



**ABSENT PARENT AUTOMATED SYSTEM  
INFORMATION (APASI)  
ADABAS/NATURAL LEGACY MIGRATION**

**PROFESSIONAL SERVICES**

**REQUEST FOR PROPOSAL**

**OAG RFP NO. 002-2020**

  
\_\_\_\_\_  
**LEEVIN TAITANO CAMACHO**  
**Attorney General of Guam**

**Office of the Attorney General**  
**590 S. Marine Corps Drive**  
**ITC Building, Suite 901**  
**Tamuning, Guam 96913-3537**  
**Telephone No. +1(671) 475-3324**  
**Fax No. +1(671) 477-4703**

**REQUEST FOR PROPOSAL – ABSENT PARENT AUTOMATED SYSTEM INFORMATION (APASI)**

**OAG RFP No. 02-2020 Publication Date: September 30, 2020**

## **Section 1 – Request for Proposal (RFP) Timeline**

### **1.1 – TABLE TIMELINE**

<b><u>DATE</u></b>	<b><u>ACTIVITY</u></b>	<b><u>TIME</u></b>
<b>09/30/20</b>	<b>RFP Issuance</b>	<b>8:00 AM Chamorro Standard Time (ChST)</b>
<b>10/30/20</b>	<b>Deadline for Submission of Written Questions</b>	<b>5:00 PM Chamorro Standard Time (ChST)</b>
<b>11/13/20</b>	<b>Deadline for Response to Written Questions</b>	<b>5:00 PM Chamorro Standard Time (ChST)</b>
<b>12/4/20</b>	<b>Deadline for Submission of RFP Proposal</b>	<b>4:00 PM Chamorro Standard Time (ChST)</b>

## **SECTION 2 – GENERAL INFORMATION, GENERAL INSTRUCTIONS & PROJECT SCOPE**

### **2.1 – PROJECT TITLE AND SCOPE**

**Office of the Attorney General (OAG) Request for Proposals (RFP) NO. 002-2020, ABSENT PARENT AUTOMATED SYSTEM INFORMATION (APASI) ADABAS/NATURAL LEGACY MIGRATION**

#### **2.1.1 – GLOSSARY**

CFR – Code of Federal Regulations

GAR – Guam Administrative Rules and Regulations

GSA – General Services Agency of Guam

OAG – Office of the Attorney General of Guam

CSED – Office of the Attorney General of Guam, Child Support Enforcement Division

PO – Purchase Order(s)

RFP – Request for Proposal

STATE – Guam

VENDOR – An entity submitting a proposal in response to the RFP

**REQUEST FOR PROPOSAL – ABSENT PARENT AUTOMATED SYSTEM INFORMATION (APASI)**

**OAG RFP No. 02-2020 Publication Date: September 30, 2020**

### **2.1.2 BACKGROUND**

The Office of the Attorney General of Guam (OAG) is procuring specialized technical contract services related to moving mission-critical legacy business application systems to contemporary operating platforms. Contract(s) resulting from this procurement will be “task order” based for the Initial Term of this Agreement is one (1) year, with possible extensions totaling up to four (4) years, for a total maximum Agreement term of five (5) years. The initial contract task order resulting from this procurement will be to “migrate” APASI.

The applications and systems described in this section were originally developed using an Adabas/Natural platform and continue to be maintained and operated on that platform today. The current Adabas/Natural platform is considered aging technology and is no longer considered to be a strategically viable platform for systems operated by the OAG. OAG recommends that the applications below be migrated from the current Adabas/Natural mainframe platform to a state-of-the-art operating platform.

The initial focus of this Request for Proposal is to solicit proposals for the migration of APASI only at this time. We are soliciting firm fixed price proposals from vendors with proven experience migrating major Adabas/Natural systems (preferably government systems) to more contemporary operating platforms.

Specifics of Adabas conversion projects will be negotiated with the awarded vendor as time permits the OAG to move forward. If it is determined that negotiations are not working in the best interest of the OAG, the OAG reserves the right to pursue other sourcing methods.

Background information for the system is provided below.

#### **Background and Overview – APASI**

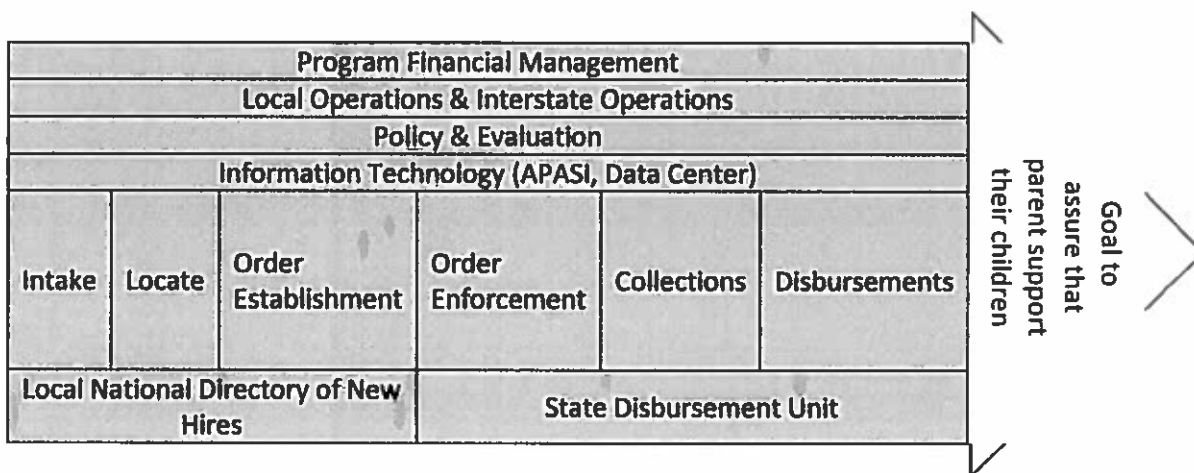
APASI (Absent Parent Automated System Information) is the comprehensive statewide system that supports the OAG Child Support Enforcement Division (CSED) Program. APASI was first implemented in 1996 and has provided effective automated case and financial management support to the CSED program for over three decades.

APASI provides automated case and financial management support to the CSED program. The OAG believes that creating a functionally equivalent system is the appropriate activity since APASI embodies over 25 years of refined “business rules” and is responsible for the receipt and disbursement of nearly \$10M of child support each year. Since APASI supports the self-sufficiency of citizens, it is essential that the migration effort take place without disrupting the OAG Child Support Enforcement Division.

## CSED Program Overview:

In 1975, the Federal government established the Child Support Enforcement program under Title IV-D of the Social Security Act. The program was initiated to reimburse Federal and local financial assistance expended to dependent children who were not receiving support from their absent parent(s). The act was soon amended to enforce child support on behalf of families who were not receiving public assistance but who applied for CSED program services. Cases where services are provided in accordance with Title IV-D are known as "IV-D cases" (pronounced "four D").

CSED is the single agency responsible for supervision and administration of the Guam's Child Support Enforcement Program. Guam's Child Support Enforcement Program is supervised and administered by CSED. CSED provides the program services including: case management, locating parents and their assets, establishment of paternity and support obligations, and enforcement of those support obligations. The diagram below gives a high-level view of the business of child support enforcement.



### Primary Product—Financial Support:

During Fiscal Year 2018, almost 48,000 payments, totaling over \$9 million, were received and subsequently disbursed to families. The State Disbursement Unit (SDU) is the central payment processing center for child and spousal support in the territory.

While the SDU is responsible for receipting and disbursement activities, the ultimate allocation and distribution of receipted payments is conducted by APASI under the control of CSED. CSED is mandated by Federal law to receipt, allocate, distribute, and disburse payments within two (2) business days.

### Automated Enforcement Remedies:

The CSED program administers numerous automated enforcement remedies to collect support. These remedies must operate accurately according to each remedy's specific statutory process. There is no room for error with regard to the automated execution of these remedies, as non-custodial parent's finances, employment, and licenses are at stake. These automated remedies include, but are not limited to:

- IRS tax offsets,
- Local revenue tax offsets,
- federal administrative offset,
- vendor offset,
- passport denial.

REQUEST FOR PROPOSAL – ABSENT PARENT AUTOMATED SYSTEM INFORMATION (APASI)

OAG RFP No. 02-2020 Publication Date: September 30, 2020

**National Directory of New Hires:**

The OAG CSED is also responsible for operating the National Directory of New Hires (NDNH). All Guam employers as well as many employers doing business in multiple states report their new hires (W4's) to the NDNH pursuant to Federal and Guam law. Historically, the NDNH has received approximately 10,000 reports each year. APASI is ultimately responsible for capturing, storing, and forwarding these reports to the NDNH within the mandated two business days. The CSED and the Child Support Enforcement Programs in other states are critically dependent upon new hire reports to ensure income withholding orders are correctly in place with non-custodial parents via their employers.

The following table provides an overview of the key sizing and performance metrics for the OAG CSED Program.

<b>OAG Child Support Enforcement Division Statistics – Fiscal Year 2018</b>	
<b>Program Statistics</b>	
IV-D Caseload	6,512
IV-D collections (processed through the SDU)	\$8,473,650
Non-IV-D collections	\$74,209.74
Total collections	\$9,923,175.00
Total payment transactions processed through the SDU	47,761
National Directory of New Hires Reports Received & Processed	10,925
<b>Performance Statistics</b>	
Percent of orders established	74.22%
Percent of current support collected	59.82%
Percent of arrears collected	50.99%
Paternity Establishment Percentage	90.68%

**APASI Technical Organization:**

APASI is fully integrated into the business of child support enforcement and meets all of the requirements for certified Child Support Enforcement systems as established by the Federal Office of Child Support Enforcement (OCSE).

The system is divided into 3 major subsystems:

- **Case Management:** Including case initiation, case maintenance, locating absent parents and their assets, and establishment of paternity and support orders.
- **Financial Management:** Including ledger initiation, ledger maintenance, allocation, distribution and disbursement of payments.

- **Enforcement:** Including income withholding, Federal and Guam tax offset, intercept of unemployment compensation, workers compensation, lottery payments, liens and bonds, credit reporting agency, and license suspensions.

APASI currently supports approximately 60 child support workers at OAG CSED. It is currently supported by a contractor, who provides operational and management support.

#### **APASI – Key Statistics:**

The following statistics provide the relative sizing of APASI.

<b>Natural language</b>	
Total non-comment lines of code (as of 4/30/2020)	1,325,533
Total number of Natural objects in codebase (as of 4/30/2020)	7981
Total number of Natural programs in codebase (as of 4/30/2020)	1640
Total number of Natural maps in codebase (as of 4/30/2020)	1446
<b>Adabas database</b>	
Total number of physical files / data views in APASI	Physical Files – 241  DB55 – 222; DB56 - 19  DDM (NSD) – 330
Total number of data fields in APASI Adabas production database	7201
Total number of projected data fields in normalized relational database	7279
Total number of records in APASI Production database (DB55)	121,697,889
Total number of records in APASI Archive database (DB56)	126,808,410
Total number of records in APASI Production database	248,506,299
Total number of records in APASI Archive database (DB55)	none

See Appendix B for more details related to key APASI sizing statistics. Appendix C provides additional information about the “APASI Mainframe Application Environment”.

#### **2.1.3 – PURPOSE**

This RFP is for the ADABAS/Natural Legacy Migration Project for APASI. We are soliciting firm fixed price proposals for migration of APASI from vendors with proven experience migrating major Adabas/Natural systems (preferably government systems) to more contemporary operating platforms.

The term “migrate”, as used in regards to APASI Migration, refers to re-deploying a “functionally equivalent” legacy system on a new operating platform, i.e. moving the legacy system to a modern  
REQUEST FOR PROPOSAL – ABSENT PARENT AUTOMATED SYSTEM INFORMATION (APASI)

programming language and hardware platform while preserving all of the legacy functionality and business process structures. The goal of legacy migration is to retain the value of the legacy asset on the new platform. The OAG believes that this migration can occur relatively quickly at a moderate cost and lower risk if the structure and functionality of the existing applications is preserved, resulting in a functional equivalent system on the new operating platform.

The proposal must include a technical solution and cost proposal.

The ADABAS/Natural Migration Project must fulfill these objectives:

1. Deliver a functionally equivalent system compatible with, and interoperable with, the existing robust operating environment. Convert data that is currently in Adabas database files into relational database management system tables.
2. Deliver a functionally equivalent system that has been thoroughly tested at multiple levels, including unit testing, system integration testing, regression testing, and user acceptance testing.
3. Deliver a system that is understandable and maintainable by the current OAG technical team.
4. Provide the current OAG team with the necessary training and experience so to provide on-going support, maintenance and enhancement of the converted system, independent of on-going third party support and participation.
5. Deliver a functionally equivalent system such that user training requirements are minimized.

Respondents who meet the criteria set forth herein shall submit a proposal that meets all of the requirements contained in this RFP.

Vendors must provide the OAG a copy of their valid Guam Business license and each year thereafter once a vendor is awarded, and while maintenance, support and warranty are in effect.

#### **2.1.4 – PERSON(S) RESPONSIBLE FOR DRAFTING OF SPECIFICATIONS IS/ARE:**

Andrew T. Perez, Deputy Attorney General

Pauline Chaco, Investigator IV/Child Support Enforcement Officer Supervisor

\*Received assistance from the Colorado Office of Economic Security, Division of Child Support Services

\*Office Child Support Enforcement, an Office of the Administration for Children and Families

#### **2.1.5 – DESCRIPTION OF SERVICES AND WORK INVOLVED**

As discussed in Section 2.1.3 APASI Migration is described below.

The ADABAS/Natural Migration Project must fulfill these objectives:

1. Deliver a functionally equivalent system compatible with, and interoperable with, the existing robust operating environment. Convert data that is currently in Adabas database files into relational database management system tables.
2. Deliver a functionally equivalent system that has been thoroughly tested at multiple levels, including unit testing, system integration testing, regression testing, and user acceptance testing.

REQUEST FOR PROPOSAL – ABSENT PARENT AUTOMATED SYSTEM INFORMATION (APASI)

OAG RFP No. 02-2020 Publication Date: September 30, 2020

3. Deliver a system that is understandable and maintainable by the current OAG technical team.
4. Provide the current OAG team with the necessary training and experience so to provide on-going support, maintenance and enhancement of the converted system, independent of on-going third party support and participation.
5. Deliver a functionally equivalent system such that user training requirements are minimized.

## **MANDATORY MINIMUM REQUIREMENTS**

Offerors must comply with the following mandatory requirements in order to be considered responsive to this RFP and to be eligible to be awarded a contract. These items are reviewed as a pass or fail during evaluation of proposals:

### **Signed Request for Proposals (RFP) Signature Page**

Offeror must submit a signed Request for Proposal Signature Page to be considered for this award. The OAG may accept an alternative signed document by a person legally authorized to bind the Offeror to the proposal; acceptance is at the OAG's discretion. In any instance where this occurs, the OAG will require the Offeror to submit a signed Request for Proposal Signature Page within 24 hours (1 business day) upon notice.

### **Verifiable Prior Successful Legacy Migrations – Adabas/Natural to current state of the art processing platforms using a RDBMS**

#### **Requirements**

Offeror must have a verifiable successful track record in performing Adabas/Natural legacy migrations. The target platform for those migrations must be compatible with the existing, robust application platforms currently utilized within the Guam agencies mentioned in this RFP. Offerors must identify not less than two customers with whom they have successfully completed equivalent system migration projects where the systems migrated by your organization are currently in use and where the customer can detail their satisfaction with your organization's migration efforts and satisfaction with the migrated system that is in use. Offeror must describe the size of the effort in number of lines of code, number of users, number of screens, and complexity of the application.

#### **Offeror's Response**

**Complete the Prior Migration Experience form.** To demonstrate a proven successful track record in performing Adabas/Natural legacy migrations with no failed migrations. The Offeror **MUST** provide information on prior migration projects by providing not less than two customer references where the systems migrated by your organization are currently in use and where customers can detail their satisfaction with your organization's migration and the migrated system that is in use.

### **Security/ Cyber Security**

#### **Requirements**

Offeror agrees at all times to maintain network, system, and application security that, at a minimum, conforms to the following:

REQUEST FOR PROPOSAL – ABSENT PARENT AUTOMATED SYSTEM INFORMATION (APASI)

OAG RFP No. 02-2020 Publication Date: September 30, 2020



- Current cyber security Standards set forth and maintained by the National Institute of Standards and Technology, which can be found at: <https://www.nist.gov/>
- Offeror agrees to document all cyber security exceptions in response to this RFP.
- Offeror shall comply with all the provisions and expectations outlined in the current revision of *IRS Publication 1075 – Tax Information Security Guidelines for Federal, State and Local Agencies and Entities*, in particular section 5.6 – *Computer System Security*. See the relevant sections of Publication 1075 that have been provided in the Procurement Library.

#### Offeror's Response

Q1. Will you meet these requirements? Yes \_\_\_\_\_ No \_\_\_\_\_

#### TECHNICAL

##### Target Platform Architecture

##### Requirements

Offeror must deliver a migrated system that operates on a target platform compatible with the existing robust operating environment. The target platform must also be compatible with APASI Hardware and Software Standards document as identified in Appendix E, APASI Procurement Library.

The Offeror will also determine a proposed sizing/scaling of the target platform in order to deliver the required system performance.

#### Offeror's Response

Q2. Will you meet these requirements? Yes \_\_\_\_\_ No \_\_\_\_\_

Q3. Describe your organization's ability to deliver a migrated system that operates on a target platform compatible with the robust operating environment. .

Q4. Describe the technical architecture your organization proposes for the new system (network, hardware, 3<sup>rd</sup> party software, licensing, etc.)?

Q5. Describe the process that will be used to determine the sizing/scaling of the target platform in order to deliver the required system performance, and describe what business/technical/system resources are needed from the OAG to support your organization's sizing effort.

##### Code & Data Migration

##### Requirement

The Offeror must deliver a functionally equivalent system operating in an environment compatible with the existing, robust environments for the associated agency. The OAG defines a functionally

equivalent system as one that continues to support all existing application functionality with no changes to OAG business processes and minimal changes to the OAG user's experience.

In addition, the Offeror must deliver a migrated system that performs at a level that does not negatively disrupt CSED operations while dealing with Guam agencies.

