systems.

**Note: Warranty/Maintenance – Cost for the following specifications below must be inclusive of the unit price.**

Bidder will ensure all hardware, software, and equipment are free of any defects and installation work is performed according to the manufacturer's specifications. Bidder will ensure the PAG is fully aware of the

capability of both the ACS and CCTV systems. This includes any instruction on initial setups as well as customizability.

- a. Bidder will include warranty of products for one (1) year after installation to cover any/all hardware, software, and equipment defects and installation/connectivity issues. To maintain operability of the system, bidder must ensure CCTV and ACS system services are uninterrupted throughout the duration of the warranty period at no cost.
- b. Bidder will identify/troubleshoot issues and repair and/or replace parts covered under warranty at no additional cost to the PAG. All recommended work is to be reviewed and approved by the PAG's IT and Port Police Divisions.
- c. Bidder must be available on an "On-Call/As-Needed" basis and shall respond within two (2) hours after first contact/report to resolve troubleshoot call or request for assistance. Failure to do so may result in procedures to resolve in accordance to terms and conditions.
- d. Bidder shall identify personnel assigned to conduct maintenance, identify and troubleshoot issues and repairs. Personnel assigned to this project shall be subjected to and pass a criminal background check, both local and/or federal, and must sign a non-Disclosure agreement (NDA), as provided by the Port Police Division, while working on this project. Should personnel change, a written notification must be made 72-hours prior to personnel conducting work with the PAG, and must be approved by the Port Police Chief or his/her designee. All new personnel shall adhere to this process and requirement.

5.1 Training - Generic and Product

QTY.

1

UOM

LT

Bidder will provide all hardware, software, and equipment training for the CCTV Surveillance System and Access Control System (ACS) according to the manufacturer's specifications.

Bidder must provide all as-built drawings and user manuals for the complete CCTV surveillance and Access Control systems. Bidder shall provide a generic overall training of the systems as well as a product training for service administrators and end-users. Training shall be on-site instruction from a manufacturer certified trainer of ACS and CCTV software systems, and shall provide a copy of their certification of the trainer on the products.

6.1 Preventative Maintenance Services for CCTV & ACS Systems

QTY.

4

UOM

Qtr

Locations: Commercial Port, Container Yard and PCC

The awarded bidder will provide preventive maintenance services on hardware, software, and equipment according to the manufacturer's specifications, to commence upon the PAG's acceptance of the CCTV and ACS systems. Bidder will provide a maintenance schedule and a proposed checklist of the preventive maintenance service for both the CCTV and ACS Systems. Bidder will consider its manufacturers' recommended preventive maintenance requirements as well as the recommended scheduled recurrence for each system in order to promote optimal performance and durability. The PAG will consider monthly visual inspections with monthly and quarterly maintenance or best practices for scheduled maintenances. Below are sample checklists for CCTV and ACS Systems. The preventive maintenance services will commence after initial warranty is completed of both CCTV and ACS Systems. All actions relative to the CCTV and ACS will require documentation of work and/or assessment performed, actions taken, and pending issues with a resolution identified. This report must be submitted prior to departing the work site and acknowledge as indicated in the agreement.

Term: Two (2) years with an option to renew with an additional one (1) year term not to exceed five (5) years. A schedule breakdown of monthly and annual cost to be provided in this submission.

Preventive Maintenance Services for CCTV System inspection must be conducted monthly (as denoted by \*) and quarterly, with reports identifying all issues, actions taken to remedy issues, and actions needed in order to correct issues not covered under the current warranty for repair and/or replacement, and test procedures should include but not limited to:

