



## HIGH RISK CONSULTANT

# Request for Proposal

No. 018-2024

Guam Department of Education

Supply Management Office

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CARMEN T. CHARFAUROS

Supply Management Administrator

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## Section 1 - REQUEST FOR PROPOSAL (RFP) TIMELINE

### 1.1. REQUEST FOR PROPOSAL (RFP) TIMELINE

<u>DATE</u>	<u>ACTIVITY</u>	<u>TIME</u>
Tuesday, August 27, 2024	RFP Issuance	8:00 a.m. Chamorro Standard Time (CHST)
Thursday, August 29, 2024	Deadline for Request to Hold Pre-Proposal Conference	3:00 p.m. Chamorro Standard Time (CHST)
Tuesday, September 03, 2024	Deadline for Submission of Written Questions	3:00 p.m. Chamorro Standard Time (CHST)
Friday, September 06, 2024	Deadline for GDOE Response to Written Questions	5:00 p.m. Chamorro Standard Time (CHST)
Wednesday, September 11, 2024	Deadline for Submission of Proposal	3:00 p.m. Chamorro Standard Time (CHST)

Request for Proposal (RFP) packages may be obtained at the GDOE's Office of Supply Management in Barrigada, Guam between 8:00 a.m. and 5:00 p.m. from Monday through Friday, excluding holidays. The RFP may also be downloaded at the GDOE's website at [www.gdoe.net/District/Department/12-Office-of-Supply-Management](http://www.gdoe.net/District/Department/12-Office-of-Supply-Management). Deadline for submission of all proposals is 3:00 p.m. Chamorro Standard Time (CHST), Wednesday, September 11, 2024. A non-refundable fee of \$10.00 (cash only) is required upon hard copy pick-up.

## Section 2 - PROJECT DESCRIPTION

### 2.1. PROJECT TITLE

#### GDOE RFP 018-2024 HIGH RISK CONSULTANT

### 2.2. PURPOSE

The Guam Department of Education would like to procure the services of a High Risk Consultant to:

- assist GDOE with developing strategies to amend / remove the specific conditions imposed on grants awarded by the U.S. Department of Education (ED), and eventually remove the high-risk grantee status
- assist GDOE in negotiating with ED regarding amendment / removal of specific conditions imposed on grants awarded by ED, and eventually remove the high-risk grantee status
- provide GDOE with guidance relative to compliance with applicable Federal law and regulations and readiness for ED's assessments.
- assist GDOE in completing the REP and preparing for ED's assessment(s)
- assist GDOE in its response to the ED assessment(s)

#### Entity Background

GDOE is responsible for making public education available to approximately 26,000 students on Guam. The Chief Executive Officer of GDOE is the Superintendent of Education, appointed by the Guam Education Board (GEB) pursuant to Guam Code Annotated Title 17 Chapter 3 Section 3102.1. Among his duties, the Superintendent prepares and submits an annual budget to the GEB for consideration and approval; hires and assigns employees; enters into contracts on behalf of the department; and reports to the GEB, Governor, and Legislature annually on the state of public education on Guam.

The GDOE is a single unified school district with jurisdiction over twenty-six (26) elementary schools, eight (8) middle schools, six (6) high schools, and one (1) alternative school. The GDOE also administers Head Start, Pre-Kindergarten GATE (Gifted and Talented Education), and Pre-Kindergarten classes at certain elementary schools. Total federal grant monies received annually is approximately \$75 million, of which \$55 million is from ED.

GDOE currently receives the following ED grants:

Federal Program	FY23 Award
Consolidated Grant to the Outlying Area	\$ 35.8 million
Special Education – Part B – Individual with Disabilities Education Act (IDEA)	\$ 17.2 million
Special Education – Part C – Infants & Toddlers	\$ 1.7 million
Comprehensive Literacy State Development	\$ 324 thousand
Project ETASLDA (GOSDV)	\$ 713 thousand
Project Hita Para Mona	\$ 250 thousand

#### *High-Risk Status*

In September 2003, GDOE was designated a high-risk grantee under Title 34 of the Code of Federal Regulations § 80.12 and became subject to specific (then "special") conditions for all Federal education programs it administered. ED determined that GDOE lacked fiscal and programmatic accountability in the administration of Federal education programs. Special conditions for Federal Fiscal Year (FFY) 2007 required the GDOE to develop and implement a Comprehensive Corrective Action Plan (CCAP) to address the lack of progress to the identified noncompliance. In November 2009, ED determined that GDOE failed to make significant progress with its CCAP, ED required the GDOE to procure the services of a Third-Party Fiduciary Agent (TPFA) to perform the financial management duties required under Federal regulations for all ED grant awards made to GDOE. In 2010, GDOE contracted with Alvarez and Marsal (A&M) for Third Party Fiduciary Oversight and Fund Management Services.

In May 2018, GDOE requested reconsideration of the specific conditions, including the requirement for a TPFA, which led to the creation of the Reconsideration Evaluation Plan (REP) in January 2019. The REP replaced the CCAP as the document against which GDOE's progress would be measured. As a result of significant progress, ED removed 18 of the 22 responsibilities and requirements for the TPFA in the FFY 2022 GDOE Specific Conditions. Additionally, ED added a new requirement for the TPFA to work with GDOE to

return all purchase order functions performed within GDOE's procurement process back to GDOE's control within the GDOE MUNIS Procurement Module.

In December 2022, ED sent a letter further acknowledging GDOE's progress in strengthening its internal controls. The letter stated that GDOE would begin, when it indicated readiness to do so, a probationary period of six months during which time GDOE would demonstrate readiness to transition fiscal management functions from the TPFA back to GDOE. Prior to the probationary period starting, GDOE was required to submit a detailed transition plan proposing how GDOE would demonstrate its readiness and ability to assume full responsibility for financial management of its ED grants. The probationary period would begin once ED reviewed and approved GDOE's Transition Plan.

In March 2023, GDOE submitted its six-month Transition Plan to define the roles and responsibilities that would be assumed by GDOE during the probationary period. The roles and responsibilities were related to five areas: (1) employee time tracking, (2) financial management information systems, (3) internal controls, (4) procurement, and (5) property management. The plan described how GDOE would, during the probationary period, gradually assume all fiduciary responsibilities, with the TPFA in a reduced oversight and advisory role.

In September 2023, a senior official from ED's Grant Risk Management Services Division (GRMSD) visited Guam to assess GDOE's progress during its six-month probationary period. The purpose of the visit was to determine the degree to which GDOE was able to demonstrate its readiness to permanently transition from the requirement of a TPFA oversight and management of ED funds. GDOE was able to demonstrate that it no longer relied on the TPFA to implement its Federal education grants in compliance with Federal rules. ED determined that GDOE had demonstrated it is capable of performing the financial management responsibilities in the areas that had been performed by the TPFA. In October 2023, ED issued its report based on the on-site visit and officially communicated the removal of the requirement for a TPFA from the FY 2023 GDOE specific conditions. GDOE's high-risk designation remains in place.

In June 2024, ED issued the FFY 2024 specific conditions. The remaining specific conditions describe GDOE's responsibility to continue to make progress as it manages all fiscal oversight responsibilities for ED grant funds that were previously performed by the TPFA. Moving forward, ED will consider whether the high-risk designation should be removed based on evidence of GDOE's successful management of ED grant funds.

The specific conditions letters can be found on the GDOE website, <https://www.gdoe.net/> at the GDOE Internal Audit Office webpage <https://gdoeiao.weebly.com/> under High Risk Status.

Financial and Single Audits

Since FY 2013, GDOE has received unmodified opinions in both its Financial and Single audits. GDOE Financial Audits can be found at the GDOE IAO website, <https://gdoeiao.weebly.com/financial-and-single-audit-reports.html>.

**2.3. PERSON'S RESPONSIBLE FOR DRAFTING SPECIFICATIONS**

Leana Willes, Auditor



## Section 3 - GENERAL INSTRUCTIONS AND GENERAL INFORMATION

### 3.1. GENERAL INSTRUCTIONS

Proposal submissions that do not comply with the instructions contained in this section and throughout this RFP may, at the discretion of GDOE, be deemed nonresponsive and disqualified from consideration for award.

#### 3.1.1. COMMUNICATION REGARDING THE RFP

ANY CORRESPONDENCE OR COMMUNICATION BY A POTENTIAL OFFEROR WITH GDOE MUST BE MADE IN WRITING VIA EMAIL ADDRESSED TO ANTHONY E. QUINATA, BUYER SUPERVISOR II AT [aequinata@gdoe.net](mailto:aequinata@gdoe.net) OR BY HAND DELIVERY AT THE GDOE SUPPLY MANAGEMENT OFFICE. ALL WRITTEN COMMUNICATIONS MUST REFERENCE RFP 018-2024 IN THE SUBJECT OR REFERENCE LINE.

#### 3.1.2. ACCEPTABLE FORMAT OF PROPOSALS

It is GDOE's intention to select an Offeror who is best qualified to provide the services being procured through this solicitation. *Offerors submitting proposals in response to this RFP must do so in writing.*

Each Proposal Package will consist of the Offeror's sealed Technical Proposal and the Offeror's sealed Cost Proposal as described in **Section 3.1.3 – PROPOSAL PACKAGE REQUIREMENTS**.

The Proposal Package should be submitted in clearly marked and sealed envelopes or boxes and delivered **CONCURRENTLY** to the address listed in **Section 3.1.4 – TIME AND DATE FOR RECEIPT OF PROPOSALS**.

