

IRIARTE CAMACHO CALVO LAW GROUP LLC

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**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

DATE: 07-25-16  
TIME: 2:00  AM  PM BY: JR  
FILE NO OPA-PA: 16-008

Attorneys for Appellant  
BASIL FOOD INDUSTRIAL SERVICES CORPORATION

BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Appeal of

BASIL FOOD INDUSTRIAL SERVICES  
CORPORATION,

Appellant.

and

GENERAL SERVICES AGENCY,

Purchasing Agency.

Docket No. OPA-PA-16-008

**COMMENTS TO AGENCY REPORT;  
EXHIBIT 1**

GSA's Agency Report in OPA-PA-16-008 addresses the issues in OPA-PA-16-006, but fails to address the major points raised in this case regarding the emergency procurement. Basil responds herein to the points raised by GSA in its "Additional Rebuttal to Comments on Agency Report," filed on July 12, 2016.

**I. GSA Admits It Did Not Follow the Guam Procurement Law's Requirements for Emergency Procurements**

GSA offered no explanation why it deviated from Guam law's requirement that it obtain at least three informal price quotations, or why it selectively chose to obtain a quote from only one bidder, SH Enterprises. Last

summer the Government had no issue in obtaining quotations from four vendors for the same service. Ex. 1.

Even more concerning is that GSA accepted a proposal from a bidder who did not have a HACCP Plan in place. Guam law requires that vendors who serve highly susceptible populations such as the elderly maintain a certified HACCP Plan. At the time it submitted a quote for the ENP emergency services, **SH did not have a HACCP Plan**, meaning that its service to the elderly did not meet health code requirements. GSA knowingly put the health of the elderly at risk when it issued an award to an organization who has not been certified to serve food to the elderly.

## **II. GSA Misread section 5215**

Second, GSA offered no discussion why it misinterpreted and misapplied section 5215. Section 5215 states that "if time allows [GSA must] give notice to all contractors from the qualified bid list who have provide the needed supplies and services to the government within the preceding twelve (12) months." GSA excerpted "if time allows" and incorrectly applied it to the preceding phrase that GSA "must solicit at least three (3) informal price quotations." This was a gross manipulation of the language of the emergency procurement statute.

Emergency procurements can be dangerous because they are expenditures of public funds that have not undergone a thorough competitive process. They are susceptible to inflated pricing. Obtaining three quotes is the one measure that gives the minimum assurance that some degree of competitive bidding has occurred.

If the OPA did not have time to obtain three quotations, the contract

allowed for an alternative, specifically, Basil's Emergency Plan. Section 4.10 of the Contract requires the vendor to have in place an emergency menu for the provision of dry goods for the period of three days. GSA simply could have activated the emergency situation and required Basil to provide dry goods to the elderly at the same cost. Since Basil cured its default within two days, Basil would have been able to provide dry goods during the two-day period while it awaited reinspection, and then could have been reinstated to provide hot meals under the contract. Instead, GSA chose to violate the emergency procurement law and pay a non-qualified vendor two to three times what it paid Basil.<sup>1</sup>

It is quite alarming how GSA disregards the three-quotation requirement and then tortures the language of the Procurement Law in order to justify its conduct. The OPA should not allow this conduct to stand.

### **III. GSA Failed to Contact Basil**

In an emergency procurement situation, the Procurement Law requires the Government to "if time allows ... give notice to all contractors from the qualified bid list who have provided the needed supplies and services to the government within the preceding twelve months." 5 GCA § 5215. GSA claims that SH was the only company on the bidders' list that met these requirements. That is incorrect as SH was not qualified to provide the emergency services since it did not have a HACCP Plan.

GSA also fails to explain why it did not contact Basil, who was a qualified bidder, to determine if Basil could provide the services on an emergency

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<sup>1</sup> See the discussion of price differences in the Comments Basil filed in OPA-PA-16-006.

basis. Basil had access to other kitchen facilities from which it could prepare food. The emergency procurement law does not contain exceptions that the Government need not contact the current vendor, which is the justification GSA provides. The OPA should enforce this provision of section 5125.