- Check the number and type of cameras, including lenses, are in accordance with the specification and any amendment\*;
- Camera/lens focus and auto iris is adjusted properly;
- Camera field of view is adjusted to customer's requirements;
- Camera/housing viewing window is clean, inside and out\*;
- Camera lens is dust free\*;
- Interior of camera enclosure is clean and dry\*;
- Check operation of pan tilt and zoom focus. Use controller in control room to check all these operations\*;
- Check indicator lamps are working correctly;
- Check for sound physical fixings of all equipment including loosening or corrosion of supports and fixings including towers and brackets;
- Check all glands and seals on external equipment;
- Check wiring and cable harness for wear and fray and show no signs of damage;
- Check to make sure cable is dressed properly;
- Check warning labels are still in place\*;
- All connections checked and labelled;
- Check connectors and cable entry points for loose wiring\*;
- Check that the cabling is transmitting an adequate video signal to control room. Signal should be free of distortion, tearing, hum-bars, EMI and rolling, etc.. \*;
- Make sure all connectors are insulated from conduit and pull boxes;
- Check all cables and conduit are properly supported, undamaged and showing no signs of wear;
- Monitors are free from picture burn-in and distortion\*;
- Monitors have proper contrast and brightness\*;
- Check all automatic and remote control camera functions are satisfactory and that camera movement and fields of view are free from obstruction\*;
- Growth or shrubbery is clear of camera views and sensors. Customer is made aware of the consequences of allowing any future overgrowth\*;
- Operation of supplementary lighting is satisfactory\*;
- Recorders are functioning properly and providing distortion free recording\*;
- Recorders should be professionally cleaned and belt changed as needed;
- Check that all control equipment is operation. This means that the switchers allow proper sequencing, multiplexers are properly encoding and decoding, and matrix switcher keyboards are fully operational.
- Clean all monitor screens, control panels, and keyboards with diluted cleaning solutions\*;
- Check all connectors and wiring on the back panels for loose connections.
- All connections checked and labelled\*;
- All camera presets are checked\*;
- All alarm presets are checked\*;
- Customer's system logbook checked and updated and acknowledged\*;
- Check all power connections to ensure AC plugs are not loose.
- Ensure the overall system is up to date. Software and hardware should be updated with the latest versions. If there are hardware recalls, they should be addressed;
- Storage issues need to be examined. Hard drives should be checked to be sure they are functioning properly\*;
- Storage settings should be verified. Capacity should be checked to make sure that there is enough for the needs for the system with the current settings\*;
- Ensure backups or live synchronization should be running at optimal performance\*;
- Check that the performance of the system(s) continues to meet the agreed specification/operational requirement according to the periodic test scheme agreed with the customer\*;
- Confirm customer has latest owners'/operator's manual for CCTV solution.
- Provide written record of all tests and deviations / remedies.



Preventive Maintenance Services for Access Control System (ACS) inspection must be conducted monthly (as denoted by \*) and quarterly, with reports identifying all issues, actions taken to remedy issues, and actions needed in order to correct issues not covered under the current warranty for repair and/or replacement, and test procedures should include but not limited to:

- Ensure the system is up to date. Software and hardware should be updated with the latest versions. If there are hardware recalls, they should be addressed.
- Perform a full operating system backup;
- Backups or live synchronization should be running at optimal performance\*;
- Check that the performance of the system(s) continues to meet the agreed specification/operational requirement according to the periodic test scheme agreed with the customer\*;
- Perform database and event archive backup of application;
- Apply available and supported updates / patches to all components;
- Apply available and supported service packs to access control software;
- Apply available and supported firmware updates to the control equipment;
- Check client station connectivity and is running at optimal performance\*;
- Meter and record all AC and DC power supply settings on access control equipment;
- Perform voltage test on power supply batteries and check panel fuses if applicable;
- Test and inspect all panel connections and ground
- Test reader and reader doors for function and software recording of the following if applicable:
  - o Door held open
  - o Door forced open
  - o Reader failure
  - o Audible led operation, if applicable
  - o Tamper detect, if applicable
- Check wiring connections for contacts, request to exit devices, and lock power for integrity;
- Perform functional test of any request to exit device for proper operation;
- Clean video card printer with print head cleaner\*;
- Confirm customer has latest owner/operator manual for access control solution;
- Provide written record of all tests and deviations / remedies.