The Proposal Package should be plainly marked as follows:

<p>The Guam Department of Education Request for Proposal No. <b>018-2024</b></p> <p>Offeror's Name: _____</p> <p>Offeror's Address: _____</p> <p>Submittal Date: ____ / ____ / ____</p> <p>Submittal Time: ____:____ a.m./p.m.</p> <p>Attention: <b>ANTHONY E. QUINATA</b> <b>BUYER SUPERVISOR II</b></p>
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#### 3.1.3. PROPOSAL PACKAGE REQUIREMENTS

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

##### 3.1.3.1. TECHNICAL PROPOSAL SUBMITTAL

The Technical Proposal should be submitted in a sealed envelope or box that is clearly marked "Technical Proposal" and must include **one (1) original** with all the required forms listed on **Section 5 - FORMS REQUIRED IN RESPONSE TO RFP** complete with original signatures and notarizations where necessary, **five (5) copies**, and **two (2) electronic copies** (CD or USB flash drive) containing the complete technical submittal.

The Technical Proposal should contain a thorough description of the Offeror's business and relevant activities and salient descriptions of the products and services being offered in response to this RFP. At a minimum, the Technical Proposal should demonstrate that the products and services meet the specifications contained in the following areas:

- The name of the offeror, the location of the offeror's principal place of business and, if different, the place of performance of the proposed contract;
- The age of the offeror's business and average number of employees over a previous period of time, as specified in the Request for Proposals;

- c. The abilities, qualifications, experience and the role of all key person(s) that would be assigned to perform the services contained in this RFP;
- d. A list of other contracts under which services similar in scope, size, or discipline to the required services were performed or undertaken within a period of time, as specified in this RFP;
- e. A detailed plan for performance of the services required by this RFP.

#### **3.1.3.2. COST PROPOSAL SUBMITTAL**

The Cost Proposal should be submitted in a separate sealed envelope or box that is clearly marked "Cost Proposal" and includes **one (1) original, five (5) copies and two (2) electronic copies** (CD or USB flash drive) of the cost or pricing data. At a minimum, the proposed cost or pricing data should include the schedule of proposed hourly rates and estimated expense costs for each consultant or employee proposed to work on this project, and the line item costs for each product necessary for this multi-year contract.

Except to the extent price adjustments may be allowable as provided in the sample agreement in **ATTACHMENT A**, all products and services being proposed should remain the same throughout the contract.

#### **3.1.4. TIME AND DATE FOR RECEIPT OF PROPOSALS**

Proposals must be received by GDOE no later than:

TIME: **3:00 p.m.** Chamorro Standard Time (CHST)

DATE: **Wednesday, September 11, 2024**

The GDOE Supply Management Office 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 IT IS INDICATED IN THE SUPPLY MANAGEMENT OFFICE, will not be considered for award.

If delivered via hand delivery, United States Postal Service, Federal Express, DHL, or other courier service, proposals must be delivered to the following mailing/physical address:

MAILING/PHYSICAL ADDRESS: Guam Department of Education, Supply Management Office  
Re: RFP No. 018-2024  
501 MARINER AVENUE, SUITE 116  
BARRIGADA, GUAM 96913-1608

Due to the current COVID-19 pandemic, proper safety protocols must be adhered to. If the proposal submission will be hand-delivered, please anticipate delays upon entering the building. A mask will be required.

#### **3.1.5. RECEIPT AND OPENING OF PROPOSALS**

Proposals sent via fax or email will not be considered. Proposals shall be hand delivered or mailed at the address specified on **Section 3.1.4 – TIME AND DATE FOR RECEIPT OF PROPOSALS**. Proposals delivered through mail and received after the submission date and time will not be considered for award. **Proposals will not be opened publicly.**

#### **3.1.6. PROPOSAL VALIDITY**

Submitted proposals must remain valid for at least ninety (90) days after the deadline for submission. Once awarded, prices shall remain firm throughout the term of this contract and all renewals thereafter.

#### **3.1.7. ALTERNATE OR MULTIPLE PROPOSALS NOT ACCEPTED**

Alternate or multiple proposals will not be accepted. Any Offeror submitting alternate, multiple, or otherwise altered proposals will be deemed nonresponsive and disqualified from this solicitation.

#### **3.1.8. LATE PROPOSALS NOT ACCEPTED**

Proposals received after the time and date specified in **Section 3.1.4 – TIME AND DATE FOR RECEIPT OF PROPOSALS** will be considered nonresponsive and disqualified from consideration for award.

### 3.1.9. TRADE SECRETS AND OTHER PROPRIETARY DATA

Offeror must complete and submit GDOE Procurement Form 004 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 listed on GDOE Procurement Form 004 and also **clearly marked and separable** from the remainder of the proposal.

### 3.1.10. ACKNOWLEDGEMENT OF AMENDMENTS TO RFP

This RFP may not be modified unless done by an Amendment made in writing by the GDOE Supply Management Administrator. 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 email or fax to GDOE. Signed Acknowledgment Forms for every amendment must also be included with the technical proposal. **Offerors who fail to properly submit Amendment Acknowledgment Forms may be deemed nonresponsive and disqualified from participating in this solicitation.** Other than fax and email, Amendments and Clarifications may be downloaded or accessed through the GDOE website at [www.gdoe.net/District/Department/12-Office-of-Supply-Management](http://www.gdoe.net/District/Department/12-Office-of-Supply-Management). Prospective Offerors are solely responsible for checking the website on a daily basis.

### 3.1.11. PRE-PROPOSAL CONFERENCE

GDOE may, at its discretion, conduct a pre-proposal conference in accordance with 2 GAR Div 4 §3114(g). In the event a pre-proposal conference is scheduled, GDOE will announce the time and place of the conference to all prospective offerors known to have received an RFP.

Any potential Offeror may submit a request for a pre-proposal conference in writing to the attention of **ANTHONY E. QUINATA, BUYER SUPERVISOR II** no later than:

TIME: **3:00 p.m.** Chamorro Standard Time (CHST)

DATE: **Thursday, August 29, 2024**

In the event that GDOE determines to hold a pre-proposal conference, all potential Offerors, that is all Offerors who have requested and received an RFP packet from GDOE, will be informed of the date, time, location and requirements of the pre-proposal conference. A summary or minutes of a pre-proposal conference will be made available to all potential offerors.

At any pre-proposal conference or site visit, GDOE may provide verbal answers to verbal questions from potential Offerors. **AT NO TIME SHALL A VERBAL ANSWER BE CONSIDERED AN OFFICIAL GDOE RESPONSE.** All questions must be submitted in accordance with **Section 3.1.12 – PRE-PROPOSAL WRITTEN QUESTIONS**. Only written answers may be relied upon.

### 3.1.12. 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 3.1.1 – COMMUNICATION REGARDING THE RFP**. All questions and responses will be made available in writing to every potential Offeror. Questions submitted after the time and date below will not be considered or answered.

Questions regarding this RFP must be received in writing by GDOE no later than:

TIME: **3:00 p.m.** Chamorro Standard Time (CHST)

DATE: **Tuesday, September 03, 2024**

### 3.1.13. EXPLANATION TO OFFERORS

No oral explanation in regards to the meaning of the specification will be made and no oral instructions will be given before the award of the proposal. Discrepancies, omissions, or doubts as to the meaning of the specifications should be communicated in writing to the named contact individual of GDOE for interpretation before the deadline for written questions specified in **Section 3.1.12 – PRE-PROPOSAL WRITTEN QUESTIONS**. Offerors should act promptly and allow sufficient time for a reply to reach them before submission of their proposals. Interpretation, if required, shall be made in the form of an amendment to the RFP, which will be forwarded to all prospective Offerors.



### **3.2. GENERAL INFORMATION**

#### **3.2.1. EVALUATION FACTORS**

The following factors and their relative importance will be used in evaluating the Proposals:

##### **25 Points Maximum**

- a. **Detailed Plan.** The plan for performing the required services.

##### **35 Points Maximum**

- b. **Firm Capacity and Ability.** Ability to perform the services and the qualifications and abilities of personnel proposed to be assigned to perform the services.

##### **25 Points Maximum**

- c. **Adequacy of Firm Resources.** The personnel, equipment, and facilities to perform the services currently available or demonstrated to be made available at the time of contracting.

##### **15 Points Maximum**

- d. **Past Performance.** Record of past performance of similar work.

##### **100 points (Total Maximum)**

#### **3.2.2. DISCUSSIONS**

The evaluation committee may conduct discussions with any Offeror to: (1) determine in greater detail such Offeror's qualifications and (2) explore with the Offeror the scope and nature of the required services, its proposed method of performance, and the relative utility of alternative methods of approach. Discussions shall not disclose any information derived from proposals submitted by other Offerors, and the Guam Department of Education shall not disclose any information contained in any proposals until after award of the proposed contract has been made. The proposal of the Offeror awarded the contract shall be open for public inspection except as otherwise provided in the contract.

#### **3.2.3. MODIFICATION OR WITHDRAWAL OF PROPOSALS**

Prior to the conclusion of discussions for this RFP, proposals may be modified or withdrawn.

#### **3.2.4. SELECTION OF BEST QUALIFIED OFFEROR AND PROPOSAL**

The Evaluation Committee shall consist of no less than three (3) evaluators and no more than five (5).

After receipt of all proposals, the established Evaluation Committee will conduct an independent evaluation of all proposals received under this solicitation. Each proposal shall be evaluated according to the criteria stipulated in **Section 3.2.1 – EVALUATION FACTORS** and shall be ranked accordingly. The proposals will be ranked based on the sum of the total number of points given by each evaluation committee member. Offerors may be interviewed by the Evaluation Committee to clarify certain items from the submitted proposal.

The best qualified Offeror will be asked to participate in negotiations to discuss technical and price factors to ensure a mutual understanding of both GDOE's requirements and the Offerors' proposals, unless GDOE determines that there is no need to hold negotiations and the award is made based on the initial proposal received.

GDOE reserves the right to waive any minor informality or irregularity in proposals received.

#### **3.2.5. FAILURE TO NEGOTIATE CONTRACT WITH OFFEROR INITIALLY SELECTED AS BEST QUALIFIED**

In the event that GDOE is unable to negotiate a contract with the best qualified Offeror, negotiations may be continued with the next qualified Offeror in accordance with 2 GAR Div. 4 §3114(I).