#### **IV. GSA Improperly Requested a 90-day Emergency Procurement**

Guam law allows for an emergency procurement period of just 30 days. 5 GCA § 5215. GSA requested authorization for 90 days, and obtained a quote from SH for 90 days. Again, GSA is failing to comply with the Procurement Law.

GSA offers the explanation that the additional time is used to prepare a new bid. As of the date of these Comments, however, fifty-five days have passed since SH was awarded an emergency procurement and GSA has not demonstrated any strides toward a new procurement. GSA must be held to strictly comply with the emergency procurement provisions, including keeping to a 30-day limit.

Even more flagrant is that GSA has not produced any evidence in the record which shows that GSA sought informal quotes from vendors for the month of July or August, 2016. In other words, GSA has violated the Procurement Law by not re-issuing an emergency procurement for each new set of 30 days. If it had, it would have received quotes far less than what it is paying SH. Instead, GSA is blindly paying SH two to three times what it should actually be paying. The OPA must stop this excessive spending and procurement violations.

#### **V. The Emergency Procurement Was Defective**

GSA's Agency Report and the Rebuttal offer no response to the issue of the lack of a HACCP Plan requirement in the emergency procurement. It seems

GSA pays no attention to the health code requirements.

## **VI. SH Was Not a Qualified or Responsive Bidder**

GSA claims that SH was given the same amount of time allotted to Basil to obtain a HACCP Plan. This claim is false and unsupported by the facts. As submitted in Basil's Comments filed in OPA-PA-006-16, SH was advised back in July 2015 that it was required to have a HACCP Plan to serve food to the elderly. As of the date that SH was allowed to serve the elderly under the current emergency procurement, SH still failed to have a HACCP Plan. Contrary to GSA's assertion that Basil was not treated unfairly, the record demonstrates that SH has been given more than a year to comply, while the Government revoked Basil's license for failing to have a HACCP Plan. Even more telling is when DPHSS inspected SH on June 3, 2016, SH asked for help in understanding the food code. Agency Rep., tab 4. In other words, SH had no plans to become compliant at the point it began servicing the elderly on June 1, 2016.

Not having a HACCP Plan must disqualify SH from servicing the elderly, as are other disqualifying factors, such as SH not having an emergency plan, receiving a D rating, not sealing food containers, and serving food in open trucks containing garbage. The Government failed to thoroughly investigate these issues and has instead blindly allowed these violations to stand.

## **VII. Conclusion**

The tenor of the Agency Report and the Rebuttal shows that GSA is paying as much attention to these proceedings as it did to ensuring the health and safety of the manāmkō'. The Agency Report is devoid of substance and the

is a poorly cut-and-paste version of the letter sent to Basil in response to its protest.

GSA, the government agency entrusted to follow and implement the Procurement Law, appears incapable of reading the law it is tasked to implement. That law instructed that three quotations must be sought. GSA failed to do that. The health code required bidders to have HACCP Plans. GSA failed to enforce that requirement. The law limits GSA to 30-day periods for emergency procurements. GSA failed to do that.

The list of GSA's deficiencies is endless. It is apparent that GSA requires the intervention of the OPA to set GSA straight and ensure GSA's compliance with the most basic provisions of the Procurement Law. Basil asks that the OPA find that the emergency procurement has been in violation of the Guam Procurement Law and that it be terminated immediately.

DATED: Hagåtña, GU, 25 July, 2016.