**OPTIONAL BID ITEM(S):**

**(A) SCOPE OF WORK/SERVICES - AGAT MARINA**

**DESCRIPTION**

The PAG is procuring two (2) Pan/Tilt/Zoom (PTZ), high-resolution digital cameras to be installed at the Hagatna and Agat Marinas to ensure the safety, security, and accountability of all persons on the premises. This project will include the installation of the new cameras, along with all the necessary accessories, all necessary connections between devices, and all connectivity to the Port Command Center and components to ensure full functionality of the intended purpose of the installation and use of the cameras with the CCTV/ACS solution. The Bidder shall ensure compatibility between the newly installed cameras and the existing ACS software and hardware. Definitions: Unit of measurement (UOM); Quantity (Qty.); Each (EA); Lot (LT). 1 LT includes all indicated items and/or services per category. For this portion, the PAG is requesting that the prospective bidder(s) prioritize the complete installation of the Marinas within the completion time when preparing their technical proposal.

**REQUIREMENT:** Bidder shall comply with Buy America Act – 41 U.S.C. §8301-8305 and 2 CFR Section 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.

**BREAKDOWN OF SERVICES:**

	<b><u>QTY.</u></b>	<b><u>UOM</u></b>
<b>1.1 Digital IP Cameras &amp; Software License to include Mounting, Mounting Hardware &amp; Housing Hardware</b>	<b>2</b>	<b>Set</b>
a. Bidder will provide the following IP camera, software, and components required to operate within the existing CCTV surveillance system.		
b. Bidder will provide two (2) long-range, PTZ cameras with a minimum line of sight of 300-feet with 360-degree visibility with no loss of quality day or night.		
c. Cameras must have a minimum resolution of true/native 1080p with digital zoom and a minimum 30x optical zoom with no loss of quality.		
d. Cameras must have a minimum Ingress Protection (IP) rating of IP66, equivalent or better.		
e. Cameras, replacement parts, and components must be commercially available.		
f. Cameras and components must be compatible with existing video wall equipment.		
g. Camera firmware and software must be compatible with all equipment.		
h. Bidder will ensure all software is fully compatible with all security equipment, including the ACS software and hardware.		
i. Software will provide real-time, user-friendly interface.		
j. Software utilized must include optional add-on features, to include: integrated access control, TWIC readers, badging, and CCTV surveillance system.		
k. Bidder will provide and install necessary software updates for life of contract/warranty.		
l. All video feeds, inclusive of cameras at the Agat Marina and Port compound, must be integrated into a single software/application with the ability to view any video feed from one screen and all allow the user to have full control of the movement, capturing and functionality of the camera.		
m. Bidder shall ensure that once the cameras are installed, the Port Police Division shall be able to view, retain and retrieve security video at the designated locations.		
n. All software/hardware licensing shall revert to the PAG as owner and/or registered user.		

- o. Mounting hardware are to be comprised of material sufficient to withstand a harsh, corrosive marine and industrial environment, as well as harsh weather
- p. Mounting hardware must be made of non-ferrous materials or grade 316 stainless steel.
- q. Mounting hardware must be universal/compatible with other commercially available products.
- r. Mounting hardware and /or poles must be installed at designated locations at all project areas to include electrical wiring and outlets as deemed needed to ensure operation of the camera and shall be no less than 15 feet in height.

<b>1.2 Installation of Cameras, Mounting, Mounting Hardware, and Housing Hardware</b>	<b><u>QTY.</u></b> <b>1</b>	<b><u>UOM</u></b> <b>LT</b>
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Bidder will perform the following services to ensure interoperability of digital IP cameras with the PAG's existing ACS and CCTV surveillance system and software.

- a. Bidder must provide materials, labor, and equipment for the installation of two (2) new digital IP cameras at designated PAG properties (locations to be designated by PAPD personnel).
- b. Bidder must ensure all work areas are kept clean and safe at all times.
- c. Bidder shall ensure that once cameras are installed, the Port Police Division shall be able to view, retain and retrieve security video at the designated locations.
- d. Bidder will include warranty of installation for one (1) year after installation to cover any/all defects of installation/connectivity issues. To maintain operability of the system, bidder must ensure CCTV and ACS system services are uninterrupted throughout the duration of the warranty period at no cost.

