



REQUEST FOR PROPOSAL

for

MOUNT CARMEL ACADEMY CHARTER SCHOOL INDEPENDENT FINANCIAL AUDIT SERVICES

No. OPA-RFP-24-010

ISSUED BY:

Office of Public Accountability
Suite 401 DNA Building
238 Archbishop Flores Street
Hagåtña, Guam 96910

ISSUE DATE:

Monday, September 30, 2024

DEADLINE:

**Friday, October 18, 2024,
3:00 PM ChST**

NAME AND LOCATION OF PROJECT(S):

Mount Carmel Academy Charter School
P.O. Box 7830
Agat, Guam 96928



OFFICE OF PUBLIC ACCOUNTABILITY

Suite 401 DNA Building, 238 Archbishop Flores Street, Hagåtña, Guam 96910
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www.opaguam.org

PUBLIC ANNOUNCEMENT

This Advertisement is paid with Government of Guam local funds by:
Mount Carmel Academy Charter School

REQUEST FOR PROPOSAL No. OPA-RFP-24-010 Independent Financial Audit Services for the Mount Carmel Academy Charter School

The Public Auditor is soliciting proposals from a U.S. Certified Public Accountant firm for a financial audit of the Mount Carmel Academy Charter School (MCS) for Fiscal Years 2024, 2025, and 2026, subject to the availability and certification of funds from fiscal year to fiscal year, with an option to renew for one (1) additional fiscal year, with the approval of the Public Auditor. Required audit reports include a report on the financial statements and reports on internal control and compliance.

The Request for Proposal (RFP) package may be obtained at the Office of Public Accountability (OPA), in Hagåtña, Guam, between 8:00 AM and 5:00 PM, from Monday to Friday, excluding holidays. The RFP package may also be downloaded from OPA's website at www.opaguam.org.

The deadline to submit proposals is Friday, October 18, 2024, no later than 3:00 PM, Chamorro Standard Time (ChST). All proposals must be submitted to the attention of: Public Auditor Benjamin J.F. Cruz.

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

All questions regarding the RFP should be submitted in writing via e-mail to Public Auditor Benjamin J.F. Cruz at admin@guamopa.com on or before **Tuesday, October 8, 2024, no later than 3:00 PM, ChST.** Except to the person named above, direct or indirect contact with the OPA and MCS management or staff, board members, or any person participating in the selection process is prohibited.

Benjamin J.F. Cruz
Public Auditor

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Section I. INSTRUCTIONS TO OFFERORS

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A. PURPOSE

The Office of Public Accountability (OPA) is issuing this Request for Proposals (RFP) to seek an experienced and qualified Offeror to provide professional independent financial audit services (Services) for the Mount Carmel Academy Charter School (MCS). The issuance of this RFP in no way constitutes a commitment by the OPA to award a contract.

B. TYPE OF CONTRACT TO BE OFFERED AND TERM

The estimated time for performance of the Services contained in the Scope of Services in this RFP is for three (3) years; therefore, the MCS Independent Financial Audit contract that results from this solicitation will be a Multi-Term Firm-Fixed contract.

1. **Initial Term.** After the Public Auditor has approved the contract and the written Notice to Proceed (NTP), the awarded Contractor will be notified services may begin.

2. **Renewal Terms.** The Public Auditor, upon satisfactory performance by the Contractor, may renew the contract for any number of time period(s) determined to be in the best interests of the government of Guam (GovGuam), for a total of up to one (1) additional year (a Renewal Term) for the purposes of the MCS Independent Financial Audit. It is in the best interest of GovGuam that any Renewal Term shall not be subject to negotiation but shall be a continuation of the contract on the same terms, conditions, and pricing as in effect under the existing contract. All Renewal Terms are subject to the availability of additional funds.

C. INSTALLMENT PAYMENTS

Offerors submitting Proposals in response to this RFP should be aware that payments for goods and/or services procured through this RFP will be made in installments agreed upon in any awarded contract and tied to satisfactory completion and progress of assigned tasks and/or deliverables.

D. REGISTRATION FORM AND THE REQUEST FOR PROPOSALS PACKET

The Registration form for the RFP packet will be available at the OPA, Suite 401 DNA Building, 238 Archbishop Flores Street, Hagåtña, Guam; and on the OPA website at www.opaguam.org.

E. SUBMISSION OF PROPOSALS AND DUE DATE

RFP TIMETABLE:

Registration for MCS Independent Financial Audit RFP Packet will be available at the OPA, Suite 401 DNA Building, 238 Archbishop Flores Street, Hagåtña, Guam; and on the OPA website at www.opaguam.org .	From: Monday, September 30, 2024 To: Thursday, October 17, 2024
Deadline for Requests to Hold Pre-Proposal Conference must be e-mailed to admin@guamopa.com .	Deadline: Tuesday, October 8, 2024 on or before 3:00 PM Chamorro Standard Time (ChST)
Deadline for Receipt of Written Questions must be e-mailed to admin@guamopa.com .	Deadline: Tuesday, October 8, 2024 on or before 3:00 PM, ChST
Deadline for Answers to Written Questions will be e-mailed to Offerors who registered.	Deadline: Friday, October 11, 2024 on or before 3:00 PM, ChST
Deadline for Receipt of Un-Priced Technical Proposals at the OPA, Suite 401 DNA Building, 238 Archbishop Flores Street, Hagåtña, Guam, in the format specified in the solicitation.	Deadline: Friday, October 18, 2024 on or before 3:00 PM, ChST

Sealed Proposals shall be submitted to the OPA, including one (1) fully executed original and five (5) bound copies. Failure to submit the required forms in the number or format required may be cause for rejection of Proposals due to non-responsiveness. The narrative Statement of Qualifications, which consist of the total of all of the responses to include Paragraphs **K, L, M, N, and O**, shall not exceed twenty (20) pages total (exclusive of resumes and exhibits). See the Proposal Format and Content provisions for full instructions and minimum requirements for the content of the Proposal.

Faxed or E-mailed Proposals will not be accepted.

By submitting a Proposal in response to this solicitation, the Offeror agrees to accept and comply with the terms and conditions incorporated in this RFP and to be bound by the Guam Procurement Law and the Guam Procurement Regulations.

The Offeror further agrees that the Proposal offer shall remain open and firm and may not be withdrawn for one hundred twenty (120) days after the conclusion of discussions. In no case will failure to inspect or review constitute grounds for a claim or for the withdrawal of a Proposal after opening. Proposals conditioned upon receiving award of both the contract being solicited in this RFP and another contract will be rejected as non-responsive.

Proposals must be received no later than Friday, October 18, 2024, 3:00 PM ChST. Proposals received after the closing time for receipt will not be considered. Office hours for receipt of

Proposals are Monday through Friday (excluding GovGuam holidays), from 8:00 AM to 12:00 PM and from 1:00 PM to 5:00 PM.

Proposals may be hand-delivered, delivered by mail, or delivered by other courier service:

RFP No. OPA-RFP-24-010

ATTN: Public Auditor Benjamin J.F. Cruz
Office of Public Accountability
Suite 401 DNA Building
238 Archbishop Flores Street
Hagåtña, Guam 96910

Each Offeror submitting a Proposal for any portion of the work covered by the RFP, the Proposal, or the Proposal Documents shall execute all required affidavits and certification forms, in the form provided with this RFP. Such affidavits and certification forms shall be attached to the Proposal. Any forms that are required to be notarized must be notarized no more than thirty (30) days prior to submission of the Proposal. Failure to submit all required forms will result in rejection of the Proposal.

F. PRE-PROPOSAL CONFERENCE

Any potential offeror may e-mail a request for a Pre-proposal conference to the attention of Public Auditor Benjamin J.F. Cruz at admin@guamopa.com no later than **Tuesday, October 8, 2024 on or before 3:00 PM ChST.**

G. NO PRE-PROPOSAL DISCUSSIONS WITH OFFERORS

No oral discussion, explanation, or instructions in regard to the meaning of any provision of this RFP will be allowed or given on or before the submission due date for all Proposals unless made during the Pre-Proposal conference.

H. QUESTIONS/COMMUNICATIONS WITH OFFERORS PRIOR TO PROPOSAL SUBMISSION AND SINGLE POINT OF CONTACT

All communications and any questions concerning possible discrepancies, omissions, or doubts as to the meaning of any provision of this RFP shall be raised before the submission due date for Proposals and shall be communicated in writing **on or before 3:00 PM ChST, Tuesday, October 8, 2024** to Public Auditor Benjamin J.F. Cruz at admin@guamopa.com.

Written answers to all timely and properly submitted written questions submitted **on or before 3:00 PM ChST, Tuesday, October 8, 2024** shall be answered **on or before 3:00 PM ChST, Friday, October 11, 2024.** The OPA will notify all Offerors of any substantive modification or clarification provided in response to any timely and properly submitted written questions. The OPA may extend any applicable dates or due dates if any circumstance or information significantly amends the solicitation or makes compliance with the original proposed due dates impractical. The OPA is not required to respond to untimely or improperly submitted questions or communications.

No other oral or written communications concerning possible discrepancies, omissions, objections, or doubts as to the meaning of any provision of this RFP shall be submitted to the OPA at any time prior to the submission date for Proposals, except as permitted by the Guam Procurement Law and Guam Procurement Regulations. Any communication concerning the provisions of the RFP initiated by an Offeror, other than a timely submission of permitted pre-proposal questions: 1) shall contain a citation to the Guam code section or Guam procurement regulation that authorizes the communication; 2) shall be submitted in writing; and 3) shall only be communicated to the above-designated Single Point of Contact. The OPA is not required to respond to any communication that does not comply with the requirements of this paragraph or any communication that is untimely. The OPA will notify all Offerors of any substantive modification or clarification of the solicitation provided in response to any properly submitted communication, as permitted by law. The OPA may extend any applicable dates or due dates if any circumstance or information significantly amends the solicitation or makes compliance with the original proposed due dates impractical.

