

CAMACHO CALVO LAW GROUP LLC

GERI E. DIAZ
gdiaz@camachocalvo.law
356 E. Marine Corps Drive, Suite 201
Hagåtña, GU 96910
Tel No. 671.472.6813
Fax No. 671.477.4375

Attorney for Appellant
BASIL FOOD INDUSTRIAL SERVICES CORPORATION

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: July 1, 2020

TIME: 9:43 AM PM BY: Cmw

FILE NO OPA-PA: 19-011/20-003

BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Appeal of

BASIL FOOD INDUSTRIAL SERVICES
CORPORATION,

Appellant.

Appeal No. OPA-PA-19-011

Appeal No. OPA-PA-20-003

CONSOLIDATED

**APPELLANT BASIL FOOD
INDUSTRIAL SERVICES
CORPORATION'S OPPOSITION TO
GSA'S MOTION FOR SUMMARY
JUDGMENT DATED JUNE 10, 2020**

COMES NOW, Appellant Basil Food Industrial Services Corporation, by and through its counsel of record, Camacho Calvo Law Group, with its Opposition to General Services Agency's Motion for Summary Judgment dated June 10, 2020.

I. INTRODUCTION

General Services Agency's ("GSA") Motion for Summary Judgment should fail as SH Enterprises' donation of the Hakubotan building to the Government of Guam is in direct contravention to the terms and conditions of GSA-056-19¹. Despite GSA's contention, it was the

¹ GSA-056-19 is the contract for Nutrition Services for the Comprehensive Management, Operations, and Maintenance of the Elderly Nutrition Program, Congregate Meals and Home-Delivered Meals Components

Purchasing Agency for GSA-056-19, and it is, therefore, the proper entity to whom Basil should direct the protest and appeal under 5 G.C.A. § 5425.

II. BASIL PROPERLY FILED ITS PROTEST AND THIS APPEAL AGAINST GSA

As indicated in Basil's Notice of Procurement Appeal dated February 27, 2020, GSA issued an Invitation for Bid No. GSA-056-19 on September 25, 2019. The bid packet was replete with affidavits² and contract clauses discussing the prohibition of ethical violations, and references to the Guam Procurement Code and the Guam Administrative Rules which prohibit gratuities, kickbacks, and favours to the Government of Guam.

SH Enterprises' donation of the Hakubotan building to the Government of Guam for use as the War Claims Processing Center (*See Exhibit E, Notice of Procurement Appeal*), violated both 5 G.C.A. § 5630(d) and 2 G.A.R. Div. 4, § 11107(4) which explicitly prohibits favors to the government during the contract performance period.³

SH Enterprises' donation also violated a myriad of provisions explicitly outlined in the contract, including 1) No. 6 of the General Terms and Conditions requiring compliance with all the specifications in the bid; 2) No. 31 of the General Terms and Conditions requiring that the contractor will not violate the prohibition against gratuities and kickbacks in Chapter 11 of the Guam Procurement Act and Chapter 11 of the Guam Procurement Regulations, which both deal with ethics in public contracting; 3) Section 16.8 (of the General Specification on Item 16.0 Contract Clauses Required by 2 C.F.R. Part 200) which requires compliance with 5 G.C.A.

² These affidavits include the Affidavit Disclosing Ownership and Commissions, the Affidavit Regarding No Gratuities or Kickbacks and the Affidavit Regarding Ethical Standards. These affidavits were completed and signed by SH Enterprises' representatives.

³ On November 8, 2019, GSA awarded the contract (GSA-056-19) to SH Enterprises. The term of this contract was three (3) years with the option to renew for two (2) additional years.

Chapter 5, Articles 9 and 11 (Ethics in Public Contracting); and 4) Section 22.2 which prohibits gratuities and kickbacks outlined in the Guam Procurement Regulations.

By providing the Government of Guam with the free use of the Hakubotan building, SH Enterprises knowingly and willfully offered a favor, which violated the terms and conditions outlined in GSA-056-19. Accordingly, Basil properly filed the Protest against GSA because GSA was the Purchasing Agency for GSA-056-19. Consequently, the appropriate remedy is for the Public Auditor to deny GSA's motion for summary judgment.