The Offeror must deliver a migrated system that is maintainable by the current OAG technical team without the need to utilize proprietary tools or libraries, such as run-time conversion engines, etc. The OAG understands that the conversion of programming code using automated tools may be a necessary component of the migration; however, the resulting "new" programming code must be readable and maintainable programming code. The OAG also desires the size of the codebase for the migrated system be of similar size to the existing Natural / Adabas system or smaller. A translated codebase that is significantly larger than the original system would be a serious concern to the OAG.

The Offeror must also provide the current OAG team with the necessary training and experience so that they are equipped and ready to provide on-going support, maintenance and enhancement of the migrated system, without on-going third party development support.

#### **Offeror's Response**

**Q6.** Will you meet these requirements? Yes \_\_\_\_\_ No \_\_\_\_\_

**Q7.** Describe the general methodology to be used to deliver a functionally equivalent system that operates on a contemporary technology platform.

**Q8.** Describe your data conversion methodology, including details on your conversion process for taking Adabas structures and conventions and converting them to structures and conventions common in a relational database management system.

**Q9.** Describe your data cleansing methodology and your proposal for how bad data will be cleansed. Can clean-up be automated or does it need to be done manually by OAG employees?

**Q10.** Describe your code conversion methodology, including details on your conversion process for the various layers and structures of the legacy Adabas/Natural applications. Describe when and where automated code conversion is utilized versus when and where hand-coded conversion of programs is utilized. Define what percentage of the target production code is automatically generated and what percentage will require hand modification and/or hand coding.

**Q11.** Provide an explanation and / or a metric by which you would estimate the size of the codebase for the new system based on the information provided about the existing system.

**Q12.** Describe the process for ensuring interoperability between the new migrated system and the existing interfacing systems,

**Q13.** Describe your organization's expectation with respect to on-going modifications to the existing legacy applications during the migration project. Describe if your organization's process requires a "code freeze," and at what point in the process this is required, and how long it will last. Also, describe how changes made to the existing legacy applications during migration will be incorporated into the migrated system.

**Q14.** Describe the steps taken to ensure that the migrated system will perform at a level that will not disrupt CSED operations. Define the analysis and processes used to maximize the performance of the migrated system.

REQUEST FOR PROPOSAL – ABSENT PARENT AUTOMATED SYSTEM INFORMATION (APASI)

OAG RFP No. 02-2020 Publication Date: September 30, 2020

**Q15.** Describe the method used convert batch processes into the target platform, and describe the approach used to ensure completion of the batch processes on the migrated system within the nightly batch window.

**Q16.** Describe the process to be used to train and prepare the current OAG team (management and staff) so they are equipped for operational stability of the new system, ready to provide on-going support, maintenance and enhancement of the migrated system, apart from on-site third party assistance.

**Q17.** Describe the steps taken to ensure that the migrated system will have an uptime as good as or better than the uptime for the existing system.

## **Initial Component Build**

### **Requirements**

The OAG desires a complete build-out and test of a representative system component during the initial stage of APASI migration project. The purpose of this initial component build-out is to provide the OAG with an early evaluation of the maintainability of the generated/converted code, and the quality, usability, and functional equivalence of the vendor's system deliverables. This initial component must be a working, "production ready" system component. Ideally, the OAG can take the opportunity at this time to benchmark the performance of the proposed system. The OAG will work with the Offeror to select a component of appropriate size, scope, and complexity such that it is representative of the work to be encountered throughout the ADABAS/Natural Migration Project.

### **Offeror's Response**

**Q18.** Will you meet these requirements? Yes\_\_\_\_ No\_\_\_\_

**Q19.** Describe how the first component will be tested and evaluated by CSED to accurately assess the merits of the converted system.

**Q20.** Describe how this first component will be subsequently incorporated into the fully migrated OAG system.

## **Interfaces & Interface Partners**

### **Requirements**

The Offeror must migrate the legacy application(s) with no impact (performance, timing, frequency, etc.) to any of the application(s) interface partners or their systems and applications. Interface partners must not be required to make programming changes to their interfaces with the migrated applications. This project must be transparent to the interface partners and their systems and applications, except to perform system tests to ensure correct functioning of the interfaces.

### **Offeror's Response**

**Q21.** Will you meet these requirements? Yes\_\_\_\_ No\_\_\_\_

**Q22.** Describe the methodologies used to migrate the legacy applications with their numerous interfaces to the target applications with no impact (programming, performance, timing, frequency, etc.) to interface partners, systems, and applications.

REQUEST FOR PROPOSAL – ABSENT PARENT AUTOMATED SYSTEM INFORMATION (APASI)

OAG RFP No. 02-2020 Publication Date: September 30, 2020

## **User Experience**

### **Requirements**

The Offeror must deliver a migrated system where the user experience is a functional equivalent of the legacy system. The OAG intends to preserve the essence of the existing user interface within existing applications, such that training needs are reduced and adoption of the migrated system by the existing users is likely. However within this objective, the OAG desires to obtain the best user experience possible without increasing risk or project duration.

Current legacy systems utilize both menu driven navigation as well as “direct command” navigation. Virtually all experienced users rely on the direct commands for navigation through the system, so, it is critical that an equivalent capability be provided in the migrated system.

### **Offeror’s Response**

**Q23.** Will you meet these requirements? Yes \_\_\_\_\_ No \_\_\_\_\_

**Q24.** Describe the methodologies used to create the user interface in the target application while maintaining the user experience of the original system.

**Q25.** Describe typical interface controls and constructs in the target system that may cause confusion for users of the legacy system. Describe how your organization typically overcomes the confusion legacy users might experience when they begin to use a migrated system that is a functional equivalent of the legacy system.

**Q26.** Describe your anticipated approach to replicating the critical capability of “direct command” navigation in the migrated system.

## **Testing**

### **Requirements**

The Offeror is required to provide a robust testing plan for the converted code and migrated system. Testing must include, at a minimum, unit testing, system integration testing, regression testing, performance testing, and user acceptance testing by a group that includes representation of CSED workers that interact with agency systems. The expectation is that the results of this testing of the new system will be identical to the results of the same processes run against the legacy applications.

CSED has no Operations Analysts (for APASI), who can provide assistance in developing the functional testing process. However, CSED has a contractor that act as subject matter experts of the functional aspects of the existing APASI to CSED users.

### **Offeror’s Response**

**Q27.** Will you meet these requirements? Yes \_\_\_\_\_ No \_\_\_\_\_

**Q28.** Describe the methodology to be used for unit testing of the converted code, whether converted automatically or by hand.

**Q29.** Describe the process for quality assurance and system testing of all application functions, interface, and batch processes of the migrated system. Identify the role of the CSED resources in this testing.

**Q30.** Describe the approach planned for user acceptance testing including acceptance testing

REQUEST FOR PROPOSAL – ABSENT PARENT AUTOMATED SYSTEM INFORMATION (APASI)

OAG RFP No. 02-2020 Publication Date: September 30, 2020

by CSED users. Based on your experience, please recommend criteria that the CSED should consider in its acceptance testing.

### **Pilot and deployment of migrated system**

#### **Requirements**

It is essential to the OAG that CSED operations not be negatively disrupted by the migration of APASI from a legacy environment to a new platform. Therefore, the OAG insists that deployment of the new system be conducted with the lowest possible risk. To that end, the OAG requests input from the Offeror as to the recommended lowest risk option for deployment of the migrated system. The recommendation must work within the following constraints:

- (1) The deployment must begin, with the Offeror's participation, with up to three (3) sequential CSED pilots using the migrated system. The CSED pilots will include a formal acceptance.
- (2) The CSED pilots will include a formal acceptance.
- (3) The CSED pilots will be followed by a CSED-wide phased deployment of the migrated system.

The preferred option being considered by the OAG for a low risk deployment approach, is for the operation of the new application system to work in parallel with the legacy system. Under this scenario, both the new and legacy systems would stay in synch, and data within each system would be available to the other system either in near real-time or via batch updates. This scenario envisions the possibility of deploying the system in a component by component fashion. Only after the new components have been accepted and implemented CSED-wide would the existing components of the legacy system be decommissioned.

The OAG recognizes that this preferred parallel deployment option may not be cost effective, the lowest risk option, or both. If the Offeror believes that to be the case, the OAG is still eager to find a low risk deployment solution for the new system. The OAG requests that the Offeror recommend an alternative approach that it considers to be the lowest risk, most cost effective option for deployment of the new systems across CSED. Cost Schedule A-2 allows for the Offeror to propose both the OAG's preferred approach and an alternative approach to deployment.

#### **Offeror's Response**

**Q31.** Will you meet these requirements for a CSED pilot and a low risk CSED-wide deployment of the migrated system? Yes\_\_\_\_\_ No\_\_\_\_\_

**Q32.** Describe the approach to be used for a pilot CSED deployment, an approach that includes a formal CSED acceptance process and an authorization to proceed to CSED-wide deployment. Also, describe the approach to be used for phased CSED-wide deployment of the migrated system

**Q33.** Optional Question: Provide an alternative recommendation for lowest risk approach to deployment of the migrated system.

### **Project Plan**

#### **Requirements**

Offeror must provide a proposed project plan for the ADABAS/Natural Legacy Migration Project. Ultimately, OAG and the awarded Offeror will jointly finalize a project plan to manage the project,

REQUEST FOR PROPOSAL – ABSENT PARENT AUTOMATED SYSTEM INFORMATION (APASI)

OAG RFP No. 02-2020 Publication Date: September 30, 2020

however, as part of the proposal the Offeror must provide a project management plan according to Project Management Institute (PMI) standards and project management best practices.

For purpose of responding to this RFP the following definitions apply:

- Tasks are activities that can be measured over time and must be accomplished to complete the scope of work and meet the project schedule.
- Deliverables are work products resulting from the activities conducted as a part of a task

#### **Offeror's Response**

**Q34.** Will you meet these requirements? Yes\_\_\_\_\_ No\_\_\_\_\_

**Q35.** Provide a project plan that shows the necessary tasks to migrate each application to a new platform. This plan should include a work breakdown structure and Gantt chart identifying the project management tasks for the project according to PMI standards. The plan should include the milestones identified in the table in 2.1.12 titled "OAG Child Support Enforcement Division APASI Application Migration Project", as well as other milestones the Offeror deems necessary for analysis, code conversion, data conversion, interface conversion, testing, training, and deployment tasks for the new system.

**Q36.** Describe how change control will be conducted to manage and change user requests that arise during the project.

#### **Final Acceptance Requirements**

##### **Requirements**

*The Offeror must provide a warranty stating that the newly migrated system will be free of errors that cause material deviation from the general requirements specified in this RFP for a period of six (6) months from the date of the OAG's final acceptance of the system.*

The Offeror must maintain an on-site presence in Guam after completion of the deployment of the each system and until final acceptance by the OAG to ensure a smooth transition to CSED operations. During this period the Offeror must be responsible for correcting all essential, critical and major errors or deficiencies in the system at no additional cost.

Essential, critical and major deficiencies are defined as follows:

**Essential** – This category includes defects that result in failure of the complete software system or of a subsystem, or of a software unit (program or module) within the system. Data corruption, inability to use the complete software system or the subsystem would fall into this category, as well as unacceptable system performance.

**Critical** - The defect results in failure of the major functionality, with no workaround. Frequent or reproducible crashes fall in this category, as would major functionality not working.

**Major** - The defect does not result in a failure, but causes the system to produce incorrect, incomplete, or inconsistent results, or the defect impairs the system's usability.

The OAG envisions final acceptance will take place 90 days after all essential, critical, and major defects have been resolved. The OAG retains the right to accept the system at any time during the 90 day period.

The OAG is also interested in whether an optional maintenance period could be made available by the Offeror following acceptance of the new system.

**Offeror's Response**

**Q37.** Will you meet these requirements? Yes\_\_\_\_ No\_\_\_\_

**Q38.** Describe the expected criteria for final acceptance of the migrated system and the process to be used for hand-off of the system to the OAG.

**Q39.** Optional Question: Describe in some detail the activities of an optional maintenance period after final acceptance that your organization could provide that could be exercised at the discretion of the OAG and provide a proposed pricing model.

**Q40.** Describe system and/or technical documentation that will be provided with the delivery of the new system.

**MANAGEMENT**

**Migration Project Team**

**Requirements**

The OAG requires a well-qualified migration project team committed to the success of the ADABAS/Natural Migration Project. The Offeror must provide a table showing the key management and technical team for the migration project that can ensure the success of the project. This table will include the job title, job role, and the number of resources for the project and the percent of their involvement in the project.

Resumes and references must be provided for named individuals. Resumes must describe each person's educational background, experience, and other pertinent professional data, and should be sufficiently detailed to demonstrate the individual's qualifications for this project. OAG may conduct reference checks to verify the accuracy of submitted information and to ascertain the individual's level of performance and involvement in the project. OAG reserves the right to pursue any references or sources, which may assist in completing this component of the technical proposal evaluation.

**Offeror's Response**

**Q41.** Describe the Offeror's key management and technical team and their duties and roles to be provided for this project.

**Q42.** Describe the expected location for the various team members. Particularly note the members of the team expected to be located at the OAG's facilities.

**Corporate Experience**

**Requirements**

For the ADABAS/Natural Migration Project the OAG requires a well-qualified Offeror capable of ensuring the success of the ADABAS/Natural Migration Project. In order to prove such qualification, the Offeror must provide information about the organization's background and experience that qualifies them to complete the scope of work expressed in the RFP. Corporate information must be provided for the prime contractor and any subcontractors, including details of company background, size, and date established. If the Offeror is owned or controlled by a

REQUEST FOR PROPOSAL – ABSENT PARENT AUTOMATED SYSTEM INFORMATION (APASI)

OAG RFP No. 02-2020 Publication Date: September 30, 2020

parent company, the name, main office address and parent company's tax identification number must be provided for the parent company.

The Offeror must also provide at least two additional references that match the scope of work outlined in this solicitation. These additional references are in addition to the the two references provided pursuant to "Verifiable Prior Successful Legacy Migrations – Adabas/Natural to current state of the art processing platforms using a RDBMS" but are not required to have been migration projects involving Natural/Adabas. Provide the principal contact, telephone number and email address, as well as a brief description of the work performed. The OAG reserves the right to call and/or visit these references only on the selected Offerors as a method of verifying experience. It is the responsibility of the Offeror to ensure that references respond to OAG's inquiries.

#### **Offeror's Response**

**Q43.** Describe the Offeror's background and experience that qualifies the Offeror to perform the scope of work expressed in the RFP.

**Q44.** Provide corporate information for any subcontractors proposed for the project, including details of company background, size, and date established.

**Q45.** Provide a corporate organization chart of the firm that is submitting the proposal. (If the firm is a subsidiary of a parent company, the organization chart should be that of the subsidiary firm.

**Q46.** Provide a statement regarding the Offeror's current contractual obligations, which might have an influence on the ability to fulfill the conditions of this RFP and resulting contract.

**Q47.** Identify any prior or pending legal actions, including administrative hearings, and the result or current status of those actions.

**Q48.** Provide a copy of the last certified, audited financial statements for your company. The OAG reserves the right to review financials only on the selected Offeror's as a method of determining responsibility.

### **2.1.6 INSTALLATION, SETUP AND TRAINING**

1. Proposals should include installation of the suggested solution, setup, and on-site training of all users.
2. Proposed system must have robust training materials such as manuals, e-learning, etc.
3. Proposed system must have robust ongoing maintenance and troubleshooting response.

### **2.1.7 SERVICE AND ANNUAL MAINTENANCE**

Vendors will include warranty information on the solution including length of warranty and available extensions (include annual costs).

1. Listing of service rates.
2. Listing of annual maintenance rates.

REQUEST FOR PROPOSAL – ABSENT PARENT AUTOMATED SYSTEM INFORMATION (APASI)

OAG RFP No. 02-2020 Publication Date: September 30, 2020



3. Any other fees which may affect the RFP and warranty.

#### **2.1.8 DURATION OF AWARD**

The initial term of the contract resulting from this RFP will be for one (1) calendar year upon its full execution by all necessary parties. OAG, at its option, may renew the contract for up to four (4) additional terms of one (1) year each, subject to availability of funds, or extend the time for performance of tasks contemplated in either the initial or subsequent terms.

#### **RESULTING CONTRACT TIMING & PAYMENT SCHEDULE MODEL**

As indicated in Section 2.1.2 Background, the initial contract task order will be to migrate the APASI. Timing and payment terms for APASI are provided in the table below.

<b>OAG Child Support Enforcement Division APASI Application Migration Project</b>			
<b>Phase</b>	<b>Activity</b>	<b>Project Milestone</b>	<b>Payment Milestone</b>
1. Initial Component Build and Evaluation	<ul style="list-style-type: none"> <li>• Vendor will develop first application component</li> <li>• OAG will evaluate first component</li> <li>• Vendor and OAG will benchmark new system and update project schedule as necessary</li> </ul>	Initial component evaluation	Upon OAG approval, vendor may invoice up to 5% of total cost
2. Development Phase	<ul style="list-style-type: none"> <li>• Vendor will convert the remainder of OAG application The converted system will be fully tested</li> <li>• OAG will evaluate "converted" system and authorize pilot</li> </ul>	Development Complete, proceed to pilot system	Upon OAG approval, vendor may invoice up to 25% of total cost
3. Pilot Implementation	<ul style="list-style-type: none"> <li>• Vendor and OAG will implement new system in select counties.</li> <li>• OAG will evaluate system and authorize CSED-wide roll-out.</li> </ul>	Pilot Implementation successful, proceed CSED-wide	Upon OAG approval, vendor may invoice up to 30% of total cost
4. CSED-wide implementation	<ul style="list-style-type: none"> <li>• Vendor and OAG will implement system CSED-wide.</li> </ul>	CSED-wide Implementation complete	Upon OAG approval, vendor may invoice up to 30% of total cost
5. Evaluation and Acceptance phase	<ul style="list-style-type: none"> <li>• OAG will evaluate implemented system and formally accept it.</li> </ul>	OAG accepts new system	Vendor may invoice for balance of cost (10%)

Timing and payment terms for any subsequent task order(s) will be finalized at the time those task order(s) are executed.

OAG shall provide timely notice if funds are not available for continuation of contract beyond each fiscal year. In the event of cancellation due to unavailability of funds, Offeror will be reimbursed unamortized, reasonably incurred, non-recurring costs.