I. OTHER COMMUNICATIONS

Discussions after the submission due date for Proposals and prior to award for the purpose of clarifying and/or modifying timely Proposals submitted by the Offerors are permitted in accordance with Title 2 of the Guam Administrative Rules and Regulations (GAR), Division (Div.) 4 § 3114(i) and/or § 3116. (See also General Terms and Conditions, Clarification/Discussion of Proposals.)

Direct or indirect contact or communication concerning this RFP with any other OPA employees, other employees or representatives of GovGuam who are participating in the solicitation process, or any other person participating in the solicitation process is strictly prohibited at all times during the solicitation process and prior to award of the contract, unless such contact or communication is specifically authorized by the Guam Procurement Law and the Guam Procurement Regulations.

J. PROPOSAL FORMAT AND CONTENT

All Proposals and Proposal Documents must be submitted in writing. Interested Offerors shall submit their written Proposals and Proposal Documents in a sealed envelope to include one (1) original and five (5) copies. The outer envelope shall be marked in bold letters:

**Office of Public Accountability
Attention: Public Auditor Benjamin J.F. Cruz
Request for Proposal No. OPA-RFP-24-010
Independent Financial Audit Services
for Fiscal Years 2024, 2025, and 2026
Technical Proposal**

In a second separate sealed envelope, the offeror shall also submit a Price Proposal to include the schedule of proposed hourly rates for the type or types of audit services and a total all-inclusive maximum price for each of the three fiscal years to be audited. A price proposal should also be submitted for the additional (Renewal Term) year of service should the OPA, with the approval of

the Public Auditor, decide to retain and renew the services of the selected Offeror. The sealed envelope shall be marked plainly:

Office of Public Accountability
Attention: Public Auditor Benjamin J.F. Cruz
Request for Proposal No. OPA-RFP-24-010
Independent Financial Audit Services
for Fiscal Years 2024, 2025, and 2026
Price Proposal

The envelope shall also be marked with the Offeror's name and the name of Offeror's authorized representative. Proposals and Proposal Documents shall be filled out in ink or typewritten and signed in black or blue ink. Erasures, strikeouts, or other types of changes made to a Proposal, which are evident on its face, must be explained or noted over the signature of the Offeror. Unexplained erasures or alterations and omissions to the Proposal or Proposal Documents may be cause for rejection by the government.

The Proposal must include:

- A cover letter on the Offeror's letterhead, listing the legal name of the Offeror, location of Offeror's principal place of business, location of the formation of Offeror's business entity, and current place(s) of operation and other projects. The cover letter shall include the place of performance of the proposed contract, a mailing address, telephone number(s), facsimile number, email address, date of the proposal, and the title and number of the RFP. A designated contact person, his or her title, address, telephone, facsimile number and email address should also be included. This cover letter must be signed in the legal name of the Offeror and by an authorized officer, representative, agent or employee of the Offeror, who has authority to bind the Offeror. Proof of authority to bind the Offeror may be requested by the OPA;
- A detailed plan for performance of the Professional Services listed in the Scope of Services, including a description of the firm's plan, capacity, and ability to timely submit the preliminary financial statements and auditor reports for Fiscal Years (FY) 2024, 2025, and 2026 no later than January 31st; and the final reports no later than February 28th following the fiscal year end. Earlier release is encouraged;
- A statement of the abilities, qualifications, and experience of all persons who would be assigned to provide the required Services under this RFP, including the qualifications and experience of key persons who would be assigned to perform the required services;
- A statement of the availability and capacity of the Offeror to perform the Services under this RFP;
- A statement of the personnel, equipment, and facilities to perform the services currently available or demonstrated to be available at the time of contracting;

- A listing of other contracts under which services similar in scope, size, or discipline for the required services were performed within the past five (5) years, including a list of current contracts with GovGuam entities and Federally-funded entities. If none, indicate none;
- A listing of any other contracts under which any services were performed within the last five (5) years; and
- The age of the offeror's business and the average number of employees over the past year; and the size of the firm's governmental audit staff that would be assigned to perform the scope of services.

The Proposal must contain a concise narrative including a statement of qualifications addressing the aforementioned bulleted items, the evaluation criteria set forth in this solicitation, and information described in the Scope of Services.

The Proposal must also include the following additional information:

- A statement that the Offeror will periodically rotate assigned key persons if they served more than two years on the assignment.
- Continuing professional education for the last three (3) calendar years of those individuals to be assigned to the audit, i.e., partner-in-charge, auditor-in-charge, and other auditors.
- A statement that the firm, in collaboration with the agency, shall submit a Gantt chart no later than September 30th of the fiscal year for FY 2024, and June 30th for the subsequent fiscal years outlining the necessary tasks and dates for completing the FY financial audit by February 28th, following the fiscal year end. On or before the 5th day of each month, the firm shall submit a report to the OPA detailing the state and progress of the audit and attach a list of the Gantt chart projects the agency failed to complete the previous month.
- A statement indicating the Firm's/Individual(s)' understanding of the project's potential problems and/or any special concern(s) the vendor may have;
- A statement that the Offeror agrees to abide by the OPA Code of Ethics. (Please refer to link in "About Us" section on the OPA website at www.opaguam.org);
- A statement that the Offeror has established and implemented an Affirmative Action Plan;
- Affirmation that the Offeror is independent of GovGuam as defined in generally accepted auditing standards and the Government Auditing Standards;

- The Individual(s) or Firm shall provide information on the result of any Federal or State desk reviews of its audit during the past five (5) years. In addition, the Individual(s)/Firm shall provide information on the circumstances and status of any disciplinary action taken or pending against the Individual(s)/Firm during the past five (5) years with the Guam Board of Accountancy or the Guam Society of Certified Public Accountants (CPA); if no Federal or State desk review or disciplinary action was conducted or taken, affirmation that there is none is required; and
- A list of references identifying most recent clients and not to exceed five (5) customers with contact name, title, complete address, phone number, email address, and facsimile number. The contact listed should be capable of providing an appropriate testimonial for the work performed, if requested by the OPA.

All cost associated with preparation of a Proposal in response to this RFP shall be solely the Offeror's responsibility. The OPA shall not be liable for any costs incurred by a potential Offeror in connection with this RFP. By submitting a Proposal, the Offeror expressly waives any right it may have against the OPA for any expenses incurred in connection with the preparation of its Proposal, unless otherwise entitled to such expenses by law.

All Proposals should follow and address each of the evaluation criteria and must be complete as to all requested information. Failure to follow the prescribed format or omission of required information will result in a lower score on evaluation and may result in rejection of the Proposal. Supporting graphical information, i.e., photos, drawings, illustrations may be provided to support the information given in the Proposal; such material will not be separately evaluated; but may be utilized as supporting documentation.

As stated above, Price Proposals or price information should be submitted in a clearly marked sealed envelope separate from the Technical Proposal. The Price Proposal from unsuccessful Offerors will be returned unopened once a contract is executed with the successful Offeror.

If the contract is more than one hundred thousand (\$100,000.00) dollars, Cost and Pricing Data and a separate Certification of the Cost or Pricing Data will be required from the Offeror with whom a contract is successfully negotiated. The Cost or Pricing Data and Certification of the Cost or Pricing Data shall be requested separately by the OPA when required. Neither the Cost or Pricing Data nor the Certification of the Cost or Pricing Data shall be submitted with the Offeror's Proposal.

The following is a listing of all the Separate Proposal Documents that must be completed, signed and/or notarized if required, and included in the envelope with the written Proposals:

- a. Copy of business license, whether from Guam or any other United States location. A Guam business license is not required in order to submit a proposal but is a pre-condition for award and entering into contract with the OPA. In the event that an Offeror is not licensed to do business in Guam and is selected for the award, the Offeror must obtain all necessary Guam licenses within thirty (30) days of the selection

notification. Specific information on Guam licenses may be obtained from the Guam Department of Revenue and Taxation (www.guamtax.com);

- b. Copy of the most recent external Quality Control Peer Review report performed on the Certified Public Accountant (CPA) firm, together with the Management Letter Comments and any other communication relative to the Peer Review Report;
- c. Copy of the firm's Permit to Practice and a copy of the Permit to Practice as a CPA for the auditor authorized to sign the audit report from Guam or any other United States jurisdiction. The Permits to Practice issued by the Guam Board of Accountancy is not required in order to submit a proposal but is a pre-condition for award and entering into contract with the OPA. In the event that an Offeror does not have the Permits to Practice in Guam and is selected for the award, the Offeror shall obtain all necessary Permits within thirty (30) days of the selection notification; and
- d. Affidavits attached to this RFP notarized in the State or Territory of the Offeror's principal place of establishment:
 - i Affidavit Disclosing Ownership and Commissions (AG Form 002) (attached)
 - ii Affidavit re: Non-Collusion (AG Form 003) (attached)
 - iii Affidavit re: No Gratuities or Kickbacks (AG Form 004) (attached)
 - iv Affidavit re: Ethical Standards (AG Form 005) (attached)
 - v Declaration re: Compliance with U.S. DOL Wage Determination (AG Form 006) (attached)
 - vi Affidavit re: Contingent Fees (AG Form 007) (attached)
 - vii Current U.S. Department of Labor Wage and Benefit Determination (SCA) (attached)
 - viii Subcontractor Utilization Form (attached)
 - ix Conflict of Interest Disclosure Form (attached)
 - x Certification of Non-Employment of Convicted Sexual Offenders (attached).

Failure to include any items of information required by this Paragraph or any of these documents and forms with the Proposal will result in rejection of the Proposal. All Proposals and Proposal Documents must be fully completed and signed. Any Proposal Documents that are required to be notarized must be notarized prior to submission but no more than thirty (30) days prior to submission.

