



REQUEST FOR PROPOSAL
for
INDEPENDENT AUDITING SERVICES
RFP No. PAG-018-003

Deadline for Submission: Friday, September 7, 2018, no later than 10:00 a.m.
Chamorro Standard Time (Guam Time)

Place of Submission: Jose D. Leon Guerrero Commercial Port of Guam /
Port Authority of Guam
Procurement Office
1026 Cabras Highway, Suite 201
Piti, Guam 96925



PORT OF GUAM
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Eddie Baza Calvo
Governor of Guam
Ray Tenorio
Lieutenant Governor

PUBLIC ANNOUNCEMENT

This Advertisement is paid with PAG Operational Funds by:
Jose D. Leon Guerrero Commercial Port of Guam

REQUEST FOR PROPOSAL No. PAG 018-003 **Independent Auditing Services**

The **Jose D. Leon Guerrero Commercial Port of Guam (PAG)**, a public corporation and an autonomous instrumentality of the Government of Guam is soliciting proposals from a nationally recognized U.S. Certified Public Accounting Firm for an audit (to include the Single Audit Act Provision) of its financial operations for FY 2018 through FY 2020, subject to the availability of funds and certification from fiscal year to fiscal year, and with an option to renew for one additional fiscal year. This Firm will provide a structure and provide recommendations of revisions that are consistent with the required audit reports, to include a report on the financial statements and reports on internal control and compliance.

A Pre-proposal conference is scheduled on August 22, 2018 at 10:00 a.m. Chamorro Standard Time (Guam Time) at the Commercial Port Board of Director's Conference Room. Request for Proposal (RFP) packages may be obtained at the PAG Procurement Office anytime from Monday through Friday, excluding holidays between 8:00 a.m. and 5:00 p.m. or from the Office of Public Accountability's website at www.opaguam.org. **Deadline for submission of all proposals is 10:00 a.m. Chamorro Standard Time (Guam Time), September 7, 2018.** All proposals must be submitted to the attention of: **JOANNE M.S. BROWN, General Manager.**

The PAG, with the written approval of the Public Auditor, reserves the right to reject any or all proposals, solicit new proposals, waive minor informalities or irregularities or award the Independent Auditor in whole or in part.

All questions regarding the proposal should be made in writing and directed to the General Manager at jbrown@portguam.com or Ms. Joy Jean Arceo, Acting Procurement and Supply Manager via facsimile at (671) 472-1439 or email at jrarceo@portguam.com. Except to the above persons named, direct or indirect contact with PAG Management or Staff, Board members, or any person participating in the selection process is prohibited.

/s/


JOANNE M. S. BROWN
General Manager

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I. INTRODUCTION

BACKGROUND

The Jose D. Leon Guerrero Commercial Port or Port Authority of Guam (PAG) was created by Public Law 13-87 as an autonomous agency of the Government of Guam to provide for the needs of ocean commerce, shipping, recreational and commercial boating and navigation of Guam.

For further information, related to audits of the Jose D. Leon Guerrero Commercial Port of Guam, please refer to PAG's issued financial statements and relevant reports published on the OPA's website at www.opaguam.org. For other information, please visit PAG's website at www.portguam.com.

RFP TIMETABLE:

RFP package for interested parties available at the PAG Procurement Office	August 15, 2018 between 8:00 a.m. to 5:00 p.m. Mon. thru Friday
Pre-Proposal conference (if requested by one or more interested parties)	PAG Board of Directors Conference Room
Deadline for Receipt of Written Questions	August 20, 2018
Deadline for Answers to Written Questions	August 24, 2018
Deadline for receipt of un-priced proposals and sealed cost proposals at the PAG Procurement Office	10:00 a.m. September 7, 2018

SERVICES REQUIRED:

PAG requires the services of a qualified nationally recognized U.S. Certified Public Accounting Firm with general knowledge, skill and experience in auditing books and accounts.

Solicitation for this RFP covers independent auditing services for fiscal years ending 2018, 2019, 2020, and with an option to renew for one additional fiscal year.

II. SUBMISSION AND EVALUATION OF PROPOSAL

1. DESCRIPTION OF WORK INVOLVED

The Scope of Services required is described in Part “III” of this Request for Proposal.

2. TYPE OF CONTRACT

The PAG intends to award a multi-term contract subject to negotiations. Contract will be formulated after negotiations have concluded. Such contract may be cancelled only if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal year succeeding the first. In the event of cancellation due to insufficient funds, the firm will be reimbursed unamortized, reasonably incurred, nonrecurring costs.

3. SUBMITTAL DATE

The required proposal (1 Original and 5 copies) must be submitted no later than **10:00 a.m. Chamorro Standard Time (Guam Time), Friday, September 7, 2018**. Any proposals submitted after the deadline will not be accepted.

4. PRE-PROPOSAL CONFERENCES

Pre-proposal conferences, as appropriate, may be conducted in accordance with 2 G.A.R. § 3109(h) (Pre-Bid Conferences). Such a conference may be held prior to the date established for submission of proposals and in accordance with regulation.