#### **3.2.6. DETERMINATION OF RESPONSIBILITY**

Responsibility of an Offeror will be determined in accordance with 2 GAR Div. 4 §3116. Offerors should be prepared to promptly provide to GDOE 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 GDOE for information relating to responsibility may result in a determination that an Offeror is not responsible and therefore disqualified from an award.

Pursuant to 5 GCA §5201(g), responsiveness of an Offeror will be determined by compliance with the requirements of this RFP.

### **3.2.7. NOTICE OF AWARD**

Notice of Award shall constitute the official award of this RFP. Written notice of award will be public information and made a part of the procurement file.

A sample agreement is included in this RFP as **ATTACHMENT A**. GDOE reserves the right to alter the sample agreement as allowed by applicable law or regulation.

### **3.2.8. CONTRACT PROVISIONS**

GDOE reserves the right to include any part or parts of the Offeror's proposal in the final contract with the Offeror. Offeror will be subject to conditions and terms imposed by GDOE.

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

### **3.2.9. CONTRACT TERM**

The Contract resulting from this RFP shall be for one (1) year with the option to renew for one (1) additional one-year period, subject to the availability of funds and subject to the terms of this RFP and to the terms of the contract agreement.

In the event of contract cancellation due to unavailability of funds, Offeror will be reimbursed for unamortized, reasonably incurred, non-recurring costs. If contract is cancelled for lack of funds, Government will timely inform Contractor; but that neither party's rights under termination clause are affected.

### **3.2.10. OPTION TO RENEW**

GDOE reserves the right to exercise its option to renew as specified in **Section 3.2.9 – CONTRACT TERM** upon notification and mutual agreement/consent of both parties, and is subject to the availability of funds.

### **3.2.11. SPECIAL PERMITS AND LICENSES**

The Offeror shall, at its own expense, procure all permits, certificates, and licenses and give all notices and necessary reports required by law for this RFP. Failure to maintain required licenses or permits shall be grounds for immediate termination of the contract.

### **3.2.12. CONTRACT TYPE**

A Firm Fixed Price Professional Services agreement will be consummated between the most responsible Offeror and GDOE.

### **3.2.13. FUNDING SOURCE**

This project is 100% locally funded.

### **3.2.14. DELIVERY AND PERFORMANCE SCHEDULE**

The Offeror who is awarded the solicitation guarantees that the service will be completed within the agreed upon completion date.

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

### **3.2.15. 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.

Satisfactory completion shall be determined according to the terms specified in a contract executed pursuant to this RFP.

### **3.2.16. INSPECTION AND ACCEPTANCE OF GOODS**

Offerors submitting proposals in response to this RFP should be aware that GDOE will inspect and test all goods, supplies, materials or equipment delivered in response to this RFP. GDOE reserves the right to reject and, at its discretion, require replacement of those items that are determined to be defective in material, construction, workmanship, manufacturing, or performance and/or that do not conform to the specifications described in this RFP.

### **3.2.17. VENDOR PERFORMANCE**

Offeror who is awarded this solicitation, may, at the discretion of GDOE, be monitored and assessed based on their performance. Vendor performance will be reviewed before, during, and after the supplies or services have been delivered or performed.

The GDOE Supply Management Administrator or his/her designee may meet periodically with the selected Offeror for the purpose of reviewing progress and providing necessary guidance to the Offeror in solving issues.

### **3.2.18. JUSTIFICATION OF DELAY**

If the Offeror cannot comply with the completion requirement agreed upon, it is the Offeror's responsibility to advise GDOE in writing explaining the cause and reasons of the delay. GDOE may make a reasonable extension of time.

### **3.2.19. LIQUIDATED DAMAGES**

When the Contractor is given notice of delay or nonperformance as specified in 2GAR Div 4 § 6101(d) of the Termination for Default Clause of this RFP 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 vendor is terminated for default, or until the vendor provides the supplies or services if the vendor is not terminated for default. To the extent that the vendor's delay or nonperformance is excused under 2GAR Div 4 § 6101(d) (Excuse for Nonperformance or Delayed Performance) of the Termination for Default Clause of this RFP, liquidated damages shall not be due the territory. The Contractor remains liable for damages caused other than delay.

### **3.2.20. PHYSICAL LIABILITY**

If it becomes necessary for the Vendor, either as principal, agent or employee, to enter upon the premises or property of Guam Department of Education in order to construct, erect, inspect, make delivery or remove property hereunder, the Vendor hereby covenants and agrees to take, use, provide and make all proper, necessary and sufficient precautions, safeguards and protections against the occurrence of any accidents, injuries or damages to any person or property during the progress of work herein covered, and to be responsible for, and to indemnify and save harmless the Guam Department of Education from the payment of all sums of money by reason of all or any such accidents, injuries or damages that may occur upon or about such work, and fines, penalties and loss incurred for or by reasons of the violations of any territorial ordinance, regulations, or the laws of Guam or the United States, while the work is in progress. Contractor will carry insurance to indemnify the Guam Department of Education against any claim for loss, damage or injury to property or persons arising out of the performance of the Contractor or his employees and agents of the services covered by the contract and the use, misuse or failure of any equipment used by the contractor or his employees or agents, and shall provide certificates of such insurance to the Guam Department of Education when required.

### **3.2.21. TAXES**

All Offerors are responsible for any taxes or fees that may be assessed or due for performance of work or delivery of services pursuant to this RFP. Specific information regarding Guam taxes may be obtained from the Guam Department of Revenue and Taxation.

### **3.2.22. AUTHORITY TO ISSUE THIS RFP**

This solicitation is issued subject to the Guam Procurement Act (5GCA Chapter 5) and applicable Guam Procurement Regulations.

### **3.2.23. COSTS OF PROPOSAL PREPARATION**

All costs associated with preparation of a proposal in response to this RFP shall be solely the Offeror's responsibility. GDOE shall not be liable for any costs incurred by a potential Offeror in connection with this RFP. By submitting a proposal, the Offeror specifically waives the right against GDOE for any expenses incurred in proposal preparation. Submitted proposals become the property of GDOE. Offeror's request for the return of specific proprietary material may be honored.

#### **3.2.24. CANCELLATION OF CONTRACT**

Pursuant to 2 GAR Div 4 §3121(e)(1)(G), in the event of a cancellation due to unavailability of funds, GDOE will notify the Contractor on a timely basis, and Contractor will be reimbursed the unamortized, reasonably incurred, nonrecurring costs. If contract is cancelled for lack of funds, Government will timely inform Contractor; but that neither party's rights under termination clause are affected.

## Section 4 - TERMS AND CONDITIONS

### 4.1. REFERENCE TO LAW AND REGULATIONS

Proposals submitted in response to this RFP must fulfill the requirements 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 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.

### 4.2. LIST OF FORMS REQUIRED FOR ALL SOLICITATIONS

All Offerors must complete and submit originals of the forms identified throughout this RFP and collectively listed in **Section 5 - FORMS REQUIRED IN RESPONSE TO RFP.**

### 4.3. LAWS TO BE OBSERVED

The Offeror should be familiar with federal and local laws, codes, ordinances, and regulations, which, in any manner, affect those engaged or employed in the work, or the material or equipment, used in or upon the site, or in any way affect the conduct of the work. No misunderstanding or ignorance on the part of the Offeror will, in any way, serve to modify the provision of the contract.

### 4.4. 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 with the Proposal.***

### 4.5. OFFERORS CERTIFY THAT PRICE OR OFFER WAS INDEPENDENTLY ARRIVED AT WITHOUT COLLUSION

Offerors must certify that the submitted price or offer was independently arrived at without collusion in accordance with 2 GAR Div. 4 § 3126(b). ***AG Procurement Form 003 (Jul. 12, 2010) must be completed and included with the Technical Proposal.***

### 4.6. PROHIBITION AGAINST GRATUITIES AND KICKBACKS

Offerors must certify to the best of their knowledge that neither they, nor any of their officers, representatives, agents, subcontractors, or employees, have violated or are violating the prohibition against gratuities and kickbacks set forth in 5 GCA §5630.

Offerors must certify to the best of their knowledge that neither they, nor any of their 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 response to this RFP. 5 GCA § 5630(c); 2 GAR Div. 4 § 11107(3) and 11107(4)(e). ***AG Procurement Form 004 (Jul. 12, 2010) must be completed and included with the Technical Proposal.***

### 4.7. REPRESENTATION REGARDING ETHICAL STANDARDS

Offerors must affirm 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 with the Technical Proposal.***

### 4.8. REPRESENTATION REGARDING CONTINGENT FEES

Offerors must affirm 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 with the Technical Proposal.***

### 4.9. PROHIBITION AGAINST EMPLOYMENT OF SEX OFFENDERS

Any entity providing services pursuant to this RFP is prohibited from employing sex offenders to provide the goods or services procured through this RFP, in accordance with 5 GCA § 5253, which states:

**§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 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.

...

- (d) 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).

**GDOE Procurement Form 002 must be completed and included with the Technical Proposal.**

#### **4.10. WAGE AND BENEFIT DETERMINATION FOR SERVICES**

Offerors must pay employees providing services procured through this RFP in accordance with the Wage Determination for Guam and the Northern Mariana Islands issued and promulgated by U.S. Department of Labor for such labor as is employed in the direct delivery of contract deliverables to the government of Guam. 5 GCA § 5801 and § 5802, as applicable. A copy of the most recent wage determination is included herein. The Wage Determination for Guam and the Northern Mariana Islands also can be found on the U.S. Department of Labor's website: [www.beta.sam.gov](http://www.beta.sam.gov).