K. QUALITY OF PROPOSAL CONTENT AND PLAN FOR PERFORMING THE SERVICES

As part of the written Proposal, Offerors shall submit a plan for the proposed Project outlining the components, qualities, uses, and benefits of the Offeror's proposed solution, along with a comprehensive plan for performing the Services, providing as much detail as is practical, explaining the Offeror's Proposal and how any Services contained in the Scope of Services will be performed and how any objectives outlined in the Scope of Services will be achieved. The Offeror shall describe the advantages of the proposed plan and the Offeror's method for performing the Services, avoiding problems and delays, and resolving conflict. The Offeror's proposed plan

should describe any processes in detail for the functions being addressed and identify any outstanding issues the proposed solution may present. The proposed plan shall further describe Offeror's approach to completing this Project on budget, on schedule, with high quality, and how the Offeror's proposed plan will offer the OPA and GovGuam the most advantage. The proposed plan shall include a proposed Project schedule.

L. ABILITY, QUALIFICATIONS, AND EXPERIENCE OF PERSONNEL, AND QUALITY OF EQUIPMENT AND FACILITIES

As part of the written Proposal, Offerors shall submit the qualifications and a brief work history of the identified personnel to be assigned to the Project, addressing, in particular, any proposed project manager and core project staff or key personnel. ***The work history and qualifications shall not exceed three (3) pages per staff member.*** The Offeror shall also submit a detailed but brief description of the following:

- Provide a Project Organizational Chart of designated or key personnel to be assigned to this Project with identification of their project roles and description of their area of responsibilities and the location of their office.
- Identify the project principal, project manager, assistant project manager, key staff, subcontractors, and their qualifications and experience as it relates to this Project.
- List the project team, key personnel, and/or subcontractor experience on similar projects.
- Quantify the time commitment of key personnel or team members during the Project life cycle.
- List unique qualifications of key personnel or team members.
- List qualifications and relevant individual technical training, education, and experience including degree(s), year and discipline, and active registrations and licenses with number and jurisdiction. Include the description of the specific role performed by each individual on each project listed, highlighting projects of similar size and scope where the individual's role is similar to his/her role on this Project.
- Provide a detailed description of the resources, equipment, and facilities that are currently available to perform the Services or can be demonstrated to be available to perform the services at the time of contracting.

Offerors shall also submit a detailed description of the benefits and quality of any resources, equipment, and/or facilities Offeror intends to utilize to perform the Services, which may not be currently available, but will be made available or can be demonstrated to be made available, at the time of contracting. All Offerors, when identifying key personnel in their Proposal, must accurately, comprehensively, and correctly provide the information about the key person(s) requested in the solicitation. Inaccurate information in the Proposal constitutes a material

misrepresentation and could result in rejection of the Offeror's Proposal. All persons identified as key personnel in the Contractor's Proposal must agree to provide the services for the Project for a minimum of ninety (90) days from the date of the Notice to Proceed, barring unforeseen catastrophic events such as illness, accident, or death. Offerors must submit letters of commitment from the key personnel identified in the Offeror's Proposal and/or letters of offer and acceptance counter-signed by the Offeror and key personnel as part of the Offeror's Proposal.

M. AVAILABILITY AND CAPACITY OF THE OFFEROR TO PERFORM

As part of the written Proposal, Offerors shall submit a brief explanation of why the Offeror is available or will be available and has the capacity to provide the services listed in the Scope of Services. The explanation shall address how the Offeror's current workload can accommodate the addition of a contract of this type; the Offeror's current or demonstrated available resources; and how the Offeror will implement Quality Assurance/Quality Control measures. *This statement shall not exceed ten (10) pages.*

The Proposal should provide a clear description of all specific project staff or subcontractors who are intended to work on the Project, the nature, extent, and manner of their involvement, and their availability for the Project. The Proposal shall also address the availability of any equipment or facilities that may be used to provide the services. As part of this Proposal description, Offerors must include the following:

- Identify and describe the current and projected workload of all designated personnel or subcontractor(s), including a list of ongoing projects and his/her role on these ongoing projects.
- Describe the procurement, involvement, management, and availability of any subcontractors.
- Describe how the current workload of each designated personnel or subcontractor can accommodate the addition of this Project.
- Describe the approach and organizational capabilities to perform the Services on time and within budget.
- Detail the extent of each designated personnel member's and subcontractor's involvement in providing the Services.
- Describe the internal quality and cost-control measures or procedures.
- Provide a disclosure of financial resources sufficient to demonstrate an ability to complete this Project.
- Provide a detailed description of how any required resources, equipment, and facilities will be obtained or made available to perform the Services.

N. OFFEROR'S RECORD OF PERFORMANCE ON SIMILAR PROJECTS

As part of the written Proposal, the Offeror is required to provide proof to the OPA that it has delivered a quality work product on similar projects. The OPA is especially interested in related experience on Guam, other U.S. territories, and the 50 states, as knowledge of U.S. laws and regulations applicable to such work is relevant. The Offeror shall provide its past performance record on similar projects. Offeror should demonstrate a track record of effective planning, scheduling and on-time delivery, and successful performance on its projects. Offeror should also demonstrate a track record of teamwork, cooperation, fair dealing, client service, and relationships of mutual trust and confidence. Emphasis should include the quality of work and timeliness of delivery. ***The submittal shall not exceed four (4) pages.***

The Proposal shall include:

- A list of projects similar in scope and with emphasis on experience in government sector independent financial audits. The list shall identify project name, project description, location, client references (including contact name, address and telephone number, completion date, project budget, project role, type of services provided highlighting work performed similar in scope), and other pertinent information.
- A list of the Offeror's record of cost performance on these projects (i.e., original contract award amount versus final contract cost) and explain any cost deviations.
- A list of the Offeror's record of schedule performance (list original schedule versus final completion date) and explain any schedule deviations.
- A history of performance on projects similar in scope to this RFP that the Offeror was involved with over the past five (5) years. This description of Offeror's performance history should demonstrate Offeror's teamwork, cooperation, fair dealing, client service, and establishment of relationships of mutual trust and confidence.

O. OFFEROR'S GENERAL EXPERIENCE AND PAST PERFORMANCE

As part of the written Proposal, the Offeror is required to provide proof to the OPA that it has delivered a quality work product in a majority of its areas of work and projects. The OPA is interested in Offeror's overall experience on Guam, other U.S. territories, and the 50 states. The Offeror shall provide its past performance record on any projects performed in the last five (5) years, for all projects, which are not encompassed by the list required in the previous Paragraph. Offeror should demonstrate a track record of effective planning, scheduling and on-time delivery, and successful performance on its projects. Offeror should also demonstrate a track record of teamwork, cooperation, fair dealing, client service, and relationships of mutual trust and confidence. Emphasis should include the quality of work and timeliness of delivery. ***This submittal shall not exceed three (3) pages.***

The Proposal shall include:

- A list of all projects performed in the last five (5) years, which are not included in the list required in the paragraph above for similar projects. This list shall identify project name, project description, location, client references (including contact name, address and telephone number, completion date, project budget, project role, type of services provided highlighting work performed), and other pertinent information.
- A list of the Offeror’s record of cost performance on these projects (original contract award amount versus final contract cost) and an explanation for any cost deviations.
- A list of the Offeror’s record of schedule performance (list original schedule versus final completion date) and an explanation for any schedule deviations.
- A history of performance on these other projects that the Offeror was involved with over the past five (5) years. This description of Offeror’s performance history should demonstrate Offeror’s teamwork, cooperation, fair dealing, client service, and establishment of relationships of mutual trust and confidence.

P. AGE AND SIZE OF OFFEROR’S BUSINESS

The Proposal shall include a statement of the age of the Offeror’s business and the average number of employees over the last five (5) years.

Q. EVALUATION FACTORS FOR PROPOSALS

Proposals will be evaluated only on the Evaluation Factors listed in this RFP. The quality of Offerors’ written Proposals shall be determined using the following Evaluation Factors and the listed associated possible scoring totals. Written Proposals scoring less than seventy (70) points may be rejected from consideration for the award of the contract. The total of one hundred (100) possible points is broken down as follows:

EVALUATION FACTORS	SCORE
<p>Quality of Proposal Content and Plan for Performing the Required Services: Overall quality, comprehensiveness, and value of the Proposal’s presentation regarding the Services that provides the most benefit to Guam and in responding to items described in the Scope of Services section of this RFP. Proposed plan and method for accomplishing the Services, avoiding problems and delays, and resolving conflict. The Offeror’s approach to completing this Project on budget, on schedule, with high quality; and Offeror’s plans to meet the OPA’s goals for the Services. The Plan shall include a Proposed Project Schedule with the capacity and ability to issue the final financial audit within the specified time of no later than February 28th, following the fiscal year end.</p>	<p style="text-align: center;">30 Points</p>

<p>Ability, Qualifications, Experience, and Quality of Personnel, Equipment, and Facilities: Specialized experience and qualifications of designated Project personnel to perform the Services, as reflected by technical training and education, general experience, specific experience in providing the Services, and the qualifications and abilities of personnel proposed to be assigned to perform the Services. Specialized benefits and/or quality of the Offeror’s resources, equipment, and/or any facilities Offeror intends to utilize to perform the Services.</p>	<p>30 Points</p>
<p>Availability and Capacity of Offeror: The Offeror’s current capacity to successfully apply its skills and resources to perform and complete the Services on time and within budget at a level of quality expected by the OPA. This includes an evaluation of the resources, personnel, facilities, and equipment currently available to perform the services or demonstrably available at the time of contracting, and an evaluation of the Project Organizational Chart to complete the Services. The plan for performing the required services, including an understanding of the project’s potential problems and/or any special concerns.</p>	<p>20 Points</p>
<p>Offeror’s Record of Past Performance on Similar Projects: The Offeror’s specialized experience on projects similar in scope and type. Successful performance on projects that are similar in nature and scope. A demonstrated track record of effective planning, scheduling and on-time delivery performance on those similar projects. Successful performance of similar past projects. A demonstrated track record of teamwork, cooperation, fair dealing, client service and relationships of mutual trust and confidence.</p>	<p>10 Points</p>
<p>Offeror’s General Experience and Past Performance: The Offeror’s general experience in all areas of its work. A demonstrated track record of effective planning, scheduling and on-time delivery performance on those schedules. Successful performance of all past projects. A demonstrated track record of teamwork, cooperation, fair dealing, client service and relationships of mutual trust and confidence.</p>	<p>10 Points</p>

R. REQUEST FOR NON-DISCLOSURE OF CONFIDENTIAL DATA

After award, the winning Proposal becomes a part of the public record of procurement. Offerors may request that portions of their Proposal be kept confidential. If an Offeror is submitting trade secrets or proprietary information in its Proposal that it wishes to keep confidential, then a written request for non-disclosure must be included with the Proposal, and those portions of the Proposal which are proprietary must be clearly marked or designated. Material so designated shall accompany the Proposal and shall be readily separable from the Proposal in order to facilitate inspection of the non-confidential portion of the Proposal. Prices and makes and models or catalogue numbers of the items offered, deliveries, and terms of payment of the winning Proposal shall be publicly available at the time of the Notice of Award, regardless of any designation to the contrary. Any Proposals marked or designated as “Confidential” or “Proprietary” for the entirety of the Proposal shall be rejected.