IRIARTE CAMACHO CALVO LAW  
GROUP LLC

  
\_\_\_\_\_  
ELYZE MCDONALD IRIARTE

Attorneys for Appellant  
BASIL FOOD INDUSTRIAL SERVICES  
CORPORATION

# EXHIBIT 1

# PLEASE RESPOND WITH A QUOTE OR "NO QUOTE"

## GSA REQUEST FOR QUOTATION

BUYER: TIANNA J. SARROSA

TELEPHONE: 475-1712

FAX NO.: 472-4217

| Please respond as soon as possible or no later than: 6/3/15                                   |       | Requisition Number:  |              | Date: 5/29/15 CFI      |             |
|---|-------|--|--------------|------------------------|-------------|
| Vendor: <b>CALIFORNIA MART</b><br><b>FAX: 649-2951</b>  |       | PLEASE FURNISH PRICE QUOTE, DELIVERY TIME AND TERMS BASED ON <del>F.O.B.</del> DESTINATION FOR THE ITEMS LISTED BELOW. PLEASE RESPOND BY THE ABOVE DATE.   |              |                        |             |
| Quoted by (Signature):<br>X Hui Soke Min <i>Hui Soke Min</i>                                  |       | Quote Date: 6-2-15   |              | Phone Number: 649-0574 |             |
| **Delivery Date Required:<br>X Immediately  |       | The party making the foregoing bid, that such bid is genuine and that said bidder agrees, that they are fully aware and is in compliance with Title 5 G.C.A. Chapter 5 § 5801 and § 5802 Wage Determination, and that the attached is the most recent issued by U.S. D.O.L. for the positions required to implement the required service as per the following specification.<br><br>Therefore, under penalty of perjury, I certify that the facts stated above are true.<br>Signature X <i>Hui Soke Min</i> Date: X 6-2-15 |              |                        |             |
| **Delivery Date Offered:<br>X 10 days after award   |       |  |              |                        |             |
| Terms: <u>Net 30 days</u><br>Prices good for: <u>6 months</u> Days                            |       |  |              |                        |             |
| 1. Offering Recycle Products ( ) Yes ( ) No   |       | 2. Offering Biodegradable Products ( ) Yes ( ) No.   |              |                        |             |
| Please separate your offer of recyclable and/or biodegradable products from regular products. |       |  |              |                        |             |
| <b>THIS IS NOT AN ORDER</b>   |       |  |              |                        |             |
| ITEM  | QTY   | DESCRIPTION - OR EQUAL OR EQUIVALENT TO  | AVAILABILITY | UNIT PRICE             | TOTAL PRICE |
| 1.  | 1 LOT | REQUEST FOR QUOTATION IS ISSUED TO PROVIDE FOOD SERVICE IN BENTO STYLE CONTAINERS FOR THE DIVISION OF SENIOR CITIZENS, DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES.  | See attached |                        |             |
|   |       | PLEASE SEE ATTACHED FOR SCOPE OF WORK FOR SUCH REQUIREMENT.  |              |                        |             |
|   |       | IT IS ANTICIPATED THAT THE SERVICES BEING REQUESTED MAY BE PROCURED VIA AN EMERGENCY PROCUREMENT METHOD.   |              |                        |             |
|   |       | *CONGREGATE MEAL   |              |                        |             |
|   |       | PRICE PER MEAL: \$ _____   |              |                        |             |
|   |       | *FOR IMMEDIATE SERVICE 10 DAYS AFTER AWARD   |              |                        |             |

Note: The Government of Guam encourages offers of "EARTH FRIENDLY" products.

-COMMITTED TO EXCELLENCE-



**S.H. ENTERPRISES, INC.**

P. O. Box 9730 Tamuning, Guam, 96931

Tel.: (671) 649-2956 / 649-0521 Fax: (671) 649-2957

Mobile: (671) 777-2806 (Min)

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June 2, 2015

General Service Agency

Attn: Ms. Claudia Acfalle

Subject: Price Quotation For Congregate And Home-Delivered Meals

Dear Miss Acfalle:

As per your request, below is the price quotation for Congregate and Home-Delivered Meals.

Congregate Meals:

\$8.50 per meal X 858 client = \$7293.00 X 22 days = \$160,446.00 / month

Home-Delivered Meals:

\$9.95 per meal X 1,180 client = \$11,741.00 X 30days = \$352,230.00 / month

The above prices are good effective June 2015 and valid for six months.

