

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 06/07/14

TIME: 2:32 AM PM BY: C. Roque

FILE NO OPA-PA: 16-006

IRIARTE CAMACHO CALVO LAW GROUP LLC

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Attorneys for Appellant
BASIL FOOD INDUSTRIAL SERVICES CORPORATION

BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Appeal of

BASIL FOOD INDUSTRIAL SERVICES
CORPORATION,

Appellant.

Docket No. OPA-PA_____

NOTICE OF PROCUREMENT APPEAL

Basil Food Industrial Services Corporation brings this appeal of a breach of contract controversy against the General Services Agency of the Department of Administration.

Appellant Information:

Name: Basil Food Industrial Services Corporation (formerly known as Li Qun Corporation).

Mailing Address: 530 West O'Brien Drive, Hagåtña, GU 96910. For the purposes of this Appeal, please direct filings and correspondence to Basil's legal counsel: Iriarte Camacho Calvo Law Group LLC, Attn: Elyze Iriarte, Esq., 134 W Soledad Ave Ste 401, Hagåtña, GU 96910.

Business Address: 530 West O'Brien Drive, Hagåtña, GU 96910

Email Address: eiriarte@icclawgroup.com

Daytime Contact No.: 472-6813

Fax No.: 477-4375

Appeal Information

Purchasing Agency: General Services Agency for Department of Public Health and Social Services (DPHSS)

Identification of Contract: GSA Bid No. 010-14 & GSA Bid No. 011-14 (referenced herein as "Contracts").

Decision being appealed was made on June 3, 2016 by the Acting Chief Procurement Officer, Anita Cruz. See Exs. I and K.

Appeal is made from a Decision on Contract or Breach of Contract Controversy, specifically, GSA's decision to terminate the Contracts.

Names of Competing Bidders, Offerors, or Contractors known to Appellant: SH Enterprises; Kals Corporation; L C Enterprises.

Statement Supporting the Appeal

The Office of Public Accountability has jurisdiction over breach of contract controversies, including the present dispute. 5 GCA §§ 5427, 5706.

On January 24, 2014, GSA issued an Invitation for GSA Bid No. 010-14, "Nutrition Services for the Comprehensive Management, Operations & Maintenance of the Elderly Nutrition Program, Congregate Meals Component." On the same day, GSA issued an Invitation for GSA Bid No. 011-14, "Nutrition Services for the Comprehensive Management, Operations & Maintenance of the Elderly Nutrition Program, Home-Delivered Meals Component." The Contracts' terms were for one

year, with an option to renew for two additional years. See Exs. A & B.

Basil was selected as the lowest responsible bidder and has been providing service under the Contracts since July 2014. The prior provider for elderly meal services was SH Enterprises. Basil retained many of SH Enterprises' employees working under the elderly nutrition program ("ENP").

Basil's Performance under the Contracts

Basil has earnestly tried to comply with DPHSS' requirements throughout the term of the Contracts, despite being treated unfairly by DPHSS.

In 2013, Guam passed a new Food Code, which requires a Hazard Analysis and Critical Control Point ("HACCP") Plan under certain circumstances, including for elderly nutrition services. According to Food Code § 8-201.14(F), an "HACCP Plan required for submission to the regulatory authority shall be developed or certified by a person who has obtained a training and credentialing on HACCP from a program that has been evaluated and listed by the Regulatory Authority." To comply with the new Food Code, Basil inquired with DPHSS, the regulatory authority, on how it can locate a person on island with the requisite training and credentialing to assist in developing and certifying Basil's HACCP Plan. DPHSS advised Basil that it would not divulge the identity of any person with such qualifications because it did not want to act biased.

Basil spent months trying to locate a local HACCP certifier, but was unsuccessful. Basil sought extensions from DPHSS, noting that it was unable to find a qualified person on island. Again, DPHSS did not provide the identity of any person qualified to develop an HACCP Plan on-island. Therefore, Basil was required

to retain an off-island provider, HACCP Consulting Group, LLC. Basil's consultant developed Basil's plan which was submitted originally on June 29, 2015. After being informed of corrections it needed to make to the HACCP Plan, Basil again worked with HACCP Consulting Group to submit a revised plan on July 7, 2015.

On July 9, 2015, Basil's Anigua facility (where it cooks meals for the program) was inspected by DPHSS. It was given a demerit for not having an acceptable HACCP plan, and was issued a notice of closure specifically because of the lack of a certified HACCP Plan. Ex. C. As a result, Basil was unable to meet its commitment under the Contracts. It was only upon the closure of Basil's facility that DPHSS was willing to inform them of a local person (Barry Mead) qualified to develop and certify their HACCP Plan. On July 18, 2015, Mr. Mead certified Basil's HACCP Plan, and the Plan was submitted to DPHSS. Ex. D. DPHSS restored Basil to an "A" rating.

Meanwhile, on July 14, 2015, DPHSS informed Basil that it was under default and had ten days to cure the default. Ex. E. On July 28, 2015, GSA acknowledged that Basil had cured any default when its "A" rating was restored. Ex. F.

Basil had learned that, during the period that Basil was suspended for not having a HACCP Plan, the vendor chosen by GSA (SH Enterprises) under the emergency procurement did **not** have a certified HACCP Plan. Ex. G. Therefore, the vendor chosen by GSA was not certified or properly licensed to prepare food under the ENP program. Basil also suspects underhanded activity occurred with respect to the emergency procurement, because days before Basil was inspected, on July 6, 2015, Basil received a call from an employee of SH Enterprises, wishing to contact a former SH Enterprises employee now employed with Basil. Basil was informed

that "something was happening this week," that SH "took the contract," and that the employee needed to get in touch with SH.

Months later, on May 31, 2016, Basil underwent another inspection.¹ The inspection report indicated violations of the Guam Food Code. As a result of the inspection, DPHSS removed the "A" placard and replaced it with a "D" placard. DPHSS also issued a notice of closure and re-inspection request. The inspection report allowed the violations to be corrected by either June 10, 2016 or June 30, 2016.

Within two days, on June 2, 2016, Basil corrected all violations and received an "A" rating. Ex. H.

However, on June 1, 2016, GSA informed Basil that the contracts were immediately terminated pursuant to section 12.9 of the Contracts' Special Terms and Conditions. Ex. I. Basil informed GSA that it had cured any default within the ten days allotted by 2 GAR Div. 4 § 6101(8) and that the Contracts must be reinstated. Ex. J. However, GSA refused to rescind the termination. Ex. K.

In the meantime, according to news reports, GSA has issued an emergency procurement to provide meal service to the elderly, and has awarded the emergency procurement again to SH Enterprises. Basil has received evidence that SH Enterprises is not complying with health regulations in the transport of the ENP food.

¹ The inspection was allegedly incited by a complaint filed with the DPHSS that a small bug was found in a meal tray. Basil disputes that the bug came from its Anigua facility.

Legal Argument

The Contracts specify they are governed under the Guam Procurement Act (5 GCA Ch. 5) and Guam Procurement Regulations. Ex. L. The purpose of the Procurement Regulations "is to provide standard policies and procedures governing the procurement, management, control and disposal of supplies, services, and construction for the territory in conformity" with the Guam Procurement Law. 2 GAR Div. 4 § 1101.

Furthermore, under the Contracts' General Terms and Conditions (Ex. L), if the contractor fails to perform any of the provisions of the contract, then the contractor's "Defaults will be treated subject to and in accordance with the provisions of 2 GAR Div. 4 § 6101(8)." Section 6101(8) states:

(8) Termination for Default Clause.