<b>1.3 Connectivity</b>	<b><u>QTY.</u></b> <b>1</b>	<b><u>UOM</u></b> <b>LT</b>
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- a. Bidder will ensure all two (2) cameras are operable and connected to the PAG owned servers and connected to an integrated CCTV surveillance system (This will include performing and/or coordinating the installation of data connectivity to ensure adequate data transfer speeds to insure no loss or lag of video feed and/or data for the Agat Marina)
- b. No less than CAT-6 or fiber optic cabling of sufficient quality will be used to ensure no loss of video quality when connected to the network and shall be installed to withstand harsh, corrosive marine and industrial environment, as well as, harsh weather conditions. Should a wireless solution be utilized, contractor shall ensure all transmission is on a secured network with controlled access wireless solution shall ensure no loss of video quality.
- c. All network and power cables that are located outdoors must be sealed with weatherproofing/waterproofing grommets to protect from inclement weather.
- d. Repeater(s) shall be used in the event a camera is located further than 300 ft. from a network switch/repeater to ensure no loss of video quality.

**Note: Warranty/Maintenance – Cost for the following specifications below must be inclusive of the unit price.**

Bidder will ensure all hardware, software, and equipment are free of any defects and installation work is performed according to the manufacturer's specifications.

- a. Bidder will include warranty of products for one (1) year after installation to cover any/all hardware, software, and equipment defects and installation/connectivity issues. To maintain operability of the system, bidder must ensure CCTV system services are uninterrupted throughout the duration of the warranty period at no cost.

- b. Bidder will identify/troubleshoot issues and repair and/or replace parts covered under warranty at no additional cost to the PAG. All recommended work is to be reviewed and approved by the PAG's IT and Port Police Divisions.
- c. Bidder must be available on an "on-call/as-needed" basis and shall respond within two (2) hours after first contact/report to resolve troubleshoot call or request for assistance. Failure to do so may result in procedures to resolve in accordance to terms and conditions.
- d. Bidder shall identify personnel assigned to conduct maintenance, identify and troubleshoot issues and repairs. Personnel assigned to this project shall be subjected to and pass a criminal background check, both local and/or federal. And must sign a Non-Disclosure Agreement (NDA), as provided by the Port Police Division, while working on this project. Should personnel change, a written notification must be made 72-hours prior to personnel conducting work with the PAG, and must be approved by the Port Police Chief or his/her designee. All new personnel shall adhere to this process and requirement.

<b>2.1 Preventative Maintenance Services for CCTV Systems</b>	<u><b>QTY.</b></u>	<u><b>UOM</b></u>	
<b>Location: Agat Marina</b>	<b>4</b>	<b>Qtr</b>	

The awarded bidder will provide preventive maintenance services on hardware, software, and equipment according to the manufacturer's specifications, to commence upon the PAG's acceptance of the CCTV system. Bidder will provide a maintenance schedule and a proposed checklist of the preventive maintenance service for both the CCTV System. Bidder will consider its manufacturers' recommended preventive maintenance requirements as well as the recommended scheduled recurrence for each system in order to promote optimal performance and durability. The PAG will consider monthly visual inspections with monthly and quarterly maintenance or best practices for scheduled maintenances. Below are sample checklists for CCTV System. The preventive maintenance services will commence after initial warranty is completed of both CCTV System. All actions relative to the CCTV will require documentation of work and/or assessment performed, actions taken, and pending issues with a resolution identified. This report must be submitted prior to departing the work site and acknowledge as indicated in the agreement.

Term: Two (2) years with an option to renew with an additional one (1) year term not to exceed five (5) years. A schedule breakdown of monthly and annual cost to be provided in this submission.