III. GSA'S ARGUMENT REGARDING THE GOVERNOR'S AUTHORIZATION TO ACCEPT DONATIONS IS A RED HERRING

In support of its Motion for Summary Judgment, GSA argues that there was no ethical violation because the Governor of Guam is authorized to accept donations. This argument is irrelevant because it is not the basis for Basil's protest. Accordingly, the Public Auditor should reject GSA's argument.

Basil does not deny that Guam law permits the Governor to accept donations. This authority resides in 5 G.C.A. § 22408. However, the act at issue here is not the Governor's acceptance of the Hakubotan building for government use, but rather, SH Enterprises' donation of the building three months after GSA awarded SH Enterprises a multimillion-dollar contract for IFB GSA-056-19. As stated above, both 5 G.C.A. § 5630(d) and 2 G.A.R. Div. 4, § 11107(4) prohibit favors to the government during the contract performance period⁴. Here, SH Enterprises' donation violated the procurement law and regulations.

⁴ The contract performance period for GSA-056-19 commenced in November 2019.

Further, the fact that the Governor can accept donations does not negate the prohibition set out in 5 G.C.A. § 5630(d) and 2 G.A.R. Div. 4, § 11107(4). The procurement ethics provision is a strict liability statute. If it weren't, then bidders, offerors, and contractors could circumvent the ethical standards set out not only in the Procurement Law but in the individual procurement contracts issued by the numerous local government entities. For example, any potential contractor or actual contractor can circumvent the procurement laws and regulations but merely making all donations to the Governor of Guam without any restrictions.

Here, the Public Auditor should hone in on SH Enterprises' actions, which violated the strict liability language of the law, regulations, and IFB GSA-056-19, and deny GSA's Motion for Summary Judgment.

IV. SH ENTERPRISES' SUBSEQUENT ACTIONS FURTHER MAGNIFY ITS ETHICAL VIOLATIONS

The Public Auditor should place significant weight on the ethical violations discussed in Basil's protest dated February 7, 2020, and its Notice of Procurement Appeal dated February 27, 2020. Approximately one month after it donated the Hakubotan building to the Government of Guam, SH Enterprises was awarded a second multi-million dollar contract by GSA (GSA-001-20) to provide food services to the Department of Corrections.

The award of this new contract should cause concern about the impropriety of SH Enterprises' actions as the cornerstone of Guam's Procurement Law is to ensure the fair and equitable treatment of those involved in and who participate in the procurement system. In the procurement process, there is a critical need to preserve the integrity of government contracting to ensure the fair treatment of bidders, offerors, and contractors. Any violation of the ethical rules in

the procurement process can lead to a bid protest and undermine the public's confidence in the Government, both of which have occurred here.

The significant events that transpired in this case are as follows:

On September 25, 2019, GSA issued an Invitation for Bid No. GSA-056-19 Nutrition Services For the Comprehensive Management, Operations, and Maintenance of the Elderly Nutrition Program Congregate Meals and Home-Delivered Meals Components.

GSA awarded the contract (GSA-056-19) to SH Enterprises on November 8, 2019.

On December 30, 2019, GSA issued another Invitation For Bid, namely, GSA-001-20 Food Services for Department of Corrections Inmates and Detainees. GSA set the bid opening date for January 14, 2020. **Exhibit A.**

SH Enterprises' memorialized its intent to donate the Hakubotan building in a letter to the Governor of Guam dated **January 22, 2020.**

In Amendment #5 to GSA-001-20, GSA amended the Bid Opening Date to February 14, 2020. **Exhibit B.**

Then, on February 25, 2020, GSA informed Basil that it had awarded GSA-001-20 to SH Enterprises. **Exhibit C.**

Based on SH Enterprises' actions and the chronology of events, there is a clear violation of the procurement law and regulations. SH Enterprises' efforts call to question the fairness, equality, and impropriety in the procurement process, which Guam's Procurement Code has continually aimed to prevent.

SH Enterprises cannot now claim that it was not aware of the law. IFB GSA-056-19 required all offerors and bidders to attest to and sign the Affidavit Regarding No Gratuities or Kickbacks and the Affidavit Regarding Ethical Standards. Similarly, GSA-001-20 also required all offerors and bidders to certify to and sign the very same affidavits. **Exhibit D.** Interestingly, despite its actions relating to the Hakubotan building, SH Enterprises attested to and signed these affidavits as part of its bid packet for GSA-001-20.