Offerors submitting proposals in response to this RFP must provide health and similar benefits for employees, such benefits having a minimum value as detailed in the Wage Determination issued and promulgated by U.S. Department of Labor and shall contain provisions guaranteeing a minimum of ten (10) paid holidays per annum per employee in accordance to 5 GCA §5802. **AG Procurement Form 006 (Feb. 16, 2010) must be completed and included with the Technical Proposal.**

#### **4.11. EQUAL EMPLOYMENT OPPORTUNITY**

Section 3.01 of the Executive Order 10935 dated March 7, 1965 requires the Offeror not to discriminate against any employee or applicant for employment because of race, creed, color or national origin. The Offeror will take affirmative action to ensure that employees are treated equally during employment without regard to their race, creed, color or national origin.

#### **4.12. MANDATORY DISPUTES CLAUSE**

In accordance with Guam procurement law, all controversies between the territory and the Contractor which arise under, or by virtue of, this contract and which are not resolved by mutual agreement, shall be decided by the GDOE procurement officer in writing, within 60 days after written request by the Contractor for a final decision concerning the controversy; provided however that if the procurement officer does not issue a written decision within 60 days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the Contractor may proceed as if an adverse decision had been received. The procurement officer shall immediately furnish a copy of the decision to the Contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. Any such decision shall be final and conclusive, unless fraudulent, or the Contractor brings an action seeking review of the decision before the Guam Office of Public Accountability. The Contractor shall comply with any decision of the procurement officer and proceed diligently with performance of this contract pending final resolution by the Office of Public Accountability or the Superior Court of Guam of any controversy arising under or by virtue of this contract, except where there has been a material breach of the contract by GDOE; provided, however, that in any event the Contractor shall proceed diligently with the performance of the contract where GDOE has made a written determination that continuation of work under the contract is essential to public health and safety.

Any disputes for expenses incurred in reliance upon this Agreement shall be subject to the Government Claims Act found at Title 5, Guam Code Annotated, Chapter 6.

#### **4.13. RIGHT OF GDOE TO CANCEL OR REJECT PROPOSALS**

GDOE reserves the right to cancel this RFP at any time when it is in the best interests of the Department, in accordance with 5 GCA §5225 and 2 GAR Div. 4 §3115(c).

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

GDOE may resolicit for proposals when it is deemed to be in the best interest of GDOE.

#### **4.14. BYRD ANTI-LOBBYING AMENDMENT**

In accordance with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), Contractor shall not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Contract grant or any other award covered by 31 U.S.C. 1352. See 2 CFR Part 200, Appendix II, Para. 1. Contractor agrees to abide by and comply with the Byrd Anti-Lobbying Amendment to the extent applicable by Federal law.

## Section 5 - FORMS REQUIRED IN RESPONSE TO RFP

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

	<u>Form Name</u>	<u>Form Title</u>
1.	GDOE Procurement Form 002	SPECIAL PROVISIONS – RESTRICTION AGAINST SEX OFFENDERS
2.	GDOE Procurement Form 004	REQUEST FOR PROPOSAL – DESIGNATION OF PROPRIETARY INFORMATION
3.	AG Procurement Form 002 (Rev. Nov. 17, 2021) <i>** Located under Section 6 Attachments **</i>	AFFIDAVIT DISCLOSING OWNERSHIP, INFLUENCE, COMMISSIONS, AND CONFLICTS OF INTEREST
4.	AG Procurement Form 003 (Jul. 12, 2010) <i>** Located under Section 6 Attachments **</i>	AFFIDAVIT re NON-COLLUSION
5.	AG Procurement Form 004 (Jul. 12, 2010) <i>** Located under Section 6 Attachments **</i>	AFFIDAVIT re NO GRATUITIES or KICKBACKS
6.	AG Procurement Form 005 (Jul. 12, 2010) <i>** Located under Section 6 Attachments **</i>	AFFIDAVIT re ETHICAL STANDARDS
7.	AG Procurement Form 006 (Feb. 16, 2010) <i>** Located under Section 6 Attachments **</i>	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) <i>** Located under Section 6 Attachments **</i>	AFFIDAVIT re CONTINGENT FEES
9.	Certification Form	CERTIFICATION REGARDING LOBBYING – REQUIRED FOR CONTRACTS OVER \$100,000.00





## SPECIAL PROVISIONS

**RE: GDOE RFP 018-2024  
HIGH RISK CONSULTANT**

**Restriction against Sex Offenders Employed by Service Providers to  
Government of Guam from working on Government Property**

\_\_\_\_\_(COMPANY NAME, hereafter the "Offeror") hereby warrants that if awarded a contract or purchase order pursuant to the RFP referenced above, it shall comply with the provisions of 5 GCA §5253, specifically 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 pursuant to the RFP while on government of Guam property, with the exception of public highways. If any employee is providing services on government property and is convicted subsequent to an award of a contract, then the Offeror warrants that it will notify the Guam Department of Education ("GDOE") 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 Offeror is found to be in violation of any of the provisions of this paragraph, then GDOE will give notice to the Offeror to take corrective action. The Offeror shall take corrective action within twenty-four (24) hours of notice from the Government, and shall notify the Government when action has been taken. If the Offeror fails to take corrective steps within twenty-four (24) hours of notice from GDOE, then GDOE in its sole discretion may temporarily suspend the contract or purchase order.

\_\_\_\_\_  
COMPANY NAME

\_\_\_\_\_  
NAME OF AUTHORIZED REPRESENTATIVE

\_\_\_\_\_  
SIGNATURE/DATE

DEPARTMENT OF EDUCATION  
OFFICE OF SUPPLY MANAGEMENT  
501 MARINER AVENUE, SUITE 116  
BARRIGADA, GUAM 96913  
Telephone: (671) 475-0438/Fax: (671) 472-5001



**REQUEST FOR PROPOSAL - PROPRIETARY DATA DESIGNATION FORM**

**HIGH RISK CONSULTANT**

**REQUEST FOR PROPOSAL (RFP): 018-2024**

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 Superintendent of the Department of Education (DOE) or his 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 is 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 **GDOE RFP No. 018-2024** be considered a trade secret or proprietary data and therefore exempt from public disclosure:

---

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

Signature \_\_\_\_\_

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

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

## Section 6 - ATTACHMENTS

Please see the following pages for attachments referenced in this RFP.

***(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK)***

## Acknowledgment of Compliance with Byrd Anti-Lobbying Amendment

In accordance with Appendix II to Title 2 of the Code of Federal Regulations, Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

### **APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING – REQUIRED FOR CONTRACTS OVER \$100,000** *Certification for Contracts, Grants, Loans, and Cooperative Agreements*

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

☐ No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

☐ If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

☐ The undersigned 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 subrecipients shall certify and disclose accordingly.

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

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

<b>GDOE Procurement Reference: RFP 018-2024</b>	
<b>Signature of Authorized Representative</b>	<b>Date</b>
<b>Printed Name and Title</b>	

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

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 Bidder/Offeror/Prospective Contractor and that (please check and fill out all that apply):

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

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

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

--

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

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

--

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

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

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

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

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

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

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

Name	Principal Place of Business Street Address	Amount of Compensation

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

Name	Principal Place of Business Street Address

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

Name	Principal Place of Business Street Address

///

///

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

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

---

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

Subscribed and sworn to before me

This \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

---

NOTARY PUBLIC

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



## AFFIDAVIT RE NON-COLLUSION

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

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

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

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

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

Signature of one of the following:

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

Subscribed and sworn to before me

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

**NOTARY PUBLIC**

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

## AFFIDAVIT RE GRATUITIES OR KICKBACKS

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

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

1. The name of the offering firm or individual is [state name of offeror company]  
\_\_\_\_\_. Affiant is \_\_\_\_\_ [state one  
of the following: the offeror, a partner of the offeror, an officer of the offeror] making the foregoing  
identified bid or proposal.

2. To the best of affiant's knowledge, neither affiant, nor any of the offeror's officers,  
representatives, agents, subcontractors, or employees have violated, are violating the prohibition against  
gratuities and kickbacks set forth in 2 GAR Division 4 § 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 \_\_\_\_\_, \_\_\_\_\_.

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

AG Procurement Form 005 (Jul. 12, 2010)

**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

"REGISTER OF WAGE DETERMINATIONS UNDER  
THE SERVICE CONTRACT ACT  
By direction of the Secretary of Labor

U.S. DEPARTMENT OF LABOR  
EMPLOYMENT STANDARDS ADMINISTRATION  
WAGE AND HOUR DIVISION  
WASHINGTON D.C. 20210

Daniel W. Simms                      Division of  
Director                      Wage Determinations

Wage Determination No.: 2015-5693  
Revision No.: 22  
Date Of Last Revision: 07/22/2024

Note: Contracts subject to the Service Contract Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026.