After receipt of a request to designate portions of the Proposal as confidential, the OPA will examine the request. The OPA may review the material declared to be confidential to determine the validity of any requests for non-disclosure of trade secrets and other proprietary data identified in writing. The OPA will then inform the Offeror of its decision on the request in writing. If the parties do not agree as to the disclosure of certain data, the Offeror may then withdraw the Proposal or submit a protest if permitted by law. If the Proposal is not withdrawn and no protest is received, then the OPA may disclose those portions of the Proposal for which a non-disclosure request was not granted.

S. MULTIPLE, ALTERNATE, OR LATE PROPOSALS

Multiple or alternate Proposals will not be accepted, and any multiple or alternate Proposals submitted will be rejected. Late Proposals will not be accepted, and any late Proposals will be rejected.

T. ALL OR NONE PROPOSALS

Proposals MAY NOT limit acceptance to the entire Proposal offering. Proposals that violate this provision shall be deemed to be nonresponsive.

U. AMENDMENTS TO REQUEST FOR PROPOSALS

The OPA reserves the right to amend this RFP at any time, as provided under Guam Procurement Law and Guam Procurement Regulations. Changes will be announced by an amendment or amendments to this RFP and shall be identified as such. Each amendment shall refer to the portions of the RFP it amends. Amendments shall be sent to all parties known to have registered for and received an RFP package. The OPA requires that all prospective Offerors acknowledge receipt of all amendments issued. Amendments shall be distributed to allow prospective Offerors time to consider the amendments in preparing their Proposals or other documents. The OPA may extend any due date if any amendment makes compliance with the original due date impractical.

V. PRICE PROPOSALS

As stated in **Section J** Proposal Format and Content, the Price Proposal shall be submitted in a separate envelope, sealed and clearly marked.

All Price Proposals shall include a proposed Project budget addressing both the first fiscal period and the entire time of performance. If prices for both the first fiscal period and entire time of performance are submitted, the prices will be equally weighted in order to determine whether Offeror's price is fair and reasonable and that the contract may be awarded thereon.

A unit price shall be given for each type of service, and such unit prices shall be the same throughout any resulting contract except to the extent price adjustments may be provided in the solicitation and resulting contract. All deliverables will be payable upon completion, delivery, approval, and acceptance by the OPA. Monthly or other regularly scheduled deliverables should be itemized and priced by task. Regularly recurring monthly tasks (e.g., monthly reports, quarterly reports, fiscal reports) should each be listed as discrete items, and the sum of all recurring monthly

costs should equal the total monthly invoicing/pricing amount for regular recurring tasks. Travel expenses must be included in the Offeror's service rates and pricing (or the hourly rates which are built into the cost of the deliverable) and may not be billed or priced separately.

W. COST AND PRICING DATA AND CERTIFICATION OF COST OR PRICING DATA

If the estimated price of the contract is more than one hundred thousand (\$100,000.00) dollars, Cost or Pricing Data will be required from any Offeror selected to conduct contract negotiations. The Cost or Pricing Data shall be submitted to the OPA's Procurement Officer prior to beginning price negotiations at any reasonable time and in any reasonable manner requested by the OPA. The Cost or Pricing Data documentation is separate from Offeror's Price Proposal. Such data shall be specifically identified in writing by the Offeror as Cost and/or Pricing Data. The Offeror is required to keep these data current until the negotiations are completed.

In addition, if the contract is more than one hundred thousand (\$100,000.00) dollars, a Certification of the Cost or Pricing Data submitted will also be required from the Offeror with whom a contract is successfully negotiated. The Certification of the Cost or Pricing Data shall be separately provided from the successful Offeror to the OPA when required. The Offeror shall certify as soon as practicable after the agreement is reached on price that, to the best of the Offeror's knowledge and belief, the cost of pricing data submitted are accurate, complete, and current.

The Cost and Pricing Data and the Certification of the Cost or Pricing Data shall NOT be submitted with the Offeror's Proposal; these documents shall only be submitted when and as requested by the OPA.

X. STATUS OF FUNDING & COMPLIANCE W/ FUNDING TERMS AND CONDITIONS

Funds are presently available for this solicitation. These funds are currently available from the account name: Mount Carmel Academy Charter School Budget. The government's obligation under any proposed contract is contingent upon the availability of funds from which payment for contract purposes can be made. The issuance of this solicitation does not compel the award of any contract.

All Offerors are required to comply with the terms and conditions of the OPA applicable funding requirements.

Y. WAGE AND BENEFIT REQUIREMENTS

Whenever GovGuam enters into a procured contractual arrangement with an Offeror for the provision of a service to GovGuam and the Offeror employs a person(s) whose purpose, in whole or in part, is the direct delivery of the service contracted by GovGuam, then the Offeror 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 (DOL) for such labor as is employed in the direct delivery of the contract deliverables to GovGuam. The Wage Determination most recently issued by the U.S. DOL at the time a contract is awarded to the Offeror by GovGuam shall be used to determine the wages, which shall be paid to employees pursuant to Guam

Procurement Law, if applicable. 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 Guam Procurement Law, that the Wage Determination promulgated by the U.S. DOL on a date most recent to the renewal date shall apply, if applicable. In addition to the required Wage Determination, any contract to which this requirement applies shall also contain provisions mandating health and similar benefits for employees, such benefits having a minimum value as detailed in the Wage Determination issued and promulgated by the U.S. DOL and shall contain provisions guaranteeing a minimum of ten (10) paid holidays per annum per employee.

To ensure compliance with these provisions, Offeror must complete and attach **Declaration re: Compliance with U.S. DOL Wage Determination (AG Form 006)**, located at [Section VIII](#) of this RFP, to the Proposal. Failure to complete, sign, and submit this document with the Proposal will result in rejection of the Proposal. Offeror must also attach the most current applicable Wage Determination issued by the U.S. DOL for Guam and the Marianas Islands, located at [Section X](#) of this RFP, to the Proposal. Failure to submit this document with the Proposal will result in rejection of the Proposal.

Z. SUBCONTRACTORS

1. **Subcontractor.** A subcontractor is a person or entity who has a direct contract with the Offeror/Contractor or a higher tier subcontractor to perform a portion of the Services in this solicitation.
2. **Award of Subcontracts and Other Contracts for Portions of the Services.**
 - a. All Offerors shall furnish in writing to the OPA the names of all known persons or entities proposed to provide subcontracting services on each principal portion of the Scope of Services by completing, signing, and attaching the Subcontractor Utilization Form to the Offeror's Proposal. The OPA may conduct discussions with the Offeror: (1) stating whether the OPA has reasonable objection to any such proposed person or entity; or (2) stating whether the OPA requires additional time for review or additional information concerning the utilization of a proposed person or entity. If the Offeror fails to submit this form with its Proposal, that Offeror will be disqualified. If this occurs, the OPA will select the next highest ranked qualifying Offeror for negotiations.
 - b. The OPA, reserves the rights to object to Offeror's utilization of any subcontractor and to require substitution of the subcontractor for cause. The Offeror shall not contract with a proposed person or entity to whom the OPA has made reasonable and timely objection. In the case of substitution or any other issue with subcontractors, the Offeror shall not be required to contract with anyone to whom the Offeror has made reasonable objection in writing to the OPA.
 - c. The Offeror shall not substitute a subcontractor, person or entity set forth in its Proposal or in the Subcontractor Utilization Form, located at [Section XI](#) of this RFP, unless Offeror has obtained the written consent of the OPA, or unless the OPA require such substitution. Offeror must notify the OPA in writing prior to any termination or

substitution of a subcontractor listed in the Proposal or Proposal Documents. Failure by the Offeror to follow these requirements shall constitute a material breach of the terms of this RFP, which may result in the termination of any awarded contract or other legally available remedies.

3. **Subcontractor Relations.** By appropriate written agreement, the Offeror shall require each subcontractor, to the extent of the Services to be performed by the subcontractor, to be bound to the Offeror by the terms of its Proposal and any resulting Contract and to assume toward the Offeror all the obligations and responsibilities, including the responsibility for safety of the subcontractor's Services, which the Offeror assumes toward the OPA. Each subcontract agreement shall preserve and protect the rights of the OPA under this solicitation with respect to the Services to be performed by the subcontractor so that the subcontracting thereof will not prejudice such rights. Offeror shall have full responsibility for the satisfactory performance of the Services under the RFP, the Proposal and Proposal Documents, the Scope of Services and any conditions, plans, or specifications, and any awarded contract, for any subcontracts, which the Offeror may let.
4. **Subcontracts.** The Offeror and subcontractor(s) shall insert in any subcontracts the clauses set forth in this solicitation and any awarded contract, to include a clause requiring all subcontractors to include these clauses in any lower tier subcontracts. The Offeror shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in **Paragraph BB**.