Preventive Maintenance Services for CCTV System inspection must be conducted monthly (as denoted by \*) and quarterly, with reports identifying all issues, actions taken to remedy issues, and actions needed in order to correct issues not covered under the current warranty for repair and/or replacement, and test procedures should include but not limited to:

- Check the number and type of cameras, including lenses, are in accordance with the specification and any amendment\*;
- Camera/lens focus and auto iris is adjusted properly;
- Camera field of view is adjusted to customer's requirements;
- Camera/housing viewing window is clean, inside and out\*;
- Camera lens is dust free\*;
- Interior of camera enclosure is clean and dry\*;
- Check operation of pan tilt and zoon focus. Use controller in control room to check all these operations\*;
- Check indicator lamps are working correctly;
- Check for sound physical fixings of all equipment including loosening or corrosion of supports and fixings including towers and brackets;
- Check all glands and seals on external equipment;
- Check wiring and cable harness for wear and fray and show no signs of damage;
- Check to make sure cable is dressed properly;
- Check warning labels are still in place\*;
- All connections checked and labelled;
- Check connectors and cable entry points for loose wiring\*;

- Check that the cabling is transmitting an adequate video signal to control room. Signal should be free of distortion, tearing, hum-bars, EMI and rolling, etc.. \*;
- Make sure all connectors are insulated from conduit and pull boxes;
- Check all cables and conduit are properly supported, undamaged and showing no signs of wear;
- Monitors are free from picture burn-in and distortion\*;
- Monitors have proper contrast and brightness\*;
- Check all automatic and remote control camera functions are satisfactory and that camera movement and fields of view are free from obstruction\*;
- Growth or shrubbery is clear of camera views and sensors. Customer is made aware of the consequences of allowing any future overgrowth\*;
- Operation of supplementary lighting is satisfactory\*;
- Recorders are functioning properly and providing distortion free recording\*;
- Recorders should be professionally cleaned and belt changed as needed;
- Check that all control equipment is operation. This means that the switchers allow proper sequencing, multiplexers are properly encoding and decoding, and matrix switcher keyboards are fully operational.
- Clean all monitor screens, control panels, and keyboards with diluted cleaning solutions\*;
- Check all connectors and wiring on the back panels for loose connections.
- All connections checked and labelled\*;
- All camera presets are checked\*;
- All alarm presets are checked\*;
- Customer's system logbook checked and updated and acknowledged\*;
- Check all power connections to ensure AC plugs are not loose.
- Ensure the overall system is up to date. Software and hardware should be updated with the latest versions. If there are hardware recalls, they should be addressed;
- Storage issues need to be examined. Hard drives should be checked to be sure they are functioning properly\*;
- Storage settings should be verified. Capacity should be checked to make sure that there is enough for the needs for the system with the current settings\*;
- Ensure backups or live synchronization should be running at optimal performance\*;
- Check that the performance of the system(s) continues to meet the agreed specification/operational requirement according to the periodic test scheme agreed with the customer\*;
- Confirm customer has latest owners'/operator's manual for CCTV solution.
- Provide written record of all tests and deviations / remedies.

These specifications have been developed by the staff of the Port Police Division in coordination with the Information Technology Division, CIP Division, Facilities and Maintenance Division and the Procurement Division of the Port Authority of Guam.

**APPENDIX W  
BID PROPOSAL FORM**

DATE:

TO: Procurement Administrator  
Port Authority  
1026 CABRAS HIGHWAY, STE. 201,  
PITI, GUAM 96925

Dear Sir:

The undersigned ("Bidder"), a \_\_\_\_\_ (Corporation or partnership or individual), organized and/or licensed to do business under the laws of \_\_\_\_\_, hereby proposes and agrees to furnish all necessary items, labor, materials, equipment, tools and services necessary for the \_\_\_\_\_ \*Project\*, pursuant to Invitation for Bids No. \_\_\_\_\_ in accordance with the Specifications and other Contract Documents composing the Invitation for Bids for the sum of:

(Bid Amount) \_\_\_\_\_;

plus any and all sums to be added and/or deducted resulted from all extra and/or omitted work under a change order or Contract amendment under the unit and/or lump sum prices stated in the itemized proposal form attached hereto.

The undersigned has examined the location of the proposed Work, the drawings if applicable, Specifications and other Contract Documents and is familiar with the local conditions at the place where the work is to be performed, agrees to perform all work within the time set forth; herein and the price stated in their bid.