TERMINATION FOR DEFAULTS

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

As section 6101(8) indicates, Basil should have been afforded a ten day period to cure. In fact, Basil did cure any default within two days.

GSA has refused to rescind the termination of the Contracts and relies upon

Section 12.9 of the Special Terms and Conditions, which states:

In the event the Bidder who is awarded this IFB for the provision of ENP Nutrition Services is issued a 'C' rating from the Division of Environmental Health, DPH&SS or is issued a 'Stop Order' by the Guam Fire Department, the awarded Vendor may be terminated as the Vendor of the ENP Nutrition Services.

Even if section 12.9 permits termination, termination must occur through section 6101(8), as incorporated by the Contracts' General Terms and Conditions. Section 6101(8) permits a termination only after the contractor fails to cure within ten days. Contrary to GSA's analysis, there is no ability to opt out of this ten day cure period, just because of a separate and earlier contract default.

GSA is bound to follow both the law and the Contracts which allow the contractor an opportunity to cure a default. As Basil has done so, GSA must be ordered to immediately reinstate the contract.

Relief Requested

Basil requests that the terminations be rescinded and that it be permitted to perform under the remaining term of the Contracts, and also that it be given an extension of the Contracts' terms to account for the period it has been unlawfully restrained from performing.

Basil further requests that GSA be prevented from issuing a new bid for the ENP services.

Declaration re Court Action

Pursuant to 5 GCA Chapter 5, unless the court requests, expects, or otherwise expresses interest in a decision by the Public Auditor, the Office of Public Accountability will not take action on any appeal where action concerning the

protest or appeal has commenced in any court.

The undersigned party does hereby confirm that to the best of his or her knowledge, no case or action concerning the subject of this Appeal has been commenced in court. All parties are required to and the undersigned party agrees to notify the Office of Public Accountability within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

DATED: Hagåtña, GU, 7, June, 2016.

IRIARTE CAMACHO CALVO LAW
GROUP LLC



ELYZE MCDONALD IRIARTE

Attorneys for Appellant
BASIL FOOD INDUSTRIAL SERVICES
CORPORATION

VERIFICATION OF MICHAEL ZHOU


GUAM USA)
)
MUNICIPALITY OF HAGATNA) SS.

MICHAEL ZHOU, being first duly sworn under oath, has read the foregoing BASIL FOOD INDUSTRIAL SERVICES CORPORATION'S NOTICE OF APPEAL, knows the contents thereof, and verifies that the same is true to the best of his knowledge and belief.

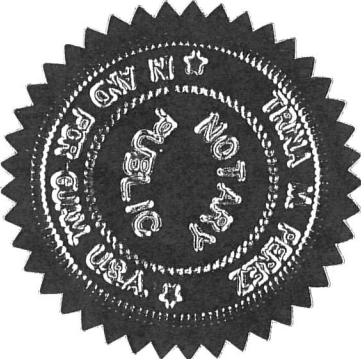


MICHAEL ZHOU

Subscribed and sworn to before me this 6 day of June, 2016.



Notary Public



TRINA M. PEREZ
NOTARY PUBLIC
In and for Guam, U.S.A.
My Commission Expires: March 02, 2017
P.O. Box 5087 Hagatna, Guam 96932

Exhibits

- A. Excerpt from GSA-010-14
- B. Excerpt from GSA-011-14
- C. July 17, 2015 letter from J.Gillan to M. Zhou
- D. July 18, 2015 HACCP certification
- E. July 14, 2015 letter from C.Acfalle to J.Li
- F. July 28, 2015 letter from C.Acfalle to J.Li
- G. July 15, 2015 Memorandum from M.T. Nadeau to J. Gillan
- H. June 2, 2016 Inspection Report
- I. June 1, 2016 Letter from A.Cruz to M.Zhou
- J. June 2, 2016 letter from E.Iriarte and A.Cruz
- K. June 3, 2016 letter from A.Cruz to E.Iriarte
- L. Excerpt from GSA-010-14 and GTA-011-14: General Terms and Conditions

EXHIBIT A

INVITATION FOR BID

ISSUING OFFICE:

for: Pedro F. San Nicolas

GENERAL SERVICES AGENCY
GOVERNMENT OF GUAM
148 ROUTE 1, MARINE DRIVE
PITI, GUAM 96915

CLAUDIA S. ACFALLE
Chief Procurement Officer

DATE ISSUED: 01/24/14

BID INVITATION NO: GSA-010-14

BID FOR: **Department of Public Health & Social Services**

SPECIFICATION: See Attached

DESTINATION: Nutrition Services for the Comprehensive Management, Operations, & Maintenance of the Elderly Nutrition Program, Congregate Meals Component.

REQUIRED DELIVERY DATE: **Initial contract period is upon signing of the contract for a period of (1) one year, with the option to renew for (2) two additional years, based upon availability of funds and satisfactory performance.**

INSTRUCTION TO BIDDERS:

INDICATE WHETHER: INDIVIDUAL PARTNERSHIP CORPORATION

INCORPORATED IN: GUAM

This bid shall be submitted in duplicate and sealed to the issuing office above no later than (Time)9:00 am. Date:2/10/14 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 60 calendar days from the date opening to supply any or all the items which prices are quoted.

NAME AND ADDRESS OF BIDDER:

LI QUN CORPORATION

482 PALE SAN VITORES ROAD

TAMUNING, GUAM 96913-4003

SIGNATURE AND TITLE OF PERSON
AUTHORIZED TO SIGN THIS BID:

JERRY ZY LI, TREASURER

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:

EXHIBIT B

INVITATION FOR BID

ISSUING OFFICE:

for: Pedro F. Sant Nicolas

GENERAL SERVICES AGENCY
GOVERNMENT OF GUAM
148 ROUTE 1, MARINE DRIVE
PITI, GUAM 96915

CLAUDIA S. ACFALLE
Chief Procurement Officer

DATE ISSUED: 01/24/14

BID INVITATION NO: GSA-011-14

BID FOR: Department of Public health and Social services

SPECIFICATION: See Attached

DESTINATION: Nutrition Services for the Comprehensive Management, Operations, & Maintenance of the Elderly Nutrition Program, Home-Delivered Meals Component.

REQUIRED DELIVERY DATE: Initial contract period is upon signing of the contract for a period of (1) one year, with the option to renew for (2) two additional years, based upon availability of funds and satisfactory performance.

INSTRUCTION TO BIDDERS:

INDICATE WHETHER: INDIVIDUAL PARTNERSHIP CORPORATION

INCORPORATED IN: GUAM

This bid shall be submitted in duplicate and sealed to the issuing office above no later than (Time)10:00 am Date:2/10/14 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 60 calendar days from the date opening to supply any or all the items which prices are quoted.