5. FORM OF SUBMITTAL

Any proposals submitted after the above deadline will not be accepted. Submitted proposals must remain valid for at least ninety (90) days. **In response to this RFP, both a sealed technical and a sealed price/fee proposal, containing the offerors’ cost and pricing data, must be submitted concurrently.** Each proposal must be in writing with 1 Original and 5 copies. The proposal must be submitted in a separate sealed envelope from the price proposal. The sealed envelope shall be marked plainly:

**Jose D. Leon Guerrero Commercial Port of Guam
Attention: Ms. Joanne M. S. Brown, General Manager
Request for Proposal No. PAG-018-002
Independent Audit Services for
Fiscal Years 2018, 2019, 2020
Proposal**

In a second separate sealed envelope, the proposer shall also submit a cost or pricing data to include the schedule of proposed hourly rates for the type or types of audit services and a total all-inclusive maximum price for each of the three fiscal years to be audited. A price proposal should also be submitted for the additional year of service should the PAG, with

the approval of the Public Auditor, decide to retain the services of the selected offeror. The sealed envelope shall be marked plainly:

**Jose D. Leon Guerrero Commercial Port of Guam
Attention: Ms. Joanne M. S. Brown, General Manager
Request for Proposal No. PAG-018-002
Independent Audit Services Fee
Fiscal Years 2018, 2019, 2020
Price Proposal**

The sealed envelopes containing the offeror's technical and price proposal shall also indicate the offeror's name, address, and contact information, as well as the date of proposal submission.

6. REPORT DUE DATES

The audits must be completed with preliminary financial statements and auditor reports submitted for review by PAG and OPA no later than December 31st of each year. Final reports shall be issued no later than January 31st of each fiscal year.

Note: The report date of the opinion should be no more than 60 days before the actual issuance of the report. For example, if the final report is to be issued January 31st, the report shall not be dated earlier than December 1st.

7. TRADE SECRETS AND PROPRIETARY DATA

Offerors may designate those portions of their proposal that contain trade secrets or proprietary data to be confidential. Designated portions must be explicitly marked "CONFIDENTIAL".

8. CONTENTS OF THE PROPOSAL

Proposals must be in writing and shall contain the following: At a minimum, the proposal shall contain:

- a. 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, a mailing address, telephone number(s), facsimile number, email address, date of the proposal, and the title and number of the RFP. A designated contact person, his or her title, address, telephone, facsimile number and email address should also be included;
- b. The age of the offeror's business and the average number of employees over the past year; and the size of the firm's governmental audit staff that would be assigned to perform the scope of services;
- c. Copy of business license, whether from Guam or any other United States location. A Guam business license is not required in order to submit a proposal, but is a pre-condition for award and entering into contract with PAG and OPA. In the event that an offeror is not licensed to do business on Guam and is selected for the award, the offeror must obtain all necessary Guam licenses within thirty (30) days of the

selection notification. Specific information on Guam licenses may be obtained from the Department of Revenue and Taxation;

- d. Copy of the most recent external Quality Control Peer Review report performed on the CPA firm, together with Management Letter Comments and any other communication relative to the Peer Review Report;
- e. Copy of the firm's Permit to Practice and a copy of the Permit to Practice as a Certified Public Accountant for the auditor authorized to sign the audit report, from Guam or any other United States jurisdiction. The Permits to Practice issued by the Guam Board of Accountancy is not required in order to submit a proposal, but is a pre-condition for award and entering into contract with PAG and OPA. In the event that an offeror does not have the Permit to Practice on Guam and is selected for the award, the offeror shall obtain all necessary Permits within thirty (30) days of the selection notification.
- f. A list of current contracts with Government of Guam entities and federally funded entities. If none, indicate none;
- g. The personnel, equipment, and facilities to perform the services currently available or demonstrated to be available at the time of contracting;
- h. The qualifications and experience of key persons who would be assigned to perform the required services;
- i. Continuing professional education for those individuals to be assigned to the audit for the last three calendar years, i.e., partner-in-charge, auditor-in-charge, and other auditors;
- j. A listing of other contracts under which services similar in scope, size, and discipline for the required services were performed or undertaken in the past five years;
- k. Plan for performing the required services, including a description of the firm's plan, capacity, and ability to timely submit the annual financial audits no later than January 30th, following the fiscal year end; earlier release is encouraged;
- l. A statement indicating the Firm's/Individual(s)'s understanding of the project's potential problems and/or any special concern(s) the vendor may have.
- m. A statement that the offeror has established and implemented an Affirmative Action Plan;
- n. Affirmation that the offeror is independent of the Government of Guam as defined in the generally accepted auditing standards and Government Auditing Standards;

- o. The individual(s) or firm shall provide information on the result of any federal or state desk reviews of its audit during the past five (5) years. In addition, the firms shall provide information on the circumstances and status of any disciplinary action taken or pending against the firm during the past five (5) years with the Guam Board of Accountancy or the Guam Society of CPAs; if no federal or state desk review or disciplinary action was conducted or taken, affirmation that there is none is required;
- p. Affidavits attached to this RFP notarized in the state or territory of the offeror's principal place of establishment;
- q. List of references identifying most recent clients and not to exceed five customers with contact name, title, complete address, phone number, email addresses, and facsimile number. Contact listed should be capable of providing an appropriate testimonial for the work performed, if requested by PAG and/or OPA.

9. 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 agency conducting the procurement 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 opened to public inspection except as otherwise provided in the contract.