In a nutshell, SH Enterprises' actions significantly violate the ethical provisions of Guam's Procurement laws. The events that occurred in this case not only calls into question the integrity of the award of the contracts, but it also decreases the public's confidence in the procurement system.

V. CONCLUSION

GSA does not provide a legally sound basis to support its request for summary judgment. SH Enterprises' actions violated the terms of GSA-056-19 and the Procurement Laws, and as the procuring agency for this contract, GSA is the proper party for Basil's protest and appeal. Based on the aforementioned reasons, GSA's Motion for Summary Judgment should be denied.

DATED: Hagåtña, GU, July 1, 2020.

CAMACHO CALVO LAW GROUP LLC



GERI E. DIAZ
Attorney for Appellant
BASIL FOOD INDUSTRIAL SERVICES
CORPORATION

EXHIBIT A



DEPARTMENT OF ADMINISTRATION

DEPARTAMENTO DE ADMINISTRACION

DEPARTAMENTO DE ADMINISTRACION

DEPARTAMENTO DE ADMINISTRACION

DEPARTAMENTO DE ADMINISTRACION



LOWDIA A. LEON GUERREIRO
Governor (Mago Daga)

RODOLFO F. PINERO
At. Governor (Mago Daga)

HOWARD E. BIAN
Secretary (Mago Daga)

JOHN C. FURBERMAN
Deputy Secretary (Mago Daga)

JOHN C. FURBERMAN
Deputy Secretary (Mago Daga)

DEPARTAMENTO DE ADMINISTRACION

DEPARTAMENTO DE ADMINISTRACION

December 30, 2019

INVITATION FOR BID

GSA-001-20

**Food Services for Dept. of
Corrections Inmates and Detainees**

Amendment 1

1. Amend to correct the Opening Date on the publication of IFB GSA-001-20
advertised on the Commonwealth's Position December 30, 2019

From: January 14, 2020

To: New Bid January 14, 2020

Amend to correct the Opening Date on the publication of IFB GSA-001-20
advertised on the Commonwealth's Position December 30, 2019

Amend to correct the Opening Date on the publication of IFB GSA-001-20
advertised on the Commonwealth's Position December 30, 2019

HOWARD E. BIAN
Secretary
DEPARTMENT OF ADMINISTRATION

DATE	TIME	BY

EXHIBIT B



GENERAL M. IRIBI
Director (General)

ROTH C. MARCELLANO
Deputy Director (General Services)

**DEPARTMENT OF
ADMINISTRATION**
DIPATANGON AT MENESTRACION
GENERAL SERVICES AGENCY

(Makabansang Serbisyo Agency)

Telephone Numbers: (877) 475-8887/1727 - Fax Number: (877) 475-8877/1717
E-mail: GSAProcurement@GSA.gov Website: gsa.gov/gsa/gsa.gov



LORENZO A. LEON GARRIDO
Director (General Services)

JOSHUA B. FERNANDO
Deputy Director (General Services)

February 4, 2020


**INVITATION FOR BID
GSA-001-20
FOOD SERVICES FOR DOC INMATE AND DETAINEES
AMENDMENT # 5**

1. Amend Bid Opening Date & Time:

From: February 07, 2020 at 2:00 p.m.

To: February 11, 2020 at 10:00 a.m.


General M. Iribi
Director (General Services)



FOR OFFICIAL USE ONLY

EXHIBIT C

发自我的iPhone

以下是转发的邮件:

发件人: Christine Tedtaotao <Christine.Tedtaotao@gsadoa.guam.gov>
日期: 2020年2月25日 GMT+10 下午5:17:01
收件人: Michael Zhao <erhongzhou@hotmail.com>,
"jameszheng0724@gmail.com" <jameszheng0724@gmail.com>
抄送: gsaprocurment <gsaprocurment@gsadoa.guam.gov>
主题: **GSA-001-20 Bid Status**

Buenas yan Hafa Adai,

Please see attach document in reference to GSA-001-20 Bid Status
I kindly ask upon receiving this email and reviewing the attachment to please fill out "Acknowledgement Receipt" and you may forward back to GSA via email to gsaprocurment@gsadoa.guam.gov or fax to 475-1727.