NAME AND ADDRESS OF BIDDER:
LI QUN CORPORATION
482 PALE SAN VITORES ROAD
TAMUNING, GU 96913-4003

SIGNATURE AND TITLE OF PERSON
AUTHORIZED TO SIGN THIS BID:
JERRY ZY LI, TREASURER

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:

EXHIBIT C



GOVERNMENT OF GUAM
 DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES
 DIPATTAMENTON SALUT PUPBLEKO YAN SETBISION SUSIAT



EDDIE BAZA CALVO
 GOVERNOR

RAY TENORIO
 LIEUTENANT GOVERNOR

JAMES W. GILLAN
 DIRECTOR

LEO G. CASIL
 DEPUTY DIRECTOR

JUL 17 2015

Mr. Michael Zhou
 President
 Basil Food Industrial Services Corporation
 #530 West O'Brien Drive
 Hagatna, Guam 96932

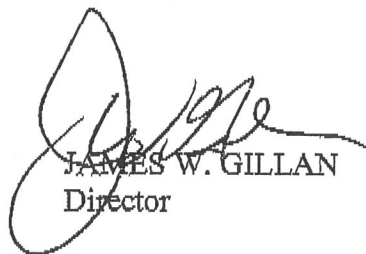
Dear Mr. Zhou,

This letter is to inform you of a correction which needs to be made on the inspection report dated 07/09/15. The statement written on the report, "sanitary permit revoked" will be changed to "sanitary permit suspended." Thus, your sanitary permit (no. 150002470) was suspended, not revoked, following the inspection.

Your Sanitary Permit No. 150002470 was suspended due to the repeated violation of not possessing a certified HACCP Plan specific to your operation, as required in the Guam Food Code section 8-201.14. According to Title 10 GCA Section 21109(b), the suspension of your permit will continue as long as the violation (lack of a certified HACCP Plan) goes uncorrected.

Should you have any questions, please contact Ms. Katherine Del Mundo, Environmental Public Health Officer III of the Division of Environmental Health, at 735-7221.

Sincerely,



JAMES W. GILLAN
 Director

123 CHALAN KARETA, MANGILAO, GUAM 96913-6304
 www.dphss.guam.gov • Ph.: 1.671.735.7102 • Fax: 1.671.734.5910

RECEIVED
 CARLSMITH BALL

DATE: 7/17/15 TIME 4:00 PM

EXHIBIT D

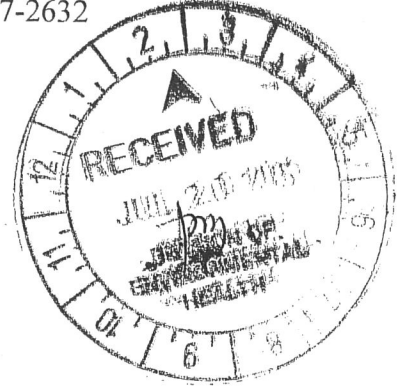
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BARRY LANCE MEAD, CFBE, CHE

114 San Pedro St.
Santa Rita, Guam 96915-1601
Hm. / Fax (671) 565-2632 Cellular 727-2632
Email bigb@teleguam.net

July 18, 2015

Department of Public Health and Social Services
Office of Environmental Health
123 Chalan Kareta
Mangilao, GU 96913-6304



Attn: Mr. Thomas Nadeau

Subject: HACCP Certification for Basil Food Industrial Services

Hafa Adai Mr. Nadeau,

By way of this letter I am certifying that I reviewed the HACCP plan for the Basil Food Industrial Services and found it to be in compliance with §8-201.13(A)(4) and §8-201.14 of the Guam Food Code.

Senseremente,

A handwritten signature in black ink, appearing to read "B. L. Mead". The signature is written in a cursive style and is positioned above the printed name.

Barry L. Mead, CFBE, CHE
Certified ServSafe® Instructor
Registered ServSafe® Proctor

EXHIBIT E

Eddie Baza Calvo
Governor



GENERAL SERVICES AGENCY

(Ahensian Setbision Hinirat)
Department of Administration

148 Route 1 Marine Drive, Piti, Guam 96915
Tel: (671) 475-1707 Fax Nos: (671) 475-1727 / 472-4217

Ray Tenorio
Lieutenant Governor

Anthony C. Blaz
Director

Alfred F. Duenas
Deputy Director

July 14, 2015

Memorandum

Mr. Jerry Li
Basil Food Industrial Services
482 Pale San Vitores Road
Tamuning, Guam 96913

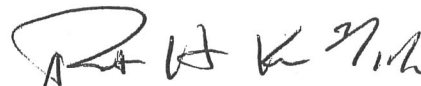
Re: Notice of Default for GSA Bid No 10-14 and 11-14

On July 9, 2015, the Department of Public Health and Social Services' Division of Environmental Health had issued you a NOTICE OF CLOSURE order for your facility at Anigua, due to receiving a "D" rating. This has caused you to be in violation of both GSA Bids No. 10-14 and 11-14 under Section 12.9 of the Special Term and Conditions, which was incorporated into the Purchase Order which reads:

12.9 TERMINATION FOR NON-COMPLIANCE WITH REGULATORY REQUIREMENTS:

In the event the Bidder who is awarded the IFB for the provision of ENP Nutrition Services is issued a "C" rating from the Division of Environmental Health, DPHSS or issued a "Stop Order" by the Guam Fire Department, the awarded Vendor may be terminated as the Vendor of the ENP Nutrition Services.

As stated above, your facility received a "D" rating. As such, you are in default of this contractual term. The government has determined that you have ten (10) days from receipt of this letter to cure this default. If you fail to cure it by the specific time, this contract shall be automatically terminated.


CLAUDIA S. ACFALLE
Chief Procurement Officer

cc: Director, DPHSS
Administrator, DSC DPHSS

COMMITTED TO EXCELLENCE

EXHIBIT F

COMMITTED TO EXCELLENCE

Eddie Baza Calvo
Governor

GSA**GENERAL SERVICES AGENCY**

(Ahensian Setbision Hinirat)
Department of Administration

Ray Tenorio
Lieutenant Governor

Anthony C. Blaz
Director

148 Route 1 Marine Drive, Piti, Guam 96915
Tel: (671) 475-1707 Fax Nos: (671) 475-1727 / 472-4217

Alfred F. Duenas
Deputy Director

July 28, 2015

Memorandum

FAX RECEIVED

Mr. Jerry Li
Basil Food Industrial Services
482 Pale San Vitores Road
Tamuning, Guam 96913

JUL 28 2015

TIME: 11:17

Re: Non-Compliance and Cure of Section 12.9 of the Special Terms and Condition for GSA Bid No 10-14 and 11-14

On July 15, 2015, you received from the General Services Agency a memorandum informing you that your company was in default on section 12.9 of the Special Terms and Conditions in GSA Bid Nos. 10-14 and 11-14, due to receiving a "D" rating from the Department of Public Health and Social Services' Division of Environmental Health.

Further, in our July 14, 2015, memorandum, you were informed that the government has given you an additional ten (10) days to cure the default, and if you fail to do so, these contracts will be automatically terminated as indicated in the above stated provision.

On July 27, 2015, the Department of Public Health and Social Services Division of Environmental Health informed us that you had now come into compliance with the requirements and had received an "A" rating.

Since you had met the requirements for curing the issue that led to your suspension, the General Services Agency will reinstate your contract on the above stated bids after the expiration of the emergency contract that was issued. In other words, you will be expected to provide services beginning on August 10th for the Congregate and on August 9th for the Home Delivery

We also want to express our deep disappointment in your handling of this situation. You were given a great deal of time by the Department of Public Health and Social Services' Division of Environmental Health to come into compliance with the Guam Food Code. Your lack of action led to this situation. In the future, any such similar action may lead to a determination that you are not a responsive and responsible vendor.