Availability of the service is effective immediately. Terms: Net 30 Days.

The price quotation forms will be faxed to your office today, Tuesday, June 2, 2015.

Should you have any questions, please feel free to contact us at the above numbers.

Sincerely,



HUI SOOK MIN

Vice-President

**PLEASE RESPOND WITH A QUOTE OR "NO QUOTE"**

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**FAX NO.: 472-4217**

|   |                     |                  |
|---|---------------------|------------------|
| Please respond as soon as possible or no later than: 6/3/15 | Requisition Number: | Date:<br>5/29/15 |
|---|---------------------|------------------|

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|---|---|
| Vendor: <b>AGANA RETAIL</b><br><b>FAX: 472-6790</b> | PLEASE FURNISH PRICE QUOTE, DELIVERY TIME AND TERMS BASED ON F.O.B. DESTINATION FOR THE ITEMS LISTED BELOW. PLEASE RESPOND BY THE ABOVE DATE. |
|---|---|

|   |             |                                  |
|---|-------------|----------------------------------|
| Quoted by (Signature): <i>[Signature]</i> 5/30/15 | Quote Date: | Phone Number:<br><b>472-1524</b> |
|---|-------------|----------------------------------|

|                           |  |
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| **Delivery Date Required: | The party making the foregoing bid, that such bid is genuine and that said bidder agrees, that they are fully aware and is in compliance with Title 5 G.C.A. Chapter 5 § 5801 and § 5802 Wage Determination, and that the attached is the most recent issued by U.S. D.O.L. for the positions required to implement the required service as per the following specification. |
| **Delivery Date Offered:  |  |

|   |   |
|---|---|
| Terms: _____<br>Prices good for: _____ Days | Therefore, under penalty of perjury, I certify that the facts stated above are true.<br>Signature <u>X</u> Date: <u>X</u> |
|---|---|

1. Offering Recycle Products ( ) Yes ( ) No      2. Offering Biodegradable Products ( ) Yes ( ) No.  
Please separate your offer of recyclable and/or biodegradable products from regular products.

**THIS IS NOT AN ORDER**

| ITEM | QTY   | DESCRIPTION - OR EQUAL OR EQUIVALENT TO   | AVAILABILITY | UNIT PRICE | TOTAL PRICE |  |
|------|-------|---|--------------|------------|-------------|--|
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|      |       | PLEASE SEE ATTACHED FOR SCOPE OF WORK FOR SUCH REQUIREMENT.   | NO           | Quote      |             |  |
|      |       | IT IS ANTICIPATED THAT THE SERVICES BEING REQUESTED MAY BE PROCURED VIA AN EMERGENCY PROCUREMENT METHOD.  |              |            |             |  |
|      |       | *CONGREGATE MEAL<br>PRICE PER MEAL: \$ _____  |              |            |             |  |
|      |       | *FOR IMMEDIATE SERVICE 10 DAYS AFTER AWARD  |              |            |             |  |

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| <b>Please respond as soon as possible or no later than: 6/3/15</b> | <b>Requisition Number:</b> | <b>Date:</b><br>5/29/15 |
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|--|---|

|   |                                      |   |
|---|--------------------------------------|---|
| <b>Quoted by (Signature):</b><br>X <i>[Signature]</i> | <b>Quote Date:</b><br><i>5/30/15</i> | <b>Phone Number:</b><br><i>472-1524</i> |
|---|--------------------------------------|---|

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| <b>**Delivery Date Required:</b><br>X | The party making the foregoing bid, that such bid is genuine and that said bidder agrees, that they are fully aware and is in compliance with Title 5 G.C.A. Chapter 5 § 5801 and § 5802 Wage Determination, and that the attached is the most recent issued by U.S. D.O.L. for the positions required to implement the required service as per the following specification. |
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| <b>**Delivery Date Offered:</b><br>X |  |
|--------------------------------------|--|

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| <b>Terms:</b> _____                       | Therefore, under penalty of perjury, I certify that the facts stated above are true. |
| <b>Prices good for:</b> _____ <b>Days</b> |  |

|  |  |
|--|--|
| 1. Offering Recycle Products ( )Yes ( ) No | 2. Offering Biodegradable Products ( )Yes ( )No. |
|--|--|

Please separate your offer of recyclable and/or biodegradable products from regular products.