AA. CONFLICTS OF INTEREST

This is a locally funded project and pursuant to 2 GAR, Div. 4, § 11105, in order to ensure objective contractor performance and eliminate unfair competitive advantage, Offerors that have organizational conflicts of interest or who have developed, prepared, furnished, or drafted any specifications, requirements, statements of work, scope of services, invitations for bids, requests for proposals, or significant documents related to this solicitation must be excluded from competing for such procurements.

All Offerors shall follow the Conflict of Interest (COI) Guidelines attached to this RFP when submitting a Proposal in response to this locally funded solicitation or procurement or when entering into any locally funded contract with the OPA. The Offeror shall follow these COI Guidelines throughout the period during which the Offeror's Proposal is open or the contract is in effect. All Offerors shall provide the COI Guidelines and associated COI Disclosure Form to all of its Consultants and Subcontractors at any tier of a contract and shall ensure that the Offeror and each of its Consultants or Subcontractors make any disclosures required by these guidelines or as required by this RFP or any awarded Contract. The OPA will follow and apply these COI Guidelines when conducting procurements. If a conflict of interest or potential conflict of interest is determined to exist, the OPA will attempt to determine whether the conflict of interest can be avoided or mitigated. Before determining to withhold an award based on conflict of interest considerations, the OPA shall notify the Offeror, provide the reasons therefor, and allow the Offeror a reasonable opportunity to respond.

All Offerors must complete and submit the COI Disclosure Form located at [Section XII](#) of this RFP with the Offeror's Proposal. Each disclosure of a qualifying potential conflict on the COI Disclosure Form shall include a signed statement by the current or former OPA employee of their role or proposed role for the Offeror in the particular Procurement and any resulting Contract on the "Relatives and Former OPA Employees – Roles and Signatures" page of the form. Failure to complete and submit the COI Disclosure Form will result in the rejection of the Proposal.

BB. DISCLOSURE OF MAJOR SHAREHOLDERS

As a condition of submitting a Proposal, any partnership, sole proprietorship or corporation doing business with the OPA shall submit an affidavit executed under oath that lists the name and address of any person who has held more than 10% of the outstanding interest or shares in said partnership, sole proprietorship or corporation at any time during the 12-month period immediately preceding submission of the Proposal on the Affidavit Disclosing Ownership and Commissions (AG Form 002) attached to this RFP at [Section IV](#). This Affidavit shall contain the number of shares or the percentage of all assets of such partnership, sole proprietorship or corporation, which have held by each such person during the 12-month period. In addition, the Affidavit shall contain the name and address of any person who has received or is entitled to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the Proposal for the Offeror and shall also contain the amounts of any such commission, gratuity or other compensation. Any Offeror selected for negotiations must keep this Affidavit current through the date that a Notice of Award is issued in this procurement. A Proposal from any Offeror listing a person with a potential conflict of interest on the Affidavit will be rejected in accordance with the COI Guidelines attached to this RFP. The Affidavit shall be open and available to the public inspection and copying. This Affidavit Disclosing Ownership and Commissions attached to this RFP must be completed and returned with the Offeror's Proposal. Failure to submit the Affidavit concerning commissions paid with the Offeror's Proposal shall be deemed nonresponsive and cause for rejection of the Proposal upon opening.

Section II. GENERAL TERMS AND CONDITIONS

These General Terms and Conditions contain the following lettered paragraphs:

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A. AUTHORITY

This Request for Proposals (RFP) solicitation is issued subject to the provisions of the Guam Procurement Act (as amended) and the Guam Procurement Regulations (copies are available for inspection at the OPA website). By submitting a Proposal, Offerors agree to be bound by all the laws and regulations of Guam. The RFP requires all parties involved in the preparation, negotiation, performance, or administration of contracts to act in good faith.

B. SPECIAL RFP TERMS FOR MULTI-TERM CONTRACTS

Any contract awarded under this RFP is subject to the availability of certified funds. The Procurement Officer will notify the Contractor on a timely basis whether the funds are, or are not, available for the continuation of the contract for each succeeding fiscal period. In the event that funds are not available for any succeeding fiscal period, the contract shall be cancelled; however, this does not affect either Party's right to terminate under the termination clauses of the contract. If the contract is cancelled for insufficient funds, the awarded Contractor shall be reimbursed its unamortized, reasonably incurred, non-recurring costs.

C. FIRM FIXED-PRICE

Pursuant to 2 GAR, Div., § 3119(d)(2) Firm Fixed-Price Contract. A firm fixed-price contract provides a price that is not subject to adjustment because of variations in the contractor's cost of performing the work specified in the contractor's cost of performing the work specified in the contract. A Firm Fixed-Price Contract should be used whenever prices which are fair and reasonable to the territory can be established at the outset. This RFP is based upon comparison of prices in similar prior procurement in which prices were fair and reasonable.

D. CANCELLATION AND REJECTION

The OPA and the Public Auditor shall have the right to cancel this solicitation in whole or in part at any time and to reject in whole or in part any or all Proposals or offers which have been submitted in response to this RFP at any time if the OPA determines such to be in the best interest of the OPA and/or GovGuam.

E. TAXES

Offerors may be subject to taxation, including but not limited to, Gross Receipts Tax, Guam Business Privilege Tax, Guam Income Tax, and the payment of any and all taxes which may be due as a result of entering into this agreement are the sole responsibility of the Offeror and its subcontractors and any permitted assignees or successors in interest. Specific information of taxes may be obtained from the Director of the Guam Department of Revenue and Taxation.

F. WITHHOLDING ASSESSMENT FEE

Pursuant to Title 11 of the Guam Code Annotated (GCA) § 71114, all procurements of professional services are subject to a withholding assessment fee for non-resident persons or companies without

a valid Guam Business License, which is equal to four percent (4%) of the total dollar value of any contract awarded for all GovGuam contracts for any professional services provided by a non-resident person or company residing outside of Guam, as a cost of doing business with GovGuam.

G. PERMITS, LICENSING, AND COMPLIANCE WITH LAWS

The selected Offeror shall be required to obtain all permits and comply with all Federal and Territorial laws, ordinances, or rules applicable to its professional licensing and the provision of equipment and services to GovGuam. Specific information on licenses required by GovGuam may be obtained from the Director of Revenue and Taxation. The Offeror shall provide a copy of all of its current, valid, appropriate business licenses, and Guam Business License or a statement of exemption, pursuant to 11 GCA §§ 70126 and 70130, with the Offeror's Proposal when it is submitted to the OPA.

All Offerors agree by submitting a Proposal that they will follow all applicable federal and local laws and regulations governing their submissions and performance under any contract issued under this RFP.

H. MANDATORY PROHIBITIONS

1. Prohibition of Gratuities, Kickbacks, and Favors.

Gratuities. It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or Proposal therefor.

Kickbacks. It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

Favors to the Territory. It shall be a breach of ethical standards for any person who is or may become a contractor, a subcontractor under a contract to the prime contractor or higher tier contractor, or any person associated therewith, to offer, give or agree to give any employee or agent of the Territory or for any employee or agent of the Territory to solicit or accept from any such person or entity or agent thereof, a favor or gratuity on behalf of the Territory whether or not such favor or gratuity may be considered a reimbursable expense of the Territory, during the pendency of any matter related to procurement, including contract performance warranty periods.

2. Prohibition of Employment of Sex Offenders. No person convicted of a sex offense under the provisions of 9 GCA Chapter 25, or an offense as defined in 9 GCA Chapter 28 Article 2 in Guam, or an offense in any jurisdiction which includes, at a minimum, all of the elements of said offenses,

or who is listed on the Sex Offender Registry, and who is employed by a business contracted to perform services for an agency or instrumentality of GovGuam, shall work for his employer on the property of GovGuam other than a public highway.

3. Prohibition of Contingent Fees. It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a territorial contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

4. Ethical Standard. It shall be a breach of ethical standards for an Offeror to knowingly influence a government employee to breach any of the ethical standards set forth in 5 GCA Chapter 5 Article 11 (Ethics in Public Contracting) of the Guam Procurement Law and in Chapter 11 of the Guam Procurement Regulations.

I. MANDATORY WARRANTIES

1. Representation Regarding Gratuities and Kickbacks. The Offeror represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth in 2 GAR, Div. 4, § 11107 (Gratuities and Kickbacks) of the Guam Procurement Regulations. Offeror further agrees to execute and file a Non-Gratuity Affidavit before final payment under the contract is made by the OPA.

2. Warranty against Employment of Sex Offenders. Offeror warrants that: (1) no person in its employment who has been convicted of a sex offense under the provisions of 9 GCA Chapter 25 or of an offense defined in 9 GCA Chapter 28 Article 2, or who has been convicted in any other jurisdiction of an offense with the same elements as heretofore defined, or who is listed on the Sex Offender Registry, shall provide services on behalf of Offeror while on government of Guam property, with the exception of public highways; and (2) that if any person providing services on behalf of Offeror is convicted of a sex offense under the provisions of 9 GCA Chapter 25 or an offense as defined in 9 GCA Chapter 28 Article 2, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry at any time during the performance of the contract, that such person will be immediately removed from working on government property and Offeror warrants that it will notify the Public Auditor within twenty-four (24) hours of such conviction. If Offeror is found to be in violation of any of the provisions of this paragraph, then the OPA will give notice to Offeror to take corrective action. Offeror shall take corrective action within twenty-four (24) hours of notice from the OPA, and Offeror shall notify the OPA when action has been taken. If Offeror fails to take corrective steps within twenty-four (24) hours of notice from the OPA, then the OPA in its sole discretion may temporarily suspend this agreement.