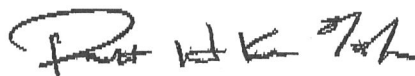

CLAUDIA S. ACFALLE

EXHIBIT G



GOVERNMENT OF GUAM
 DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES
 DIPATTAMENTON SALUT PUPBLEKO YAN SETBISION SUSIAT



EDDIE BAZA CALVO
 GOVERNOR

RAY TENORIO
 LIEUTENANT GOVERNOR

JAMES W. GILLAN
 DIRECTOR

LEO G. CASIL
 DEPUTY DIRECTOR

JUL 15 2015

Memorandum

To: Director, Department of Public Health and Social Services
 From: Chief Environmental Public Health Officer, DEH
 Subject: Response to Freedom of Information Act (FOIA) Request from Basil Industrial Food Services

This memorandum is in response to Item #3 in the FOIA request from Basil Industrial Food Services dated July 10, 2015, as follows:

3. All HPACC [sic] certifications for any vendor providing food or nutrition services for the elderly as administered by the Department of Public Health, and all correspondence relating to such HPACC certifications from January 1, 2014 to present.

No vendor providing food or nutrition services for the elderly as administered by the Department of Public Health and Social Services has a Hazard Analysis Critical Control Point ("HACCP") certifications. No correspondence relating to such HACCP certifications from January 1, 2014 to present exists for any such vendor besides Basil Industrial Food Services.

Should you have any questions related to this memorandum, please contact me via email at masatomo.nadeau@dphss.guam.gov, or by phone at 735-7221.


 M. THOMAS NADEAU

EXHIBIT H

Food Establishment Inspection Report

INSPECTION TYPE Regular	RBN TYPE <input type="checkbox"/>	GRADE 1	INSPECTION DATE 06/02/2016	ESTABLISHMENT NAME BASIL FOOD SERVICE
Follow-up <input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	RATING A	TIME IN 10:00 AM	TIME OUT 12:00 PM
Complaint <input type="checkbox"/>	<input type="checkbox"/>		SANITARY PERMIT NO. 1580377	PERMIT HOLDER BASIL FOOD INDUSTRIAL SERVICES CORP.
Investigation <input type="checkbox"/>	<input type="checkbox"/>		LOCATION (ADDRESS) 101 EAST 22ND NEW/289-7-1 W. O'BRIEN DR. HAGATN	
Other <input type="checkbox"/>	<input type="checkbox"/>			
ESTABLISHMENT TYPE CATERING				RISK CATEGORY 4

Item	IN	OUT	NA	N/O	Description	COS	R	PTS
1					Handwashing facilities and procedures			6
2					Handwashing facilities and procedures			6
3					Preparation of food			6
4					Food labeling: expiration date, use by date, tobacco use			6
5					No discharge from sinks, drains, or floor			6
6					Hand clean and protected			6
7					No bare hand contact with ready-to-eat food			6
8					Adequate handwashing facilities and procedures accessible			6
9					Food obtained from approved sources			6
10					Food received at proper temperature			6
11					Food in food contact surfaces and containers			6
12					Required records available			6
13					Food separated and protected			6
14					Food contact surfaces cleanable			6
15					Proper disposal of refuse			6
16					Handwashing facilities and procedures			6
17					Handwashing facilities and procedures			6
18					Handwashing facilities and procedures			6
19					Handwashing facilities and procedures			6
20					Handwashing facilities and procedures			6
21					Handwashing facilities and procedures			6
22					Consumer Advisory provided for raw or undercooked foods			6
23					Food safety practices: prohibited foods not used			6
24					Food safety practices: approved and properly used			6
25					Food safety practices: properly identified, stored, and used			6
26					Food safety practices: variance, specialized process, and HACCP plan			6

Item	IN	OUT	NA	N/O	Description	COS	R	PTS
27					Pasteurized eggs used where required			1
28					Water and ice from approved source			2
29					Variance obtained for specialized processing methods			1
30					Proper cooling methods used; adequate equipment for temperature control			1
31					Plant food properly cooked for hot holding			1
32					Approved thawing methods used			1
33					Thermometer provided and accurate			1
34					Food properly labeled; original container			1
35					Insects, rodents, and animals not present			2
36					Contamination prevented during food preparation, storage & display			1
37					Personal cleanliness			1
38					Wiping cloths: properly used and stored			1
39					Washing fruits and vegetables			1
40					Linens: clean and properly stored			1
41					Utensils, equipment and linens: properly stored, dried, handled			1
42					Single-use/single-service articles: properly stored, used			1
43					Gloves used properly			1
44					Food and nonfood-contact surfaces cleanable, properly designed, constructed, and used			1
45					Warewashing facilities: installed, maintained, used; test strips			1
46					Nonfood-contact surfaces clean			1
47					Hot & cold water available, adequate pressure			2
48					Plumbing installed; proper backflow devices			2
49					Sewage and wastewater properly disposed			2
50					Toilet facilities: properly constructed, supplied, & cleaned			2
51					Garbage/refuse properly disposed; facilities maintained			2
52					Physical facilities installed, maintained, and clean			1
53					Adequate ventilation and lighting; designated areas use			1

I have read and understand the above violation(s), and I am aware of the corrective measures that shall be taken.

Person in Charge (Print and Sign) Beth De la Cruz / Beth Cruz Date June 02, 2016

DEH Inspector (Print and Sign) R. DEL MUNDO EPHO III FOR (Baradi EPHO III)

Follow-up (Circle one): YES NO Follow-up Date 06/30/16

Department of Public Health and Social Services
 Division of Environmental Health
Food Establishment Inspection Report

ESTABLISHMENT NAME: **BASIL FOOD SERVICE**
 LOCATION (Address): **LOT 1454-1-2-NEW/239-7-W. O'BRIEN TR. HAGATNA**
 INSPECTION DATE: **06/02/2016**
 SANITARY PERMIT NO: **150003322**
 PERMIT HOLDER: **BASIL FOOD INDUSTRIAL SERVICES CORP.**

TEMPERATURE OBSERVATIONS			
Item/Location	Temperature (°F)	Item/Location	Temperature (°F)
NONE FOLLOWS			

VIOLATIONS

Violations cited in this report must be corrected within the time frames indicated, or as stated in Sections 8-405.11 and 8-406.11 of the Guam Food Code.

A FOLLOW-UP INSPECTION WAS CONDUCTED BASED ON A REGULAR/COMPLAIN INSPECTION CONDUCTED ON 05/31/16, AND THE FOLLOWING VIOLATIONS WERE CORRECTED:

6, 7, 8, 13, 14, 21, 23, AND 26
 # 33, 34, 36, 37, 38, 42, 45, AND 53

PROVIDED FOOD SAFETY TRAINING LOG SHEET FOR TRAINING DONE ON 06/01/16 AT 8:30 AM TO 12:00 PM. TRAINING CONDUCTED BY BETTY DELACRUZ AND MICHAEL ZHOU (INTERPRETER). TRAINING INCLUDED PROPER HANDWASHING, WARE WASHING PRACTICES, DATE MARKING, AND GLOVE USAGE.

ACCORDING TO MS. DELA CRUZ, THEY WILL BE SERVING TO HSP. HACCP LOGS COULD NOT BE VERIFIED DUE TO NO OPERATION. LOG SHEET WAS PROVIDED INDICATING MEETING OF HACCP TEAM AND WHAT WAS DISCUSSED AND PLANNED TO ENSURE COMPLIANCE. DEH STAFF, K. DELMUNDO, ALSO MET WITH STAFF FOR HACCP TEAM TO DISCUSS LOGS AND SOPs AND THEIR IMPORTANCE.