#### **2.1.9 – COMPENSATION STRUCTURE**

Each of the deliverables will be payable upon completion, delivery, approval, and acceptance by the OAG. Travel expenses must be included in the vendor's consultation pricing (or the hourly rates which are built into the cost of the deliverable) and may not be billed separately.

#### **2.1.10– CONTRACT TYPE**

An agreement pursuant to this RFP is expected to be a firm fixed-price contract. A sample of the contract to be executed by the successful offeror is included as Attachment 1.

#### **2.1.11 – FUNDING SOURCE(S)**

Funds to compensate the services solicited in this RFP shall be taken from the following sources:

Funds are presently available for this solicitation. These funds are currently available from funds made available to the OAG from the general fund. The government's obligation under any proposed contract is contingent upon the availability of funds from which payment for contract purposes can be made. The issuance of this solicitation does not compel the award of any contract. All Offerors are required to comply with the terms and conditions of OAG's applicable funding requirements.

However, this RFP has been approved by the Federal Office of Child Support Enforcement. Thus, funding expended for this contract will be funded at the rate as follows:

Sixty-six percent (66%) from federal funds from the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement

Thirty-four percent (34%) from funds allocated to the Office of the Attorney General from the Government of Guam General Fund.

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

**REQUEST FOR PROPOSAL – ABSENT PARENT AUTOMATED SYSTEM INFORMATION (APASI)**

OAG RFP No. 02-2020 Publication Date: September 30, 2020

## **2.2 – COMPLIANCE WITH RFP INSTRUCTIONS**

Failure to comply with the requirements of this RFP may result in proposals being deemed non-responsive and Offeror being disqualified from participation in this RFP.

### **2.2.1 – COMMUNICATION REGARDING THIS RFP**

ANY CORRESPONDENCE OR COMMUNICATION BY A POTENTIAL OFFEROR WITH OAG MUST BE MADE IN WRITING TO THE ATTENTION OF OAG PROCUREMENT OFFICIAL TIANNA SARROSA VIA EMAIL AT [procurement@guamag.org](mailto:procurement@guamag.org) OR BY FACSIMILE AT 671-477-4703 OR BY HAND DELIVERY AT THE OFFICE OF THE ATTORNEY GENERAL, ADMINISTRATION DIVISION. ALL WRITTEN COMMUNICATIONS MUST REFERENCE RFP 002-2020 IN THE SUBJECT OR REFERENCE LINE. RFP PACKETS MAY BE PICKED UP AT THE OFFICE OF THE ATTORNEY GENERAL, 9th FLOOR, SUITE 901, ITC BUILDING, TAMUNING, GUAM.

*"THIS IS A COMPETITIVE BID THAT IS OPEN TO ALL BIDDERS"*

### **2.2.2 – ACCEPTABLE FORMAT OF PROPOSALS**

**Proposals must be submitted in writing.**

Each Proposal Package should consist of the Offeror's separately packaged and marked Technical Submittal and Cost Submittal.

**The Proposal Package** shall be submitted in a clearly marked and sealed envelope or box and shall contain:

**The Technical submittal** should arrive in a clearly marked and sealed envelope or box that includes one (1) original with original signatures and notarizations where necessary, one (1) digital copy on compact disc or flash drive, and five (5) copies, AND

**The Cost Submittal** should arrive in a clearly marked and sealed envelope or box that includes one (1) original and five (5) copies.

**The Proposal Package** should be delivered according to the instructions in Section 2.2.3 and be marked on the outside with the following information:

Office of the Attorney General  
Request for Proposal No. 002-2020

RFP Title: **ABSENT PARENT AUTOMATED  
SYSTEM INFORMATION (APASI)  
ABADAS/NATURAL LEGACY MIGRATION**

Offeror's Name:

Offeror's Address:

Contact No.:

Submittal Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Attention: Procurement Official

### **2.2.3 – TIME AND DATE FOR RECEIPT OF PROPOSALS**

Proposals must be received by:

TIME: **4:00 PM** Chamorro Standard Time (ChST)

DATE: December 4, 2020

**The Office of the Attorney General maintains the Official time in this regard. Proposals may be submitted any time before the deadline for receipt of proposals.**

**Proposals received past the time indicated above, AS THAT TIME IS INDICATED BY THE OAG, will not be considered for award.**

**If delivered via hand delivery, Federal Express, DHL, or other courier service, proposals must be delivered to the following physical address below. Please submit your proposal for services, resume and vitae letters of recommendation, and credentials to:**

**PHYSICAL ADDRESS:** Office of the Attorney General  
Re: RFP No. 002-2020  
RFP Title: Absent Parent Automated System Information (APASI)  
590 S. Marine Corps Drive  
ITC Building, 9<sup>th</sup> Floor, Suite 901  
Tamuning, Guam 96913

Attention: Procurement Official

**If delivered via the United States Postal Service, bids must be delivered to the following mailing address:**

REQUEST FOR PROPOSAL – ABSENT PARENT AUTOMATED SYSTEM INFORMATION (APASI)

OAG RFP No. 02-2020 Publication Date: September 30, 2020

MAILING ADDRESS: Office of the Attorney General  
Re: RFP No. 002 -2020  
RFP Title: Absent Parent Automated System Information (APASI)  
590 S. Marine Corps Drive  
ITC Building, 9<sup>th</sup> Floor, Suite  
901 Tamuning, Guam 96913  
  
Attention: Procurement Official

#### **2.2.4 – PROPOSAL SUBMISSION FORM**

Each Proposal Package will consist of the Offeror's Technical Submittal with all required forms, complete with original signatures and notarizations where necessary and Offeror's Cost Submittal.

#### **Contents of the Proposal**

**Technical Submittal** should arrive in a clearly marked and sealed envelope or box that includes one (1) original with original signatures and notarizations where necessary, one (1) digital copy on compact disc or flash drive, and five (5) copies, AND

1. Transmittal Cover Letter. The Transmittal Cover letter must be on the vendor's letterhead, and signed by an individual who is authorized to bind the vendor to all statements in the proposal. The cover letter should contain at a minimum:
  - a. Vendor's identity – the Vendor's location of principal place of business, and place of performance of the contract, as required by 2 GAR, Div. 4 § 3114(f)(1)(H)(i).
  - b. Designation and name, title, and contact information of the vendor's representative for matters relating to the RFP
  - c. An acknowledgment that the vendor has read the RFP and accepts the terms, conditions, and instructions in the RFP
  - d. A statement that the vendor's proposal is valid for a minimum of one hundred eighty (180) days from the submission deadlines contained in the RFP
  - e. Signature of vendor's authorized representative
2. Table of Contents. The separate sections of the proposal shall be numbered sequentially and identified in the table of contents
3. Description of Organization, Key Personnel Qualifications, and Experience. Vendor shall provide the following:
  - a. An executive summary to provide an overview of vendor's organization and what is intended to be provided by vendor.
  - b. A statement regarding vendor's financial condition and confirming that vendor has adequate financial resources to perform the work described in the RFP
  - c. Evidence of experience in performing research, evaluation, and analysis in the area of economics and determining child-rearing costs

REQUEST FOR PROPOSAL – ABSENT PARENT AUTOMATED SYSTEM INFORMATION (APASI)

OAG RFP No. 02-2020 Publication Date: September 30, 2020

- d. A description of at least two (2) past projects of similar size or scope completed within the past ten years, and the name and contact information of the entities for which such work was performed. Emphasis should be placed on previous projects for government agencies.
  - e. Vendor organizational chart and staffing plan for the proposal. Staffing plan shall include job descriptions and staff qualifications for each key position included in the proposal
  - f. A statement indicating that vendor has conducted a review to determine if company or staff affiliations might result in a conflict of interest, and if there is a potential conflict, an explanation of how that may be resolved.
4. **Narrative and Technical Response.** The Narrative and Technical Response shall provide a detailed explanation of the work to be performed and timelines for each deliverable.

**Cost Submittal.** Offeror's Cost Submittal should include itemized pricing for all products and services being proposed under this RFP. At a minimum, the Cost Submittal should contain hourly, daily, or flat rates and estimated expense costs for each consultant or employee proposed to work on this project and line item costs for each product necessary for the term of the contract. The Cost Submittal should be broken down into rates and costs for the first year, and rates for each renewal term if applicable.

**Cost or Pricing Data and Certification of Cost or Pricing Data.** Cost or Pricing Data will be required from any Offeror selected to conduct contract negotiations. The Cost or Pricing Data shall be submitted to OAG's Procurement Officer prior to beginning price negotiations at any reasonable time and in any reasonable manner requested by OAG. The Cost or Pricing Data documentation is separate from Offeror's Price Proposal; however, both the Price Proposal and the Cost or Pricing Data shall be submitted together, if requested in such manner. Such data shall be specifically identified in writing by the Offeror as Cost and/or Pricing Data. The Offeror is required to keep these data current until the negotiations are completed.

In addition, a Certification of the Cost or Pricing Data will also be required from the Offeror with whom a contract is successfully negotiated. The Certification of the Cost or Pricing Data shall be separately provided to the successful Offeror by OAG when required. The Offeror shall certify as soon as practicable after the agreement is reached on price that, to the best of the Offeror's knowledge and belief, the cost or pricing data submitted are accurate, complete, and current.

Neither the Cost or Pricing Data nor a Certification of the Cost or Pricing Data shall be submitted with the Offeror's Proposal; these documents shall only be submitted when and as requested by OAG.

**Forms.** Additional Proposal Package requirements include the return of the required forms and documents listed in Section 4.

#### **2.2.5 – LATE PROPOSALS NOT ACCEPTED**

Proposals received after the time and date in Section 2.2.3 – Time and Date for Receipt of Proposals will be considered nonresponsive and disqualified from participating in this solicitation.

### **2.2.6 – TRADE SECRETS AND OTHER PROPRIETARY DATA**

Offeror must complete and submit OAG Procurement Form 021 with the proposal, whether or not the Offeror wishes to designate information within the proposal as a Trade Secret or other proprietary information. Blanket designations of confidentiality placed on the front cover of a proposal will not be accepted as a valid designation of proprietary information. Every item, page, section, or subsection that the Offeror wishes to designate as a trade secret or proprietary data should be clearly marked and separable from the remainder of the proposal. Where appropriate, OAG will issue an Amendment that will be added to the Request for Proposal on the OAG webpage at <http://www.oagguam.org>.

### **2.2.7 – ACKNOWLEDGEMENT OF AMENDMENTS TO RFP**

This RFP may not be modified unless done by an Amendment made in writing by OAG. Offerors must acknowledge in writing the receipt of any amendments to this RFP. Each amendment will contain an Amendment Acknowledgement Form. For each amendment, offerors must sign the Acknowledgment Form and return the signed copy via e-mail or fax to OAG in accordance with Section 2.2.1. Signed Acknowledgment Forms for every amendment must also be included with the proposal submission. Offerors who fail to properly submit Amendment Acknowledgment Forms may be deemed non-responsive and disqualified from participating in this solicitation.

## **2.3 – EVENTS, CONFERENCES and/or MEETINGS PERTINENT TO THIS RFP**

### **2.3.1 – PRE-PROPOSAL CONFERENCE**

Pre-Proposal Conference(s), as appropriate, may be conducted in accordance with 2 GAR Div. 4 § 3109(g)(4) (Pre-Proposal Conferences). Such a conference may be held at any time prior to the established date for submission of proposals.

A pre-proposal conference may be held at OAG's discretion. Any potential offeror may submit a request for a pre-proposal conference in writing to OAG. In the event OAG determines to hold a pre-proposal conference, all potential offerors, that is all offerors who have requested and received an RFP packet from OAG, will be informed of the date, time, location and requirements of the pre-proposal conference. A summary, minutes or recording of the pre-proposal conference will be made available to all potential offerors.

At any pre-proposal conference or site visit, OAG may provide verbal answers to questions from potential Offerors. AT NO TIME SHALL A VERBAL ANSWER BE CONSIDERED AN OFFICIAL OAG RESPONSE. All questions must be submitted in writing in accordance with Section 2.3.2 – Pre-Proposal Written Questions. Only written answers from OAG shall be considered an official OAG response.

### **2.3.2 – PRE-PROPOSAL WRITTEN QUESTIONS**

Potential Offerors may submit written questions concerning this RFP before the time and date listed below. Questions must be submitted in writing according to the instructions contained in Section 2.2.1 herein. All questions and responses will be made available in writing to every potential offeror.

REQUEST FOR PROPOSAL – ABSENT PARENT AUTOMATED SYSTEM INFORMATION (APASI)

OAG RFP No. 02-2020 Publication Date: September 30, 2020

Questions submitted after the time and date below will not be considered or answered.

Questions regarding this RFP must be received in writing by OAG

by: **TIME: 5:00 pm Chamorro Standard Time (ChST)**

**DATE: October 30, 2020**

## **2.4 – AWARD**

### **2.4.1 – EVALUATION FACTORS FOR AWARD**

OAG will review and rank each technical proposal to determine the Best Qualified Offeror. In determining the Best Qualified Offeror, OAG will evaluate each proposal according to the factors below. A total of 100 points is available.

Cost proposals, though submitted with the Technical Proposal, will not be considered in determining the Best Qualified Offeror. Cost proposals will be opened and considered only during the negotiation phase with the Best Qualified Offeror. Award of a contract pursuant to this RFP will be made only after negotiation of a fair and reasonable price with the Best Qualified Offeror in accordance with Section 3114(l) of the Guam Procurement Regulations.

<b><u>Evaluation Factors</u></b>	<b><u>Points</u></b>
The plan for performing the required services	30
The ability to perform the services as reflected by the technical training and education, general experience, specific experience in providing the required services, and the qualifications and abilities of personnel proposed to be assigned to perform the services	25
The personnel, equipment, and facilities to perform the required services	25
A record of past performance of similar size and scope of work	20
<b>Total Possible Points</b>	<b>100</b>

### **2.4.2 – DETERMINATION OF RESPONSIBILITY**

Responsibility of an offeror will be determined in accordance with 2 GAR §3116. Offerors should be prepared to promptly provide to OAG information relating to the offeror's responsibility. Such information may include but is not limited to documentation of financial, personnel, and other resources, expertise, or records of performance. Failure of an offeror to comply with a request by OAG for information relating to responsibility may result in a determination that the offeror is not responsible and therefore disqualified from an award.

REQUEST FOR PROPOSAL – ABSENT PARENT AUTOMATED SYSTEM INFORMATION (APASI)

OAG RFP No. 02-2020 Publication Date: September 30, 2020



### **2.4.3 – NOTICE AND EXECUTION OF AWARD**

Any award pursuant to this RFP will not be complete until an agreement for the scope of work and the project is fully executed by the selected Offeror, OAG, and other required parties. A sample agreement is included in this RFP as ATTACHMENT 1. OAG reserves the right to alter the sample agreement as allowed by applicable law or regulation.

## **2.5 – GENERAL INFORMATION**

### **2.5.1 – DELIVERY AND PERFORMANCE SCHEDULE**

The selected contractor shall commence work on the date specified in the notice to proceed. A contract for goods and/or services procured through this RFP shall be subject to the availability of funds and applicable delivery and payment deadlines.

### **2.5.2 – METHOD OF PAYMENT**

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

### **2.5.3 – ACCESS TO RECORDS, INSPECTION, AND AUDIT REVIEW INSPECTION AND ACCEPTANCE OF GOODS**

The OAG, the OCSE, 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 OAG, the OCSE, the Comptroller General of the United States, or any of their duly authorized representatives, unless the Offeror is notified in writing by the OCSE, the cognizant agency for audit, the oversight agency for audit, the cognizant agency for indirect costs, or the OAG 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.

REQUEST FOR PROPOSAL – ABSENT PARENT AUTOMATED SYSTEM INFORMATION (APASI)

OAG RFP No. 02-2020 Publication Date: September 30, 2020

Records for real property and equipment acquired with the funds from the awarded contract must be retained for three (3) years after final disposition of the real property and equipment. Each subcontract by the Offeror shall include a provision containing the conditions of this Section for any contract awarded under this solicitation.

B. Right to Audit. Contractor shall establish and maintain a reasonable accounting system that enables the OAG or the OCSE to readily identify Offeror's assets, expenses, costs of goods, and use of funds. The OAG, the OCSE, 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 worksheets; 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 OAG, the OCSE, 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 OAG, the OCSE, the Comptroller General of the United States and any of their authorized representatives. Such records shall be made available to OAG, the OCSE, 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 OAG, the OCSE, the Comptroller General of the United States and any of their authorized representatives. Contractor shall ensure OAG, the OCSE, 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 OAG, the OCSE, 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 OAG, the OCSE, 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 OAG, the OCSE, 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 OAG 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 OAG may recoup the costs of the audit work from the Contractor. Any adjustments and/or payments that must be

REQUEST FOR PROPOSAL – ABSENT PARENT AUTOMATED SYSTEM INFORMATION (APASI)

OAG RFP No. 02-2020 Publication Date: September 30, 2020

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 OAG, the OCSE, the Comptroller General of the United States and any of their authorized representatives' findings to Contractor.

C. Right to Enter and Inspect. OAG, the OCSE, 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 OAG, the OCSE, 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.

#### **2.5.4 – ALTERNATE PROPOSALS**

An alternate proposal will not be accepted. A submission of an alternate proposal will be considered nonresponsive and may disqualify a vendor from participating in this solicitation.

#### **2.5.5 – SAMPLES OR DESCRIPTIVE LITERATURE**

Samples or descriptive literature should not be submitted to OAG unless expressly requested within this RFP. Regardless of any condition set by an offeror, unsolicited samples or descriptive literature will not be examined, tested, or deemed to vary any requirements of this RFP.

#### **2.5.6 – All or None**

Proposals MAY NOT limit acceptance to the entire Proposal offering. Proposals that violate this provision shall be deemed to be nonresponsive.

### **SECTION 3 – TERMS AND CONDITIONS**

#### **3.1 – REQUIREMENTS FOR ALL SOLICITATIONS**

Proposals must fulfill the requirements for all solicitations identified in this RFP. Each of the forms identified herein must be completed and returned according to the instructions provided. The term "GCA" refers to the Guam Code Annotated. The term "GAR" refers to the Guam Administrative Rules and Regulations, Division 4, Procurement Regulations. Administration of this RFP shall be subject to the Guam Procurement Law at 5 GCA Chapter 5 and the procurement regulations at 2 GAR Division 4.