3. Covenant Against Contingent Fees. The Offeror warrants that it has not employed any person to solicit or secure any contract resulting from this RFP upon agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the OPA the right to terminate the contract, or in its discretion, deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commissions

payable by the Offeror upon contracts or sales secure or made through bona-fide established commercial or selling agencies maintained by the Offeror for the purpose of securing business.

4. Representation Regarding Ethical Standard. Offeror 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 set forth in 5 GCA Chapter 5 Article 11 (Ethics in Public Contracting) of the Guam Procurement Law and in Chapter 11 of the Guam Procurement Regulations.

J. EQUAL EMPLOYMENT OPPORTUNITY

By submitting a Proposal, the Offeror and all subcontractors agree to comply with the following policies: Executive Order 11246, Title 41 of the Code of Federal Regulations (CFR) 60, 29 CFR 1625-1627, Title 23 of the U.S. Code (U.S.C.) Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633. The Offeror and all subcontractors must also comply with the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b). The Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the Project activities and Services under this RFP. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this RFP. The Offeror shall not discriminate against any employee or applicant for employment because of race, religion, sex, color, national origin, age or disability. If awarded the contract, the Offeror will take whatever steps are necessary to ensure that its employees are treated equally during employment without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training.

K. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT

Offerors must meet all applicable Americans with Disabilities Act (ADA) regulations and requirements.

L. PROPOSALS

The Offeror is required to read each and every page of its Proposal and by the act of submitting a Proposal shall be deemed to have accepted all conditions contained therein. In no case will failure to review or inspect constitute grounds for a claim or for the withdrawal of a Proposal after opening. Proposals shall be filled out in ink or typewritten and signed in ink. Erasures or other changes in a Proposal must be explained or noted over the signature of the Offeror. Proposals containing any conditions, omissions, unexplained erasures or alterations, items not called for in the Proposal, or irregularities of any kind may be rejected by the OPA in whole or in part.

M. REVIEW OF PROPOSALS

The OPA intends to review the Proposals as soon as possible after the submission due date for Proposals as provided herein. The Proposals submitted will be the primary documents for evaluation. The OPA reserves the right to waive any minor information or irregularity in the Proposals received. The OPA may award, allow amendments, or reject Proposals in whole or in part as permitted by law. The OPA is not responsible for any costs incurred by the Offerors. The OPA reserves the right to retain copies of all Proposals submitted regardless of whether an Offeror is selected for negotiations or awarded a contract. Submission of a Proposal indicates acceptance of these terms and conditions by the Offeror.

N. INDEPENDENT PRICE DETERMINATION

By submitting a Proposal, the Offeror certifies that if selected for negotiations, any price, pricing data, or Price Proposal submitted by the Offeror is independently arrived at without collusion.

O. ACCEPTANCE OF SOLICITATION TERMS AND APPLICABLE LAWS

The Offeror is required to read each and every page of this RFP, and by the act of submitting a Proposal, shall be deemed to have accepted all conditions contained herein and to be bound by the laws of Guam and any other applicable laws. This RFP is issued subject to all the provisions of the Guam Procurement Law (5 GCA §§ 5001, et seq.) and the Guam Procurement Regulations, copies of which are available for inspection at the OPA.

The Guam Procurement Law and this RFP require all parties involved in the preparation, evaluation, negotiation, performance, or administration of contracts to act in good faith.

Proposals may not be withdrawn by Offeror on the basis of Offeror's unfamiliarity with the required terms or applicable laws. Offeror may not propose or negotiate any conditions, omissions, unexplained erasures, irregularities, alterations, or items that are in contravention of the terms and conditions of the RFP or applicable law. The OPA may deem such proposed items to constitute a showing of bad faith, in whole or in part, which may result in debarment or other legal remedies against the Offeror.

If any part, term, or condition of this RFP is found to be contrary to the Guam Procurement Law, the Guam Code, any applicable Guam Administrative Rules and Regulations, or is found to contain ambiguous terms, then such portion of the RFP shall be interpreted or resolved in favor of or according to the provisions of the Guam Procurement Law or other applicable Guam law or rules.

P. MODIFICATION OR WITHDRAWAL OF PROPOSALS

Proposals may be modified or withdrawn at any time prior to the conclusion of discussions, as provided under the Guam Procurement Law and the Guam Procurement Regulations. In no case will failure to review or inspect constitute grounds for a claim or for the withdrawal of a Proposal after opening. The Government reserves the right to waive any minor informalities in Proposals received or to have them corrected by the Offeror, in accordance with applicable regulations.

Q. CLARIFICATION/DISCUSSION OF PROPOSALS

After the receipt and opening of Proposals and at its option, the OPA or its designee(s) may conduct discussions with Offerors that have submitted timely, valid Proposals for the purpose of clarification to assure full understanding and responsiveness to the solicitation requirements, as permitted under the Guam Procurement Law and the Guam Procurement Regulations. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision to Proposals and such revisions shall be permitted after submission and prior to award for the purpose of obtaining best and final offers. All Proposals should be submitted initially on the Offeror's most favorable terms. In conducting discussions, there shall be complete confidentiality of any information derived from Proposals submitted by competing Offerors.

R. EVALUATION FOR SELECTION

Upon the receipt of all Proposals, a selection team will be convened to select the most responsive and qualified Offerors. The OPA may conduct discussions with any Offeror to determine the Offeror's qualifications and/or to explore the scope and nature of the Services, the Offeror's proposed method of performance and the relative utility of alternative methods of approach to the Project. Following the validation of qualifications or other discussions, the OPA or its designee(s), will select in the order of their respective qualification and evaluation ranking, no fewer than three acceptable Proposals (or such lesser number if fewer than three acceptable Proposals were received) by Offerors deemed to be qualified to provide the Services, and the Proposals shall be ranked in accordance with their evaluation scores.

S. RESPONSIBILITY OF OFFERORS

Before awarding a contract to an Offeror, the OPA must be satisfied that the Offeror is responsible. Offerors shall supply information requested by the OPA concerning the responsibility of the Offeror. The unreasonable failure of an Offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such Offeror. In determining the responsibility of the best-qualified Offeror, the OPA shall be guided by the following:

1. The Offeror's current capability in all respects to perform fully the contract requirements;
2. The Offeror's current integrity and reliability which will assure good faith performance;
3. Whether the Offeror has available the appropriate financial, material, equipment, facility, and personnel resources and expertise or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;
4. The Offeror's satisfactory record of integrity with regard to previous contracts and contract awards;
5. The Offeror's satisfactory record of performance with regard to previous contracts and contract awards;
6. Whether the Offeror has qualified legally to contract with GovGuam; and
7. Whether the Offeror has supplied all necessary information in connection with any inquiry concerning responsibility.

T. SELECTION OF BEST-QUALIFIED OFFEROR

The Evaluation Committee shall consist of:

- Three (3) members from the OPA.
- One (1) member from MCS.
- One (1) member of the Guam Society of CPAs or other accountants' association, selected by the Public Auditor.

a. Pursuant to 1 GCA § 1908, the Public Auditor shall select the auditing firm and shall have oversight over the audits. Accordingly, OPA shall have the authority to oversee, direct and supervise the audit(s) contracted in this proposal/agreement. OPA shall have access to all working papers of the Auditor. The Auditor shall advise OPA of all communications made to MCS. The Auditor shall provide drafts of all reports, including but not limited to financial statements, audit findings, internal control compliance reports, and management letters to MCS concurrently to OPA. The Auditor's final reports shall not be issued to external parties without the consent of OPA.

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

b. Proposals shall be evaluated only on the basis of the evaluation factors stated in this Request for Proposals. After the Evaluation Committee completes the validation of qualifications for each offeror, the evaluation of each proposal, and discussions made pursuant to 2 GAR, Div., 4 § 3114(i), if any, have been completed, the Evaluation Committee shall make a recommendation to the Public Auditor as to the most qualified offeror based on the highest overall score and being the first choice of the majority of the evaluators. In the event that (1) the offeror with the highest overall score is not the same as the first choice of the majority of the evaluators; or (2) there is a tie in the overall score of two or more offerors, the first choice of the majority of the evaluators will prevail. The Public Auditor may accept or reject the Evaluation Committee's recommendation. If the recommendation is rejected, the Public Auditor may require the Evaluation Committee to conduct a second evaluation or take any action necessary to ensure the proposals are evaluated in accordance with the evaluation factors set forth in the Request for Proposals or any action permitted by the Guam Procurement Laws and Regulations. If the Public Auditor accepts the Evaluation Committee's ranking of the offerors, the Public Auditor, pursuant to 1 GCA §§ 1908 and 1921, shall select, in the order of their respective qualification ranking, no fewer than three (3) acceptable offerors or such lesser number if fewer than three (3) acceptable proposals were received, deemed to be the best qualified to provide the required services.