Based on the inspection today, the items listed above identify violations which shall be corrected by the date specified by the Department. Failure to comply may result in further regulatory actions. If seeking to appeal the result of this inspection, a written request for hearing must be submitted to the Director before the indicated correction date.

Person in Charge (Print and Sign): **Betty Delacruz / Betty Cruz**
 DEH Inspector (Print and Sign): **K. DELMUNDO EPHO III**
 Date: **June 02, 2016**
 Date: **06/02/16**

Department of Public Health and Social Services
Division of Environmental Health

Food Establishment Inspection Report

ESTABLISHMENT NAME BASIL FOOD SERVICE		LOCATION (Address) LOT 1454-12-NEW/239-7-W. O'BRIEN DR. HAGATNA
INSPECTION DATE 06/02/2016	SANITARY PERMIT NO. 150003322	PERMIT HOLDER BASIL FOOD INDUSTRIAL SERVICES CORP.

Violations cited in this report must be corrected within the time frames indicated, or as stated in Sections 8-405.11 and 8-406.11 of the Guam Food Code.

DEH STAFF, K. DEL MUNDO, ALSO WENT OVER PREVIOUS INSPECTION REPORT TO FURTHER DISCUSS CORRECTIVE ACTIONS TAKEN, THE IMPORTANCE OF FOLLOWING THE HACCP PLAN DUE TO THE POPULATION BEING SERVED, AND ANSWERED QUESTIONS.	
THE FOLLOWING VIOLATIONS ARE STILL PENDING: #52 - WORK IS BEING PROCESSED INTERNALLY AND CURRENTLY BEING ADDRESSED. WORK ORDER / DOCUMENTATION WILL BE PROVIDED AT A LATER TIME	
A \$100.00 RE-INSTALLMENT FEE SHALL BE PAID TO THE DEPARTMENT PRIOR TO THE RE-ISSUANCE OF THE PERMIT.	
REMOVED "B" PLACARD NO. 00360 AND NOTICE OF CLOSURE ISSUED "A" PLACARD NO. 0236	
BRIEFED MANAGER, BETTY DELA CRUZ, ON ABOVE VIOLATIONS.	

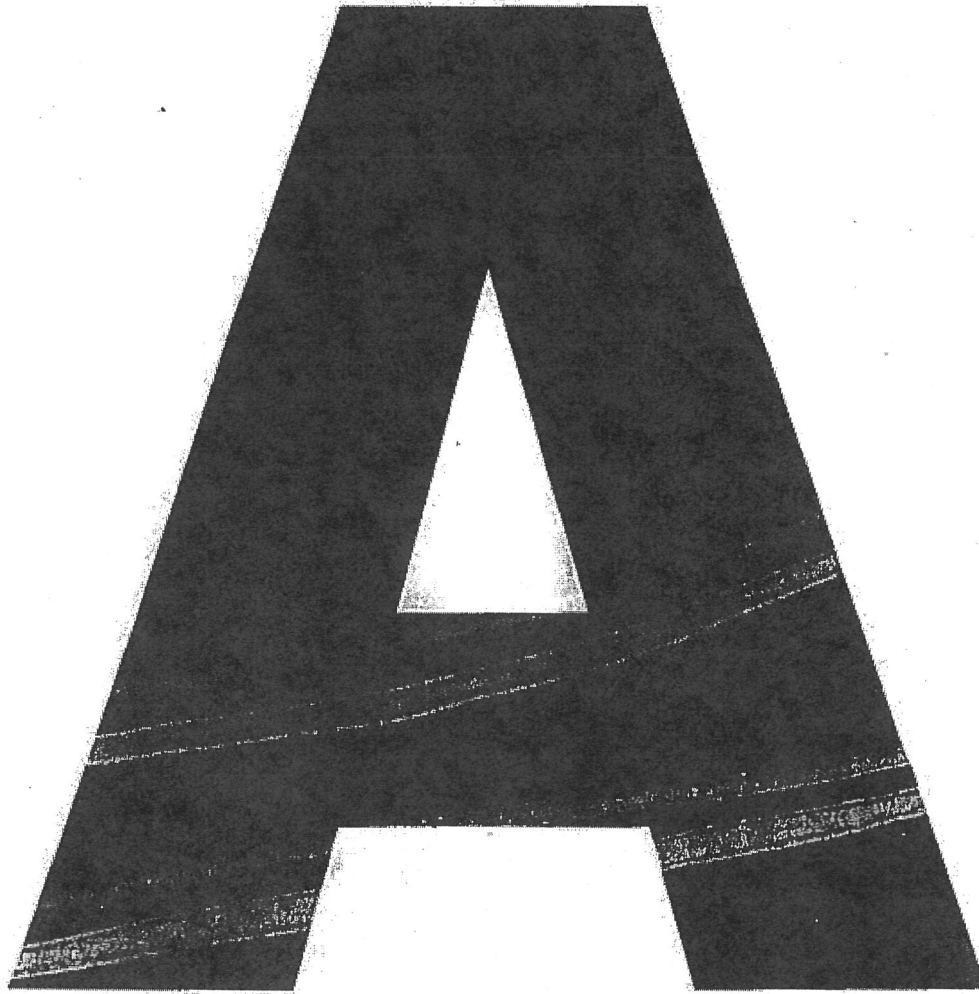
Based on the inspection today, the items listed above identify violations which shall be corrected by the date specified by the Department. Failure to comply may result in further regulatory actions. If seeking to appeal the result of this inspection, a written request for hearing must be submitted to the Director before the indicated correction date.

Person in Charge (Print and Sign) Betty Dela Cruz / Betty Cruz	Date: June 02, 2016
DEH Inspector (Print and Sign) K. DEL MUNDO EPHO III for M. Boradi EPHO III CB	Date: 06/02/2016

GOVERNMENT OF GUAM

DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES THE DIVISION OF ENVIRONMENTAL HEALTH

On the date of the latest inspection, this establishment
received the letter grade



Based on an assigned demerit score of
10 or less demerit points.

This facility was inspected on: 06/02/2016

The next sanitation inspection is due: 09/02/2016

No 01236 *FW*

**THIS PLACKARD MUST NOT BE REMOVED BY ANYONE EXCEPT A DESIGNATED
REPRESENTATIVE OF THE DIRECTOR OF PUBLIC HEALTH AND
SOCIAL SERVICES**

EXHIBIT I

Eddie Baza Calvo
Governor



GENERAL SERVICES AGENCY

(Ahensian Setbision Hinirat)
Department of Administration

148 Route 1 Marine Corps Drive, Piti, Guam 96915
Tel: (671) 475-1707 Fax Nos: (671) 475-1727 / 472-4217

Ray Tenorio
Lieutenant Governor

Christine W. Baletto
Acting Director
Dept. of Administration

Anisia B. Terlaje
Deputy Director
Dept. of Administration

June 1, 2016

Memorandum

Mr. Micheal Zhou
Basil Food Industrial Services
#530 West O'Brien Drive
Hagatna, Guam 96932

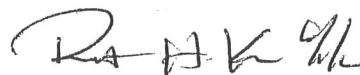
Re: Termination of Contract for Failing to Comply of Section 12.9 of the Special Terms and Condition for GSA Bid No 10-14 and 11-14

Dear Mr Zhou:

On May 31, 2016, The Environmental Health section of the Department of Public Health and Social Services conducted its inspection of your facility and found that it had 45 demerits, or a "D" rating. Based upon this rating, your company is in default of section 12.9 of the Special Terms and Conditions in GSA Bid Nos. 10-14 and 11-14. This rating has your facility suspended from providing services.