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	Executive Order 14026 generally applies to the contract. The contractor must pay all covered workers at least \$17.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2024.
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The applicable Executive Order minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the Executive Orders is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

States: Guam, Northern Marianas, Wake Island

Area: Guam Statewide  
Northern Marianas Statewide  
Wake Island Statewide

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

OCCUPATION CODE - TITLE	FOOTNOTE	RATE
01000 - Administrative Support And Clerical Occupations		
01011 - Accounting Clerk I		14.27***
01012 - Accounting Clerk II		16.02***
01013 - Accounting Clerk III		17.93
01020 - Administrative Assistant		21.97
01035 - Court Reporter		17.40
01041 - Customer Service Representative I		12.78***
01042 - Customer Service Representative II		14.23***
01043 - Customer Service Representative III		15.65***
01051 - Data Entry Operator I		12.16***
01052 - Data Entry Operator II		13.27***
01060 - Dispatcher, Motor Vehicle		17.39
01070 - Document Preparation Clerk		13.85***
01090 - Duplicating Machine Operator		13.85***
01111 - General Clerk I		11.33***
01112 - General Clerk II		12.36***
01113 - General Clerk III		13.88***
01120 - Housing Referral Assistant		19.39
01141 - Messenger Courier		11.37***
01191 - Order Clerk I		12.57***
01192 - Order Clerk II		13.71***
01261 - Personnel Assistant (Employment) I		15.95***

01262 - Personnel Assistant (Employment) II	17.85
01263 - Personnel Assistant (Employment) III	19.89
01270 - Production Control Clerk	22.97
01290 - Rental Clerk	11.10***
01300 - Scheduler, Maintenance	15.55***
01311 - Secretary I	15.55***
01312 - Secretary II	17.40
01313 - Secretary III	19.39
01320 - Service Order Dispatcher	15.40***
01410 - Supply Technician	21.97
01420 - Survey Worker	16.99***
01460 - Switchboard Operator/Receptionist	10.78***
01531 - Travel Clerk I	13.65***
01532 - Travel Clerk II	15.32***
01533 - Travel Clerk III	16.60***
01611 - Word Processor I	14.53***
01612 - Word Processor II	16.31***
01613 - Word Processor III	18.26
05000 - Automotive Service Occupations	
05005 - Automobile Body Repairer, Fiberglass	17.40
05010 - Automotive Electrician	16.34***
05040 - Automotive Glass Installer	15.28***
05070 - Automotive Worker	15.28***
05110 - Mobile Equipment Servicer	13.11***
05130 - Motor Equipment Metal Mechanic	17.40
05160 - Motor Equipment Metal Worker	15.28***
05190 - Motor Vehicle Mechanic	17.40
05220 - Motor Vehicle Mechanic Helper	12.00***
05250 - Motor Vehicle Upholstery Worker	14.22***
05280 - Motor Vehicle Wrecker	15.28***
05310 - Painter, Automotive	16.34***
05340 - Radiator Repair Specialist	15.28***
05370 - Tire Repairer	12.67***
05400 - Transmission Repair Specialist	17.40
07000 - Food Preparation And Service Occupations	
07010 - Baker	12.21***
07041 - Cook I	15.29***
07042 - Cook II	17.82
07070 - Dishwasher	10.00***
07130 - Food Service Worker	10.18***
07210 - Meat Cutter	13.34***
07260 - Waiter/Waitress	9.89***
09000 - Furniture Maintenance And Repair Occupations	
09010 - Electrostatic Spray Painter	19.70
09040 - Furniture Handler	11.94***
09080 - Furniture Refinisher	19.70
09090 - Furniture Refinisher Helper	14.47***
09110 - Furniture Repairer, Minor	17.15***
09130 - Upholsterer	19.70
11000 - General Services And Support Occupations	
11030 - Cleaner, Vehicles	10.12***
11060 - Elevator Operator	10.38***
11090 - Gardener	15.28***
11122 - Housekeeping Aide	10.38***
11150 - Janitor	10.38***
11210 - Laborer, Grounds Maintenance	11.55***
11240 - Maid or Houseman	10.24***
11260 - Pruner	10.34***
11270 - Tractor Operator	13.99***
11330 - Trail Maintenance Worker	11.55***
11360 - Window Cleaner	11.60***
12000 - Health Occupations	
12010 - Ambulance Driver	20.86
12011 - Breath Alcohol Technician	20.86

12012 - Certified Occupational Therapist Assistant	28.62
12015 - Certified Physical Therapist Assistant	28.62
12020 - Dental Assistant	18.79
12025 - Dental Hygienist	39.73
12030 - EKG Technician	31.60
12035 - Electroneurodiagnostic Technologist	31.60
12040 - Emergency Medical Technician	20.86
12071 - Licensed Practical Nurse I	18.65
12072 - Licensed Practical Nurse II	20.86
12073 - Licensed Practical Nurse III	23.25
12100 - Medical Assistant	14.50***
12130 - Medical Laboratory Technician	18.93
12160 - Medical Record Clerk	14.97***
12190 - Medical Record Technician	17.77
12195 - Medical Transcriptionist	18.65
12210 - Nuclear Medicine Technologist	45.85
12221 - Nursing Assistant I	12.43***
12222 - Nursing Assistant II	13.99***
12223 - Nursing Assistant III	15.26***
12224 - Nursing Assistant IV	17.12***
12235 - Optical Dispenser	20.86
12236 - Optical Technician	18.65
12250 - Pharmacy Technician	15.49***
12280 - Phlebotomist	18.65
12305 - Radiologic Technologist	31.60
12311 - Registered Nurse I	25.85
12312 - Registered Nurse II	31.60
12313 - Registered Nurse II, Specialist	31.60
12314 - Registered Nurse III	38.24
12315 - Registered Nurse III, Anesthetist	38.24
12316 - Registered Nurse IV	45.85
12317 - Scheduler (Drug and Alcohol Testing)	25.85
12320 - Substance Abuse Treatment Counselor	25.85
13000 - Information And Arts Occupations	
13011 - Exhibits Specialist I	21.42
13012 - Exhibits Specialist II	26.53
13013 - Exhibits Specialist III	32.45
13041 - Illustrator I	21.42
13042 - Illustrator II	26.53
13043 - Illustrator III	32.45
13047 - Librarian	29.38
13050 - Library Aide/Clerk	17.05***
13054 - Library Information Technology Systems Administrator	26.53
13058 - Library Technician	18.11
13061 - Media Specialist I	19.15
13062 - Media Specialist II	21.42
13063 - Media Specialist III	23.87
13071 - Photographer I	19.15
13072 - Photographer II	21.42
13073 - Photographer III	26.53
13074 - Photographer IV	32.45
13075 - Photographer V	39.27
13090 - Technical Order Library Clerk	21.42
13110 - Video Teleconference Technician	19.15
14000 - Information Technology Occupations	
14041 - Computer Operator I	15.71***
14042 - Computer Operator II	17.22
14043 - Computer Operator III	19.19
14044 - Computer Operator IV	21.33
14045 - Computer Operator V	23.62
14071 - Computer Programmer I (see 1)	15.73***
14072 - Computer Programmer II (see 1)	19.50
14073 - Computer Programmer III (see 1)	23.84

14074 - Computer Programmer IV	(see 1)	
14101 - Computer Systems Analyst I	(see 1)	24.23
14102 - Computer Systems Analyst II	(see 1)	
14103 - Computer Systems Analyst III	(see 1)	
14150 - Peripheral Equipment Operator		15.71***
14160 - Personal Computer Support Technician		21.33
14170 - System Support Specialist		21.24
15000 - Instructional Occupations		
15010 - Aircrew Training Devices Instructor (Non-Rated)		24.23
15020 - Aircrew Training Devices Instructor (Rated)		29.32
15030 - Air Crew Training Devices Instructor (Pilot)		34.91
15050 - Computer Based Training Specialist / Instructor		24.23
15060 - Educational Technologist		31.17
15070 - Flight Instructor (Pilot)		34.91
15080 - Graphic Artist		20.47
15085 - Maintenance Test Pilot, Fixed, Jet/Prop		34.91
15086 - Maintenance Test Pilot, Rotary Wing		34.91
15088 - Non-Maintenance Test/Co-Pilot		34.91
15090 - Technical Instructor		17.67
15095 - Technical Instructor/Course Developer		23.78
15110 - Test Proctor		15.70***
15120 - Tutor		15.70***
16000 - Laundry, Dry-Cleaning, Pressing And Related Occupations		
16010 - Assembler		11.38***
16030 - Counter Attendant		11.38***
16040 - Dry Cleaner		12.98***
16070 - Finisher, Flatwork, Machine		11.38***
16090 - Presser, Hand		11.38***
16110 - Presser, Machine, Drycleaning		11.38***
16130 - Presser, Machine, Shirts		11.38***
16160 - Presser, Machine, Wearing Apparel, Laundry		11.38***
16190 - Sewing Machine Operator		13.53***
16220 - Tailor		14.07***
16250 - Washer, Machine		11.91***
19000 - Machine Tool Operation And Repair Occupations		
19010 - Machine-Tool Operator (Tool Room)		19.70
19040 - Tool And Die Maker		24.77
21000 - Materials Handling And Packing Occupations		
21020 - Forklift Operator		15.36***
21030 - Material Coordinator		22.97
21040 - Material Expediter		22.97
21050 - Material Handling Laborer		13.83***
21071 - Order Filler		10.62***
21080 - Production Line Worker (Food Processing)		15.36***
21110 - Shipping Packer		17.12***
21130 - Shipping/Receiving Clerk		17.12***
21140 - Store Worker I		16.59***
21150 - Stock Clerk		23.33
21210 - Tools And Parts Attendant		15.36***
21410 - Warehouse Specialist		15.36***
23000 - Mechanics And Maintenance And Repair Occupations		
23010 - Aerospace Structural Welder		25.04
23019 - Aircraft Logs and Records Technician		19.47
23021 - Aircraft Mechanic I		23.84
23022 - Aircraft Mechanic II		25.04
23023 - Aircraft Mechanic III		26.30
23040 - Aircraft Mechanic Helper		16.58***
23050 - Aircraft, Painter		22.39
23060 - Aircraft Servicer		19.47
23070 - Aircraft Survival Flight Equipment Technician		22.39
23080 - Aircraft Worker		21.03
23091 - Aircrew Life Support Equipment (ALSE) Mechanic I		21.03
23092 - Aircrew Life Support Equipment (ALSE) Mechanic		23.84