#### **3.2 –LOCAL PROCUREMENT POLICY**

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

REQUEST FOR PROPOSAL – ABSENT PARENT AUTOMATED SYSTEM INFORMATION (APASI)

OAG RFP No. 02-2020 Publication Date: September 30, 2020

### **3.3 – LIST OF FORMS REQUIRED FOR ALL SOLICITATIONS**

Offerors must complete and submit all forms required by this RFP and those listed in Section 4 herein.

### **3.4 – DISCLOSURE OF OWNERSHIP AND COMMISSIONS**

Offerors must expressly identify all major shareholders in accordance with 5 GCA § 5233.

***\*\*\*AG Procurement Form 002 (Rev. Nov. 17, 2005) must be completed and included in all proposals to this RFP\*\*\****

### **3.5 – OFFERORS CERTIFY THAT PRICE OR OFFER WAS INDEPENDENTLY ARRIVED AT WITHOUT COLLUSION**

By submitting a proposal, an Offeror certifies that the price or offer in its proposal was independently arrived at without collusion in accordance with 2 GAR § 3126(b).

***\*\*\*AG Procurement Form 003 (Jul. 12, 2010) must be completed and included in all responses to this RFP\*\*\****

### **3.6 – PROHIBITION AGAINST GRATUITIES AND KICKBACKS, AND FAVORS**

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

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

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

### **3.7 – REPRESENTATION REGARDING GRATUITIES AND KICKBACKS**

The Offeror represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth in §11-206 (Gratuities and Kickbacks) of the Guam Procurement Regulations. Offeror further agrees to execute and file a Non-Gratuity Affidavit

REQUEST FOR PROPOSAL – ABSENT PARENT AUTOMATED SYSTEM INFORMATION (APASI)

OAG RFP No. 02-2020 Publication Date: September 30, 2020

before final payment under the contract is made by the OAG.

**\*\*\*AG Procurement Form 004 (Jul. 12, 2010) must be completed and included in all responses to this RFP\*\*\***

### **3.8 – REPRESENTATION REGARDING ETHICAL STANDARDS**

By submitting a proposal, Offeror represents that it has not knowingly influenced and promises that it will not knowingly influence a government employee to breach any of the ethical standards set forth in 5 GCA Chapter 5 Article 11 (Ethics in Public Contracting) of the Guam Procurement Act and in Chapter 11 of the Guam Procurement Regulations.

**\*\*\*AG Procurement Form 005 (Jul. 12, 2010) must be completed and included in all responses to this RFP\*\*\***

### **3.9 – PROHIBITION OF CONTINGENT FEES**

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

### **3.10 – REPRESENTATION REGARDING CONTINGENT FEES**

By submitting a proposal, Offeror represents that it has not retained a person to solicit or secure a territorial contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business, in accordance with 5 GCA § 5631.

**\*\*\*AG Procurement Form 007 (Jul. 12, 2010) must be completed and included in all responses to this RFP\*\*\***

### **3.11 – RIGHT OF OAG TO CANCEL REQUEST FOR PROPOSAL**

OAG reserves the right to cancel this RFP at any time when it is in the best interests of OAG, in accordance with 5 GCA § 5225 and 2 GAR § 3115(c).

OAG reserves the right to reject any proposal in whole or in part when it is in the best interest of the Department, in accordance with 2 GAR Div. 4 § 3115(e)(2).

### **3.12 – PROHIBITION AGAINST EMPLOYMENT OF SEX OFFENDERS**

Any entity providing services pursuant to this RFP is prohibited from employing sex offenders to provide the services or goods being procured through this RFP. Specifically, pursuant to 5 GCA § 5253:

**§ 5253. Restriction Against Contractors Employing Convicted Sex Offenders from Working at Government of Guam Venues.**

- a) No person convicted of a sex offense under the provisions of Chapter 25 of Title 9 Guam Code Annotated, or an offense as defined in Article 2 of Chapter 28, Title 9
- REQUEST FOR PROPOSAL – ABSENT PARENT AUTOMATED SYSTEM INFORMATION (APASI)

GCA in Guam, or an offense in any jurisdiction which includes, at a minimum, all of the elements of said offenses, or who is listed on the Sex Offender Registry, and who is employed by a business contracted to perform services for an agency or instrumentality of the Government of Guam, shall work for his employer on the property of the Government of Guam other than a public highway.

- b) All contracts for services to agencies listed herein shall include the following provisions: (1) warranties that no person providing services on behalf of the contractor has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 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 who is listed on the Sex Offender Registry, that such person will be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.
- c) Any contractor found in violation of § 5253(b), after notice from the contracting authority of such violation, shall, within twenty-four (24) hours, take corrective action and shall report such action to the contracting authority. Failure to take corrective action within the stipulated period may result in the temporary suspension of the contract at the discretion of the contracting authority.

**SOURCE:** Added by P.L. 28-24:2. Amended by P.L. 28-98:2 (Feb. 7, 2006).

### **3.13 – WAGE AND BENEFITS DETERMINATION FOR SERVICES**

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

**REQUEST FOR PROPOSAL – ABSENT PARENT AUTOMATED SYSTEM INFORMATION (APASI)**

**OAG RFP No. 02-2020 Publication Date: September 30, 2020**

**\*\*\*AG Procurement Form 006 (Feb. 16, 2010) must be completed and included in all responses to this RFP.\*\*\***

**3.14 – MANDATORY DISPUTES CLAUSE (2 GAR § 9103(g))**

- A. OAG and the Contractor agree to attempt resolution of all controversies which arise under, or are by virtue of, this procurement and any resulting contract through mutual agreement. If the controversy is not resolved by mutual agreement, then the Contractor shall request the government in writing to issue a final decision within sixty days after receipt of the written request. If the government does not issue a written decision within sixty days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the Contractor may proceed as though the government had issued a decision adverse to the Contractor.
- B. OAG shall immediately furnish a copy of the decision to the Contractor, by certified mail with a return receipt requested, or by any other method that provides evidence of receipt.
- C. OAG's decision shall be final and conclusive, unless fraudulent or unless the Contractor appeals the decision.
- D. This subsection applies to appeals of OAG's decision on a dispute. For money owed by or to OAG under this Agreement, the Contractor shall appeal the decision in accordance with the Government Claims Act by initially filing a claim with the Office of the Attorney General no later than eighteen months after the decision is rendered by OAG or from the date when a decision should have been rendered. For all other claims by or against OAG arising under this Agreement, the Office of the Public auditor has jurisdiction over the appeal from the decision of OAG. Appeals to the Office of the Public Auditor must be made within sixty days of OAG's decision or from the date the decision should have been made.
- E. The Contractor shall exhaust all administrative remedies before filing an action in the Superior Court of Guam in accordance with applicable laws.
- F. The Contractor shall comply with OAG's decision and proceed diligently with performance of the Agreement pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, the Agreement, except where the Contractor claims a material breach of the Agreement by OAG. However, if OAG determines in writing that continuation of services under the Agreement is essential to the public's health or safety, then the Contractor shall proceed diligently with performance of the Agreement notwithstanding any claim of material breach by OAG.

**3.15 – TAXES**

Offerors may be subject to taxation, including but not limited to, Gross Receipts Tax, Guam Business Privilege Tax, Guam Income Tax and the payment of any and all taxes which may be due as a result

REQUEST FOR PROPOSAL – ABSENT PARENT AUTOMATED SYSTEM INFORMATION (APASI)

OAG RFP No. 02-2020 Publication Date: September 30, 2020

of entering into this agreement are the sole responsibility of the Offeror and its subcontractors and any permitted assignees or successors in interest. Specific information of taxes may be obtained from the Director of the Guam Department of Revenue and Taxation.

### **3.16 – WITHHOLDING ASSESSMENT FEE**

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

### **3.17 – PROCUREMENT OF RECOVERED MATERIALS**

This is a federally funded Project and pursuant to 2 CFR § 200.322, any Offeror awarded a contract under this RFP and all of its 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, with CFR 121 OMB Guidance § 200.324 where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by 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.

### **3.18 – CONFLICTS OF INTEREST**

This is a federally funded project and pursuant to 2 CFR §§ 200.318 (c)(2) and 200.319(a), in order to ensure objective contractor performance and eliminate unfair competitive advantage, Offerors that have organizational conflicts of interest or who have developed, prepared, furnished, or drafted any specifications, requirements, statements of work, scope of services, invitations for bids, requests for proposals, or significant documents related to this solicitation must be excluded from competing for such procurements.

Therefore, all Offerors shall follow the Conflict of Interest (COI) Guidelines attached to this RFP when submitting a Proposal in response to this federally funded OAG solicitation or procurement or when entering into any federally funded contract with the OAG. The Offeror shall follow these COI Guidelines throughout the period during which the Offeror's Proposal is open or the contract is in effect. All Offerors shall provide the COI Guidelines and associated COI Disclosure Form to all of its Consultants and Subcontractors at any tier of a contract and shall ensure that the Offeror and each of its Consultants or Subcontractors make any disclosures required by these guidelines or as required by this RFP or any awarded Contract. The OAG will follow and apply these COI Guidelines when conducting procurements. If a conflict of interest or potential conflict of interest is determined to exist, the OAG will attempt to determine whether the conflict of interest can be avoided or mitigated. Before determining to withhold an award based on conflict of interest considerations, the OAG shall notify the Offeror, provide the reasons therefor, and allow the Offeror a reasonable opportunity to respond.

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

**REQUEST FOR PROPOSAL – ABSENT PARENT AUTOMATED SYSTEM INFORMATION (APASI)**



on the Conflict of Interest Disclosure Form shall include a signed statement by the current or former the OAG employee of their role or proposed role for the Offeror in the particular Procurement and any resulting Contract on the "Relatives and Former OAG Employees - Roles and Signatures" page of the form. Failure to complete and submit the COI Disclosure Form will result in the rejection of the Proposal.

### **3.19 – SUBCONTRACTORS**

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

2. Award of Subcontracts and Other Contracts for Portions of the Services.

a. All Offerors shall furnish in writing to OAG the names of all known persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed to provide subcontracting services on each principal portion of the Scope of Services by completing, signing, and attaching the Subcontractor Utilization Form to the Offeror's Proposal. OAG may conduct discussions with the Offeror: (1) stating whether OAG has reasonable objection to any such proposed person or entity; or (2) stating whether OAG requires additional time for review or additional information concerning the utilization of a proposed person or entity. If the Offeror fails to submit this form with its Proposal, that Offeror will \*OR\* may be disqualified. If this occurs OAG will select the next highest ranked qualifying Offeror for negotiations.

b. OAG, the government of Guam, and the \*Federal Awarding Agency\* reserve the rights to object to Offeror's utilization of any subcontractor and to require substitution of the subcontractor for cause. The Offeror shall not contract with a proposed person or entity to whom OAG, the government of Guam, or the \*Federal Awarding Agency\* has made reasonable and timely objection. In the case of substitution or any other issue with subcontractors, the Offeror shall not be required to contract with anyone to whom the Offeror has made reasonable objection in writing to the OAG.

c. The Offeror shall not substitute a subcontractor, person or entity set forth in its Proposal or in the Subcontractor Utilization Form, located at Section XI of this RFP, unless Offeror has obtained the written consent of the OAG, or unless OAG requires such substitution. Offeror must notify OAG in writing prior to any termination or substitution of a subcontractor listed in the Proposal or Proposal Documents. Failure by the Offeror to follow these requirements shall constitute a material breach of the terms of this RFP, which may result in the termination of any awarded contract or other legally available remedies.

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

3. Subcontractor Relations. By appropriate written agreement, the Offeror shall require each  
REQUEST FOR PROPOSAL – ABSENT PARENT AUTOMATED SYSTEM INFORMATION (APASI)

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

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

#### Section 4 – FORMS REQUIRED FOR ALL PROPOSALS SUBMITTED IN RESPONSE TO RFP

Proposal must contain signed, and where required, notarized originals of the forms listed below.

	<u>Form Name</u>	<u>Form Title</u>
1.	OAG Procurement Form 020	SPECIAL PROVISION – RESTRICTION AGAINST SEX OFFENDERS
2.	OAG Procurement Form 021	REQUEST FOR PROPOSAL – DESIGNATION OF PROPRIETARY INFORMATION
3.	AG Procurement Form 002 (Rev. Nov. 17, 2005)	AFFIDAVIT DISCLOSING OWNERSHIP and COMMISSIONS
4.	AG Procurement Form 003 (Jul. 12, 2010)	AFFIDAVIT re NON-COLLUSION
5.	AG Procurement Form 004 (Jul. 12, 2010)	AFFIDAVIT re GRATUITIES or KICKBACKS
6.	AG Procurement Form 005 (Jul. 12, 2010)	AFFIDAVIT re ETHICAL STANDARDS
7.	AG Procurement Form 006 (Feb. 16, 2010)	DECLARATION re COMPLIANCE WITH U.S. DOL WAGE DETERMINATION (Including a supplemental copy of the U.S. DOL WAGE DETERMINATION RATES)
8.	AG Procurement Form 007 (Jul. 15, 2010)	AFFIDAVIT re CONTINGENT FEES
9.	Subcontractor Utilization Form	Subcontractor Utilization Form
10.	Conflict of Interest Disclosure Form	Section XIII. CONFLICT OF INTEREST (COI) DISCLOSURE FORM
11.	Conflict of Interest Guidelines	Section XVI. CONFLICT OF INTEREST GUIDELINES

REQUEST FOR PROPOSAL – ABSENT PARENT AUTOMATED SYSTEM INFORMATION (APASI)

OAG RFP No. 02-2020 Publication Date: September 30, 2020

**Special Provisions**

**RFP: O A G - 0 0 2 -2020**

**RE: ABSENT PARENT AUTOMATED SYSTEM INFORMATION (APASI) ABADAS/NATURAL LEGACY  
MIGRATION**

**Restriction against Sex Offenders Employed by service providers to  
Government of Guam from working on Government Property.**

If a contract for services is awarded to the bidder or offeror, then the service provider must warranty that no person in its employment who has been convicted of a sex offense under the provisions of chapter 25 of Title 9 of 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 (24) hours of the conviction, and will immediately remove such convicted person from providing services on government property. If the service provider is found to be in violation of any of the provisions of this paragraph, then the government will give notice to the service provider to take corrective action. The service provider shall take corrective action within twenty-four (24) hours of notice from the Government, and the service provider shall notify the Government when action has been taken. If the service providers fail to take corrective steps within twenty-four (24) hours of notice from the Government, then the Government in its sole discretion may suspend temporarily and contract for services until corrective action has been taken.

---

Signature of Offeror	Date
Proposer, if an individual;	
Partner, if a partnership;	
Officer, if a corporation.	

OFFICE OF THE ATTORNEY GENERAL

590 S. MARINE CORPS DRIVE  
ITC BUILDING, SUITE 901  
TAMUNING, GUAM 96913

TEL: 671-475-3324 | FAX: 671-477-4703

**REQUEST FOR PROPOSAL – DESIGNATION OF PROPRIETARY INFORMATION**

All Offerors are advised that pursuant to 2 GAR §3114(h) if a contract is awarded pursuant to a Request for Proposals (RFP), the successful proposal may be incorporated into the contract and thereafter considered public information. If an Offeror wishes to prevent the public release of certain information within a proposal on the basis that such information is a trade secret or other proprietary data, the Offeror must clearly designate the sections of the proposal as proprietary information and request in writing that such information be exempt from public disclosure.

For proposals selected for award under an RFP, the Attorney General, Office of the Attorney General (OAG) or her designee will examine requests to designate information as proprietary and issue a decision in writing as to whether such information will be considered proprietary. Disagreements as to whether information will be considered proprietary will be resolved pursuant to 2 GAR §3114(h)(2).

Offerors wishing to designate proposal information as proprietary must clearly mark such sections within the proposal and identify the corresponding sections and page numbers below and return this form with the proposal.

I, \_\_\_\_\_, an authorized representative of, hereby request that the sections and page numbers listed below of the proposal submitted in response to **RFP 002-2020, ABSENT PARENT AUTOMATED SYSTEM INFORMATION (APASI) ABADAS/NATURAL LEGACY MIGRATION.**

be considered a trade secret or proprietary data and therefore exempt from public disclosure:

---

---

---

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

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

Company: \_\_\_\_\_

\_\_\_\_\_  
Signature

OAG Procurement Form 021

REQUEST FOR PROPOSAL – ABSENT PARENT AUTOMATED SYSTEM INFORMATION (APASI)

OAG RFP No. 02-2020 Publication Date: September 30, 2020

**AFFIDAVIT DISCLOSING OWNERSHIP and COMMISSIONS**

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

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

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

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

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

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

Name	Address	Compensation
_____	_____	_____

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

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

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

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

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

AG Procurement Form 002 (Rev. Nov. 17, 2005)

**AFFIDAVIT re NON-COLLUSION**

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

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

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

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

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

**Signature of one of the following:**

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

**Subscribed and sworn to before me**

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**NOTARY PUBLIC**

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

**AFFIDAVIT re 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 \_\_\_\_\_, 20\_\_.

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

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



**AFFIDAVIT RE ETHICAL STANDARDS**

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

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

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

\_\_\_\_\_  
Signature of one of the following:

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

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

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires \_\_\_\_\_, \_\_\_\_\_.

**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

AG Procurement Form 006 (Feb. 16, 2010)

**AFFIDAVIT re CONTINGENT FEES**

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

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

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

2. As a part of the offering company's bid or proposal, to the best of my knowledge, the offering company has not retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract. This statement is made pursuant to 2 GAR Division 4 § 11108(f).

3. As a part of the offering company's bid or proposal, to the best of my knowledge, the offering company has not retained a person to solicit or secure a contract with the Government of Guam upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. This statement is made pursuant to 2 GAR Division 4 § 11108(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 \_\_\_\_\_, \_\_\_\_\_.

### **SUBCONTRACTOR UTILIZATION FORM**

RFP NO.	PROJECT NAME
NAME OF PRIME CONTRACTOR	E-MAIL ADDRESS
ADDRESS	
TELEPHONE NO.	FAX NO.