10. EVALUATION

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

30 points Maximum

- a. The capacity and ability of the offeror to issue the final financial audits for FY 2018, 2019, 2020 within the specified time of no later than January 31st, following the fiscal year end;

30 points Maximum

- b. The plan for performing the required services, including understanding of the project's potential problems and/or any special concerns;

20 points Maximum

- c. Qualification of offeror as evidenced by its submission and discussion with offeror in accordance with items 8 and 9. More specifically, the offeror's ability to perform the services as reflected by technical training and education, general experience, character, integrity, specific experience in providing the required services, and the qualifications and abilities of personnel proposed to be assigned to perform the services;

10 points Maximum

- d. The personnel, equipment, and facilities to perform the services currently available or demonstrated to be available at the time of contracting; and

10 points Maximum

- e. The record and quality of past performance of similar work, including clientele/references input regarding the level of customer satisfaction with similar audit relationships.

100 points (Total Maximum)

11. SELECTION OF BEST-QUALIFIED OFFEROR AND PROPOSAL

The Evaluation Committee shall consist of:

- Two members from PAG selected by the General Manager.
 - Two members from the OPA.
 - One member of the Guam Society of Certified Public Accountants, or other Accountants' Association, selected by the Public Auditor in consultation with PAG.
- a. Public Law 21-22 (Title 1 G.C.A § 1908) provides that the Public Auditor shall select the auditing firm and shall have oversight over the audits. Accordingly, PAG has acknowledged that OPA shall have the authority to oversee, direct and supervise the audit(s) contracted in this proposal/agreement. OPA shall have access to all working papers of the Auditor. The Auditor shall advise OPA of all communications made to PAG. The Auditor shall provide drafts of all reports, including but not limited to financial statements, audit findings, internal control compliance reports and management letters to PAG concurrently to OPA. The Auditor's final reports shall not be issued to external parties without the consent of the PAG and OPA.

The Auditor shall provide the final reports to PAG and OPA, in the form and content to be determined by OPA (.pdf format), for publication of these reports on the World Wide Web at www.opaguam.org and www.portguam.com.

- b. Proposals shall be evaluated only on the basis of the evaluation factors stated in this Request for Proposals. After the Evaluation Committee completes the validation of qualifications for each offeror, the evaluation of each proposal, and discussions made pursuant to 2 G.A.R., Div. 4, Chap. 3, §3114(i), if any, have been completed, the Evaluation Committee shall make a recommendation to the Public Auditor as to the ranking of all offerors. The Public Auditor may accept or reject the Evaluation Committee's recommendation. If the recommendation is rejected, the Public Auditor may require the Evaluation Committee to conduct a second evaluation or take any action necessary to ensure the proposals are evaluated in accordance with the evaluation factors set forth in the Request for Proposals, or any action permitted by Guam Procurement Laws and Regulations. If the Public Auditor accepts the Evaluation Committee's ranking of the offerors, the Public Auditor, pursuant to 1 G.C.A. §1908 and §1921, shall select, in the order of their respective qualification ranking, no fewer than three (3) acceptable offerors or such lesser number if less than

three (3) acceptable proposals were received, deemed to be the best qualified to provide the required services.

Upon selection, PAG's General Manager or a designee will open the sealed price proposal of the selected offeror and begin negotiations with the best qualified offeror listed in the qualification ranking of offerors approved by the Public Auditor. If compensation, contract requirements, and contract documents can be agreed upon with the best qualified offeror, and, pursuant to 1 G.C.A. §1908 and §1921, the Public Auditor approved the final contract, the contract shall be awarded to that offeror.

If compensation, contract requirements, and contract documents cannot be agreed upon with the best qualified offeror, a written record stating the reasons therefore shall be placed in the procurement file and the head of the purchasing agency conducting the procurement or a designee of such officer shall advise such offeror of the termination of negotiations which shall be confirmed by written notice within three (3) days.

Upon failure to negotiate a contract with the best qualified offeror, the head of the purchasing agency or the designee of such officer may enter into negotiations with the next most qualified offeror listed in the qualification ranking of offerors approved by the Public Auditor. If compensation contract requirement and contract documents can be agreed upon, then the contract shall be awarded to that offeror. If negotiations again fail, negotiations shall be terminated as set forth above and commence with the next qualified offeror listed in the qualification ranking of offerors approved by the Public Auditor.

Should the head of the purchasing agency or a designee of such officer be unable to negotiate a contract with any of the offerors initially selected as the best qualified offerors, offers may be re-solicited or additional offerors may be selected, as set forth above, based on original acceptable submissions in the order of their respective qualification ranking and negotiations may continue as set forth above until an agreement is reached and the contract is awarded.

All offerors will be notified in writing of the outcome of the evaluation. After the selection of the best qualified offeror and a successful negotiation regarding compensation, contract requirements, and contract documents is reached, the sealed envelopes containing the price proposal from offerors not awarded the contract will be returned.

END OF SUBMISSION AND EVALUATION OF PROPOSAL

III. SCOPE OF SERVICES FOR ANNUAL INDEPENDENT AUDIT

SERVICES REQUIRED

PAG requires the services of a nationally recognized U.S. Certified Public Accounting Firm/Individual with general knowledge, skill, and experience in auditing financial statements and federal awards compliance of state and local governments. The PAG, with the approval of the Public Auditor, retains the option to renew the contract for one additional year.