II	
23110 - Appliance Mechanic	19.70
23120 - Bicycle Repairer	15.81***
23125 - Cable Splicer	24.19
23130 - Carpenter, Maintenance	17.58
23140 - Carpet Layer	18.43
23160 - Electrician, Maintenance	20.04
23181 - Electronics Technician Maintenance I	18.43
23182 - Electronics Technician Maintenance II	19.70
23183 - Electronics Technician Maintenance III	20.98
23260 - Fabric Worker	17.15***
23290 - Fire Alarm System Mechanic	16.77***
23310 - Fire Extinguisher Repairer	15.81***
23311 - Fuel Distribution System Mechanic	20.98
23312 - Fuel Distribution System Operator	15.81***
23370 - General Maintenance Worker	13.77***
23380 - Ground Support Equipment Mechanic	23.84
23381 - Ground Support Equipment Servicer	19.47
23382 - Ground Support Equipment Worker	21.03
23391 - Gunsmith I	15.81***
23392 - Gunsmith II	18.43
23393 - Gunsmith III	20.98
23410 - Heating, Ventilation And Air-Conditioning Mechanic	20.22
23411 - Heating, Ventilation And Air Contidioning Mechanic (Research Facility)	21.51
23430 - Heavy Equipment Mechanic	20.41
23440 - Heavy Equipment Operator	18.33
23460 - Instrument Mechanic	20.98
23465 - Laboratory/Shelter Mechanic	19.70
23470 - Laborer	13.83***
23510 - Locksmith	19.70
23530 - Machinery Maintenance Mechanic	25.08
23550 - Machinist, Maintenance	20.98
23580 - Maintenance Trades Helper	11.77***
23591 - Metrology Technician I	20.98
23592 - Metrology Technician II	22.31
23593 - Metrology Technician III	23.62
23640 - Millwright	20.98
23710 - Office Appliance Repairer	19.46
23760 - Painter, Maintenance	18.74
23790 - Pipefitter, Maintenance	19.96
23810 - Plumber, Maintenance	18.75
23820 - Pneudraulic Systems Mechanic	20.98
23850 - Rigger	20.98
23870 - Scale Mechanic	18.43
23890 - Sheet-Metal Worker, Maintenance	20.80
23910 - Small Engine Mechanic	18.43
23931 - Telecommunications Mechanic I	20.98
23932 - Telecommunications Mechanic II	22.31
23950 - Telephone Lineman	22.68
23960 - Welder, Combination, Maintenance	19.96
23965 - Well Driller	21.13
23970 - Woodcraft Worker	20.98
23980 - Woodworker	15.81***
24000 - Personal Needs Occupations	
24550 - Case Manager	16.09***
24570 - Child Care Attendant	10.22***
24580 - Child Care Center Clerk	13.25***
24610 - Chore Aide	14.06***
24620 - Family Readiness And Support Services Coordinator	16.09***
24630 - Homemaker	16.12***
25000 - Plant And System Operations Occupations	

25010 - Boiler Tender	22.79
25040 - Sewage Plant Operator	22.89
25070 - Stationary Engineer	22.79
25190 - Ventilation Equipment Tender	15.72***
25210 - Water Treatment Plant Operator	22.89
27000 - Protective Service Occupations	
27004 - Alarm Monitor	11.21***
27007 - Baggage Inspector	10.02***
27008 - Corrections Officer	14.59***
27010 - Court Security Officer	14.59***
27030 - Detection Dog Handler	11.21***
27040 - Detention Officer	14.59***
27070 - Firefighter	14.59***
27101 - Guard I	10.02***
27102 - Guard II	11.21***
27131 - Police Officer I	14.59***
27132 - Police Officer II	16.21***
28000 - Recreation Occupations	
28041 - Carnival Equipment Operator	13.44***
28042 - Carnival Equipment Repairer	14.68***
28043 - Carnival Worker	9.93***
28210 - Gate Attendant/Gate Tender	13.18***
28310 - Lifeguard	11.60***
28350 - Park Attendant (Aide)	14.74***
28510 - Recreation Aide/Health Facility Attendant	11.84***
28515 - Recreation Specialist	18.26
28630 - Sports Official	11.74***
28690 - Swimming Pool Operator	17.71
29000 - Stevedoring/Longshoremen Occupational Services	
29010 - Blocker And Bracer	26.02
29020 - Hatch Tender	26.02
29030 - Line Handler	26.02
29041 - Stevedore I	24.21
29042 - Stevedore II	27.82
30000 - Technical Occupations	
30010 - Air Traffic Control Specialist, Center (HFO) (see 2)	45.21
30011 - Air Traffic Control Specialist, Station (HFO) (see 2)	31.17
30012 - Air Traffic Control Specialist, Terminal (HFO) (see 2)	34.34
30021 - Archeological Technician I	18.41
30022 - Archeological Technician II	20.59
30023 - Archeological Technician III	25.51
30030 - Cartographic Technician	25.51
30040 - Civil Engineering Technician	25.51
30051 - Cryogenic Technician I	28.25
30052 - Cryogenic Technician II	31.21
30061 - Drafter/CAD Operator I	18.41
30062 - Drafter/CAD Operator II	20.59
30063 - Drafter/CAD Operator III	22.96
30064 - Drafter/CAD Operator IV	28.25
30081 - Engineering Technician I	17.32
30082 - Engineering Technician II	19.44
30083 - Engineering Technician III	21.74
30084 - Engineering Technician IV	26.94
30085 - Engineering Technician V	32.95
30086 - Engineering Technician VI	39.86
30090 - Environmental Technician	25.51
30095 - Evidence Control Specialist	25.51
30210 - Laboratory Technician	22.96
30221 - Latent Fingerprint Technician I	28.25
30222 - Latent Fingerprint Technician II	31.21
30240 - Mathematical Technician	25.51
30361 - Paralegal/Legal Assistant I	19.54
30362 - Paralegal/Legal Assistant II	24.21
30363 - Paralegal/Legal Assistant III	29.61

30364 - Paralegal/Legal Assistant IV	35.83
30375 - Petroleum Supply Specialist	31.21
30390 - Photo-Optics Technician	25.51
30395 - Radiation Control Technician	31.21
30461 - Technical Writer I	25.51
30462 - Technical Writer II	31.21
30463 - Technical Writer III	37.75
30491 - Unexploded Ordnance (UXO) Technician I	28.73
30492 - Unexploded Ordnance (UXO) Technician II	34.76
30493 - Unexploded Ordnance (UXO) Technician III	41.67
30494 - Unexploded (UXO) Safety Escort	28.73
30495 - Unexploded (UXO) Sweep Personnel	28.73
30501 - Weather Forecaster I	28.25
30502 - Weather Forecaster II	34.36
30620 - Weather Observer, Combined Upper Air Or Surface Programs	(see 2) 22.96
30621 - Weather Observer, Senior	(see 2) 25.51
31000 - Transportation/Mobile Equipment Operation Occupations	
31010 - Airplane Pilot	34.76
31020 - Bus Aide	8.97***
31030 - Bus Driver	12.75***
31043 - Driver Courier	10.26***
31260 - Parking and Lot Attendant	9.91***
31290 - Shuttle Bus Driver	11.65***
31310 - Taxi Driver	11.41***
31361 - Truckdriver, Light	11.21***
31362 - Truckdriver, Medium	12.16***
31363 - Truckdriver, Heavy	17.57
31364 - Truckdriver, Tractor-Trailer	17.57
99000 - Miscellaneous Occupations	
99020 - Cabin Safety Specialist	16.95***
99030 - Cashier	10.26***
99050 - Desk Clerk	10.01***
99095 - Embalmer	28.73
99130 - Flight Follower	28.73
99251 - Laboratory Animal Caretaker I	25.47
99252 - Laboratory Animal Caretaker II	27.83
99260 - Marketing Analyst	21.54
99310 - Mortician	28.73
99410 - Pest Controller	16.07***
99510 - Photofinishing Worker	15.10***
99710 - Recycling Laborer	17.32
99711 - Recycling Specialist	23.38
99730 - Refuse Collector	16.40***
99810 - Sales Clerk	10.63***
99820 - School Crossing Guard	18.82
99830 - Survey Party Chief	24.38
99831 - Surveying Aide	13.87***
99832 - Surveying Technician	18.02
99840 - Vending Machine Attendant	25.47
99841 - Vending Machine Repairer	32.44
99842 - Vending Machine Repairer Helper	25.47

\*\*\*Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.20 per hour). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to contracts or contract-like instruments entered into with the federal government in connection with seasonal recreational services or seasonal recreational equipment rental for the general public on federal lands. The minimum wage requirements of

Executive Order 14026 also are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

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ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

HEALTH & WELFARE: \$5.36 per hour, up to 40 hours per week, or \$214.40 per week or \$929.07 per month

HEALTH & WELFARE EO 13706: \$4.93 per hour, up to 40 hours per week, or \$197.20 per week, or \$854.53 per month\*

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

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

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

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

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

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

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

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

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

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

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

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

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

An 8 percent differential is applicable to employees employed in a position that represents a high degree of hazard when working with or in close proximity to ordnance, explosives, and incendiary materials. This includes work such as screening, blending, dying, mixing, and pressing of sensitive ordnance, explosives, and pyrotechnic compositions such as lead azide, black powder and photoflash powder.

All dry-house activities involving propellants or explosives. Demilitarization, modification, renovation, demolition, and maintenance operations on sensitive ordnance, explosives and incendiary materials. All operations involving re-grading and cleaning of artillery ranges.

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

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

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

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

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

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

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

**Conformance Process:**

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

The process for preparing a conformance request is as follows:

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

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

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

## 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 \_\_\_\_\_, \_\_\_\_\_.



**GDOE**

**RFP 018- 2024**

**High Risk Consultant**

**Sample Contract**

SAMPLE CONTRACT

(This is a sample document. [NAME] reserves the right to issue and execute a contract pursuant to this RFP and as allowed by law or regulations, and hereby reserves all other rights as stated in the RFP or otherwise applicable.)

**AGREEMENT BETWEEN GUAM DEPARTMENT OF EDUCATION  
AND [VENDOR]  
FOR SERVICES PURSUANT TO GDOE RFP 018-2024**

THIS AGREEMENT is entered into by and between the **GUAM DEPARTMENT OF EDUCATION** ("GDOE"), an agency of the government of Guam, whose address is 501 Mariner Avenue, Barrigada, Guam 96913, and **[VENDOR]** ("Contractor"), whose address is [REDACTED].