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

U. NEGOTIATION AND AWARD OF CONTRACT

OPA shall negotiate a contract with the best-qualified Offeror for the Services at a compensation determined in writing by OPA to be fair and reasonable. OPA reserves the right to contract for the work hereunder in planned phases which is dependent upon need and funding availability. Contract negotiations will be directed toward: (1) making certain that the Offeror has a clear understanding of the scope of work, specifically, the essential requirements involved in providing the Services; (2) determining that the Offeror will make available the necessary personnel and facilities to perform the services within the required time; and (3) agreeing upon compensation which is fair and reasonable, taking into account the estimated value of the Services, and the scope, complexity and nature of such services. Additionally, pursuant to 5 GCA § 5216 (d) and (e), if the Offeror is selected for negotiations, OPA and the Offeror “must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed.” *Id.*

1. Successful Negotiation of Contract with Best-Qualified Offeror: If compensation, contract requirements and contract documents can be agreed upon with the best-qualified Offeror, the contract will be awarded to that Offeror.
2. Failure to Negotiate Contract with Best-Qualified Offeror: If compensation, contract requirements or contract documents cannot be agreed upon with the best qualified Offeror, a written record stating the reasons therefore shall be placed in the file and OPA will advise such Offeror of the termination of negotiations which shall be confirmed by written notice within three (3) days. Upon failure to negotiate a contract with the best- qualified Offeror, OPA will enter into negotiations with the next most qualified Offeror. If negotiations again fail, negotiations will be terminated as provided in this Paragraph and commence with the next most qualified Offeror.
3. Notice of Award: Written notice of award will be issued to the Offeror with whom a contract is successfully negotiated and will be public information, which is made a part of the contract file.
4. Failure to Negotiate Contract with Offerors Initially Selected as Qualified: Should OPA be unable to negotiate a contract with any of the Offerors initially selected as qualified Offerors, Proposals may be re-solicited or additional Offerors may be selected based on original, acceptable Proposal submissions in the order of their respective qualification ranking, and negotiations may continue in accordance with the procedures and process herein specified.

V. ACCESS TO RECORDS, INSPECTION, AND AUDIT REVIEW

The Public Auditor and any of their authorized representatives must have the right of access to any documents, papers, or other records of the Offeror which are pertinent to the contract, in order to make audits, examinations, excerpts, and transcripts, and to inspect supplies and services and audit records at any Offeror or proposed subcontractor's facility or place of business and perform tests both: prior to award of a contract, to determine the Offeror's responsibility and capability of

performing any contract to be awarded under a solicitation and to determine whether the Offeror's or subcontractor's facilities, supplies, or services conform to solicitation requirements; or after award, to determine whether the awarded Offeror is conforming to contract requirements, and its performance is therefore acceptable. This right also includes timely and reasonable access to the Offeror's personnel for the purpose of interview and discussion related to such documents. By submitting a Proposal in response to this RFP, the Offeror agrees to abide by the following access, audit, and inspection terms:

- a) *Access to Records and Retention.* The Offeror, including its subcontractors, if any, agrees that it shall maintain and retain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and relative to its cost or pricing data and shall make such materials available at all reasonable times after submission of its Proposal, during any awarded contract term, and for three (3) years from the date of final payment under any awarded contract, for inspection in Guam or at any reasonable location designated by the Public Auditor and his or her authorized representatives, unless the Offeror is notified in writing by OPA, the cognizant agency for audit, the oversight agency for audit, or the cognizant agency for indirect costs to extend the retention period. If any litigation, claim, or audit is started before the expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. Records for real property and equipment acquired with the funds from the awarded contract must be retained for three (3) years after final disposition of the real property and equipment. Each subcontract by the Offeror shall include a provision containing the conditions of this Paragraph for any contract awarded under this solicitation.

- b) *Right to Audit.* Offeror shall establish and maintain a reasonable accounting system that enables the Public Auditor or any of his or her authorized representatives to readily identify Offeror's assets, expenses, costs of goods, and use of funds. The Public Auditor and his or her authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to its Proposal or this solicitation which are kept by or under the control of the Offeror, including, but not limited to those kept by the Offeror, its employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files (including Proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back-charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Offeror shall, at all times during the term of any awarded contract and for a period of three (3) years after the date of final payment under any awarded contract, maintain such records, together with such supporting or underlying documents and materials. The Offeror shall at any time requested by the Public Auditor or any of his or her authorized representatives whether before, during, or after completion of an awarded contract, and at Offeror's own expense make such records available for inspection and audit (including copies and extracts of records as required) by OPA. Such records shall be made available to the Public Auditor, or any of

his or her authorized representatives during normal business hours at the Offeror's office or place of business and subject to a three-day written notice. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for the Public Auditor or any of his or her authorized representatives. Offeror shall ensure the Public Auditor or any of his or her authorized representatives has these rights with Offeror's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Offeror and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Offeror's obligations to the Public Auditor or any of his or her authorized representatives. Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by the Public Auditor or any of his or her authorized representatives unless certain exemption criteria are met. If the audit identifies overpricing or overcharges (of any nature) by the Offeror to OPA in excess of one-half of one percent (.5%) of the total contract billings, the Offeror shall reimburse OPA for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, OPA may recoup the costs of the audit work from the Offeror. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Offeror's invoices and/or records shall be made within a reasonable amount of time not to exceed ninety (90) days from presentation of the Public Auditor or any of his or her authorized representatives' findings to Offeror.

- c) *Right to Enter and Inspect.* The Public Auditor or any of his or her authorized representatives may be subject to a three-day written notice to enter and inspect an Offeror's or subcontractor's facilities, place(s) of business, or any place(s) of performance of any awarded contract relating to Offeror's Proposal or this solicitation, or any contract awarded pursuant to this solicitation. The Public Auditor or any of his or her authorized representatives may enter and inspect any plans, supplies, services, equipment, work and records at these locations which are related to the performance of any awarded contract and may conduct any testing deemed necessary to determine the Offeror's or subcontractor's compliance or conformity to the solicitation or contract requirements. The Public Auditor and/or any of his or her authorized representatives may enter and audit the cost or pricing data, books, and records of the Offeror or any subcontractor, and/or investigate in connection with an action to debar or suspend a person from consideration for award of contracts pursuant to 2 GAR, Div. 4, § 9102 (Authority to Debar or Suspend) of the Guam Procurement Regulations or any applicable federal debarment provisions.

W. LOCAL PROCUREMENT POLICY

No specification, term, condition, or qualification of this RFP shall exclude any Offeror from consideration on the basis of Guam-only experience provided that the experience of such Offeror is otherwise responsive to the solicitation, in accordance with the requirements of 5 GCA § 5008(e).

X. RELATIONS WITH OTHER GOVERNMENT AGENCIES

All directions within the scope of the RFP and the awarded contract will be issued by the Public Auditor; Offerors and any awarded Contractor shall not accept such direction from others. Information provided by other government agencies or entities which seemingly conflicts with information provided by the Public Auditor in this solicitation will be discussed with the Public Auditor immediately. This policy is not intended to prevent the Offerors or any awarded Contractor from obtaining necessary information from other governmental agencies or entities.

Y. OBLIGATIONS OF THE OFFEROR

The Offeror shall be responsible for the professional and technical accuracy of its Proposal and the coordination of all designs, drawings, specifications in its Proposal, and all designs, drawings, specifications, and any other work, services, and materials furnished under any awarded contract. The Offeror shall, without additional cost to OPA or GovGuam, correct and revise all errors or deficiencies in its Proposal, and if awarded a contract, shall correct and revise all errors or deficiencies in its designs, drawings, specifications, and in its work services, or materials furnished by the Offeror, if found to be defective by the Public Auditor or OPA.

The Offerors are responsible for securing all approvals for entry onto private property.

Z. GUAM DEBARMENT

Offeror warrants that it will comply with the provisions of 5 GCA Chapter 5 Articles 9 and 11, subject to debarment or suspension, and if awarded a contract under this RFP, that it will not employ any subcontractors who have been debarred by the GovGuam.

Section III. SCOPE OF SERVICES

Mount Carmel Academy Charter School Independent Financial Audit

The work performed under this Scope of Services shall consist of a regionally recognized U.S. CPA Firm/Individual with general knowledge, skill, and experience in auditing financial statements and Federal awards compliance of State and local governments. Solicitation for this RFP covers independent financial auditing services for MCS for FYs 2024, 2025, and 2026. OPA, with the approval of the Public Auditor, retains the option to renew the contract for one (1) additional year of service.

BACKGROUND

Mount Carmel Academy Charter School (“MCS”) is governed by 17 GCA Chapter 12 (as amended) as Guam only converted private catholic school to an academy charter school funded by the government of Guam General Fund. MCS offers nearly seventy (70) years of successfully providing elementary and junior high/middle school education, “Educating the Complete Child!”

In the last decade MCS greatly enhanced its "activity-based curriculum" with a project-based curriculum (also known as "project-based learning/PBL"). MCS offers the most relevant and exciting project-based curriculum by utilizing the last sixteen (16) years of activity-based learning to create a complete, yet customized curriculum designed to most benefit local Guam students. MCS evolved over the last sixteen (16) years resulting in an education more geared towards students from Guam. It is because of this proven success MCS further developed this complete conversion to project-based teaching and learning. The MCS model does not duplicate what other project-based schools across the world offer but instead uses the successful method with our proven additions resulting in a one-of-a-kind project-based curriculum school (Pre-K through 8th grade).

PROPOSED SCOPE OF CONSULTANT SERVICES

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

Item 1: Auditor’s report on the financial statements, and any supplementary information, expressing either an unqualified, qualified, adverse, or

disclaimed opinion on the basic financial statements, a disclaimer of opinion on required supplementary information, and an in-relation-to (SAS No. 119) opinion on other supplementary information, to the extent applicable.

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

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

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

Item 1: Auditor's (SAS No. 119) in-relation-to report on the schedule of expenditures of Federal awards. [Note: This report may be included as part of the Auditor's report on the financial statements and supplementary information discussed above (b-Item 1).]

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

Item 3: A schedule of findings and questioned costs, including a summary of Auditor's results, financial statement audit findings required to be reported by the *Government Auditing Standards*, Federal award audit

findings and questioned costs required to be reported by OMB Uniform Guidance, and management's responses and corrective action plan in regards to the findings.