This is not the first time that your company has had to stop providing services under the contract. In July of last year, you also received a "D" rating. At that time, we informed you that any further similar action result in a termination of whether you are a responsive and responsible bidder.

Based upon your history of failing to meet the basic safety and health criteria at the facility, we have determined that your contract is terminated pursuant to section 12.9 of the Special Terms and Conditions in GSA Bid Nu 10-114 and 11-14, effective immediately.


ANITA CRLZ
Acting.

cc: Attorney General of Guam
Director, DPHSS

EXHIBIT J



IRIARTE
CAMACHO
CALVO
LAW GROUP LLC

2 JUNE 2016

VIA FACSIMILE: 475-1727 & HAND DELIVERY

Anita Cruz
General Services Agency, Department of Administration
148 Route 1 Marine Corps Drive
Piti, GU 96912

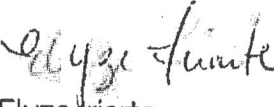
Re: Cure of Default under GSA Bid No. 10-14 and 11-14

Dear Ms. Cruz:

On behalf of Basil Food Industrial Services, I am responding to your letter dated June 1, 2016 notifying Basil of the Termination of Contracts under GSA Bid No. 10-14 and 11-14.

I am enclosing a copy of today's re-inspection report in which Basil is awarded an "A" rating. Since the contracts are governed by Guam procurement law and regulations, Basil should be afforded a ten-day period to cure defaults. See 2 GAR Div. 4 § 6101(8). Basil has cured and is prepared to recommence service under GSA Bid No. 10-14 and 11-14 effective June 3, 2016. Please confirm that Basil may recommence service tomorrow.

Sincerely,



Elyze Iriarte

cc: Robert Kono, GSA
Michael Zhou (by email)

EXHIBIT K

Eddie Baza Calvo
Governor



GENERAL SERVICES AGENCY

(Ahensian Setbision Hinirat)
Department of Administration

Ray Tenorio
Lieutenant Governor

Christine W. Baletto
Acting Director
Dept. of Administration

148 Route 1 Marine Corps Drive, Piti, Guam 96915
Tel: (671) 475-1707 Fax Nos: (671) 475-1727 / 472-4217

Anisia B. Terlaje
Deputy Director
Dept. of Administration

June 3, 2016

Memorandum

Ms. Elyze Iriarte
c/o Iriarte, Camacho, Calvo Law Group
1134 West Soledad Ave
Hagatna, Guam 96932

Re: Request for Curing of Default of GSA Bid No. 10 and 11-14

We are in receipt of your memorandum dated June 2nd, requesting that the termination memorandum of June 1st be cancelled and the above stated contracts be reinstated as your company was able to cure the suspension of the facility.

As stated in Special Terms and Conditions 12.9, if you receive a "D" rating, the government may terminate your contract. In July 27th 2015, you had also received a "D" rating. At that time, the government chose to give you an opportunity to cure, rather than immediately terminated as provided for in the contract. This does not mean that every time that your client violates the same issue that the government must give you ten (10) days to cure. The government chooses now to exercise the provision of this contract and terminate you for receiving a "D" rating.

The termination of these contracts remain in effect.

ANITA CRUZ
Acting

RECEIVED *SC*
IRIARTE, CAMACHO, CALVO LAW GROUP LLC
DATE: 6/03/16 TIME: 9:44

EXHIBIT L

**GOVERNMENT OF GUAM
GENERAL TERMS AND CONDITIONS**

SEALED BID SOLICITATION AND AWARD

Only those Boxes checked below are applicable to this bid.

- [X] 1. **AUTHORITY:** This solicitation is issued subject to all the provision of the Guam Procurement Act (5GCA, Chapter 5) and the Guam Procurement Regulations (copies of both are available at the Office of the Complier of laws, Department of Law, copies available for inspection at General Services Agency). It requires all parties involved in the Preparation, negotiation, performance, or administration of contracts to act in good faith.
- [X] 2. **GENERAL INTENTION:** Unless otherwise specified, it is the declared and acknowledged intention and meaning of these General Terms and conditions for the bidder to provide the Government of Guam (Government) with specified services or with materials, supplies or equipment completely assembled and ready for use.
- [X] 3. **TAXES:** Bidders are cautioned that they are subject to Guam Income Taxes as well as all other taxes on Guam Transactions. Specific information on taxes may be obtained from the Director of Revenue and Taxation.
- [X] 4. **LICENSING:** Bidders are cautioned that the Government will not consider for award any offer submitted by a bidder who has not complied with the Guam Licensing Law. Specific information on licenses may be obtained from the Director of Revenue and Taxation.
- [X] 5. **LOCAL PROCUREMENT PREFERENCE:** All procurement of supplies and services where possible, will be made from among businesses licensed to do business on Guam in accordance with section 5008 of the Guam Procurement Act (5GCA, Chapter 5) and Section 1-104 of the Guam Procurement Regulations.
- [X] 6. **COMPLIANCE WITH SPECIFICATIONS AND OTHER SOLICITATION REQUIREMENTS:**
Bidders shall comply with all specifications and other requirements of the Solicitation.
- [X] 7. **“ALL OR NONE” BIDS:** NOTE: By checking this item, the Government is requesting all of the bid items to be bid or none at all. The Government will not award on an itemized basis.
- [X] 8. **INDEPENDENT PRICE DETERMINATION:** The bidder, upon signing the Invitation for Bid, certifies that the prices in his bid were derived at without collusion, and acknowledge that collusion and anti-competitive practices are prohibited by law. Violations will be subject to the provision of Section 5651 of that of the Guam Procurement Act. Other existing civil, criminal or administrative remedies are not impaired and may be in addition to the remedies in Section 5651 of the Government code.
- [X] 9. **BIDDER'S PRICE:** The Government will consider not more than two (2) (Basic and Alternate) item prices and the bidder shall explain fully each price if supplies, materials, equipment, and/or specified services offered comply with specifications and the products origin. Where basic or alternate bid meets the minimum required specification, cost and other factors will be considered. Failure to explain this requirement will result in rejection of the bid.
- [X] 10. **BID ENVELOPE:** Envelope shall be sealed and marked with the bidder's name, Bid number, time, date and place of Bid Opening.
- [X] 11. **BID GUARANTEE REQUIREMENT:** Bidder is required to submit a Bid Guarantee Bond or standby irrevocable Letter of Credit or Certified Check or Cashier's Check in the same bid envelope to be held by the Government pending award. The Bid Guarantee Bond, Letter of Credit, Certified Check or Cashier's Check must be issued by any local surety or banking institution licensed to do business on Guam and made payable to the Treasure of Guam in the amount of fifteen percent (15%) of his highest total bid offer. The Bid Bond must be submitted on Government Standard Form BB-1 (copy enclosed). Personal Checks will not be accepted as Bid Guarantee. If a successful Bidder (contractor) withdraws from the bid or fails to enter into contract within the prescribed time, such Bid guarantee will be forfeited to the Government of Guam. Bids will be disqualified if not accompanied by Bid Bond, Letter of Credit, Certified Check or Cashier's check. Bidder must include in his/her bid, valid copies of a Power of Attorney from the Surety and a Certificate of Authority from the Government of Guam to show proof that the surety company named on the bond instrument is authorized by the Government of Guam and qualified to do business on Guam. For detailed information on bonding matters, contact the Department of Revenue and Taxation. Failure to submit a valid Power of Attorney and Certificate of Authority on the surety is cause for rejection of bid. **Pursuant to 5 GCA § 5212, all competitive sealed bidding for the procurement of supplies or services exceeding \$25,000.00 a 15% Bid Security of the total bid price must accompany the bid package. The bid bond, Letter of Credit, Certified Check or Cashier's Check will serve as Bid Security for this procurement.**
- [X] 12. **PERFORMANCE GUARANTEE:** Bidders who are awarded a contract under this solicitation, guarantee that goods will be delivered or required services performed within the time specified. Failure to perform the contract in a satisfactory manner may be cause for suspension or debarment from doing business with the Government of Guam. In addition, the Government will hold the Vendor liable and will enforce the requirements as set forth in Section 40 of these General Terms and Conditions.
- [X] 13. **SURETY BONDS:** Bid and Bid Bonds coverage must be signed or countersigned in Guam by a foreign or alien surety's resident general agent. The surety must be an Insurance Company, authorized by the government of Guam and qualified to do business in Guam. Bids will be disqualified if the Surety Company does not have a valid Certificate of Authority from the Government of Guam to conduct business in Guam.
- [X] 14. **COMPETENCY OF BIDDERS:** Bids will be considered only from the such bidders who, in the opinion of the Government, can show evidence of their ability, experience, equipment, and facilities to render satisfactory service.
- Pre-award inspection of the bidder's facility may be made prior to the award of contract. Bids will be considered only from firms which are regularly engaged in the business of providing goods and/or service as described in this bid with a good record of performance for a reasonable period of time and have sufficient financial support, equipment and organization to insure that they can satisfactorily execute the services if awarded a contract under the terms and conditions herein stated. The terms "equipment or organization" as used herein shall be construed to mean a fully equipped and well established company in line with best business practices in the industry and as determined by the proper authorities.
- [X] 15. **DETERMINATION OF RESPONSIBILITY OF BIDDERS:** The Chief Procurement Officer reserves the right for securing from bidders information to determine whether or not they are responsible and to inspect plant site, place of business; and supplies and services as necessary to determine their responsibility in accordance with Section 15 of these General Terms and Conditions.
(2 GAR, Div. 4 § 3116)