The Bid Guaranty attached hereto without endorsement, in the sum of not less than fifteen percent (15%) of the highest amount the total bid, is furnished to the Port Authority of Guam ("Port Authority") and \*Bank\* \_\_\_\_\_ ("\*BANK\*") as payees, as a guarantee that the Agreement will be executed and a Performance and Payment Bond and proof of insurance and other requirements set forth in the bid, in forms acceptable to Port Authority, shall be furnished within twenty (20) days after notification that the undersigned is the lowest responsible and responsive bidder. In the event that this Bid is accepted, and the undersigned bidder shall fail to: (1) provide any and all documents requested by Port Authority; (2) execute the Contract on terms and conditions acceptable to Port Authority; and (3) furnish a satisfactory performance and Payment Bond under the conditions and within the time specified in this Proposal, the equivalent amount of the Proposed Guaranty shall be forfeited, as liquidated damages for the delay and additional work and costs caused thereby in obtaining another bidder, said amount being beforehand determined as being reasonable and containing no penalties.

If written notice that the bidder is the lowest responsible and responsive bidder, and such notice is mailed, telegraphed or delivered to the undersigned within one hundred and twenty (120) days after the opening thereof, the undersigned agrees to execute a Contract on terms and conditions acceptable to Port Authority, and to furnish a Performance and Payment Bond in an amount equal to one hundred percent (100%) of the Contract Amount, within twenty (20) days after receipt of such notice.

The undersigned hereby acknowledges receipt of the following Addenda:

Addendum No.

Dated:

_____	_____
_____	_____
_____	_____

If awarded the Contract, the undersigned agrees to complete the work within sixteen months following the execution of the Contract by all parties thereto and the issuance of the Notice to Proceed from Port Authority.

Attached hereto are the following: (1) an affidavit in proof that the undersigned has not entered into any collusion with any person in respect to this proposal or any other proposal or the submitting of proposals for the Contract for which this bid is submitted; (2) proof of licensure on Guam to conduct the services specified in the bid; (3) proof of insurance in the types and amounts specified in the bid, including certificates and a copy of the complete policies which indicates coverages and exclusions; (4) Certification of Non-Employment of Convicted Sex Offenders; and (5) any other document requested under per the Bid Specifications.

The undersigned understands that the Port Authority reserves the right to reject any or all Bids or to waive any informality or technicality in any Bid in the interest of Port Authority.

RESPECTFULLY SUBMITTED BY: \_\_\_\_\_

(CONTRACTOR)

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(BY)

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(TITLE)

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(BUSINESS ADDRESS)

# **APPENDIX X**

## **BID SCHEDULE PRICE FORM**

### **LOCATION: (A) COMMERCIAL PORT – FEMA FUNDED)**

<b>ITEM NO.</b>	<b>DESCRIPTION</b>	<b>QTY/ UNIT</b>	<b>UNIT PRICE</b>	<b>PRICE EXTENSION</b>
<b>1.1</b>	<b>Removal Services</b> (Inclusive of all items 2.1 a thru c)	1 Lt	\$_____	\$_____
<b>1.2</b>	<b>Digital IP Cameras &amp; Software</b> <b>License to include Mounting, Mounting</b> <b>Hardware &amp; Housing hardware</b> (Inclusive of all items 2.2 a thru q)	50 set	\$_____	\$_____
<b>1.3</b>	<b>Installation Services</b> (Inclusive of all item 2.3 a thru c)	1 Lt	\$_____	\$_____
<b>1.4</b>	<b>Connectivity</b> (Inclusive of all item 2.4 a thru c)	1 Lt	\$_____	\$_____

### **LOCATION: (B) CONTAINER YARD (MARAD FUNDED)**

<b>ITEM NO.</b>	<b>DESCRIPTION</b>	<b>QTY/ UNIT</b>	<b>UNIT PRICE</b>	<b>PRICE EXTENSION</b>
<b>3.1</b>	<b>Digital IP Cameras &amp; Software</b> <b>License to include mounting, mounting</b> <b>Hardware &amp; Housing hardware</b> (Inclusive of all items 3.1 a thru p)	12set	\$_____	\$_____
<b>3.2</b>	<b>Installation Services</b> (Inclusive of all item 3.2 a thru d)	1 Lt	\$_____	\$_____
<b>3.3</b>	<b>Connectivity</b> (Inclusive of all item 3.3 a thru g)	1 Lt	\$_____	\$_____