The following subcontractors <sup>1</sup> will be used on this project:						
COMPANY NAME, ADDRESS, PHONE NUMBER, AND E-MAIL ADDRESS	TYPE OF WORK TO BE PERFORMED	ESTIMATED DOLLAR AMOUNT OF SUBCONTRACT				
<p>I certify under penalty of perjury that the foregoing statements are true and correct. In the event that substitution or replacement of a subcontractor is required, I will adhere to the substitution or replacement requirements of the Government of Guam.</p> <table><tr><td>_____ Signature of Prime Contractor</td><td>_____ Date</td></tr><tr><td>_____ Print Name</td><td>_____ Title</td></tr></table>			_____ Signature of Prime Contractor	_____ Date	_____ Print Name	_____ Title
_____ Signature of Prime Contractor	_____ Date					
_____ Print Name	_____ Title					

Subcontractor Utilization Form

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

## **Section XIII. CONFLICT OF INTEREST (COI) DISCLOSURE FORM**

**Government of Guam Office of the Attorney General of Guam RFP No. 002-2020**

Offerors under Contract or proposing to enter into a Contract with the Office of the Attorney General of Guam ("OAG") 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 OAG employees).

This COI Disclosure Form is submitted in response to:

- ☐ OAG 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 the OAG within the last year? No ☐ Yes ☐  
b) Is any Associate of the Offeror a Relative or Member of the Household of a current OAG 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 OAG 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 OAG 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 the OAG 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 the OAG? 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 the OAG 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 OAG Employees - Roles and Signatures

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

Part A: Employees that left the OAG in the last year.			
Employee Name/Signature	Job Performed for the OAG	Current Role with Offeror	Date left the OAG
Name: _____  Sign: _____  <ul style="list-style-type: none"> <li>Involved with this Procurement on behalf of the OAG? 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 the OAG? 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 the OAG? 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>			
<p><b>Part B: Identify Associates of the Offeror that are Relatives or Members of the Household of OAG employees currently working for the OAG, if the OAG employee had or will have any involvement with this Procurement or Contract.</b></p>			
Offeror Associate's Name	Name and Relationship of Relative or Member of Household Employed at the OAG	Role at the OAG	the OAG employee's Role with this Procurement

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

Conflict of Interest Disclosure Form

## **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 The Office of the Attorney General of Guam (“OAG”) solicitation or procurement or when entering into any federally funded Contract with the OAG. 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 OAG will follow and apply these COI Guidelines when conducting the OAG procurements.

### **1. Definitions.**

The definitions that apply to these COI Guidelines and the OAG’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 the OAG 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 the OAG):
  1. Is any Associate of the Offeror a former employee of the OAG (within the last year)?
  2. Is any Associate of the Offeror a Relative or Member of the Household of a current employee of the OAG 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 OAG 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 the OAG?
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 the OAG?
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 the OAG 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 the OAG) 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 OAG, 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 the OAG 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 OAG employees, and the employment of former OAG employees, which are applicable to this procurement, and are explained below.

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

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

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

For each Procurement, Offerors shall disclose to the OAG the identification of any of Offeror's employee(s) that had been employed by the OAG 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 OAG 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 OAG 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 OAG 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.”

the OAG’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 the OAG’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 the OAG 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 OAG 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 the OAG to restrict Offeror's use of confidential or proprietary information obtained from previous affiliations with the OAG or the Government when competing for the OAG 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 the OAG 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 the OAG 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 the OAG's guidelines on the subject and specifically regulate both Organizational and Individual Conflicts of Interest. The OAG'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 (the OAG'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 OAG'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 the OAG and such Offeror or Associate has not participated and will not participate in such acquisition for and in behalf of the OAG (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 the OAG 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 the OAG 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 the OAG 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 OAG demonstrated independent decision-making authority during the environmental process.

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

the OAG'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 the OAG 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.**

the OAG 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 the OAG 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 the OAG 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, the OAG might determine in writing that the multi-specialty engineering Offeror is eligible to propose.

2. the OAG seeks comprehensive project management services for a series of Transportation Projects. One of the proposing Offerors employed a senior official from the OAG who played a significant role in providing direction for the solicitation, six months ago. the OAG 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 the OAG, will not engage in any activities that would violate the OAG 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, the OAG 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. the OAG 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. the OAG 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 the OAG 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 the OAG's concerns about the conflict. Depending on the particular facts, the OAG determines that the company has an actual conflict of interest.
4. the OAG 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, the OAG 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. the OAG 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. the OAG 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 OAG website prior to the RFP release. the OAG 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. the OAG contracts with a consulting Offeror to assist the OAG 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 the OAG 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. the OAG seeks comprehensive program management services for a series of Transportation Projects. Prior to release of the RFP, the OAG 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.). the OAG may conclude the proposing Offeror does not have a conflict of interest that detracts from its eligibility for the program management award. the OAG 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. the OAG 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 the OAG under a separate contract. the OAG'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. the OAG 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 the OAG under a separate contract. the OAG'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 OAG's COI Disclosure Form:

**“Actual Conflict of Interest”** means that an individual or Offeror is unable to render impartial assistance or advice to the OAG, 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 the OAG'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 the OAG, 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 the OAG 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 the OAG’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 the OAG.

**"Project"** means any proposed or existing undertaking pertaining to such programs that are assigned to the OAG 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 OAG employees are considered Public Employees under this definition.)

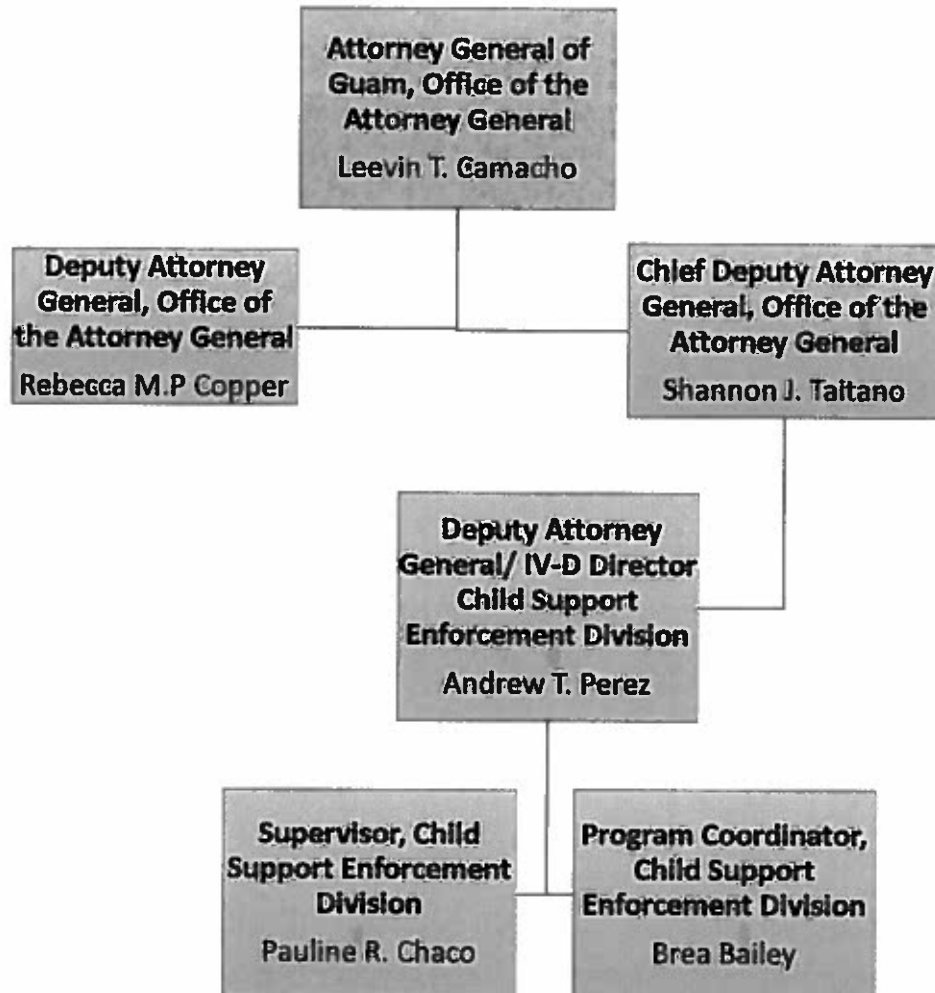
**"Relative"** (of a Public Employee) means:

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

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

#### Conflict of Interest Guidelines

**Section 5 – OFFICE OF THE ATTORNEY GENERAL, CHILD SUPPORT ENFORCEMENT DIVISION  
ORGANIZATIONAL CHART**



**ATTACHMENT 1**  
**SAMPLE CONTRACT**

**This is a sample document. The OAG reserves the right to issue and execute a contract pursuant to the RFP and as allowed by law or regulations, and hereby reserves all other rights as stated in the RFP, or otherwise applicable.**

**AGREEMENT BETWEEN THE OFFICE OF THE ATTORNEY GENERAL  
OF GUAM,  
CHILD SUPPORT ENFORCEMENT DIVISION**

**AND**

**[VENDOR]**

**FOR PROFESSIONAL SERVICES PURSUANT TO OAG RFP 002-2020**

Contract for:	<b>Absent Parent Automated System Information ADABAS/Natural Legacy Migration Project</b>
Project No:	<b>OAG RFP 002-2020</b>
Amount:	<b>\$ _____</b>
Place:	<b>Guam</b>

**THIS AGREEMENT FOR PROFESSIONAL SERVICES (“Agreement”)** is entered into by and between the Office of the Attorney General, Child Support Enforcement Division (“OAG”), an agency of the government of Guam, whose mailing address is 590 s. Marine Corps Drive, Suite 901, Tamuning, Guam, 96913, and [VENDOR] (“Contractor”), whose address is \_\_\_\_\_.

**WHEREAS**, The OAG received funds through the Child Support Enforcement (“CSE”) program, Part D of Title IV of the Social Security Act from the Office of Child Support Enforcement (“OCSE”) in the Department of Health and Human Services to conduct the Absent Parent Automated System Information (“APASI”) ADABAS/Natural Legacy Migration Project (hereinafter, the “Project”). The objective of the Project is to migrate the APASI Application to a more contemporary operating platform, and implement the new converted system (“System”);

**WHEREAS**, OAG determined it does not have adequate personnel or resources to perform the services contemplated in this agreement and it is in the best interests of OAG to have such services performed under a contract;

**WHEREAS**, OAG determined to award a Firm Fixed-Price contract for the required services and system and thereupon OAG issued a Request for Proposals (“RFP”), OAG RFP 002-2020, soliciting professional services for the OAG for the Project;

**WHEREAS**, Contractor responded to the RFP by submitting a proposal (“the Proposal”) to provide services in accordance with the RFP, and was selected as the best qualified offeror with whom a contract was successfully negotiated;

**WHEREAS**, by submitting its Proposal, Contractor warrants and represents that it possesses the necessary knowledge, resources and experience to perform the services, and to migrate, provide, maintain, and update the System described in the Contract Documents for this Project professionally, skillfully and diligently; and

**WHEREAS**, OAG desires to retain Contractor for specific professional services on the terms and conditions set forth in this Agreement, and Contractor has agreed to accept such terms and conditions; the award of this contract has been made pursuant to the OAG’s procurement rules and regulations, the laws of Guam, and a finding by the Procurement Officer that Contractor is the qualified responsive and responsible Proposer based upon evaluation factors set forth in the RFP, and that compensation has been determined to be fair and reasonable;

**NOW THEREFORE**, OAG and the Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

//

//

## **SECTION 1**

### **CONTRACT DOCUMENTS**

It is hereby mutually agreed that the following list of documents which are attached hereto, bound herewith or incorporated herein by reference shall constitute the "Contract Documents," all of which are made part hereof, and collectively evidence and constitute this Agreement between the parties hereto, and they are as fully a part of this Agreement, as if they were set out verbatim and in full herein:

- a. The Request for Proposals, OAG RFP 002-2020, attached to this Agreement as **Exhibit 1**, and all notices, conditions, attachments, and instructions for OAG RFP 002-2020, which includes the requirements and specifications contained in the Scope of Services;
- b. Any addendum to, or OAG responses to questions submitted for Request for Proposals, OAG RFP 002-2020;
- c. Contractor's Proposal submitted in response to Request for Proposals, OAG RFP 002-2020;
- d. This Agreement and any Extension, Amendment, or Change Order thereto; and
- e. Any general or special terms and conditions of the funding source under the Child Support Enforcement (CSE) program, Part D of Title IV of the Social Security Act.

## **SECTION 2**

### **PARTIES**

The Parties to this Agreement are the Office of the Attorney General, Child Support Enforcement Division ("OAG"), an agency of the government of Guam, and [VENDOR], ("Contractor"), who may be hereinafter together referred to as "the Parties."

### **SECTION 3**

#### **SCOPE OF AGREEMENT**

This Agreement supersedes any and all prior agreements, either oral or in writing, if any, between the Parties hereto with respect to the retainer of Contractor by OAG and contains all of the covenants and agreements between the parties with respect to the subject matter of this Agreement. Each party to this Agreement acknowledges that no representation, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein, and that any other agreement, statement, or promise not contained in this Agreement shall not be valid or binding on the Parties with respect to the subject matter of this Agreement. This Agreement, and any modification hereto, is not binding until approved by the Attorney General of Guam and executed by the Governor of Guam. Any modification of this Agreement will be effective only if it is in writing, approved by the Attorney General of Guam and executed by the Governor of Guam.

### **SECTION 4**

#### **CONTRACT TYPE AND PRICE**

This is a multi-term Firm Fixed-Price Contract. The total payment to Contractor under this Agreement shall be the amount of \_\_\_\_\_. This price is not subject to adjustment or increase because of variations in the Contractor's actual cost of performing the work and Services specified in the RFP and this Agreement. Any price adjustments to this Agreement may only be made in accordance with valid, approved Change Orders pursuant to the Change Orders Clause of this Agreement and the Price Adjustment Clause of this Agreement. Contractor's profit under this Agreement has been separately negotiated to be the amount of \_\_\_\_\_.

### **SECTION 5**

#### **CONTRACT TERM**

A. This Agreement shall be valid upon its full execution by all necessary parties. The Effective Date of the Agreement shall be the date upon which the Governor of Guam signs the Agreement.

The Initial Term of this Agreement is one (1) year, with possible extensions totaling up to four (4) years, for a total maximum Agreement term of five (5) years.

B. All Services to be performed by Contractor on the Project under this Agreement shall commence upon issuance of a Notice to Proceed ("NTP") by OAG and continue pursuant to the Schedule of Services of this Agreement, and in accordance with the Scope of Services and the Contractor's Proposal, and until the expiration, cancellation, or termination of this Agreement or any extension or renewal thereof. There is no right or expectation of renewal or extension and any renewal or extension will be exercised solely at the discretion of OAG.

C. **Initial Term.** The initial term of the contract shall be for one (1) years and shall begin upon the date that the Governor executes the Agreement. After the Governor has executed the Agreement, the OAG will issue the NTP to notify the Contractor that services may begin.

D. **Extension Terms.** At the sole option of the OAG, and upon satisfactory performance by the Contractor, the Agreement may be renewed for any number of time period(s) determined to be in the best interests of the government of Guam, upon written agreement between OAG and Contractor's authorized representative, for a total of up to four (4) additional years (each being a "Renewal Term") for the purposes of ongoing maintenance and services. Any Extension Term shall not be subject to negotiation, but shall be a continuation of the Agreement on the same terms, conditions, and pricing as in effect under the existing Agreement. All Extension Terms are subject to the availability of additional funds.

E. **No Cost Extension Terms.** Should the awarded Contractor require additional time to complete any contract objectives, for good cause, and at the sole option of OAG, this Agreement may be extended for a No Cost Extension Term of \_\_\_\_\_ [insert calculated time frame, ex: three months, six months, nine months, etc.; recommended to limit to less than one year], as approved by the OCSE, with no additional obligation of any funds by OAG (each being a "No Cost Extension Term"). If OAG elects to extend the Agreement in this manner, the No Cost Extension Term shall be exercised by OAG through the execution of a written determination signed by the Procurement Officer and placed in the contract file prior to the end date of the period of performance of the Project's funding source, as approved by the OCSE. Any such extension shall not be subject to negotiation, but shall be on the same terms, conditions, and price as in effect under the existing Agreement, at no additional cost to OAG, and no additional obligation of funds by the government of Guam.

All Extension Terms and No Cost Extension Terms are subject to the availability of funds. In no case shall any extension or renewal extend the total of the terms of the contract beyond five (5) years. Unless cancelled for lack of funds, terminated, renewed, or extended prior to expiration, this

Agreement shall expire at the end of the Initial term or at the end of any subsequent Extension Term or any No Cost Extension term exercised by the OAG.

## **SECTION 6**

### **CONTRACTOR'S POINT OF CONTACT**

A. The Contractor, promptly after execution of this Agreement and no later than thirty (30) days after issuance of a Notice to Proceed ("NTP"), shall identify a primary contact person who is familiar with the services being performed hereunder and who shall be responsible to the questions and direction of OAG. The contact person must be identified in writing, and Contractor shall keep this information current during the entire term of this Agreement. OAG reserves the right to request replacement of the contact person designated by the Contractor under this Agreement.

## **SECTION 7**

### **SCHEDULE OF SERVICES**

A. The Contractor, promptly after execution of this Agreement and no later than seven (7) days after issuance of a Notice to Proceed ("NTP"), shall prepare and submit for OAG's approval, Contractor's Schedule of Services. The schedule shall not exceed time limits current under this Agreement, shall be revised at appropriate intervals as required by the conditions of the Services, shall be related to the Services and the Project Milestones contained in the RFP, and shall provide for expeditious and practicable execution of the Services and Project Milestones. The OAG shall have oversight of the Schedule of Services. The Contractor agrees to provide the Services in the Scope of Services of this Agreement in accordance with the Project Milestones and Schedule of Services for the Initial Term of the Agreement, beginning performance after receipt of the NTP from OAG, and for any Extension terms agreed to in writing by the Parties.