16. **STANDARD FOR DETERMINATION OF LOWEST RESPONSIBLE BIDDER:**

In determining the lowest responsible offer, the Chief Procurement Officer shall be guided by the following:

- a) Price of items offered.
 - b) The ability, capacity, and skill of the Bidder to perform.
 - c) Whether the Bidder can perform promptly or within the specified time.
 - d) The quality of performance of the Bidder with regards to awards previously made to him.
 - e) The previous and existing compliance by the Bidder with laws and regulations relative to procurement.
 - f) The sufficiency of the financial resources and ability of the Bidder to perform.
 - g) The ability of the bidder to provide future maintenance and services for the subject of the award.
 - h) The compliance with all of the conditions to the Solicitation.
17. **TIE BIDS:** If the bids are for the same unit price or total amount in the whole or in part, the Chief Procurement Officer will determine award based on 2 GAR, Div. 4, § 3109(o) (2) or to reject all such bids.
18. **BRAND NAMES:** Any reference in the Solicitation to manufacturer's Brand Names and number is due to lack of a satisfactory specification of commodity description. Such preference is intended to be descriptive, but not restrictive and for the sole purpose of indicating prospective bidders a description of the article or services that will be satisfactory. Bids on comparable items will be considered provided the bidder clearly states in his bid the exact articles he is offering and how it differs from the original specification.
19. **DESCRIPTIVE LITERATURE:** Descriptive literature(s) as specified in this solicitation must be furnished as a part of the bid and must be received at the date and time set for opening Bids. The literature furnished must clearly identify the item(s) in the Bid. The descriptive literature is required to establish, for the purpose of evaluation and award, details of the product(s) the bidder proposes to furnish including design, materials, components, performance characteristics, methods of manufacture, construction, assembly or other characteristics which are considered appropriate. Rejection of the Bid will be required if the descriptive literature(s) do not show that the product(s) offered conform(s) to the specifications and other requirements of this solicitation. Failure to furnish the descriptive literature(s) by the time specified in the Solicitation will require rejection of the bid.
20. **SAMPLES:** Sample(s) of item(s) as specified in this solicitation must be furnished as a part of the bid and must be received at the date and time set for opening Bids. The sample(s) should represent exactly what the bidder proposes to furnish and will be used to determine if the item(s) offered complies with the specifications. Rejection of the Bid will be required if the sample(s) do not show that the product(s) offered conform(s) to the specifications and other requirements of this solicitation. Failure to furnish the sample(s) by the time specified in the Solicitation will require rejection of the Bid.
21. **LABORATORY TEST:** Successful bidder is required to accompany delivery of his goods with a Laboratory Test Report indicating that the product he is furnishing the Government meets with the specifications. This report is on the bidder's account and must be from a certified Testing Association.
22. **AWARD, CANCELLATION, & REJECTION:** Award shall be made to the lowest responsible and responsive bidder, whose bid is determined to be the most advantageous to the Government, taking into consideration the evaluation factors set forth in this solicitation. No other factors or criteria shall be used in the evaluation. The right is reserved as the interest of the Government may require to waive any minor irregularity in bid received. The Chief Procurement Officer shall have the authority to award, cancel, or reject bids, in whole or in part for any one or more items if he determines it is in the public interest. Award issued to the lowest responsible bidder within the specified time for acceptance as indicated in the solicitation, results in a bidding contract without further action by either party. In case of a error in the extension of prices, unit price will govern. It is the policy of the Government to award contracts to qualified local bidders. The Government reserves the right to increase or decrease the quantity of the items for award and make additional awards for the same type items and the vendor agrees to such modifications and additional awards based on the bid prices for a period of thirty (30) days after original award. No award shall be made under this solicitation which shall require advance payment or irrevocable letter of credit from the government (2 GAR, Div.4 §1103).
23. **MARKING:** Each outside container shall be marked with the Purchase Order number, item number, brief item description and quantity. Letter marking shall not be less than 3/4" in height.
24. **SCHEDULE FOR DELIVERY:** Successful bidder shall notify the General Services Agency, Telephone Nos. 475-1707 or 475-713, at least twenty-four (24) hours before delivery of any item under this solicitation.
25. **BILL OF SALE:** Successful supplier shall render Bills of Sale for each item delivered under this contract. Failure to comply with this requirement will result in rejection of delivery. The Bill of Sale must accompany the items delivered but will not be considered as an invoice for payment. Supplier shall bill the Government in accordance with billing instructions as indicated on the Purchase Order.
26. **MANUFACTURER'S CERTIFICATE:** Successful bidder is required, upon delivery of any item under this contract, to furnish a certificate from the manufacturer indication that the goods meet the specifications. Failure to comply with this request will result in rejection of delivery payment. Supplier shall bill the Government in accordance with billing instructions as indicated on the Purchase Order.
27. **INSPECTION:** All supplies, materials, equipment, or services delivered under this contract shall be subject to the inspection and/or test conducted by the Government at destination. If in any case the supplies, materials, equipment, or services are found to be defective in material, workmanship, performance, or otherwise do not conform with the specifications, the Government shall have the right to reject the items or require that they be corrected. The number of days required for correction will be determined by the Government.
28. **MOTOR VEHICLE SAFETY REQUIREMENTS:** The Government will only consider Bids on motor vehicles which comply with the requirements of the National Traffic and Motor Vehicle safety Act of 1966 (Public Law 89-563) and Clean Air Act as amended (Public Law 88-206), that are applicable to Guam. Bidders shall state if the equipment offered comply with these aforementioned Federal Laws.