**THIS IS NOT AN ORDER**

| ITEM | QTY   | DESCRIPTION - OR EQUAL OR EQUIVALENT TO  | AVAILABILITY | UNIT PRICE | TOTAL PRICE |
|------|-------|--|--------------|------------|-------------|
| 1.   | 1 LOT | REQUEST FOR QUOTATION IS ISSUED TO PROVIDE FOOD SERVICE IN BENTO STYLE CONTAINERS FOR THE DIVISION OF SENIOR CITIZENS, DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES |              |            |             |
|      |       | PLEASE SEE ATTACHED FOR SCOPE OF WORK FOR SUCH REQUIREMENT.  |              |            |             |
|      |       | IT IS ANTICIPATED THAT THE SERVICES BEING REQUESTED MAY BE PROCURED VIA AN EMERGENCY PROCUREMENT METHOD.   |              |            |             |
|      |       | *HOME-DELIVERED  |              |            |             |
|      |       | PRICE PER MEAL: \$ _____   |              |            |             |
|      |       | *FOR IMMEDIATE SERVICES 10 DAYS AFTER AWARD  |              |            |             |

**Note: The Government of Guam encourages offers of "EARTH FRIENDLY" products.  
-COMMITTED TO EXCELLENCE-**

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**FAX NO.: 472-4217**

|  |                     |                 |
|--|---------------------|-----------------|
| Please respond as soon as possible or no later than: <b>TODAY BY COB</b> | Requisition Number: | Date:<br>7/7/15 |
|--|---------------------|-----------------|

|  |   |
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| <b>Vendor:</b> GLOBAL FOOD SERVICES<br>FAX: 646-6097 | PLEASE FURNISH PRICE QUOTE, DELIVERY TIME AND TERMS BASED ON F.O.B. DESTINATION FOR THE ITEMS LISTED BELOW. PLEASE RESPOND BY THE ABOVE DATE. |
|--|---|

|   |  |                               |
|---|--|-------------------------------|
| Quoted by (Signature):<br>X                 | Quote Date:  | Phone Number:<br>646-6083/415 |
| **Delivery Date Required:<br>X              | The party making the foregoing bid, that such bid is genuine and that said bidder agrees, that they are fully aware and is in compliance with Title 5 G.C.A. Chapter 5 § 5801 and § 5802 Wage Determination, and that the attached is the most recent issued by U.S. D.O.L. for the positions required to implement the required service as per the following specification. |                               |
| **Delivery Date Offered:<br>X               | Therefore, under penalty of perjury, I certify that the facts stated above are true.   |                               |
| Terms: _____<br>Prices good for: _____ Days | Signature X  | Date: X                       |

1. Offering Recycle Products ( )Yes ( ) No      2. Offering Biodegradable Products ( )Yes ( )No.  
Please separate your offer of recyclable and/or biodegradable products from regular products.

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|      |       | PLEASE SEE ATTACHED FOR SCOPE OF WORK FOR SUCH REQUIREMENT.  |              |            |             |
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|      |       | *HOME-DELIVERED  |              |            |             |
|      |       | PRICE PER MEAL: \$ _____   |              |            |             |
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FAX NO.: 472-4217

|  |                     |                  |
|--|---------------------|------------------|
| Please respond as soon as possible or no later than: <del>6/3/15</del> Today COB | Requisition Number: | Date:<br>5/29/15 |
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|   |   |
|---|---|
| Vendor: GLOBAL FOOD SERVICES<br>FAX: 646-6097 | PLEASE FURNISH PRICE QUOTE, DELIVERY TIME AND TERMS BASED ON F.O.B. DESTINATION FOR THE ITEMS LISTED BELOW. PLEASE RESPOND BY THE ABOVE DATE. |
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| Quoted by (Signature):<br>X | Quote Date: | Phone Number:<br>646-6083/45 |
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|   |   |
|---|---|
| Terms: _____<br>Prices good for: _____ Days | Therefore, under penalty of perjury, I certify that the facts stated above are true.<br>Signature X Date: X |
|---|---|

1. Offering Recycle Products ( )Yes ( )No      2. Offering Biodegradable Products ( )Yes ( )No.  
Please separate your offer of recyclable and/or biodegradable products from regular products.