B. The Contractor shall perform the Services in accordance with the most recent schedules approved by OAG.

## **SECTION 8**

### **SCOPE OF SERVICES**

All Services under this Agreement shall be performed by Contractor in accordance with all applicable federal and local codes, standards, and guidelines, including current or updated



standards for the Project as those updates become effective, and any applicable Guam codes. The Scope of Services includes the following:

A. Contractor Responsibilities.

1. Contractor shall conduct research and inspections to determine working conditions and any special needs/requirements for execution of the Project.
2. Contractor shall be responsible for mobilization and site preparation a required for the services involved.
3. Contractor shall be responsible for providing appropriate personnel for all stages of the Project.
4. Contractor shall be responsible for providing and maintaining all necessary tools, equipment, systems, hardware, software, and the operation of these tools, equipment, systems, hardware, and software throughout the duration of the project.
5. Contractor shall be responsible for making any minor modifications required to allow proper use of the new equipment or systems.
6. Should any damage related to or unrelated to utilities, buildings, personal or private property, equipment and components occur as a result of Contractor's actions, all expenses to restore these systems to their original condition shall be borne by the Contractor.
7. Contractor shall furnish at its own expense, all proper and adequate equipment, materials, labor, personnel, and supplies necessary to perform the Scope of Services in a safe, professional, workmanlike and diligent manner, and shall provide and have available at all times for use by its employees engaged in the performance of such services all safety equipment and appliances needed for maximum protection of its employees and other persons against injuries.

B. Services.

1. Contractor shall perform the Services contained in Scope of Services of the RFP, attached as **Exhibit 1**, and as negotiated.
2. Laws, Permits and Regulation

- a. The Contractor shall obtain all required permits required for the migration, installation, operation and maintenance of the System. OAG agrees to facilitate Contractor's acquisition of any required permits; however, Contractor is ultimately responsible for obtaining permits and any action or inaction by OAG shall not relieve Contractor of this responsibility.
- b. Contractor shall pay all fees and charges for connection to outside services, utilities, and use of property other than the site of the services for storage of materials or other purposes.
- c. Contractor shall comply with all federal and local laws, ordinances, regulations and building code requirements applicable to services hereunder unless in conflict with contract requirements. If Contractor ascertains at any time that any requirement of this contract is at variance with applicable laws, ordinances, regulations, or building code requirements, Contractor shall promptly notify the OAG Procurement Officer.

### 3. Contractor's Obligations

- a. Contractor shall, in good professional and workmanlike manner, do and perform all services and furnish all supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the services required by this Agreement, the RFP, and the Contract Documents within the time herein specified in strict accordance with the plans and proposals of the services covered by this contract and any and all supplemental plans and drawings, and in accordance with the directions of the Procurement Officer of the OAG, as given from time to time during the progress of the services.
- b. Contractor alone shall be responsible for the safety, efficiency and adequacy of its plant, worksite, appliances and methods, and for any harm or damage, which may result from their failure or their improper use, performance, maintenance or operations.
- c. Contractor shall observe, comply with and be subject to all terms, conditions, requirements, and limitations of the Request for Proposals, Agreement, plans, and specifications and shall perform and complete the entire services per approved plans and specifications, whichever is more stringent.
- d. Upon completion or termination of the Services, the Contractor shall remove from the site of the Services all temporary structures, waste materials, and rubbish resulting from its operation, leaving the site of the Project in a neat and

presentable condition. In the event of the failure to do so, the same may be done by OAG at the expense of the Contractor.

## 5. Engineering and Design

- a. Contractor shall provide competent engineering and design services to execute the Services and provide an adequate System in accordance with the Contract Documents and RFP requirements.
- b. Contractor shall provide plans, drawings, and specifications of its proposed System before undertaking any services or migrating, installing or implementing any equipment or systems, and shall be responsible for the operability of all finished services and systems.

## 6. Methods

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

## 7. Labor and Materials

- a. The Contractor shall furnish all labor, materials, and equipment for the execution of the Services and installation of systems and equipment according to the RFP specifications and Contract Documents.

- b. Where no specifications are contained therein for whatever may be necessary, Contractor shall do all that may be termed ordinary, customary or essential to a job to be well and reliably completed. This includes concealment of all pipes, wires, and other rough items of installation, in a manner acceptable to the OAG Procurement Officer; and structural safety shall not be impaired by such concealment. As well, services not particularly detailed, marked or specified shall be of equal quality as similar parts that are detailed, marked or specified.
  - c. All material finished for and used in the Project shall be of kind and grade specified; and where not specifically called for, such material shall be at least of customary standard grade for the Services called for in the Request for Proposals.
  - d. All Services shall be executed in accordance with the performance standards acceptable for Contractor's and any subcontractors' trades. Contractor warrants that the Services shall be performed in a diligent, professional, and workmanlike manner by qualified persons and using competent professional knowledge and judgment and shall conform to Good Industry Practices and the requirements of this Agreement (the "Services Warranty"). If any portion of the Services fails to comply with this Services Warranty and OAG promptly notifies Contractor of such non-conformance along with evidence which reasonably demonstrates Contractor's culpability, Contractor shall promptly re-perform the non-conforming Services and any additional Work required under the Equipment Warranty without additional compensation from OAG. The Services Warranty Period shall be concurrent with the Equipment Warranty Period.
  - e. Full safety and security are essential; and the Contractor guarantees to accomplish safe and quality services required throughout the Project.
8. Guarantee/Warranty of Deliverables, Equipment, and System(s)
- a. Except as otherwise specified, all deliverables, equipment, or systems shall be guaranteed by the Contractor against defects resulting from the use of inferior materials, equipment, or workmanship during the tenure of the contract and any extensions, and for one (1) year after the exercise of any option to purchase the system by OAG ("Equipment Warranty"); this one (1) year term shall commence upon the Contractor's turnover of the system to OAG.
  - b. In the event that the Contractor develops software and applications for the government of Guam, the Contractor shall commit to a minimum warranty period of one (1) year for the software and applications related to this Agreement. Contractor warrants against any surreptitious programming codes,

viruses, Trojan Horses, 'back doors' or other means to facilitate or allow unauthorized access to the System or any other governmental systems for one (1) year after the expiration or termination of this Agreement. Notwithstanding prior acceptance of deliverables OAG, the Contractor shall expressly warrant all delivered programs, equipment, and products as properly functioning at the start of operations and compliant with the terms of the Agreement thereafter ("Software Warranty"). Contractor shall also expressly warrant that all delivered programs, equipment, and products are upward compatible with any other Product. The warranty period will begin at the time the implementation of the system has been formally accepted in writing by OAG and shall continue in effect throughout the duration of this Agreement, and for one (1) year after the expiration or termination of this Agreement. During this warranty period, the Contractor shall be responsible to correct, at its expense, any problems, defects and/or deficiencies reported which do not meet the specifications set forth in the Scope of Services. The Contractor will correct all defects and deficiencies in the system and replace incorrect or defective programs and documentation within five (5) business days of notification from OAG or the Project Manager of such deficiencies or within such period as may be necessary to make correction(s) using all due diligence and dispatch as agreed upon between OAG and the Contractor. Deficiencies properly noted before expiration of the warranty will be covered regardless of such expiration. System modifications and other changes made during the contract period will also be covered by this warranty.

- c. If within any guarantee/warranty period, repairs or changes are required in connection with guaranteed equipment or systems which, in the opinion of the OAG Procurement Officer, is rendered necessary as the result of the use of materials, equipment or workmanship which were inferior, defective or not in accordance with the terms of the Agreement, the Contractor shall promptly comply upon receipt of notice from OAG and without expense to OAG:
  - i. Place in satisfactory condition in every particular all of such guaranteed equipment and systems and correct all defects therein; and
  - ii. Make good all damages to the equipment, systems or contents thereof which, in the opinion of the OAG Procurement Officer, are the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the Agreement.
- d. In any case wherein fulfilling the requirements of the Agreement or of any guarantee embraced in or required thereby, the Contractor disturbs any work, equipment, or systems guaranteed under another contract, Contractor shall restore such disturbed work, equipment, or systems to a condition satisfactory to the OAG Procurement Officer and guarantee such restored work, equipment or systems to the same extent as it was guaranteed under such other contract.

- e. If the Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee, OAG may have the defects corrected and the Contractor and its surety shall be liable for all expense incurred.
- f. All special guarantees applicable to definite parts of the services, equipment, or systems shall be stipulated in the specifications or other papers forming a part of the Agreement and shall be subject to the terms of this paragraph during the first year of the life of such special guarantee.

#### 9. System Failure or Damage

In the event of system failure or damage, as defined in this paragraph, directly caused in whole or in part as a result of the services provided by the Contractor, Contractor agrees to use its best efforts to restore the system to operational capacity. System failure or damage for purposes of this Contract will mean the inability of any mechanism provided by the Contractor pursuant to the terms of this Contract, to operate properly and, as a result of its failure to operate properly, critical government functions, including sending and receiving data information, are unable to be performed.

#### C. Other Work.

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

#### D. Location of Services.

Contractor may perform the services under this Agreement at any suitable location as approved by OAG.

## SECTION 9 SCHEDULE OF VALUES

The Contractor shall submit to OAG, with the Schedule of Services, a Schedule of Values allocating the entire price under this Agreement to the various portions of the Services and the System as listed in the Schedule of Services. This Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as OAG may require. This schedule, unless objected to by OAG, shall be used as a basis for reviewing the Contractor's applications for payment.

## **SECTION 10**

### **PROGRESS AND COMPLETION**

A. Any time limits stated in this Agreement, and/or stated any of the schedules required under this Agreement, are of the essence of the contract. By executing this Agreement, the Contractor confirms that the time specified for performance of the Services is a reasonable period for performing the Services.

B. The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by this Agreement to be furnished by the Contractor and Owner. The date of commencement of the Services shall not be changed by the effective date of such insurance.

## **SECTION 11**

### **EQUIPMENT ORDERING**

Contractor shall be responsible for all packing, rigging, transportation, and installation charges for any equipment and the System. Contractor shall arrange for delivery of any equipment, so that it can be accepted in accordance with the terms of this Agreement. Contractor hereby agrees to indemnify and hold OAG harmless from any claims, liabilities, costs and expenses, including reasonable attorneys' fees, incurred by OAG arising out of any purchase orders or assignments executed by Contractor with respect to any equipment or services relating thereto.

## SECTION 12

### SYSTEM ACCEPTANCE

In order to finally accept the System, OAG shall return to Contractor a signed and dated System Acceptance:

- (a) acknowledging that the System has been received, installed, and is ready for use; and
- (b) accepting it as satisfactory in all respects for the purposes of the Agreement.

## SECTION 13

### COMPENSATION

OAG will compensate the Contractor for the services and systems implemented utilizing progress payments that shall be aligned with the Scope of Services, Contractor's Schedule of Services, and Cost Proposal, and based upon actual services completed, which have been verified by the Project Manager.

OAG agrees to pay Contractor in the currency of the United States of America at the rates agreed for the Services described in the RFP, attached as **Exhibit 1**, the Schedule of Services, and the Schedule of Values [If applicable also insert: Contractor's Cost Proposal, or list other documents here, as applicable...].

The total payment under this Contract shall be: \_\_\_\_\_ (dollar amount). Payment shall be made in progressive installments upon completion of Project Milestones contained in the RFP, the Schedule of Services and the Schedule of Values. Payment shall be remitted to Contractor as specified in the Payment and Application/Invoicing Sections of this Agreement. No payment shall be made for work performed before the Effective Date of this Contract. Contractor shall submit invoices in sufficient detail to ensure that payments may be made in conformance with this Contract. Should the Contractor fail to perform in a manner consistent with the terms and conditions set forth in this Contract, payment under this Contract may be withheld until such time as the Contractor performs its duties and responsibilities to the satisfaction of OAG.



A. **Invoice Payment.** OAG will remit payment of invoices to the Contractor in accordance with the Schedule of Services, the Schedule of Values, and the Applications for Payment/Invoices and Payment Sections of this Agreement.

B. **Payment Retained.** OAG, at its option, will withhold (retain) ten percent (10%) of each payment due until the Contractor successfully completes the deliverables and Project Milestones for the proposed system(s) within the stated deadlines, the System and equipment are installed and operational, and OAG has provided its System Acceptance of the final System including all written documentation to the Contractor. Upon OAG's issuance of the System Acceptance for the System, equipment, and all related Services, retainage will be reduced from ten percent (10%) to zero percent (0%). Retained amounts shall be paid when the Project is completed and all forms have been provided to OAG as set forth in the Proposal, Contract Documents, and this Agreement.

Payments of invoices will be based upon the Contractor meeting the stated deadlines and upon OAG acceptance of the deliverables and Project Milestone completion. Should the Contractor fail to comply with the provisions of the Agreement, payment for portions of the Agreement will be withheld until such time as the Agreement terms have been implemented. Administrative, contractual, and/or legal remedies will be implemented if it appears the Contractor has breached or defaulted on the Agreement.

C. **Final Product/Services Clause.** At any time, but prior to Acceptance of the System and Services, the parties agree that should the System and Services materially fail to perform substantially in compliance with the OAG's specifications or requirements, the Contractor's liability in such an event will be to return all fees paid by the OAG to that point. Prior to Acceptance, such termination decision will be at the sole discretion of the OAG and is in addition to any other Termination provisions contained within this Contract.

## SECTION 14

### APPLICATIONS FOR PAYMENT/INVOICES

A. At least ten days before the date established for any Project Milestone progress payment, the Contractor shall submit to OAG or its designee(s) an itemized Application for Payment/Invoice prepared in accordance with the schedule of values, if required, for the completed portions of the Services. Such Application for Payment/Invoice shall be in a form approved by and notarized, if required, and supported by such data substantiating the Contractor's right to payment as OAG may require, such as copies of requisitions from subcontractors and material suppliers.

B. Applications for Payment/Invoices shall not include requests for payment for portions of the Services for which the Contractor does not intend to pay a subcontractor or material supplier, unless such Services have been performed by others whom the Contractor intends to pay.

C. Unless otherwise provided in this Agreement, payments shall be made on account of materials and equipment delivered and suitably stored for subsequent incorporation in the Services. If approved in advance by OAG, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored shall be conditioned upon compliance by the Contractor with procedures satisfactory to OAG to protect OAG's interest in such materials and equipment, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored.

D. The Contractor warrants that title to the System and all systems will pass to OAG no later than the time of final payment. The Contractor further warrants that all systems for which the final payment have been received from OAG shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Services or systems.

## **SECTION 15**

### **RECOMMENDATIONS FOR PAYMENT**

A. OAG or its designee(s) will, within seven (7) days after receipt of the Contractor's Application for Payment/Invoice, either issue a Recommendation for Payment, with a copy to the Contractor, for such amount as the Project Manager determines is properly due, or notify the Contractor and OAG in writing of the Project Manager's reasons for withholding recommendation for payment in whole or in part.

B. The issuance of a Recommendation for Payment/Invoice will constitute a representation by OAG, based on an evaluation of the Services and the documents comprising the Application for Payment/Invoice, that, to the best of OAG's knowledge, information and belief, that the Services have progressed to the point indicated and that the quality of the Services is in accordance with this Agreement. The foregoing representations are subject to an evaluation of the Services for conformance with the Agreement, to results of subsequent tests and inspections, to correction of minor deviations from this Agreement prior to completion, and to specific qualifications expressed by OAG

C. **Decisions to Withhold Recommendation for Payment.** If OAG's or designee(s) are unable to recommend payment in the amount of the Application for Payment/Invoice, OAG or designee(s) will notify the Contractor and OAG. If the Contractor and OAG or designee(s) cannot agree on a revised amount, OAG or designee(s) will promptly issue a Recommendation for Payment for the amount for which OAG or designee(s) is able to make such representations to OAG. OAG or designee(s) may also withhold a Recommendation for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Recommendation for Payment previously issued, to such extent as may be necessary in OAG's or designee(s)' opinion to protect OAG from loss for which the Contractor is responsible, including loss resulting from acts and omissions because of:

- (1) defective Services not remedied;
- (2) third party or other claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to OAG is provided by the Contractor;
- (3) failure of the Contractor to make payments properly to subcontractors or for labor, materials or equipment;
- (4) reasonable evidence that the Services cannot be completed for the unpaid balance of the price for the Services;
- (5) damage to OAG or a separate contractor;
- (6) reasonable evidence that the Services will not be completed within the time for performance of the Services, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- (7) repeated failure to carry out the Services in accordance with this Agreement.

D. When the above reasons for withholding a Recommendation are removed, Recommendation will be made for amounts previously withheld.

E. Where the system is substantially complete but lacks testing, updates, and/or corrections, amounts shall be deducted from the prices in the Application for Payment/Invoice to amply cover such testing, updates, and/or corrections.

F. Payments will not be made that would deplete the retainage nor place in escrow any funds that are required for retainage, nor invest the retainage for the benefit of the Contractor.

## **SECTION 16**

### **PAYMENTS**

A. After the authorized designee(s) of the OAG have issued a Recommendation for Payment for an Invoice and such Recommendation has been approved by OAG, OAG shall make payment in the manner and within the time provided in this Agreement.

B. OAG has the right to request written evidence from the Contractor that the Contractor has properly paid subcontractors and material and equipment suppliers amounts paid by OAG to the Contractor for the subcontracted Services, materials, or equipment. If the Contractor fails to furnish such evidence within seven days, OAG shall have the right to contact subcontractors to ascertain whether they have been properly paid. OAG shall have no obligation to pay or to see to the payment of money to a subcontractor, except as may otherwise be required by law.

C. A Recommendation for Payment, a progress payment, or partial or entire use of the System by OAG shall not constitute acceptance of Services not in accordance with this Agreement.

D. Final payment for the Services and System shall be made to the Contractor upon satisfactory performance of all Services required to be performed under this Agreement, and when the System is completed and accepted by OAG by delivery of the System Acceptance. The total amount of the payments shall be the amount of the Agreement plus the value of all Extensions exercised, and changes as reflected in approved contract change orders. The final payment shall consist of the entire balance found to be due the Contractor after all previous payments, but excepting such sums as may be lawfully retained by OAG. Final payment for the Services shall be conditioned upon the submission by the Contractor of evidence satisfactory to OAG that all claims for labor, materials, and any other outstanding indebtedness in connection with this Agreement have been paid. Prior to the final payment due to the Contractor, and as a condition precedent thereto, Contractor shall execute and deliver to OAG a release in a form approved by OAG of any and all claims against OAG arising under this Agreement. Contractor expressly waives the provision of Section 82602 of Title 18, Guam Code Annotated, which states:

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

## **SECTION 17**

### **AVAILABILITY OF FUNDS**

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

## **SECTION 18**

### **STANDARD PRICE ADJUSTMENT CLAUSE**

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

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

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

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

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

## **SECTION 19**

### **CHANGES**

**A. Change Order.** The Procurement Officer, at any time, and without notice to the sureties, in a signed writing designated or indicated to be a change order, may order:

- (1) changes in the services within the scope of the Agreement; and
- (2) changes in the time for performance of the Agreement that do not alter the scope of the Agreement.