1. DESCRIPTION OF WORK INVOLVED

- a. Assist management with the preparation of the annual financial statements for PAG, as a separate reporting unit, in accordance with accounting principles generally accepted in the United States of America, from trial balances provided by management from its books and records. (*Note: The auditor must ensure that the scope of these services is not to such an extent that would impair the auditor's independence.*)
- b. Perform financial statement audit of the PAG, in accordance with auditing standards generally accepted in the United States of America, and *Government Auditing Standards* issued by the United States Comptroller General. In conjunction with the financial statement audit, the following reports or communications should be provided by the Auditor:

Item 1: Auditor's report on the financial statements, and any supplementary information, expressing either an unqualified, qualified, adverse, or disclaimed opinion on the basic financial statements, a disclaimer of opinion on required supplementary information, and an in-relation-to (SAS-29) opinion on other supplementary information, to the extent applicable.

Item 2: Auditor's report on internal control over financial reporting and on compliance and other matters based on an audit of the financial statements pursuant to *Government Auditing Standards*, including the reporting of identified significant deficiencies and material weaknesses in internal control over financial reporting, and any identified instances of noncompliance material to the financial statements and any other matters, including abuse, required to be reported by *Government Auditing Standards*. (*Note: It is understood that the extent of the auditor's procedures over internal control over financial reporting and compliance and other matters will not be designed to express an opinion or any other level of assurance on such controls and compliance.*)

Item 3: A letter to management including any other findings and recommendations not included in the auditor's report in Item 2 above, that the auditor feels are worthy of communication to management.

- c. If federal awards expended by PAG during any financial statement audit period meet or exceed the audit threshold of the Single Audit Act of 1996, as amended, the auditor will also perform a compliance audit over federal award programs in accordance with the Single Audit Act and the U.S. Office of Management and Budget (OMB) Uniform Guidance codified at 2 CFR 200. In conjunction with the compliance audit, the following reports or communications should be provided by the auditor:

Item 1: Auditor's (SAS-29) in-relation-to report on the schedule of expenditures of federal awards [*Note: This report may be included as part of the auditor's report on the financial statements and supplementary information discussed in (b-Item 1) above.*]

Item 2: Auditor's report on compliance with requirements applicable to each major program and on internal control over compliance prepared in accordance with the OMB Uniform Guidance. Such report will provide an unqualified, qualified, adverse, or disclaimed opinion on each major program's compliance with applicable requirements; and a report on internal control over compliance. (*Note: It is understood that the extent of the auditor's procedures over internal control over compliance will not be designed to express an opinion or any other level of assurance on such controls.*)

Item 3: A schedule of findings and questioned costs, including a summary of auditor's results, financial statement audit findings required to be reported by *Government Auditing Standards*, federal award audit findings and questioned costs required to be reported by the OMB Uniform Guidance, and management's responses and corrective action plan in regards to the findings.

- d. Ensure that the financial statements and auditor's reports meet any specific requirements contained in bond indentures, American Recovery and Reinvestment Act award agreements, or other contractual requirements relative to financial statement presentation and the audits.
- e. Submit the draft financial statements and accompanying auditor's reports to PAG management and the Office of Public Accountability no later than December 31st of each year, and issue the final reports no later than January 31st of each year.
- f. Provide copies of the final financial statements and accompanying auditor's reports as follows:
- 5 bound copies - OPA
 - 25 bound copies - PAG

One electronic copy (e.g., .pdf format) will also be required to be submitted to both the PAG and OPA. The Public Auditor will publish these reports on the World Wide

Web at www.opaguam.org and the PAG will also publish these reports on www.portguam.com.

- g. Communicate to those charged with governance the other audit-related matters required to be communicated pursuant to generally accepted auditing standards (AU Section 380, *The Auditor's Communication with Those Charged with Governance*) and any other areas of concern that may be determined throughout the term of the engagement.
- h. Provide the following additional information or documents to the Office of Public Accountability:
 - i. Within 60 days after the close of the calendar year, submit a report on the Continuing Professional Education credits of each auditor involved in the audit during the period under contract;
 - ii. As soon as available, provide any peer review reports, including any review comments, that occur during the period under contract; and
 - iii. Provide copies of management representation letter and responses to inquiries from PAG's legal counsel.

END OF SCOPE OF SERVICES FOR ANNUAL INDEPENDENT FINANCIAL AUDIT

IV. GENERAL TERMS AND CONDITIONS

1. AUTHORITY

This Request for Proposal (RFP) solicitation is issued subject to all the provisions of the Guam Procurement Act and the Guam Procurement Regulations. The RFP requires all parties involved in the preparation, negotiation, performance, or administration of contracts to act in good faith.

2. GENERAL INTENTION

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

3. PROPOSALS

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

4. EXPLANATION TO OFFERORS

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

5. RECEIPT AND OPENING OF PROPOSALS

Telegraphic proposals will not be considered, nor will modification by telegraph of proposals already submitted be considered. Proposals shall be hand carried and received at the place of opening on or before the opening date and time. Proposals received through the mail will not be accepted if such mail is received at the address showing after the submission date and time. Proposals will not be opened publicly.

6. WITHDRAWAL OF PROPOSALS

Proposals may be withdrawn on written request received from offeror(s) prior to the time fixed for opening. Negligence on the part of the offeror in preparing the proposal confers no right for the withdrawal of the proposal after it has been opened.

7. LIABILITY FOR COST OF THE PROPOSAL

PAG and OPA are not liable for any costs incurred by the offeror in connection with this RFP. By submitting a proposal, the offeror specifically waives the right against PAG and OPA for

any expenses incurred in proposal preparation. Submitted proposals become the property of PAG. Offeror requests for the return of specific proprietary material may be honored.