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|      |       | *CONGREGATE MEAL  |              |            |             |
|      |       | PRICE PER MEAL: \$ _____  |              |            |             |
|      |       | *FOR IMMEDIATE SERVICE 10 DAYS AFTER AWARD  |              |            |             |

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| <b>Please respond as soon as possible or no later than: 6/3/15</b> | <b>Requisition Number:</b>   | <b>Date:</b><br>5/29/15   |
| <b>Vendor: LSG SKYCHEF</b><br><b>FAX: 646-6793</b>                 | PLEASE FURNISH PRICE QUOTE, DELIVERY TIME AND TERMS BASED ON F.O.B. DESTINATION FOR THE ITEMS LISTED BELOW. PLEASE RESPOND BY THE ABOVE DATE.  |                           |
| Quoted by (Signature):<br>X  | Quote Date:  | Phone Number:<br>646-5878 |
| **Delivery Date Required:<br>X                                     | The party making the foregoing bid, that such bid is genuine and that said bidder agrees, that they are fully aware and is in compliance with Title 5 G.C.A. Chapter 5 § 5801 and § 5802 Wage Determination, and that the attached is the most recent issued by U.S. D.O.L. for the positions required to implement the required service as per the following specification. |                           |
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Please separate your offer of recyclable and/or biodegradable products from regular products.

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|                                |  |
|--------------------------------|--|
| **Delivery Date Required:<br>X | The party making the foregoing bid, that such bid is genuine and that said bidder agrees, that they are fully aware and is in compliance with Title 5 G.C.A. Chapter 5 § 5801 and § 5802 Wage Determination, and that the attached is the most recent issued by U.S. D.O.L. for the positions required to implement the required service as per the following specification. |
| **Delivery Date Offered:<br>X  |  |

|   |   |
|---|---|
| Terms: _____<br>Prices good for: _____ Days | Therefore, under penalty of perjury, I certify that the facts stated above are true.<br>Signature X Date: X |
|---|---|

1. Offering Recycle Products ( ) Yes ( ) No      2. Offering Biodegradable Products ( ) Yes ( ) No.  
Please separate your offer of recyclable and/or biodegradable products from regular products.

**THIS IS NOT AN ORDER**

| ITEM | QTY   | DESCRIPTION - OR EQUAL OR EQUIVALENT TO   | AVAILABILITY | UNIT PRICE | TOTAL PRICE |
|------|-------|---|--------------|------------|-------------|
| 1.   | 1 LOT | REQUEST FOR QUOTATION IS ISSUED TO PROVIDE FOOD SERVICE IN BENTO STYLE CONTAINERS FOR THE DIVISION OF SENIOR CITIZENS, DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES. |              |            |             |
|      |       | PLEASE SEE ATTACHED FOR SCOPE OF WORK FOR SUCH REQUIREMENT.   |              |            |             |
|      |       | IT IS ANTICIPATED THAT THE SERVICES BEING REQUESTED MAY BE PROCURED VIA AN EMERGENCY PROCUREMENT METHOD.  |              |            |             |
|      |       | *CONGREGATE MEAL  |              |            |             |
|      |       | PRICE PER MEAL: \$ _____  |              |            |             |
|      |       | *FOR IMMEDIATE SERVICE 10 DAYS AFTER AWARD  |              |            |             |

Note: The Government of Guam encourages offers of "EARTH FRIENDLY" products.