**WHEREAS**, GDOE issued a Request for Proposal ("RFP") GDOE **RFP 018-2024** for **High Risk Consultant** attached herewith as **Exhibit 1**;

**WHEREAS**, GDOE has 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 GDOE to have such services performed under contract;

**WHEREAS**, Contractor responded to the RFP by submitting a proposal ("Proposal") to provide services in accordance with the RFP, and was selected as the most qualified offeror;

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

**WHEREAS**, GDOE desires to retain Contractor for specific services on the terms and conditions set forth in this Agreement and Contractor has agreed to accept such terms and conditions;

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

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

A. Scope of Work. The Contractor shall provide professional consulting services for the GDOE, as described in the [REDACTED] **dated** [REDACTED] attached herein as **Exhibit 2**. Specified dates for performance of tasks may be amended by written agreement between GDOE and Contractor's authorized representative. Contractor shall provide status reports on the services performed as required under this Agreement or more frequently as requested by GDOE. Contractor recognizes that failure to perform any services required under this Agreement per the terms and conditions herein constitutes a material breach of this Agreement.

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

C. Other Work. GDOE acknowledges and agrees that Contractor may provide services to other clients, persons or companies apart from the services performed in this Agreement, as long as the performance of such other services does not in any way conflict with or hinder the performance of services herein. In the event GDOE discovers or determines that the Contractor is providing services 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 written notice by GDOE and GDOE may invoke any further available remedies under the terms of this Agreement.

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

## II. Term of Agreement.

A. This Agreement shall be effective upon its full execution by all necessary parties until [REDACTED]. It may thereafter be renewed for up to one (1) additional terms of one year upon written agreement between GDOE's Superintendent and Contractor's authorized representative. Such renewal shall be subject to the certification and availability of funds available for these services.

B. This Agreement will be cancelled if funds are not appropriated or otherwise made available to support continuation after this fiscal year. GDOE shall provide timely notice if funds are not available for continuation of contract beyond the fiscal year. In the event of cancellation due to unavailability of funds, Contractor will be reimbursed unamortized, reasonably incurred, non-recurring costs.

## III. Compensation.

A. Compensation. Compensation for Services: Contractor shall receive compensation from GDOE for Services as provided for in the [REDACTED] dated [REDACTED] attached herein as **Exhibit 2** to this Agreement and in an amount not to exceed [REDACTED] (\$ [REDACTED]). A Firm Fixed Price Professional Services agreement will be consummated between the most responsible Offeror and GDOE.

B. Expenses. Contractor shall be solely responsible for all expenses incurred in the performance of services under this Agreement unless otherwise expressly provided for herein.

C. No Compensation Prior to Approval of Agreement. GDOE shall not be liable to Contractor for any services performed by Contractor prior to full execution of this Agreement by all parties, and Contractor expressly waives any and all claims for services performed in expectation of this Agreement prior to its full execution.

D. Final Payment. Final payment shall be made upon satisfactory performance of all services required to be performed by Contractor under this Agreement. Prior to the final payment due Contractor, and as a condition precedent thereto, Contractor shall execute and deliver to GDOE a release in form approved by GDOE of claims against GDOE 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.*

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

#### IV. Early Termination.

A. By GDOE. GDOE reserves the right to cancel or terminate this Agreement prior to its completion for reasons including, but not limited to, the following:

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

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

(iii) Termination for Cause/Default. If the Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Procurement Officer may notify the Contractor in writing of the delay or non-performance and if not cured in ten days or any longer time specified in writing by the Procurement Officer, such officer may terminate the Contractor's right to proceed with the contract or such part of the

contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part the Procurement Officer may procure similar supplies or services in a manner and upon terms deemed appropriate by the Procurement Officer. The Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

Notwithstanding termination of the contract and subject to any directions from the Procurement Officer, the contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the contractor in which the territory has an interest.

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

Except with respect to defaults of subcontractors, the contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the contractor to make progress in the prosecution of the work hereunder which endangers such performance) if the contractor has notified the Procurement Officer 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 territory 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, the 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 the contractor to meet the contract requirements. Upon request of the contractor, the Procurement Officer 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, the contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the territory 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.)

If, after notice of termination of the contractor's right to proceed under the provisions of this clause, it is determined for any reason that the 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, if the contract contains a clause providing for termination for convenience of the territory, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the territory, the contract shall be adjusted to compensate for such

termination and the contract modified accordingly subject to the contractor's rights under Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations.

The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(iv) Termination for Convenience. The GDOE procurement officer may, when the interests of GDOE so require, terminate this contract in whole or in part, for the convenience of GDOE. The procurement officer shall give written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective. The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The procurement officer may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to GDOE. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as necessary to do so. The GDOE Procurement Officer may require the contractor to transfer title and deliver to the territory in the manner and to the extent directed by the GDOE Procurement Officer: any completed supplies; and such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. The contractor shall, upon direction of the GDOE Procurement Officer, protect and preserve property in the possession of the contractor in which the territory has an interest. If the GDOE Procurement Officer does not exercise this right, the contractor shall use best efforts to sell such supplies and manufacturing materials in accordance with the standards of Uniform Commercial Code of Guam, §2706 (U.S.C.G. §2706 is quoted at the end of this §6101(10)(d) Utilization of this Section in no way implies that the territory has breached the contract by exercise of the Termination for Convenience Clause.

The 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 §3118 (Cost or Pricing Data) of the Guam Procurement Regulations bearing on such claim. If the contractor fails to file a termination claim within one year from the effective date of termination, the Procurement Officer may pay the contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph. The Procurement Officer and the 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 §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 territory, the proceeds of any sales of supplies and manufacturing materials under Paragraph (3) of this clause, and the contract price of the work not terminated. Absent complete agreement under Subparagraph (b) of this Paragraph, the Procurement Officer shall pay the contractor the following amounts, provided payments agreed to under Subparagraph (b) shall not duplicate payments under this Subparagraph: (i) contract prices for supplies or services accepted under the contract; (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) less amounts paid or to be paid for accepted supplies or services; provided, however, that if it appears that the contractor would have sustained a loss if the entire contract 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 (2) of this clause. These costs must not include costs paid in accordance with Subparagraph (c) (ii) of this Paragraph; (iv) the reasonable settlement costs of the 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 contract 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 contract. The total sum to be paid the contractor under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph (b) of this Paragraph, and the contract price of work not terminated. Cost claimed, agreed to, or established under Subparagraph (b) and (c) of this Paragraph shall be in accordance with Chapter 7 (Cost Principles) of the Guam Procurement Regulations.” 14 GCA §2796 (UCC) states: “§2076. Seller's Resale Including Contract for Resale. (1) Under the conditions stated in §2703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with an incidental damages allowed under the provisions of this division (§2710), but less expenses saved in consequence of the buyer's breach. (2) Except as otherwise provided in Subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms, but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach. (3) Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell. (4) Where the resale is at public sale: (a) Only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and (b) It must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and (c) If the goods are not to be within the view of those attending the sale, the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and (d) The seller may buy. (5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section. (6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (§2707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (Subsection 3) of §2711).”

B. By Contractor. Termination for Cause: Contractor shall notify GDOE in writing of deficiencies or default in the performance of GDOE's duties under this Agreement. GDOE shall have twenty (20) days to correct the deficiency or cure the default, which period may be extended by Contractor (said extension not to be unreasonably denied). Upon 60 days' written notice of Contractor's termination of this Agreement for cause, the Contractor shall be entitled to payment, in accordance with Section III of this Agreement, for satisfactory services rendered up to the termination date and GDOE shall have no obligations to Contractor. The Contractor shall be obligated to continue performance of services, in accordance with this Agreement, until the termination date and shall have no further obligation to perform services after the termination date.

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

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

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

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

## VI. Confidentiality.

A. Information. The Contractor hereby warrants that it shall not disclose any documents, materials or information, whether verbal, written, electronic or digital media or otherwise (collectively, the "Information"), made available or acquired for the purpose of carrying out this Agreement. Only authorized persons shall use and have access to the Information, and then only for the period such access is required to perform services under this Agreement. All necessary steps shall be taken by the 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 GDOE. All of the Information shall be returned promptly after use to GDOE 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 discussions with a third party concerning such Information without the prior written consent of GDOE, and then only if the Contractor requires the third party(ies) to agree to the terms of the confidentiality set forth herein and the Information is provided to such third party(ies) only for purposes of enabling the Contractor to discharge its responsibilities under this Agreement.

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

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

## **VII. Conflicts of Interests/Ethics**

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

B. It is expressly understood that breach of any of the covenants or warranties in this Section on the part of the Contractor is a material breach of this Agreement and shall entitle GDOE to immediately terminate this Agreement. Contractor agrees that in the event of a breach or violation of this Section, GDOE shall have the right to terminate this or any other Agreement with the Contractor without liability.

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

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

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

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

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

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

TO GDOE:

**GUAM DEPARTMENT OF EDUCATION**  
Attention: ADMINISTRATOR  
Office of Supply Management  
501 Mariner Avenue  
Barrigada, Guam 96913

With a copy to GDOE's Legal Counsel of Record.

TO CONTRACTOR:

[VENDOR]  
\_\_\_\_\_  
\_\_\_\_\_

**XIII. Assignment/Subcontractors.** It is expressly acknowledged that Contractor is solely responsible for the fulfillment of its duties and obligations under this Agreement, regardless of whether or not Contractor utilizes one or more subcontractors for such purpose. 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 GDOE. 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.

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

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

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

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

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

**XIX. Compliance with Laws.**

A. In General. The Contractor shall comply with all U.S. and Guam laws, statutes, regulations and ordinances applicable to this Agreement. The Contractor represents and warrants that it is fully licensed to do business in Guam to render the services to be provided herein.

B. Non-Discrimination in Employment. The Contractor agrees: (i) not to unlawfully discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap; (ii) to include a provision similar to that contained in subsection (i) above in any subcontract or assignment agreement except a subcontract for standard commercial supplies or raw materials; and (iii) to post and to cause subcontractors and/or assignees to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause. Contractor shall comply with all conditions and requirements of Guam Law, including but not limited to Title 22 Chapter 5 Guam Employment Relations Act of the Guam Code Annotated (GCA).