8. **RIGHT TO AMEND OR CANCEL**

With the approval of the Public Auditor, PAG reserves the right to amend, supplement, or cancel the RFP, in whole or in part at any time.

The RFP may be amended or modified prior to opening of the proposals but not subsequent to opening of the proposals. Any amendment issued pursuant to this RFP must be acknowledged as being received by the potential offerors. Amendments shall be distributed within a reasonable time to allow prospective firms to consider the issue in preparing their proposals. If the time and date set for receipt of proposals will not permit such preparation, such time shall be increased to the extent possible in the amendment or, if necessary, by telegram or telephone and confirmed in the amendment.

9. **RIGHT TO REISSUE**

PAG may, with the approval of the Public Auditor, re-solicit for proposals when it is deemed to be in the best interest of PAG.

10. **FAILURE TO NEGOTIATE CONTRACT WITH OFFERORS INITIALLY SELECTED AS BEST QUALIFIED**

Should PAG be unable to negotiate a contract with the offeror initially selected as the best qualified, negotiations may continue with the next qualified offeror in accordance with the procedures and process herein specified, subject to the approval of the Public Auditor.

11. **METHOD OF AWARD & LICENSING**

The Evaluation Committee, with the approval of the OPA, reserves the right to waive any minor informality or irregularity in proposals received. PAG, with the approval of the Public Auditor, shall have the prerogative to award, amend, or reject proposals in whole or in part. It is the policy of PAG to award proposals only to offerors duly authorized and licensed to conduct business in Guam. Offerors licensed in the United States or outside of Guam, must obtain the necessary Guam licenses and Permits within 30 days of selection notification. Specific information on licenses and permits may be obtained from the Director of the Department of Revenue and Taxation and the Guam Board of Accountancy, respectively.

12. **PAG's RIGHT TO REJECT PROPOSAL**

PAG and OPA may make such investigations as deemed necessary to determine the ability of the offeror to perform the work, and the offeror shall furnish to PAG all such information and data for this purpose as PAG may request. The Evaluation Committee, with the approval of the Public Auditor, reserves the right to reject the offeror if the evidence submitted by, or investigation of such offeror fails to satisfy the Evaluation Committee that such offeror is properly qualified to carry out the obligations of the contract and to complete the work contemplated herein. Conditional proposals will not be accepted. This right of reject and/or cancel is also pursuant to 2 G.A.R., Div. 4, Chap. 3, §3115(d) (2) (A).

13. **PAYMENT OF SERVICES**

Payment for any contract entered into as a result of this RFP will be made no more frequently than monthly upon receipt of the offeror's billing statement on a net 30-day basis. Offerors are notified that they are subject to the Guam Business Privilege Tax and the Guam Income Tax, as well as all other taxes or government fees that may be applicable. Specific information on taxes may be obtained from the Guam Department of Revenue and Taxation.

The Procurement Administrator must notify the contractor on a timely basis that the funds are, or are not, available for the continuation of the contract for each succeeding fiscal period.

If funds are not appropriated or otherwise made available to support the continuation of performance in any fiscal period succeeding the first, the multi-term contract will be cancelled. This does not affect either the territory's rights or the contractor's rights under any termination clause in the contract. In the event of cancellation under 2 G.A.R. § 3121(e) (1) (C), the contractor will be reimbursed the unamortized, reasonably incurred, nonrecurring costs.

14. **CONTROL**

The General Manager of the PAG or her designee and the Public Auditor will meet periodically with the Offeror/Auditor's representative for the purpose of reviewing progress and providing necessary guidance to the offeror in solving problems.

15. **JUSTIFICATION OF DELAY**

The offeror who is awarded the proposal guarantees that the service will be completed within the agreed upon completion date. If, however, the offeror cannot comply with the completion requirement, it is the offeror's responsibility to advise PAG in writing explaining the cause and reasons of the delay. PAG, with the approval of the Public Auditor, may make a reasonable extension of time, but no later than May 31st. for the final report issuance.

16. **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.

17. **ASSIGNMENT**

Assignment will not be accepted without prior written approval from PAG and the Public Auditor. No assignment will be accepted if request is not made in writing with the proposal.

18. **DETERMINATION OF RESPONSIBILITY OF OFFEROR**

The Evaluation Committee shall use the following criteria in determining responsibility of the offeror, and reserves the right to secure additional information from offerors necessary to determine whether or not they are responsible in each of the following:

- The ability, capacity, and skill of the offeror to perform;
- Whether the offeror can perform promptly and/or within the specified time periods;
- The character, integrity, reputation, judgment experience, and efficiency of the offeror;

- The quality of performance of the offeror with regard to awards previously made to the offeror;
- The offeror's past and present record of compliance with procurement laws and regulations;
- The sufficiency of the offeror's financial resources and ability to perform;
- The offeror's compliance with the specifications and requirement of this Request for Proposal; and
- If requested, the offeror must meet all Americans with Disabilities Act regulations and requirements.

19. CONTACT FOR CONTRACT ADMINISTRATION

If your firm receives a contract as a result of this Proposal, designate a person whom we may contact for prompt administration, showing:

Name: _____	Title: _____
Address: _____	Tel. No.: _____
_____	Fax No.: _____
_____	Email Address: _____

20. CONTRACT PROVISIONS

PAG 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 PAG.

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.

21. SPECIAL PERMITS AND LICENSES

The offeror shall, at his own expense, procure all permits, certificates, and license and shall give all notices and necessary reports required by law for the General Scope of the work. Failure to maintain required licenses or permits shall be grounds for immediate termination of contract.