Your Response to this matter is Urgent and Greatly Appreciated.

Thank you

Christine M. Tedtaotao
Buyer II
General Services Agency
Department of Administration
Phone No. 671-475-1705
Email: christine.tedtaotao@gsadoa.guam.gov
gsaprocurment@gsadoa.guam.gov
Web Site: www.gsa.doa.guam.gov

GENERAL SERVICE AGENCY
(Ahensian Setbision Hinirat)
Government of Guam
148 Route 1 Marine Corps Drive, Piti, Guam 96915
Tel: 477-1707-10 Fax: 472-4217 / 475-1716/27

Accountability * Impartiality * Competence * Openness * Value

BID STATUS

BASIL FOOD INDUSTRIAL SERVICES

Attn: Michael Zhou, President
530 West O'Brien Drive
Hagatna, Guam 96932
Tel: (671) 475-8888 / Fax: (671) 475-0088
Email: erhongzhou@hotmail.com

BID INVITATION NO.: GSA-001-20

OPENING DATE: February 17, 2020

FOOD SERVICES FOR: DOC INMATES AND DETAINEES

The following is the result of the above-mentioned bid. Refer to the items checked below.

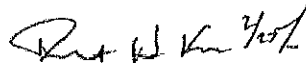
- Cancelled (in its entirety), or partially cancelled due to:
- Insufficient funds;
 - Change of specifications; or
 - Insufficient number of bidders.
- Rejected due to:
- Late submission of bid;
 - No bid security or insufficient bid security;
 - Not meeting the delivery requirement as stated in the IFB;
 - Non-conformance with requirement of IFB; (See Remarks)
 - High price**
 - Others**

REMARKS: Failed to submit resumes for Food Service Manager, Food Service Supervisor, and Registered Dietician. Failed to provide certified copy of a current financial report of the successful company for the last three (3) years.

Bid recommended for: **S.H. ENTERPRISE INC. IN THE TOTAL AMOUNT OF \$5,978,700.00**

For a contract term of three (3) years with an option to renew for two (2) additional years upon availability of funds.

REMARKS: Thank you for your participation with this bid. Please send your authorized representative to pickup your original bid status and cashier check/bid bond or Standby Letter of Credit.


CLAUDIA S. ACFALLE
Chief Procurement Officer

Please Print
ACKNOWLEDGEMENT COPY (Re-fax to GSA)
Received By: _____
Date: _____
Company Name: _____
Fax to: 475-1727 or 472-4217
E-mail to: gsaprocurement@gsadoa.guam.gov

EXHIBIT D

GSA GENERAL SERVICES AGENCY

(Aghensian Setbision Hinirat)

Government of Guam

590 S. Marine Corps. Drive, Ste. 219, Tamuning Guam 96913

Tel: 475-1713 * Telefax: 472-4217; 475-1716; 475-1727

Accountability * Impartiality * Competence * Openness * Value

INVITATION FOR BID NO.: _____

DESCRIPTION:

**FOOD SERVICES FOR:
DOC INMATES AND DETAINEES**

SPECIAL REMINDER TO PROSPECTIVE BIDDERS

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

- (X) **BID GUARANTEE (15% of Bid Amount)** May be in the form of;
Reference Page 27, #11 on the General Terms and Conditions
- a. Cashier's Check or Certified Check
 - b. Letter of Credit
 - c. Surety Bond -- Valid only if accompanied by:
 - 1. Current Certificate of Authority issued by the Insurance Commissioner;
 - 2. Power of Attorney issued by the Surety to the Resident General Agent;
 - 3. Power of Attorney issued by two (2) major officers of the Surety to whoever is signing on their behalf.
- (X) **STATEMENT OF QUALIFICATIONS**
- () **BROCHURES/DESCRIPTIVE LITERATURE;**
- (X) **AFFIDAVIT DISCLOSING OWNERSHIP and COMMISSION**
- a. Date of signature of the person authorized to sign the bid and the notary date must be the same.
- (X) **OTHER REQUIREMENTS:**
Non-Collusion Affidavit, D.O.L. Wage Determination Affidavit, Restriction against Sexual Offenders Affidavit, No Kickbacks or Gratuities Affidavit and Ethical Standards Affidavit, and Affidavit re Contingent Fees, Current Business License relating to this bid.