C. Family and Educational Rights and Privacy Act. Contractor acknowledges that certain information about GDOE students may be considered Education Records and that this information must be confidential by reason of the Family and Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, and related regulations (collectively referred to as "FERPA"). Both parties agree to protect these records in accordance with FERPA and any relevant GDOE policy or standard operating procedure. Contractor represents, warrants, and agrees that it will: (1) hold the FERPA Records in strict confidence and will not use or disclose the FERPA Records except as (a) permitted or required by the Contract, (b) required by law, or (c) otherwise authorized by GDOE in writing; (2) safeguard the FERPA Records according to commercially reasonable administrative, physical and technical standards that are no less rigorous than the standards by which Contractor protects its own confidential information; and (3) continually monitor its operations and take any action necessary to assure that the FERPA Records are safeguarded in accordance with the terms of the Contract. Contractor agrees to provide GDOE with a written summary of the procedures Contractor uses to safeguard the FERPA Records.

Contractor will have procedures and solutions implemented to prevent unauthorized access, and the procedures will be documented and available for GDOE to review on request. Those employees allowed to send data and receive data to and from the Contractor must be identified and sign a non-disclosure agreement.

Accidental exposures of data covered by the Contract to unauthorized persons will result in the Contractor notifying GDOE within four (4) hours of discovery; failure to do so will be considered a material breach of the Contract. Notification to those whose data have been exposed will occur, at Contractor's sole expense, by GDOE.

Within thirty (30) days after the termination or expiration of the term of the Contract for any reason, Contractor shall either: (a) return or destroy, as applicable, all sensitive data, including any data protected under FERPA, provided to the Contractor by GDOE, including all sensitive data, including any data protected under FERPA, provided to Contractor's employees, subcontractors, agents, or other affiliated persons or entities; or (b) in the event that returning or destroying the sensitive data, including any data protected under FERPA, is not feasible, provide notification of the conditions that make return or destruction not feasible, in which case, the Contractor must continue to protect all sensitive data, including any data protected under FERPA, that it retains and agree to limit further uses and disclosures of such data to those purposes that make the return or destruction not feasible as Contractor maintains such sensitive data, including any data protected under FERPA.

Contractor's computer(s) must be protected by acceptable industry practices for antivirus, firewalls, and network and system intrusion detections systems, which may be periodically tested by GDOE personnel.

**XX. Retention and Access to Records and Other Review.** The Contractor, including subcontractors, if any, shall maintain all books, documents, papers, accounting records and other evidence pertaining to the services performed and costs incurred, and to make such materials available at its respective offices at all reasonable times during the Agreement period

and for six (6) years from the date of the final payment under the Agreement, for inspection by GDOE. GDOE agrees to comply with reasonable requests of Contractor to provide access to all documents and GDOE property reasonably necessary to the performance of Contractor's services under this Agreement. The conditions of this section shall be placed in any subcontract or assignment arising under this Agreement.

**XXI. Liability.**

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

**XXII. Delays, Extensions and Suspensions.** The Procurement Officer may, by written order to the contractor, at any time, and without notice to any surety, require the contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to the contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Procurement Officer shall either: (i) cancel the stop work order; or (ii) terminate the work covered by such order as provided in the "Termination for Default Clause" or the "Termination for Convenience Clause" of this contract.

**XXIII. Modifications including those Due to Public Welfare, Change in Law or Change in Marketing Conditions.** GDOE shall have the unilateral power to modify the Agreement at any time subject to the written agreement of Contractor. GDOE shall have the power to make changes in the Agreement and to impose new rules and regulations on the Contractor under the Agreement relative to the scope and methods of providing services as shall from time-to-time be necessary and desirable for the public welfare or due to a change in law. GDOE shall give the Contractor notice of any proposed change in the Agreement and an opportunity to be heard concerning those matters. The scope and method of providing services as referenced herein shall also be liberally construed to include, but is not limited to, the manner, procedures, operations and obligations, financial or otherwise, of the Contractor. In the event GDOE materially alters the obligations of the Contractor, or the benefits to GDOE, then the Agreement shall be amended consistent therewith. Should these amendments materially alter the obligations of the Contractor, then the Contractor or GDOE shall be entitled to an adjustment in the rates and charges established under the Agreement. Contractor shall be entitled to terminate

this Agreement rather than accept modified terms. Nothing contained in the Agreement shall require any party to perform any act or function contrary to law. GDOE and the Contractor agree to enter into good faith negotiations regarding modifications to the Agreement, which may be required in order to implement changes in the interest of the public welfare or due to changes in law. When such modifications are made to the Agreement, GDOE and the Contractor shall negotiate in good faith a reasonable and appropriate adjustment for any changes in services or other obligations required of the Contractor directly and demonstrably due to any modification in the Agreement under this clause.

#### **XXIV. Independent Contractor and its Employees.**

A. Status of Contractor. The Contractor and its officers, agents, servants, subcontractors and employees are independent contractors performing professional services for GDOE, and are not employees of GDOE. 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 GDOE 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 GDOE 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 GDOE for the Contractor.

B. 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, or any other payments required by the governments of the U.S. and Guam, if required. Contractor is responsible for paying when due any and all income taxes, gross receipts taxes, or any other taxes or assessments incurred as a result of the services performed by the Contractor and Contractor's employees or agents under this Agreement or the compensation paid to Contractor for services performed under this Agreement. Furthermore, Contractor shall maintain at the Contractor's expense all necessary insurance for its employees including but not limited to Worker's Compensation, Errors and Omissions, and liability insurance for each employee as required under U.S. and Guam Law and the mandates of the underlying RFP to this Agreement. Contractor agrees to hold harmless and indemnify GDOE, 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.

C. 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 assumes all liability for, and hereby indemnifies GDOE from, any violation of any applicable law, rule, or regulation relating to the payment of wages or benefits.

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.

**XXV. Disclosure.** The Contractor hereby represents that it has disclosed to GDOE all matters regarding Contractor which if not disclosed to GDOE would materially affect GDOE's decision to enter into this Agreement with Contractor.

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

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

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

**XXVII. Mandatory Representations by Contractor:**

A. Persons Convicted of Sex Offense. Contractor warrants that no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 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. If any employee of Contractor is providing services on government property and is convicted subsequent to an award of a contract, then Contractor warrants that it will notify GDOE of the conviction within twenty-four hours of the conviction, and will immediately remove such convicted person from providing services on government

property. If Contractor is found to be in violation of any of the provisions of this paragraph, then GDOE will give notice to Contractor to take corrective action. Contractor shall take corrective action within twenty-four (24) hours of notice from GDOE, and Contractor shall notify GDOE when action has been taken. If Contractor fails to take corrective steps within twenty-four (24) hours of notice from GDOE, then GDOE in its sole discretion may temporarily suspend this agreement.

B. Gratuities and Kickbacks. Contractor warrants it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth in 2 GAR Division 4 §11107.

C. Contingent Fees. Contractor warrants it has not retained a person to solicit or secure this 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.

D. Ethical Standards. Contractor warrants 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 of the Guam Procurement Act and in Chapter 11 of the Guam Procurement Regulations.

## **XXVIII. Disputes.**

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

D. This subsection applies to appeals of GDOE's decision on a dispute. For money owed by or to GDOE 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 GDOE or from the date when a decision should have been rendered. For all other claims by or against GDOE arising under this Agreement, the Office of the Public auditor has jurisdiction over the appeal



from the decision of GDOE. Appeals to the Office of the Public Auditor must be made within sixty days of GDOE'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 GDOE'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 GDOE. However, if GDOE 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 GDOE.

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

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

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

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

A. Changes To Work. By a written order, at any time, and without notice to surety, the Chief Procurement Officer or the head of a Purchasing Agency may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following: (A) Drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the territory in accordance therewith; (B) method of shipment or packing; (C) or place of delivery.

Adjustments of Price or Time for Performance. If any such change order increases or decreases the contractor's cost of, or the time required for performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract. Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding

with the contract as changed, provided that the territory promptly and duly make such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

**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 territory is prejudiced by the delay in notification.

**Claims 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 contract.

**Other Claims not Barred.** In the absence of such a change order, nothing in this clause shall be deemed to restrict the contractor's right to pursue a claim arising under the contract if pursued in accordance with the clause entitled, "Claims Based on a Procurement Officer's Actions or Omissions, Notice of Claim Clause", or for breach of contract."

**B. Extension of Time to Perform Services.** This Agreement may be modified to extend time for Contractor to perform services upon writing signed by GDOE and Contractor. A modification to extend time to perform services under this Agreement may only be made on the condition that such modification shall not increase the costs for services hereunder.

**XXXIII. Acceptance of Electronic Signatures.** 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.

**XXXIV. Federal Provisions.**

**A. Contract Work Hours & Safety Standards Act.** Contractor shall abide by the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708), as applicable to the Agreement and under Federal law. Under 40 U.S.C. 3702 of the Act, Contractor must compute wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Contractor shall abide by 40 U.S.C. 3704, as applicable, to the construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. See 40 U.S.C. Sect. 3701-3708; 29 CFR Part 5; 2 CFR Part 200, Appendix II, Para E.

B. Clean Air Act & the Federal Water Pollution Control Act. Contractor shall abide by and comply with the Clean Air Act & the Federal Water Pollution Control Act, to the extent applicable by Federal law. *See* 2 CFR Part 200, Appendix II, Para. G.

C. Byrd Anti-Lobbying Amendment. In accordance with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), Contractor shall not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Contract, grant or any other award covered by 31 U.S.C. 1352. *See* 2 CFR Part 200, Appendix II, Para. 1. Contractor agrees to abide by and comply with the Byrd Anti-Lobbying Amendment to the extent applicable by Federal law.

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