22. AUDITOR WORKING PAPERS

1. **Retention.** The auditor shall retain working papers and reports for a minimum of five years after the date of issuance of the auditor's report(s) to PAG, unless the auditor is notified in writing by the cognizant agency of audit, oversight agency of audit, pass-through entity, or OPA to extend the retention period. When the auditor is aware that the Federal awarding agency, pass-through entity, OPA, or PAG is contesting an audit finding, the auditor shall contact the parties contesting the audit finding for guidance prior to destruction of the working papers and reports.
2. **Access.** Audit working papers shall be made available upon request to the cognizant agency for audit or its designee, a Federal agency providing direct or indirect funding, GAO, or OPA at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this

part. Access to working papers includes the right of Federal agencies to obtain copies of working papers, as is reasonable and necessary.

23. **LAWS TO BE OBSERVED**

1. 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.
2. **Prohibition Against Gratuities and Kickbacks** The offeror duly represents that he or she has not violated, is not violating, and will not violate the prohibition against gratuities and kickbacks set forth in the Guam procurement law as follows (2 G.A.R., Div. 4, Chap. 11, §11107(3)):

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

3. **Ethical Standards** The offerors shall duly represent that he, she, they or 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 the Guam procurement laws and regulations pertaining to ethics in public contracting. (2 G.A.R., Div. 4, Chap. 11, §11103(b))
4. **Covenant Against Contingent Fees** The offeror warrants that no person was retained for a commission, percentage, brokerage, or contingent fee to solicit or secure any resultant contract upon agreement. Breach of this warranty shall give [Entity Name] the right to terminate the contractor, or at its discretion to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commission payable by contractors upon contracts or sales secured or made through *bona fide* established commercial or selling agencies maintained by the contractor for the purpose of securing business. (2 G.A.R., Div. 4, Chap. 11, §11108(f) and (h))
5. **Wage Determination Established and Benefits** The offeror has read and understood the provisions of 5 GCA §5801 and §5802, which read:

- §5801. Wage Determination Established.
 - a) 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.
 - b) 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.
- That the offeror is in full compliance with 5 GCA §5801 and §5802, as may be applicable to the procurement referenced herein;
- 6. **Restriction Against Contractors Employing Convicted Sex Offenders from Working at Government of Guam Venues.** (§5253 of Title 5 Guam Code Annotated)
 - 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.

- c. Duties of the General Services Agency or Procurement Administrators. All contracts, bids, or Requests for Proposals shall state all the conditions in §5253(b).
- 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.”

24. **STATUS OF CONTRACTOR/CONSULTANT (OFFEROR)**

The offeror and its officers, agents, servants and employees are independent contractors performing professional services for PAG.

25. **INSURANCE**

Offeror shall procure and maintain at his or her own expense all necessary comprehensive insurance for his/her employees including but not limited to Worker’s Compensation and general liability insurance.

26. **CONFIDENTIAL OR PROPRIETARY INFORMATION**

Offerors may designate those portions of the proposals which contain trade secrets or other proprietary data which may remain confidential. After the award, the proposal of the offeror who is awarded the contract becomes part of the public procurement record. Proposals containing trade secrets or other proprietary information to be held in confidence must include a written request for non-disclosure. The request should clearly indicate the proprietary portions. PAG and Public Auditor will examine the request, determine its validity, and either grant or deny it. If denied, PAG will notify the requesting offeror in writing as to what and why portions will be disclosed. The offeror may then withdraw the proposal or submit a protest according to law. If the proposal is not withdrawn and no protest is received, then PAG or Public Auditor may disclose those portions of the proposal for which a non-disclosure request was not granted.

27. **APPLICABILITY OF FEDERAL PROCUREMENT LAW**

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

END OF GENERAL TERMS AND CONDITIONS

AFFIDAVIT 1

NON-COLLUSION AFFIDAVIT

RFP No. _____

Type of Service Being Offered: _____

Name of Offeror (Firm or Individual): _____

STATE OF _____)

)

SS.

CITY OF _____)

_____ being first duly sworn deposes and says:

That he/she is _____ (the respondent, a partner of the respondent, an officer of the respondent) making the foregoing identified bid or proposal; that such bid or proposal is genuine and not collusive or a sham; that said respondent has not colluded, conspired, connived or agreed, directly or indirectly, with any other respondent or person, to put in a sham proposal or to refrain from making an offer, and 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 respondent or of any other respondent, or to fix any overhead, profit or cost element of said proposal price of respondent or of that of any other respondent, or to secure any advantage against the Government of Guam or any other respondent, or to secure any advantage against the Government of Guam or any person interested in the proposed contract; and that all statements in this affidavit and proposal are true.

Signature of individual if offeror is a sole Proprietorship; Partner, if the offeror is a Partnership; Officer, if the offeror is a Corporation.

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20_____.

Notary Public
My Commission Expires: _____

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

AFFIDAVIT 2

MAJOR SHAREHOLDER DISCLOSURE AFFIDAVIT

RFP No. _____

Name of Offeror (Firm or Individual): _____

STATE OF _____)

)

SS.