All contract change orders must be approved in writing by the OAG on a form approved by OAG to record change orders.

**B. Adjustments of Price or Time for Performance.** OAG reserves the right to increase or decrease any unit priced quantity as may be deemed reasonable or necessary in order to complete the Services contemplated under this Agreement. If any such change order increases or decreases the Contractor's cost of, or the time required for, performance of any part of the services under this Agreement, whether or not changed by the order, an adjustment shall be made and the Agreement

modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Standard Price Adjustment Clause of this Agreement. Failure of the parties to agree to an adjustment shall not excuse a Contractor from proceeding with the Agreement as changed, provided that the government of Guam promptly and duly make such provisional adjustments in payments or time for performance as may be reasonable. By proceeding with the services, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion. All changes must be recorded on a contract change order before they can be included in an application for payment/invoice.

C. **Written Certification.** The Contractor shall not perform any change order in excess of \$5,000 unless it bears, or the Contractor has separately received, a written certification, signed by the Procurement Officer/CEO or other responsible official that funds are available therefor; and, if acting in good faith, the Contractor may rely upon the validity of such certification.

D. **Time Period for Claim.** Within 30 days after receipt of a written change order under Paragraph (1) (Change Order) of this clause, unless such period is extended by the Procurement Officer in writing, the Contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the Contractor's claim unless the government of Guam is prejudiced by the delay in notification.

E. **Claim Barred After Final Payment.** No claim by the Contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this Agreement.

F. **Claims Not Barred.** In the absence of such a change order, nothing in this clause shall restrict the Contractor's right to pursue a claim arising under the Agreement, if pursued in accordance with the clause entitled Claims Based Upon OAG's Actions or Omissions or for breach of contract.

## SECTION 20

### COOPERATION WITH THE CONTRACTOR

OAG agrees to cooperate fully with the Contractor towards the completion of the Project within reasonable and legal limitations. OAG shall provide access to the real property upon which the work under this Agreement is to be done, and will, so far as is convenient, permit the Contractor to use as much of the property as is required for the erection of temporary facilities and storage of materials, together with the right of access to same, but beyond this, the Contractor shall provide at the Contractor's cost and expense any additional property required.

## **SECTION 21**

### **OAG CONTRACT REPRESENTATIVE**

The Procurement Officer is the individual who has express authority to bind OAG with respect to all matters requiring OAG's approval or authorization under this Agreement, excepting written modifications of this Agreement. The Procurement Officer may designate in writing a representative who may also have express authority to bind OAG under the terms of this Agreement. Except as otherwise provided herein, OAG's Project Manager does not have authority to bind OAG without written approval from the Procurement Officer or his designee, as authorized in writing.

## **SECTION 22**

### **PROJECT DEFECTS**

OAG shall give prompt written notice to the Contractor whenever OAG observes or otherwise becomes aware of any defect in the Project or other event that may substantially affect the Contractor's performance of the Services under this Agreement.

## **SECTION 23**

### **REVIEW OF CONTRACT DOCUMENTS AND PERFORMANCE CONDITIONS**

Execution of this Agreement by the Contractor is a representation that the Contractor will visit and inspect the site where the Services shall be performed, become generally familiar with the conditions under which the Services are to be performed and has correlated personal observations with the requirements of this Agreement.

The Contractor accepts the conditions at the site of the Project, Services, and System as they eventually may be found to exist and warrants and represents that the Agreement 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, anything in this Agreement to the contrary notwithstanding.

## **SECTION 24**

### **RESPONSIBILITY OF THE CONTRACTOR/WAIVER**

The Contractor shall be responsible for the professional and technical accuracy of all services and materials furnished under this Agreement. The Contractor shall, without additional cost to OAG, correct or revise all errors or deficiencies in its performance. OAG's review, approval, acceptance of, and payment of compensation required under this Agreement shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the Contractor's failure in the performance of this Agreement; and the Contractor shall be and remain liable to OAG for all costs of any kind which may be incurred by OAG as a result of the Contractor's negligent performance of any services contracted under this Agreement.

## **SECTION 25**

### **SUBCONTRACTORS**

A. **Subcontractor.** A subcontractor is a person or entity who has a direct contract with the Contractor or a higher tier subcontractor to perform a portion of the Services set forth in this Agreement.

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

1. Unless otherwise stated in this Agreement, the Contractor, as soon as practicable after execution of this Agreement, shall furnish in writing to OAG the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Services. OAG may reply within 14 days to the Contractor in writing stating: (1) whether OAG has reasonable objection to any such proposed person or entity; or (2) that OAG requires additional time for review. Failure of OAG to reply within the 14-day period shall constitute notice of no reasonable objection.

2. The Contractor shall not contract with a proposed person or entity to whom OAG has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

3. The Contractor shall not substitute a subcontractor, person or entity previously selected if OAG makes reasonable objection to such substitution.

C. **Subcontractor Relations.** By appropriate written agreement the Contractor shall require each subcontractor, to the extent of the Services to be performed by the subcontractor, to be bound to the Contractor by terms of this Agreement, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the subcontractor's Services, which the Contractor, by these Documents, assumes toward OAG. Each subcontract agreement shall preserve and protect the rights of OAG under this Agreement with respect to the Services to be performed by the subcontractor so that subcontracting thereof will not prejudice such rights. Contractor shall have full responsibility under this Agreement, the Proposal Documents, conditions, Plans, and Specifications for any subcontracts which the Contractor may let.

D. **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this Agreement, to include 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.

## **SECTION 26**

### **OWNERSHIP OF DOCUMENTS AND WORK PRODUCT**

All drawings, specifications, studies, plans, reports, instruments, and other work product, work documents or work materials created by the Contractor in connection with the RFP and Contract Documents shall be the property and shall remain the property of OAG and may be used by OAG without any cost.

## **SECTION 27**

### **CONFIDENTIALITY**

A. **Information.** The Contractor, including its subcontractors, if any, hereby warrants that it shall not disclose any documents, materials or information, whether verbal, written, electronic or digital media or otherwise, (collectively, "Information"), made available or acquired for the purpose of carrying out this Agreement. Only authorized persons shall use and have access to the Information, and then only for the period that such access is required to perform the Services under this Agreement. All necessary steps shall be taken by the Contractor to safeguard the confidentiality of the Information in conformance with any applicable United States and Guam; laws, statutes, and regulations.

The Contractor shall keep copies of the Information, and the provisions of this Section shall remain in effect as long as determined by OAG. All of the Information shall be returned promptly after use to OAG and all copies or derivations of the Information shall be physically and/or

electronically destroyed. Contractor shall include a letter attesting to the complete return of Information and documenting the destruction of copies and derivations with the returned Information.

The Contractor shall not enter into any agreements or discussion with a third party concerning such Information without the prior written consent of OAG, and then only if the Contractor requires the third party(ies) to agree to the terms of the confidentiality set forth herein, and Information is provided to such third party(ies) only for the purposes of enabling the Contractor to discharge its responsibilities under the Agreement.

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

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

## **SECTION 28**

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

The OAG, the OCSE, 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 OAG, the OCSE, the Comptroller General of the United States, or any of their duly authorized representatives, unless the Offeror is notified in writing by the OCSE, the cognizant agency for audit, the oversight agency for audit, the cognizant agency for indirect costs, or the OAG to extend the retention period. If any litigation, claim, or audit is started before the expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. Records for real property and equipment acquired with the funds from the awarded contract must be retained for three (3) years after final disposition of the real property and equipment. Each subcontract by the Offeror shall include a provision containing the conditions of this Section for any contract awarded under this solicitation.

B. **Right to Audit.** Contractor shall establish and maintain a reasonable accounting system that enables the OAG or the OCSE to readily identify Offeror's assets, expenses, costs of goods, and use of funds. The OAG, the OCSE, 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 OAG, the OCSE, 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 OAG, the OCSE, the Comptroller General of the United States and any of their authorized representatives. Such records shall be made available to OAG, the OCSE, 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 OAG, the OCSE, the Comptroller General of the United States and any of their authorized representatives. Contractor shall ensure OAG, the OCSE, 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 OAG, the OCSE, 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 OAG, the OCSE, 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 OAG, the OCSE, 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 OAG 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 OAG 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 OAG, the OCSE, the Comptroller General of the United States and any of their authorized representatives' findings to Contractor.

C. **Right to Enter and Inspect.** OAG, the OCSE, 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 OAG, the OCSE, 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.

## **SECTION 29**

### **EMPLOYEE BENEFITS, TAXES, AND INSURANCE**

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

- (a) Insurance coverage provided by the OAG;
- (b) Participation in the government of Guam retirement system
- (c) Accumulation of vacation leave or sick leave; and
- (d) Workers Compensation coverage.

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

B. **Tax and Withholding Liability.** The Contractor assumes responsibility for its personnel and subcontractors providing services hereunder and will make all deductions and payments for social security and withholding taxes and for contributions to employment compensation funds, employee benefits, or any other payments required by the governments of the United States and Guam, if required. Contractor is responsible for paying when due any and all income taxes, gross receipts taxes or business privilege taxes, or any other taxes or assessments incurred as a result of the services performed by the Contractor and Contractor's employees or agents under this Agreement or the compensation paid to Contractor for services performed under this Agreement, unless Contractor is a non-resident person or entity without a valid Guam Business License, in which case a withholding fee equal to four percent (4%) of the total dollar value of this Agreement will be withheld for the payment of Guam's Business Privilege Tax in accordance with 11 GCA § 71114 (PL 33-166).

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

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

## **SECTION 30**

### **EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE**

The Contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633. The Contractor and all subcontractors must also comply with the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b).

A. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the Contractor's project activities under this Agreement. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this Agreement. In the execution of this Agreement, the Contractor agrees to comply with the following minimum specific requirement activities of EEO:

1. The Contractor will work with OAG and the Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the Agreement.

2. The Contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

B. **EEO Officer:** The Contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

C. **Dissemination of Policy:** All members of the Contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the Contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

1. Periodic meetings of supervisory and personnel office employees will be conducted before the start of services and then periodically, at which times the Contractor's EEO



policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

2. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the Contractor's EEO obligations within thirty days following their reporting for duty with the Contractor.

3. All personnel who are engaged in direct recruitment for the Project will be instructed by the EEO Officer in the Contractor's procedures for locating and hiring minorities and women.

4. Notices and posters setting forth the Contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

5. The Contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**D. Recruitment:** When advertising for employees, the Contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project workforce would normally be derived.

1. The Contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the Contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the Contractor for employment consideration.

2. In the event the Contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the Contractor is expected to observe the provisions of that agreement to the extent that the system meets the Contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the Contractor to do the same, such implementation violates Federal nondiscrimination provisions.

3. The Contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**E. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

1. The Contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project personnel.

2. The Contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

3. The Contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the Contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

4. The Contractor will promptly investigate all complaints of alleged discrimination made to the Contractor in connection with its obligations under this Agreement, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the Contractor will inform every complainant of all of their avenues of appeal.

**F. Training and Promotion:**

1. The Contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

2. Consistent with the Contractor's workforce requirements and as permissible under Federal and State regulations, the Contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this Agreement, this subparagraph will be superseded as indicated in the special provision. OAG may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

3. The Contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

4. The Contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**G. Unions:** If the Contractor relies in whole or in part upon unions as a source of employees, the Contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the Contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

1. The Contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

2. The Contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

3. The Contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of

the labor union and such labor union refuses to furnish such information to the Contractor, the Contractor shall so certify to OAG and shall set forth what efforts have been made to obtain such information.

4. In the event the union is unable to provide the Contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the Contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the Contractor from the requirements of this paragraph. In the event the union referral practice prevents the Contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, the Contractor shall immediately notify OAG.

**H. Reasonable Accommodation for Applicants/Employees with Disabilities:** The Contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**I. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The Contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this Agreement.

1. The Contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this Agreement.

2. The Contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

**J. Records and Reports:** The Contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the Contractor for all the Services under this Agreement and shall be available at reasonable times and places for inspection by authorized representatives of OAG.

1. The records kept by the Contractor shall document the following:

a. The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

b. The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

c. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

2. If required, the Contractor and any subcontractors will submit an annual report to OAG each July for the duration of the Project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the Services under this Agreement. The staffing data should represent the project workforce on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the Contractor will be required to collect and report training data. The employment data should reflect the workforce on board during all or any part of the last payroll period preceding the end of July.

## **SECTION 31**

### **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.

## **SECTION 32**

### **SAFETY: ACCIDENT PREVENTION**

A. In the performance of this Agreement the Contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation, including all pertinent regulations of the Occupational Safety and Health Administration (OSHA). 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 Agreement. Contractor alone shall be responsible for the safety, efficiency, and adequacy of its worksite, appliances, and methods, and for any damage which may result from their failure or their improper installation, maintenance, or operation.

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

C. It is a condition of this Agreement that OAG, the Project Manager or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with safety and health standards.

#### **D. Hazardous Materials.**

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 Services in the affected area and report the condition to OAG and the Project Manager in writing.

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

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

## **SECTION 33**

### **DRUG FREE WORKPLACE**

Contractor agrees to comply with Title V of the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F (Pub. L. No. 100-690, Title V, Sec. 5153, as amended by Pub. L. No. 105-85, Div. A, Title VIII, Sec. 809, as codified at 41 U.S.C. § 8102); and the implementing regulations published at 2 CFR Part 182, "Government-wide Requirements for Drug-free Workplace (Financial Assistance)"; and the laws and regulations promulgated by the Federal Government and to maintain a drug-free workplace.

A. The Contractor shall, within 30 days after award:

1. Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance, as defined and listed in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15, is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

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.

3. Provide all employees engaged in performance of the Agreement with a copy of the statement required by paragraph (1) of this clause;

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 Agreement, 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.

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;

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

7. Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs (1) through (6) of this clause.

B. The Contractor, if an individual, agrees by award of this Agreement not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this Agreement.



C. In addition to other remedies available to OAG, 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.

## **SECTION 34**

### **DEBARMENT**

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.

Federal Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award of federal funds (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. Contractor 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 agrees to the Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion, Lower Tier Covered Transaction (Sub-Recipient), which is a material representation of fact, and agrees to include the following notice in the awarded contract, sub-award, or subcontract, as applicable:

“Applicants/bidders for a lower tier covered transaction (except procurement contracts for goods and services under \$25,000 not requiring the consent of a DOC official) are subject to 2 CFR Part 1326, Subpart C, “Government-wide Debarment and Suspension (Nonprocurement).” In addition, applicants/bidders for a lower tier covered transaction for a sub-award, contract, or subcontract greater than \$100,000 of Federal funds at any tier are subject to 15 CFR Part 28, “New Restrictions on Lobbying.”

Contractors should familiarize themselves with these provisions, including the certification requirements. Therefore, during contract performance, applications for a lower tier covered transaction must include a Form CD-512, "Certification Regarding Lobbying—Lower Tier Covered Transactions," completed without modification.

## **SECTION 35**

### **FEDERAL LOBBYING**

Contractor agrees to comply with the requirements set forth under the Certification Regarding Lobbying and Disclosure Form and the implementing regulations published at 15 CFR Part 28, "New Restrictions on Lobbying." These provisions prohibit the use of Federal funds for lobbying the Executive or Legislative branches of the Federal Government in connection with an award and require the disclosure of the use of non-Federal funds for lobbying. Contractor agrees to the following Certification Regarding Lobbying as a material representation of fact. Submission of this certification is a pre-requisite for entering into the agreement offered under this RFP, imposed by Section 1352, as amended, Title 31, U.S. Code:

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

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.

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.)]

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.

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.”

All Contractors and subcontractors who receive more than \$100,000 in federal funds must also submit a Certification Regarding Lobbying on the form “Form LLL, Disclosure of Lobbying Activities,” also known as Form SF-LLL. This form assures, generally, that recipients will not lobby federal entities with federal funds, and that, as is required, they will disclose other lobbying on the form. Submission of this certification is a pre-requisite for entering into any contract funded with federal award funds, imposed by Executive Order 12549, 28 CFR Part 67, Section 67.510. Form SF-LLL must be submitted to OAG with this Agreement, by any Contractor or subcontractor receiving more than \$100,000 in federal funds, to disclose any lobbying of federal entities: (a) with profits from federal contracts; or (b) funded with nonfederal funds

## **SECTION 36**

### **TERMINATION**

#### **A. Termination for Default, Nonperformance or Delay, Damages for Delay, Time Extensions.**

1. **Default.** If Contractor refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement, or any extension thereof, otherwise fails to timely satisfy the Agreement provisions, or commits any other substantial breach of this Agreement, OAG may notify Contractor in writing of the delay or on-performance and if not cured in ten days or any longer time specified in writing by OAG, OAG may terminate Contractor's right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part OAG may procure similar supplies or services in a manner and upon terms deemed appropriate by OAG. Contractor shall continue performance of the Agreement to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

**2. Contractor's Duties.** Notwithstanding termination of the Agreement and subject to any directions from the OAG, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which OAG and the government of Guam has an interest.

**3. Compensation.** Payment for completed supplies delivered and accepted by OAG shall be at the contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by Contractor and the OAG; if the parties fail to agree, OAG shall set an amount subject to Contractor's rights under Article 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations. OAG may withhold from amounts due Contractor such sums as the OAG deems to be necessary to protect OAG against loss because of outstanding liens or claims of former lien holders and to reimburse OAG for the excess costs incurred in procuring similar goods and services.

**4. Excuse for Nonperformance or Delayed Performance.** Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this Agreement in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified OAG within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the government of Guam and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the supplies or services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the Agreement requirements. Upon request of Contractor, OAG shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the Agreement, the delivery schedule shall be revised accordingly, subject to the rights of the government of Guam under the clause entitled (in fixed-price contracts, "Termination" for Convenience in cost-reimbursement contracts) "Termination". (As used in this Paragraph of this clause the term "subcontractor" means subcontractor at any tier.)

**5. Erroneous Termination for Default.** If, after notice of termination of Contractor's right to proceed under the provisions of this clause, it is determined for any reason that Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause,

the rights and obligations of the parties shall, be the same as if the notice of termination had been issued pursuant to the clause providing for termination for convenience.