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

On this _____ day of _____, 2019, I, _____,

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

Bidder Representative's Signature

Invitation for Bid: _____

**FOOD SERVICES FOR:
DOC INMATES AND DETAINEES**

ACKNOWLEDGEMENT RECEIPT FORM

Please be advised that to be considered a prospective bidder you must fill out this Acknowledgement receipt form. Please submit by fax form to 475-1727 and email to gsaprocurement@gsadoa.guam.gov

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

Name _____

Signature _____

Date _____

Time _____

Contact Number _____

Fax Number _____

Contact Person regarding IFB _____

Title _____

E-Mail Address _____

Company/Firm _____

Address _____

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

All questions and concerns in regards to this bid must be submitted to the General Services Agency via fax attention to the Chief Procurement Officer no later than _____ close of business at 5:00pm.

INVITATION FOR BID

ISSUING OFFICE:

GENERAL SERVICES AGENCY
GOVERNMENT OF GUAM
590 S. MARINE CORPS DRIVE, STE. 219
TAMUNING, GUAM 96913

Claudia S. ACFALLE 12/15/19

CLAUDIA S. ACFALLE
Chief Procurement Officer

DATE ISSUED: December 30, 2019

BID INVITATION NO: GSA-001-20

BID FOR: FOOD SERVICES FOR: DOC INMATES AND DETAINEES

SPECIFICATION: SEE ATTACHED

DESTINATION: DEPARTMENT OF CORRECTIONS

REQUIRED DELIVERY DATE: The term of this contract shall commence upon signing of contract for Three (3) Years with the option to renew for two (2) additional fiscal years. Renewal options will be one fiscal year at a time, subject to funding availability. Renewal will be at the Sole Discretion of the Government Bidder may not refuse renewal if the government exercises its option to renew (Refer to page 35 of 47 ¶7b)

INSTRUCTION TO BIDDERS:

INDICATE WHETHER: INDIVIDUAL PARTNERSHIP CORPORATION

INCORPORATED IN: _____

This bid shall be submitted in duplicate and sealed to the issuing office above no later than (Time) 10:00am, Date: 1/14/20 and shall be publicly opened. Bid submitted after the time and date specified above shall be rejected. See attached General Terms and Conditions, and Sealed Bid Solicitation for details.

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

NAME AND ADDRESS OF BIDDER:

SIGNATURE AND TITLE OF PERSON
AUTHORIZED TO SIGN THIS BID:

AWARD: CONTRACT NO.: _____ AMOUNT: _____ DATE: _____

ITEM NO(S). AWARDED: _____

CONTRACTING OFFICER:

CLAUDIA S. ACFALLE
Chief Procurement Officer

NAME AND ADDRESS OF CONTRACTOR:

SIGNATURE AND TITLE OF PERSON
AUTHORIZED TO SIGN THIS CONTRACT:

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 _____, 201__.

NOTARY PUBLIC
My commission expires _____.

AFFIDAVIT RE NO GRATUITIES or KICKBACKS

CITY OF _____)
) ss.
ISLAND OF GUAM)

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

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

2. To the best of affiant's knowledge, neither affiant, nor any of the offeror's officers, representatives, agents, subcontractors, or employees have violated, are violating the prohibition against gratuities and kickbacks set forth in 2 GAR Division 4 § 11107(c). 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(c).

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 _____, 201_____.

NOTARY PUBLIC
My commission expires _____, _____.

AFFIDAVIT RE ETHICAL STANDARDS

CITY OF _____)
)ss.
 ISLAND OF GUAM)

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

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

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

Subscribed and sworn to before me
 this ____ day of _____, 201__.

 NOTARY PUBLIC
 My commission expires _____, _____.

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(l).

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 _____, 201__.

NOTARY PUBLIC
My commission expires _____.

DECLARATION RE COMPLIANCE WITH U.S. DOL WAGE DETERMINATION FOR GUAM

FOOD SERVICES FOR: DOC INMATES AND DETAINEES

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* - The actual USDOL Wage Determination, No. 2015-5694, Revision No.: 8, Date of Revision: 12/26/2018 is an attachment to this form. The attached applicable USDOL Wage Determination consists of 10 pages and is available at U.S. Department of Labor URL website at www.wdol.gov.)

Signature