CITY OF _____)

1. I, the undersigned, being first duly sworn, depose and say that I am an authorized representative of the undersigned and that

[Please check one]:

- The respondent is an individual or sole proprietor and owns the entire interest in the offeror's company.
- The respondent is a corporation, partnership, joint venture, or association, and the persons, companies, partners, or joint ventures that have held more than 10% of the shares or interest in the offeror's business for the twelve months preceding the submission of this proposal are as follows [if none, please so state]:

<u>Name</u>	<u>Address</u>	<u>% of Shares of Interest Held</u>
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2. Further, I say that the persons who have received or are entitled to received a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the bid or proposal for which this affidavit is submitted are as follows [if none, please so state]:

<u>Name</u>	<u>Address</u>	<u>Compensation</u>
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Signature of individual if offeror is a sole Proprietorship; Partner, if the offeror is a Partnership; Officer, if the offeror is a Corporation.

SUBSCRIBED AND SWORN to before me this ___ day of _____, 20__.

Notary Public
My Commission Expires: _____

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

AFFIDAVIT 3

SPECIAL PROVISIONS AFFIDAVIT

If a contract for services is awarded to the bidder or offeror, then the service provider must warranty that they will comply with the following laws and regulations identified in item 23 of section IV of the RFP:

1. 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.
2. **Prohibition Against Gratuities and Kickbacks** The offeror duly represents that he or she has not violated, is not violating, and will not violate the prohibition against gratuities and kickbacks set forth in the Guam procurement law as follows (2 G.A.R., Div. 4, Chap. 11, §11107(3)):

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

3. **Ethical Standards** The offerors shall duly represents that he, she, they or 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 the Guam procurement laws and regulations pertaining to ethics in public contracting. (2 G.A.R., Div. 4, Chap. 11, §11103(b))
4. **Covenant Against Contingent Fees** The offeror warrants that no person was retained for a commission, percentage, brokerage, or contingent fee to solicit or secure any resultant contract upon agreement. Breach of this warranty shall give [Entity Name] the right to terminate the contractor, or at its discretion to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commission payable by contractors upon contracts or sales secured or made through *bona fide* established commercial or selling agencies maintained by the contractor for the purpose of securing business. (2 G.A.R., Div. 4, Chap. 11, §11108(f) and (h))
5. **Wage Determination Established and Benefits** The offeror has read and understand the provisions of 5 GCA §5801 and §5802, which read:
 - a. §5801. Wage Determination Established.
 - i. 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.
 - ii. 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.

- b. §5802. Benefits.
 - i. 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.
- c. That the offeror is in full compliance with 5 GCA §5801 and §5802, as may be applicable to the procurement referenced herein;

6. **Restriction Against Contractors Employing Convicted Sex Offenders from Working at Government of Guam Venues.** (§5253 of Title 5 Guam Code Annotated)

- 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.
- c. Duties of the General Services Agency or Procurement Administrators. All contracts, bids, or Requests for Proposals shall state all the conditions in §5253(b).
- 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.”

Signature of individual if offeror is a sole Proprietorship; Partner, if the offeror is a Partnership; Officer, if the offeror is a Corporation.

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20____.

Notary Public
My Commission Expires: _____

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

**AGREEMENT
BETWEEN
JOSE D. LEON GUERRERO COMMERCIAL PORT
AND
(COMPANY)**

THIS AGREEMENT is entered into by and between the **JOSE D. LEON GUERRERO COMMERCIAL PORT**, also known as the **PORT AUTHORITY OF GUAM** (hereinafter referred to as **Port**), a public corporation and autonomous instrumentality of the government of Guam, whose address is 1026 Cabras Highway, Suite 201, Piti, Guam 96925 and **COMPANY** (hereinafter referred to as **Consultant**) a corporation authorized and licensed to do business in Guam, whose address is 361 South Marine Corp Drive, Tamuning, Guam 96913-3911.

WHEREAS, the Port issued a Request for Proposal (RFP No. PAG-018-003) seeking to retain professional services to provide the Independent Audit Services for the fiscal years ending on September 30, 2012, 2013, 2014.

WHEREAS, Consultant responded to the RFP through submitting a proposal ("Proposal") to provide the annual independent audit services in accordance with the RFP, and was selected as the most qualified offeror;

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

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

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

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

I. Statement of Services to be Performed.

A. Scope of Work. Consultant shall provide the Annual Independent Audit of the Port's basic financial statements for fiscal year ending on September 30, 2018, 2019, 2020.

Consultant shall perform all of the professional services as described in the Scope of Services as identified in the RFP, Consultant's Proposal, Payment Terms and Letter of Engagement, each attached herewith as Exhibits 1, 2, 3 and 4 respectively and incorporated as part of this Agreement. Consultant shall provide the preliminary financial statements and auditor reports on the services performed and required under this agreement and upon request by the Port. Consultant recognizes that failure to perform all the services required under this Agreement constitute a material breach of this Agreement.

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

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

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

II. Term of Agreement.

This Agreement shall be effective upon its full execution by all parties and shall remain effective until Consultant completes all services required under the Scope of Work unless earlier terminated in accordance with the terms herein.

III. Compensation.

A. Compensation. In consideration for the services performed under this Agreement, the Port shall pay to Consultant US \$_____ (), plus an additional \$_____ () annually for each \$___ million in federal grant expenditures in excess of a base of \$___ million, subject to the terms and conditions of this Agreement.