### **Location: (C) PORT COMMAND CENTER (MARAD FUNDED)**

<b>ITEM NO.</b>	<b>DESCRIPTION</b>	<b>QTY/ UNIT</b>	<b>UNIT PRICE</b>	<b>PRICE EXTENSION</b>
<b>4.1</b>	<b>ACS Software Installation</b> (Inclusive of all items 4.1 a thru d)	1 Lt	\$_____	\$_____
<b>4.2</b>	<b>CCTV Software Installation</b> (Inclusive of all items 4.2 a thru f)	1 Lt	\$_____	\$_____
<b>4.3</b>	<b>Servers/Storage</b> (Inclusive of all items 4.3 a thru e)	4 EA	\$_____	\$_____



<b>4.4</b>	<b>Supporting Infrastructure to include installation</b> (Inclusive of all items 4.4 a thru f)	1 Lt	\$ _____	\$ _____
<b>4.3</b>	<b>Connectivity</b> (Inclusive of all items 4.5 a and b)	1 Lt	\$ _____	\$ _____

#### TRAINING AND PREVENTIVE MAINTENANCE SERVICES

<b>ITEM NO.</b>	<b>DESCRIPTION</b>	<b>QTY/ UNIT</b>	<b>UNIT PRICE</b>	<b>PRICE EXTENSION</b>
<b>5.1</b>	<b>Training - Generic and Product</b>	1 Lt	\$ _____	\$ _____
<b>6.1</b>	<b>Preventative Maintenance Services for CCTV &amp; ACS Systems Locations: Commercial Port, Container Yard and PCC</b> (On separate schedule provide breakdown of cost by month)	2 Year	\$ _____	\$ _____

**TOTAL BID PRICE (1.1 to 6.1):** \_\_\_\_\_  
**(Bid Amount on Appendix U)**

**OPTIONAL BID ITEM(S)**Location: **(A) MARINAS – FEMA FUNDED**

<b>ITEM NO.</b>	<b>DESCRIPTION</b>	<b>QTY/ UNIT</b>	<b>UNIT PRICE</b>	<b>PRICE EXTENSION</b>
<b>1.1</b>	<b>Digital IP Cameras &amp; Software License to include Mounting, Mounting Hardware &amp; Housing hardware</b> (Inclusive of all items on 1.1 a thru r)	<b>5 set</b>	\$ _____	\$ _____
<b>1.2</b>	<b>Install of Cameras and Mounting, Mounting Hardware, And Housing Hardware</b> (Inclusive of all items 1.2 a thru d)	<b>1 Lt</b>	\$ _____	\$ _____
<b>1.3</b>	<b>Connectivity</b> (Inclusive of all items 1.3 a thru d)	<b>1 Lt</b>	\$ _____	\$ _____
<b>1.4</b>	<b>Preventative Maintenance Services for CCTV &amp; ACS Systems Locations: Agat Marina</b> (Provide breakdown of cost by month)	<b>2 Year</b>	\$ _____	\$ _____
<b>1.5</b>	<b>Preventative Maintenance Services for CCTV &amp; ACS Systems Locations: Agat Marina</b> (Optional Year 1 – Provide breakdown of cost by month)	<b>1 Year</b>	\$ _____	\$ _____
<b>2.1</b>	<b>Preventative Maintenance Services for CCTV &amp; ACS Systems Locations: Commercial Port, Container Yard and PCC</b> (Optional Year 1 - Provide breakdown of cost by month)	<b>1 Year</b>	\$ _____	\$ _____

**TOTAL OPTIONAL BID PRICE (1.1 to 3.1):** \_\_\_\_\_

The Port Authority of Guam reserves the right to exercise the optional bid item(s) at its own discretion subject to availability of funds.

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