- [] 29. **SAFETY INSPECTION:** All motor vehicles delivered under this contract must pass the Government of Guam Vehicle Inspection before delivery at destination.
- [] 30. **GUARANTEE:**
- a) **Guarantee of Vehicle Type of Equipment:**
The successful bidder shall guarantee vehicular type of equipment offered against defective parts, workmanship, and performance, for a period of not less than one (1) year after date of receipt of equipment. Bidder shall also provide service to the equipment for at least one (1) year. Service to be provided shall include, but will not be limited to tune ups (change of spark plugs, contact points and condensers) and lubrication (change of engine and transmission oil). All parts and labor shall be at the expense of the bidder. All parts found defective and not caused by misuse, negligence or accident within the guarantee period shall be repaired, replaced, or adjusted within six (6) working days after notice from the Government and without cost to the Government. Vehicular type of equipment as used in this context shall include equipment used for transportation as differentiated from tractors, backhoes, etc.
- b) **Guarantee of Other Type of Equipment:**
The successful bidder shall guarantee all other types of equipment offered, except those mentioned in 30a, above, against defective parts, workmanship, and performance for a period of not less than three (3) months after date of receipt of equipment. Bidder shall also provide service to the equipment for at least three (3) months. All parts found defective within that period shall be repaired or replaced by the Contractor without cost to the Government. Repairs, adjustments or replacements of defective parts shall be completed by the contractor within six (6) working days after notice from the Government.
- (c) **Compliance with this Section is a condition of this Bid.**
- [X] 31. **REPRESENTATION REGARDING ETHICS IN PUBLIC PROCUREMENT:** The bidder or contractor represents that it has not knowingly influenced and promises that it will not knowingly influence a Government employee to breach any of the ethical standards and represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth on Chapter 11 (Ethics in Public Contracting) of the Guam Procurement Act and in Chapter 11 of the Guam Procurement Regulations.
- [X] 32. **REPRESENTATION REGARDING CONTINGENT FEES:** The contractor represents that it has not retained a person to solicit or secure a Government contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business (GPR Section 11-207).
- [X] 33. **EQUAL EMPLOYMENT OPPORTUNITY:** Contractors shall not discriminate against any employee or applicant of employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that employees are treated equally during employment without regards to their race, color, religion, sex, or national origin.
- [X] 34. **COMPLIANCE WITH LAWS:** Bidders awarded a contract under this Solicitation shall comply with the applicable standard, provisions, and stipulations of all pertinent Federal and/or local laws, rules, and regulations relative to the performance of this contract and the furnishing of goods.
- [] 35. **CHANGE ORDER:** Any order issued relative to awards made under this solicitation will be subject to and in accordance with the provisions of Section 6-101-03.1 of the Guam Procurement Regulations.
- [] 36. **STOP WORK ORDER:** Any stop work order issued relative to awards made under this solicitation will be subject to and in accordance with the provisions of Section 6-101-04.1 of the Guam Procurement Regulations.
- [X] 37. **TERMINATION FOR CONVENIENCE:** Any termination order for the convenience of the Government issued relative to awards made under this solicitation will be subject to and in accordance with the provisions of Section 6-101.10 of the Government Procurement Regulations.
- [X] 38. **TIME FOR COMPLETION:** It is hereby understood and mutually agreed by and between the contractor and the Government that the time for delivery to final destination or the timely performance of certain services is an essential condition of this contract. If the contractor refuses or fails to perform any of the provisions of this contract within the time specified in the Purchase Order (from the date Purchase Order is acknowledged by vendor), then the contractor is in default. Defaults will be treated subject to and in accordance with the provisions of 2 GAR, Div. 4 § 6101(8)
- [X] 39. **JUSTIFICATION OF DELAY:** Bidders who are awarded contracts under this Solicitation, guarantee that the goods will be delivered to their destination or required services rendered within the time specified. If the bidder is not able to meet the specified delivery date, he is required to notify the Chief Procurement Officer of such delay. Notification shall be in writing and shall be received by the Chief Procurement Officer at least twenty-four (24) hours before the specified delivery date. Notification of delay shall include an explanation of the causes and reasons for the delay including statement(s) from supplier or shipping company causing the delay. The Government reserves the right to reject delay justification if, in the opinion of the Chief Procurement Officer, such justification is not adequate.

- [X] 40. **LIQUIDATED DAMAGES:** When the contractor is given notice of delay or non-performance as specified in Paragraph 1 (Default) of the Termination for Default Clause of this contract and fails to cure in the time specified, the contractor shall be liable for damages for delay in the amount of one-fourth of one percent (1%) of outstanding order per calendar day from date set for cure until either the territory reasonable obtains similar supplies or services if the contractor is terminated for default, or until the contractor provides the supplies or services if the contractor is not terminated for default. To the extent that the contractor's delay or nonperformance is excused under Paragraph 40 (Excuse for Nonperformance or Delayed Performance) of the Termination for Default Clause of this contract, liquidated damages shall not be due the territory. The contractor remains liable for damages caused other than by delay. 2 GAR, Div. 4 §6101(9) (a).
- [X] 41. **PHYSICAL LIABILITY:** If it becomes necessary for the Vendor, either as principal, agent or employee, to enter upon the premises or property of the Government of Guam in order to construct, erect, inspect, make delivery or remove property hereunder, the Vendor hereby covenants and agrees to take, use, provide and make all proper, necessary and sufficient precautions, safeguards and protections against the occurrence of any accidents, injuries or damages to any person or property during the progress of the work herein covered, and to be responsible for, and to indemnify and save harmless the Government of Guam from the payment of all sums of money by reason of all or any such accidents, injuries or damages that may occur upon or about such work, and fines, penalties and loss incurred for or by reasons of the violations of any territorial ordinance, regulations, or the laws of Guam or the United States, while the work is in progress. Contractor will carry insurance to indemnify the Government of Guam against any claim for loss, damage or injury to property or persons arising out of the performance of the Contractor or his employees and agents of the services covered by the contract and the use, misuse or failure of any equipment used by the contractor or his employees or agents, and shall provide certificates of such insurance to the Government of Guam when required.
- [X] 42. Contract will be cancelled if funds not appropriated or insufficient, and that government will timely inform contractor. R 3121(e)(1)(C) and R 3121(e)(1)(D)
- [] 43. If cancelled, contractor will be reimbursed unamortized reasonably incurred non-recurring costs. R 3121(e)(1)(G)
- [X] 44. **CONTACT FOR CONTRACT ADMINISTRATION:** If your firm receives a contract as a result of this Solicitation, please designate a person whom we may contact for prompt administration.

Name: JERRY ZY LI

Title: TREASURER

Address: P. O. BOX 217827 GMF

Telephone: 488-1588

BARRIGADA, GU 96921