B. Payment Terms. Payment shall be made in accordance with the terms set forth in Exhibit 3 attached hereto. Payment shall only become due upon the receipt and certification by the Port of documents and reports described in Exhibit 3 and upon satisfactory performance by Consultant of the services in compliance with the terms of this Agreement, and shall be payable within Thirty (30) days from the date of the invoice. Upon written notification by the Port of unsatisfactory performance by the Consultant, Consultant shall immediately remedy its performance. Failure to remedy said unsatisfactory performance may result in the Port taking action in accordance with Section IV of this Agreement.

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

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

E. Payment. Payment shall be made upon satisfactory performance of all services required to be performed by Consultant under this Agreement. Prior to the final payment due Consultant, and as a

condition precedent thereto, Consultant shall execute and deliver to the Port a release in a form approved by the Port of claims against the Port arising under this Agreement. Consultant expressly waives the provision of Section 82602 of Title 18, Guam Code Annotated, which states:

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

All rates and prices and payments to the Consultant shall be in the currency of the United States.

IV. Early Termination.

A. By the Port. The Port reserves the right to cancel or terminate this Agreement prior to its completion:

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

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

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

(iv) Effects and Responsibilities of Parties for Early Termination by the Port: In the event of an Early Termination without cause or for the best interests of Guam under paragraphs (i) and (ii) of this section, the Consultant agrees to use all reasonable efforts to mitigate expenses and obligations hereunder with respect to such event. Following an Early Termination under paragraphs (i) and (ii) of this section, by the Port, the Port shall pay the Consultant for all satisfactory services rendered up to that point. The Port reserves all rights provided by law and equity in the event of an early termination, including arising out of a default or for other causes.

B. By Consultant.

(i) Termination without Cause: Consultant reserves the right to terminate this Agreement prior to its completion, without cause, upon thirty (30) days written notice to the Port. Upon Consultant's termination of this Agreement without cause, the Consultant shall be entitled to payment for satisfactory services (as determined in the sole discretion of the Port) rendered up to the termination date

and the Port shall have no other or further obligation to Consultant. The Consultant shall be obligated to continue performance of services, in accordance with this Agreement, until the termination date and shall have no further obligation to perform services after the termination date.

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

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

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

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

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

VI. Confidentiality.

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

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

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

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

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

VII. Conflicts of Interests/Ethics

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

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

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

VIII. 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 provided 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

Applicable, the laws and regulations of Guam shall govern the interpretation, effect, and validity of this Agreement. Any court action shall be exclusively in Guam.

XIX. Compliance with Laws.

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

B. Non-Discrimination in Employment. The Consultant agrees: (i) not to unlawfully discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap; (ii) to include a provision similar to that contained in subsection (i) of this paragraph, in any subcontract or assignment agreement except a subcontract for standard commercial supplies or raw materials; and (iii) to post and to cause subcontractors and/or assignees to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

XX. Retention and Access to Records and Other Review. The Consultant, including subcontractors, if any, shall maintain all books, documents, papers, accounting records and other evidence pertaining to the services performed and costs incurred, and to make such materials available at its respective offices at all reasonable times during the Agreement period and for six (6) years from the date of the final payment under the Agreement, for inspection by the Port. The Port agrees to comply with reasonable requests of Consultant to provide access to all documents and Port property reasonably necessary to the performance of Consultant's services under this Agreement. The conditions of this section shall be placed in any subcontract or assignment arising under this Agreement.

XXI. Liability.

A. Indemnification. Consultant shall indemnify and hold harmless the Port and its officers, agents, Board members and employees from or on account of any claims, losses, expenses, injuries, damages, actions, lawsuits, judgments, or liability resulting or arising from (but only to the extent caused or contributed to by) the negligent or wrongful act or omission of the Consultant or its employees, officers, directors, subcontractors, agents, representatives, successors, or assigns, in the performance or nonperformance of services under this Agreement.

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

XXII. Delays, Extensions and Suspensions. The Port unilaterally may order the Consultant in writing to suspend, delay, or interrupt all or any part of the work for such period of time as it may determine to be appropriate for the convenience of the Port. The Consultant agrees to prosecute the work continuously and diligently apart from those periods of suspension, delay or interruption. Except as otherwise agreed to by the Parties, reasonable time extensions for the performance of Consultant's services will be granted only

for excusable delays that arise from causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God, acts of the public enemy, acts of the Government of Guam or the Government of the United States in either its sovereign or contractual capacity, acts of another consultant in the performance of an agreement with the Government of Guam, fires, floods, typhoons, earthquakes, epidemics, quarantine restrictions, strikes, freight, or embargoes.

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

XXIV. Independent Consultant and its Employees.

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

B. Liability. The Consultant assumes responsibility for its personnel and subcontractors providing services hereunder and will make all deductions and payments for social security and withholding taxes and for contributions to employment compensation funds, or any other payments required by the governments of the U.S. and Guam, if required. Consultant is responsible for paying when due any and all income taxes, gross receipts taxes, or any other taxes or assessments incurred as a result of the services performed by the Consultant and Consultant's employees or agents under this Agreement or the

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

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

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 the Port, regardless of whether Consultant is in possession of such Work Product, and may be used by the Port without permission from Consultant and without any additional costs to the Port.

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

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

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

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

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

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

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

JOSE D. LEON GUERRERO
COMMERCIAL PORT

COMPANY

JOANNE M.S. BROWN, General Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

**CERTIFICATION OF AVAILABILITY
OF FUNDS:**

DARLEEN E. HITON
Legal Counsel

JOSE B. GUEVARA, III
Financial Affairs Controller
Jose D. Leon Guerrero Commercial Port

Date: _____

Date: _____