**6. Additional Rights and Remedies.** The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

**B. Termination for Convenience**

1. OAG may, when the interest of OAG so require, terminate this Agreement in whole or in part, for the convenience of OAG or the government of Guam. OAG shall give written notice of the termination to Contractor specifying the part of the Agreement terminated and when termination becomes effective.

2. Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work.

**C. Compensation.**

1. Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data to the extent required by 2 GAR, Div. 4, § 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 OAG may pay Contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.

2. The OAG and Contractor may agree to a settlement provided the Contractor has filed a termination claim supported by cost or pricing data to the extent required by 2 GAR, Div. 4, § 3118 (Cost or Pricing Data) of the Guam Procurement Regulations and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the OAG, and the contract price of the work not terminated.

3. Absent complete agreement under Subparagraph (2) of this Paragraph, the OAG shall pay Contractor the following amounts, provided payments agreed to under Subparagraph (b) shall not duplicate payments under this Subparagraph:

(i) contract prices for services accepted under the Agreement;

(ii) costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) that shall be no less than the fees due for the portion of the term calculated up-through the date of termination calculated on a pro-rata basis, less amounts paid or to be paid for accepted services; provided, however, that if it appears that Contractor would have sustained a loss if the entire Agreement would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(iii) costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph (b) of this clause. These costs must not include costs paid in accordance with Subparagraph (3)(b) of this Paragraph;

(iv) 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 the Agreement 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 Contractor under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of Contractor reduced by the amount of payments otherwise made and the contract price of work not terminated.

4. Cost claimed, agreed to, or established under Subparagraph (b) and (c) of this Paragraph shall be in accordance with Article 7 (Cost Principles) of the Guam Procurement Regulations.

## **SECTION 37**

### **SUSPENSION OF SERVICES**

A. **Suspension for Convenience.** The Procurement Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the services for such period of time as may be appropriate for the convenience of OAG.

B. **Adjustment of Cost.** If the performance of all or any part of the services is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Procurement Officer in the administration of this Agreement, or by the failure of the Procurement Officer 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 the 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 the Contractor; or (b) for which an adjustment is provided for or excluded under any other provision of this Agreement.

C. **Time Restriction on Claim.** No claim under this clause shall be allowed: (a) for any costs incurred more than twenty (20) days before the Contractor shall have notified the Procurement Officer 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 Agreement.

D. **Adjustments of Price.** Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this Agreement.

## **SECTION 38**

### **DISPUTES**

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

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

C. OAG's decision shall be final and conclusive, unless fraudulent or unless the Contractor appeals the decision.

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

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

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

## **SECTION 39**

### **CLAIMS BASED UPON OAG'S ACTIONS OR OMISSIONS**

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

(1) Contractor shall have given written notice to OAG:



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

This notice shall state that Contractor regards the act or omission as a reason which may entitle Contractor to additional compensation, damages, or an extension of time. The OAG, 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 OAG.

- (2) The notice required by Subparagraph (A) of this Paragraph describes as clearly as practicable at the time the reasons why Contractor believes that additional compensation, damages, or an extension of time may be remedies to which Contractor is entitled; and
- (3) Contractor maintains and, upon request, makes available to the OAG within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

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

## **SECTION 40**

### **REMEDIES**

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

## **SECTION 41**

### **DEFECTIVE COST OR PRICING DATA**

**A. Overstated Cost or Pricing Data.** If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or non-current as of the date stated in the certificate, OAG is entitled to an adjustment of the contract price, including profit or fee or any exclusion of taxes

("Business Privilege Tax," formerly labeled "Gross Receipts Tax") pursuant to 11 GCA § 26203(k)(14) (formerly § 19543.1016) as added by 5 GCA § 5232 of the Guam Procurement Law, to exclude any significant sum by which the price, including profit or fee or any exclusion of taxes ("Business Privilege Tax," formerly labeled "Gross Receipts Tax") pursuant to 11 GCA § 26203(k)(14) (formerly § 19543.1016) as added by 5 GCA § 5232 of the Guam Procurement Law was increased because of the defective data. Judgmental errors made in good faith concerning the estimated portions of future costs or projections do not constitute defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data were not used or relied upon, the price should be reduced by such amount. In establishing that the defective data caused an increase in the contract price, the Procurement Officer is not expected to reconstruct the negotiation by speculating as to what would have been the mental attitudes of the negotiating parties if the correct data had been submitted at the time of agreement on price.

**B. Off-Setting Understated Cost or Pricing Data.** In determining the amount of a downward adjustment, the Contractor shall be entitled to an off-setting adjustment for any understated cost or pricing data submitted in support of price negotiations for the same pricing action up to the amount of the OAG's claim for overstated cost or pricing data arising out of the same pricing action.

**C. Dispute.** If the Contractor and the Procurement Officer cannot agree as to the existence of the defective cost or pricing data or amount of adjustment due to defective cost or pricing data, the Procurement Officer shall set an amount in accordance with Subsections (f)(1) and (f)(2) of this section and the Contractor may appeal this decision as a contract controversy under Article 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations.

## **SECTION 42**

### **VARIATIONS IN ESTIMATED QUANTITIES**

**A. Variations Requiring Adjustments.** Where the quantity of equipment covered under this Agreement is an estimated quantity and where the actual quantity of such equipment varies more than fifteen percent (15%) above or below the estimated quantity stated in the Contractor's Schedule of Values or this Agreement, an adjustment in the contract price may be made upon demand of either party. The adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred fifteen percent (115%) or below eighty-five percent (85%) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion of the system, the Procurement Officer shall, upon receipt of a timely written request for an extension of time, prior to the date of final settlement of the Agreement or

exercise of the option to purchase, ascertain the facts and make such adjustment for extending the completion date as in the judgment of the Procurement Officer the findings justified.

**B. Adjustments of Price.** Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

### **SECTION 43**

#### **LIQUIDATED DAMAGES**

When the Contractor is given notice of delay or nonperformance as specified in Paragraph (1) (Default) of the Termination for Default Clause of this Agreement and fails to cure in the time specified, the Contractor shall be liable for damages for delay in the amount of one-fourth of one-percent (1%) of outstanding order per calendar day from date set for cure until either the territory reasonably obtains similar supplies or services if the Contractor is terminated for default, or until the Contractor provides the supplies or services if the Contractor is not terminated for default. To the extent that the Contractor's delay or nonperformance is excused under Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of the Termination for Default Clause of this Agreement, liquidated damages shall not be due the territory. The Contractor remains liable for damages caused other than by delay.

### **SECTION 44**

#### **LOSS OR DAMAGE RE: SYSTEM**

Contractor shall bear the entire risk of loss or damage to the System, or caused by the System, from the Effective Date of this Agreement until OAG delivers the System Acceptance to Contractor.

In the event the System or any equipment is damaged to a material extent while Contractor bears the risk of loss, Contractor shall promptly notify OAG and shall determine within ten (10) days of the date of such notice whether the System or equipment can be repaired. If the System or equipment can be repaired, Contractor shall at its expense repair and return the System or equipment to its condition immediately prior to the damage.

### **SECTION 45**

#### **INDEMNIFICATION**

To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the government of Guam, OAG, its Project Manager and its Contractors, if any, and the agents and employees of any of them, from and against claims, damages, losses, expenses, actions, recoveries, and judgments of every nature, including but not limited to attorneys' fees, arising out of or resulting from Contractor's performance of the Services. Contractor shall indemnify the government of Guam, OAG, its Project Manager and its Contractors, if any, and the agents and employees of any of them, or any Assignee against, and hold them harmless from, any and all claims, actions, damages, including reasonable attorneys' fees, obligations, liabilities, and liens arising or imposed without the fault or negligence of Contractor, in connection with latent or other defects, or any claim for patent, trademark, copyright, or "trade secret" infringement, or under the doctrine of "strict liability," imposed or incurred by or asserted against the government of Guam, OAG, its Project Manager, or their respective successors or assigns, arising out of the manufacture, purchase, lease, possession, operation, condition, use or return of the Equipment, or by operation of law. Contractor shall be liable if any claim, damage, loss or expense attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property (including the Equipment itself) is caused by the negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Contractor's indemnification does not extend to liabilities caused solely by the gross negligence or intentional wrongdoing of the government of Guam. Contractor shall give OAG prompt written notice of any matter hereby indemnified against and agrees that upon written notice by OAG of the assertion of such a claim, action, damage, obligation, liability, or lien, Contractor shall assume full responsibility for the defense thereof. The government of Guam shall have an opportunity to participate in the defense at its own expense with respect to attorneys' fees and costs, but not liability; particularly when there are substantial principles of government or public law involved, when litigation might create precedent affecting future governmental operations or liability, or when involvement of the government of Guam is otherwise mandated by law. Such obligations shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person under this Agreement.

#### **SECTION 46**

#### **IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

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

A. That any person who is or will be utilized in the performance of this Agreement 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.

B. That Contractor and all subcontractors shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, the Federal Water Pollution Act, and 4 CFR Part 15.4(c). Contractor shall report all violations to Rural Development and to the U.S. Environmental Protection Agency, Assistant Administrator for Enforcement.

C. That Contractor and all subcontractors shall recognize and comply with all mandatory standards and policies relating to energy efficiency which are contained in any applicable State energy conservation plan issued in compliance with the Energy Policy and Conservation Act, P.L. 94-163.

D. 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.

## **SECTION 47**

### **PROCUREMENT OF RECOVERED MATERIALS**

This is a federally funded project and pursuant to 2 CFR § 200.322, any Contractor awarded a contract under this RFP and all of its 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, with CFR 121 OMB Guidance § 200.324 where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by 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.

**SECTION 48**  
**GOVERNING LAW**

Except to the extent United States federal law is applicable, the validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of Guam. Contractor expressly recognizes that the Government Claims Act (Title 5 of the Guam Code Annotated, Chapter 6) applies with respect only to claims of money owed by or to the Contractor/Contractor against the Government, if the claim arises out of or in connection with this Agreement. Contractor also expressly recognizes that all other claims by the Contractor/Contractor against the Government are subject to the Guam Procurement Law (Title 5 of the Guam Code Annotated, Chapter 5).

**SECTION 49**  
**COMPLIANCE WITH LAWS**

Each party will comply with all applicable laws and regulations and with all applicable orders issued by courts or other governmental bodies of competent jurisdiction.

**SECTION 50**  
**CONSENT TO JURISDICTION**

Contractor hereby expressly consents to the jurisdiction and venue of Guam with respect to any protest or dispute resolution, and the forum of the courts of Guam with respect to any and all claims which may arise by reason of this Agreement, except as otherwise may be provided by Guam Procurement Law. Contractor waives any and all rights it may otherwise have to contest the same or to proceed with any claims arising by reason of this Agreement in a different jurisdiction, forum, or venue.

**SECTION 51**  
**GOVERNMENT NOT LIABLE**

A. OAG and the government of Guam assume no liability for any accident or injury that may occur to Contractor, its agents, dependents, or personal property while in execution of duties under this Agreement.

B. OAG and the government of Guam shall not be liable to Contractor for any services performed by Contractor prior to the approval of this Agreement by the Procurement Officer and the Contractor hereby expressly waives any and all claims for compensation for acts performed in expectation of this Agreement prior to its approval by the Governor of Guam.

## **SECTION 52**

### **ASSIGNMENT OF AGREEMENT**

It is expressly acknowledged that Contractor is solely responsible for the fulfillment of its duties and obligations under this Agreement, regardless of whether Contractor utilizes one or more subcontractors for such purpose. The right 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 OAG. 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.

## **SECTION 53**

### **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.

## **SECTION 54**

### **ATTORNEY'S FEES PROVISION**

If OAG or the government of Guam retains an attorney or attorneys to enforce any of the Provisions of this Agreement, or to protect its interest in any matter arising under this Agreement, or to recover damages for the breach thereof, or OAG commences an action for any of the

foregoing reasons or to resolve any dispute relating to this Agreement, and OAG prevails, then OAG shall be entitled to recover from the Contractor OAG's reasonable attorney's fees, cost and expenses incurred in connection with any such action. If the Contractor retains an attorney or attorneys regarding this Agreement, any recovery of attorney's fees, costs or expenses from OAG by the Contractor is limited by and subject to the Government Claims Act and any other applicable law.

## **SECTION 55**

### **STATUTORY INTEREST**

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

## **SECTION 56**

### **MANDATORY PROHIBITIONS**

#### **A. Prohibition of Gratuities, Kickbacks, and Favors.**

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

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

**Favors to the government of Guam.** It shall be a breach of ethical standards for any person who is or may become a contractor, a subcontractor under a contract to the prime contractor or higher tier contractor, or any person associated therewith, to offer, give or agree to give any employee or



agent of the government of Guam or for any employee or agent of the government of Guam to solicit or accept from any such person or entity or agent thereof, a favor or gratuity on behalf of the government of Guam whether or not such favor or gratuity may be considered a reimbursable expense of the government of Guam, during the pendency of any matter related to procurement, including contract performance warranty periods.

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

## **SECTION 57**

### **CONTRACTOR'S ETHICAL WARRANTIES**

**A. Warranty against Employment of Sex Offenders.** Contractor warrants that: (1) no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 Guam Code Annotated or of an offense defined in Article 2 of Chapter 28 of Title 9 Guam Code Annotated, or who has been convicted in any other jurisdiction of an offense with the same elements as heretofore defined, or who is listed on the Sex Offender Registry, shall provide services on behalf of Contractor while on government of Guam property, with the exception of public highways; and (2) that if any person providing services on behalf of Contractor is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry at any time during the performance of the contract, that such person will be immediately removed from working on government property and Contractor warrants that it will notify the Director of the AGENCY within twenty-four (24) hours of such conviction. If Contractor is found to be in violation of any of the provisions of this paragraph, then OAG will give notice to Contractor to take corrective action. Contractor shall take corrective action within twenty-four (24) hours of notice from OAG, and Contractor shall notify OAG when action has been taken. If Contractor fails to take corrective steps within twenty-four (24) hours of notice from OAG, then OAG in its sole discretion may temporarily suspend this agreement.

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

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

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

## **SECTION 58**

### **LICENSES**

The Contractor shall be required to obtain all permits and comply with all Federal and Guam laws applicable to its professional licensing and the provision of the System and Services to the Government. The Contractor represents and warrants that it is fully licensed to do business in Guam to render the Services to be provided herein. The Contractor shall provide a copy of all required permits and its current, appropriate business licenses or a statement of exemption pursuant to Title 11 of the Guam Code Annotated §§ 70126 and 70130 within thirty (30) days of the issuance of the NTP.

## **SECTION 59**

### **ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties with respect to its subject matter. This Agreement supersedes all other agreements, proposals, representations, statements and understandings, whether written or oral, concerning the Services or the rights and obligations relating to the Services, and the parties disclaim any reliance thereon. This Agreement will not be modified or supplemented by any written or oral statements, proposals, representations, advertisements, service descriptions or purchase order forms not expressly set forth in this Agreement.

**SECTION 60**  
**SEVERABILITY**

In the event that any provisions of this Agreement shall be held to be invalid and/or unenforceable, the remaining provisions shall be valid and binding upon the Parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

**SECTION 61**  
**SURVIVAL OF GUARANTIES AND 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.

**SECTION 62**  
**CAPTIONS**

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

**SECTION 63**  
**COMPUTATION OF TIME**

Unless specifically stated otherwise, whenever this Agreement, the Contract Documents, or the Proposal Documents provide for a time period of ten (10) days or fewer, weekends and government of Guam holidays are not included in the computation. When this Agreement, the Contract Documents, or the Proposal Documents provide for a time period of more than ten (10) days, weekends and government of Guam holidays are to be included in the computation.

## SECTION 64

### NOTICE

All notices, requests, demands and other communications (collectively, "Notices") or any other communication required under this Agreement shall be in writing and shall have been deemed to have been duly given if placed in the U.S. mail, certified mail, return receipt requested or by commercial courier or delivery service which provides a delivery tracking feature, addressed as follows:

**Contractor**

ATTN: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**OAG**

ATTN: Andrew T. Perez

590 S. Marine Corps Drive, Suite 901

Tamuning, Guam 96913

Said Notices shall be deemed given on the earlier of (a) actual receipt; or (b) ten (10) business days following the date such notices are deposited in the U.S. Mail, properly addressed and sent via certified mail or placed with a commercial courier or delivery service with a delivery tracking feature. If the last day of any notice period falls on a Saturday, Sunday, or federal holiday, such notice period shall be extended to the next regular business day. Either party may change the address or designated person for receiving Notices by providing notice to the other party in accordance with this Section.

Contractor shall be responsible for giving all notices to OAG, the Project Manager, or any third parties required by law, in accordance with the Contract Documents, Proposal Documents and/or the Agreement. If the Contractor observes that the Agreement is at variation with any laws, ordinances, rules, or regulations, the Contractor must promptly notify OAG in writing as set forth in this section, and any necessary changes shall be adjusted by change order in accordance with the terms of this Agreement.

**SECTION 65**  
**PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

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

**SECTION 66**  
**TRANSMISSION OF DATA IN DIGITAL FORM**

If the parties intend to transmit any information or documentation in digital form, they shall establish necessary protocols governing such transmissions, unless otherwise already provided in this Agreement.

**SECTION 67**  
**ELECTRONIC SIGNATURES/COUNTERPARTS**

This Agreement may be signed by the parties hereto in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart by one party to the other may be made by electronic transmission.

**IN WITNESS HEREOF**, the parties hereto have executed this Agreement.

**CONTRACTOR**

**OAG**

\_\_\_\_\_  
**Contractor's Representative**

\_\_\_\_\_  
**ANDREW T. PEREZ**  
**Deputy Attorney General**  
**OAG**

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

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

**CERTIFIED FUNDS AVAILABLE**

Contract Amount: \$ \_\_\_\_\_

\_\_\_\_\_  
\*

**Chief Financial Officer**

**Government of Guam**

**Cost Center: G/L – Account #:** \_\_\_\_\_

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

**APPROVED AS TO LEGALITY AND  
FORM:**

**APPROVED:**

\_\_\_\_\_  
**LEEVIN TAITANO CAMACHO**  
**Attorney General of Guam**

\_\_\_\_\_  
**LOURDES A. LEON GUERRERO**  
**Governor of Guam**

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

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