- d. Ensure that the financial statements and Auditor's reports meet any specific requirements contained in bond indentures, grant agreements, or other contractual requirements relative to financial statement presentation and the audits.
- e. Statement of assurance from the Auditor that the annual audit shall satisfy specific requirements of the following documents and publication:
 - i. General Revenue Bonds 2019 Series B, 2021 Series A, and 2023 Series A and any bond indenture financing which MCS might issue should one be issued during the fiscal years to be audited.
 - ii. Audit of Passenger Facility Charges in accordance with the latest Draft Audit Guide for Passenger Facility Charges. In conjunction with this compliance audit, the following reports or communications should be provided by the Auditor:

Item I: Auditor's report on compliance with requirements applicable to the Passenger Facility Charge Program and on Internal Control Over Compliance and Report on the Schedule of Passenger Facility Charges Collected and Expended required by the Federal Aviation Administration. Such report will provide an unqualified, qualified, adverse, or disclaimed opinion on the Passenger Facility Charge Program's compliance with applicable requirements.

- f. Submit the preliminary financial statements and accompanying Auditor's reports to MCS management and OPA no later than January 31st of each year, and issue the final reports no later than February 28th of each year.
- g. Provide copies of the final financial statements and accompanying Auditor's reports as follows:
 - Five (5) bound copies – OPA
 - Five (5) bound copies – MCS

Also, one (1) electronic copy (in .pdf format) will be required for submission to OPA and MCS. The Public Auditor will publish these reports on the World Wide Web at www.opaguam.org, and MCS will publish these reports at www.mtcarmelguam.com.

- h. Communicate to those charged with governance the other audit-related matters required to be communicated pursuant to generally accepted auditing standards (AU-C Section 260, *The Auditor's Communication with Those Charged with Governance*) and any other areas of concern that may be determined throughout the term of the engagement.
- i. Provide the following additional information or documents to OPA:

- i. Within sixty (60) days after the close of the calendar year, submit a report on the Continuing Professional Education credits of each auditor involved in the audit during the period under contract;
- ii. As soon as available, provide any peer review reports, including any review comments, that occur during the period under contract; and
- iii. Provide copies of the management representation letter and responses to inquiries from the Attorney General and/or any other legal counsel.

SCHEDULE AND SUBMITTALS

The awarded Contractor must complete this project by February 28th following the fiscal year end. To meet this deadline, all Offerors must submit a Proposed Project Schedule with the Proposal. The awarded Contractor must timely follow the finalized Schedule of Services. For purposes of this RFP, the services will not be considered complete until all draft submittal comments have been addressed and the work is completed and submitted to OPA for final approval.

**Section IV. AFFIDAVIT DISCLOSING OWNERSHIP,
INFLUENCE, COMMISSIONS AND
CONFLICTS OF INTEREST (AG Form 002)**
(Required by 5 GCA § 5233)

RFP No.: OPA-RFP-24-010

Name of Offeror (Firm or Individual): _____

STATE OF _____)

)

SS.

CITY OF _____)

Preface. As a condition of submitting a Bid/Offer/Proposal or responding to any method of source selection under the Guam Procurement Law for the purpose of entering into a contract with the government of Guam, this Affidavit requires all Bidders/Offerors/Prospective Contractors to make disclosures of ownership, influence, commissions, gratuities, kickbacks, and conflicts of interest occurring **during the 365 calendar days preceding the publication of this solicitation and until award of a contract**. This includes the duty to disclose any changes to the facts disclosed herein throughout the solicitation process; and if the entity submitting this Affidavit is awarded a contract, the duty to disclose **any changes** to the facts disclosed herein **continues throughout the life of the contract, including any extensions or renewals**.

A. I, the undersigned, being first duly sworn, depose and say that I am an authorized representative of the Bidder/Offeror/Prospective Contractor and that (please check all that apply):

The Bidder/Offeror/Prospective Contractor is an individual with a business license, and all decisions are by, and all profit is for, that same individual, with principal place of business street address being: _____.

The Bidder/Offeror/Prospective Contractor is a business or artificial person (as defined in 1 GCA § 715 or 5 GCA §§ 5030(n) or 5233(b)), and is a sole proprietorship owned entirely (100%) by _____, with principal place of business street address being: _____.

The Bidder/Offeror/Prospective Contractor is a business or artificial person (as defined in 1 GCA § 715 or 5 GCA §§ 5030(n) or 5233(b)), and is owned by the following multiple individuals. Note: owners of more than 10% are statutorily required to be listed below, but other owners of smaller percentage are encouraged to be listed as well.

<u>Name of Owner</u>	<u>Principal Place of Business Street Address</u>	<u>% of Interest</u>
----------------------	---	----------------------

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

Name of >10% Owner Business or Artificial Person:

--

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

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

--

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

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

Second Tier Owner Name _____

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

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

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

D. Further, I say that the persons who have received or are entitled to receive a commission, gratuity, contingent fee or other compensation to solicit, secure, or assist in obtaining business related to the Bid/Offer/Proposal/Prospective Contract for which this Affidavit is submitted are as follows (if non, please so state):

Name of Owner	Principal Place of Business Street Address	Amount of Compensation

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

Name	Principal Place of Business Street Address

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

Name	Principal Place of Business Street Address

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

H. I hereby declare under penalty of perjury under the laws of Guam that the foregoing is true and correct.

Executed on: _____
(date)

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

SUBSCRIBED AND SWORN to before me this ____ day of _____, 202__.

Notary Public
My Commission Expires: _____

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

**Section V. AFFIDAVIT RE: NON-COLLUSION
(AG Form 003)**

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 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 _____, 202__.

 NOTARY PUBLIC.
 My commission expires _____, _____.

**Section VI. AFFIDAVIT RE: NO GRATUITIES OR KICKBACKS
(AG Form 004)**

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 or Offeror]. 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, or are violating the prohibition against gratuities and kickbacks set forth in 2 GAR 4-§11107(e). Further, affiant promises, on behalf of Offeror, not to violate the prohibition against gratuities and kickbacks as set forth in 2 GAR 4-§11107(e).

3. To the best of affiant's knowledge, neither affiant, nor any of the Offeror's officers, representatives, agents, subcontractors, or employees have offered, given, or agreed to give, any government of Guam employee or former government employee, any payment, gift, kickback, gratuity, or offer of employment in connection with Offeror's Proposal. violated, or are violating the prohibition against gratuities and kickbacks set forth in 2 GAR 4-§11107(e).

4. I make these statements on behalf of myself as a representative of the Offeror, and on behalf of the Offeror's officers, representatives, agents, subcontractors, and employees.

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

Subscribed and sworn to before me this ____ day of _____, 20__.

NOTARY PUBLIC
My commission expires: _____

**Section VIII. DECLARATION RE: COMPLIANCE WITH U.S.
DOL WAGE DETERMINATION (AG Form 006)**

Procurement No.: _____

Name of Offeror Company: _____

I, _____ hereby **certify under penalty of perjury:**

- (1) That I am _____ [*please select one: the Offeror, a partner of the Offeror, an officer of the Offeror*] making the bid or proposal in the foregoing identified procurement;
- (2) That I have read and understand the provisions of 5 GCA § 5801 and § 5802 which read:

§5801. Wage Determination Established.

In such cases where the government of Guam enters into contractual arrangements with a sole proprietorship, a partnership or a corporation ("contractor") for the provision of a service to the government of Guam, and in such cases where the contractor employs a person(s) whose purpose, in whole or in part, is the direct delivery of service contracted by the government of Guam, then the contractor shall pay such employee(s) in accordance with the Wage Determination for Guam and the Northern Mariana Islands issued and promulgated by the U.S. Department of Labor for such labor as is employed in the direct delivery of contract deliverables to the government of Guam.

The Wage Determination most recently issued by the U.S. Department of Labor at the time a contract is awarded to a contractor by the government of Guam shall be used to determine wages, which shall be paid to employees pursuant to this Article. Should any contract contain a renewal clause, then at the time of renewal adjustments, there shall be made stipulations contained in that contract for applying the Wage Determination, as required by this Article, so that the Wage Determination promulgated by the U.S. Department of Labor on a date most recent to the renewal date shall apply.

§5802. Benefits.

In addition to the Wage Determination detailed in this Article, any contract to which this Article applies shall also contain provisions mandating health and similar benefits for employees covered by this Article, such benefits having a minimum value as detailed in the Wage Determination issued and promulgated by the U.S. Department of Labor, and shall contain provisions guaranteeing a minimum of ten (10) paid holidays per annum per employee.

- (1) That the Offeror is in full compliance with 5 GCA § 5801 and § 5802, as may be applicable to the procurement referenced herein;
- (2) That I have attached the most recent wage determination applicable to Guam issued by the U.S. Department of Labor. [*INSTRUCTIONS - Please attach!*]

Signature

Section X. U.S. DEPARTMENT OF LABOR WAGE AND BENEFIT DETERMINATION (SCA)

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

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

Daniel W. Simms Division of
Director Wage Determinations

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

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

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

States: Guam, Northern Marianas, Wake Island

Area: Guam Statewide
Northern Marianas Statewide
Wake Island Statewide

Fringe Benefits Required Follow the Occupational Listing

OCCUPATION CODE - TITLE	FOOTNOTE	RATE
01000 - Administrative Support And Clerical Occupations		
01011 - Accounting Clerk I		14.27***
01012 - Accounting Clerk II		16.02***
01013 - Accounting Clerk III		17.93

01020 - Administrative Assistant	21.97
01035 - Court Reporter	17.40
01041 - Customer Service Representative I	12.78***
01042 - Customer Service Representative II	14.23***
01043 - Customer Service Representative III	15.65***
01051 - Data Entry Operator I	12.16***
01052 - Data Entry Operator II	13.27***
01060 - Dispatcher, Motor Vehicle	17.39
01070 - Document Preparation Clerk	13.85***
01090 - Duplicating Machine Operator	13.85***
01111 - General Clerk I	11.33***
01112 - General Clerk II	12.36***
01113 - General Clerk III	13.88***
01120 - Housing Referral Assistant	19.39
01141 - Messenger Courier	11.37***
01191 - Order Clerk I	12.57***
01192 - Order Clerk II	13.71***
01261 - Personnel Assistant (Employment) I	15.95***
01262 - Personnel Assistant (Employment) II	17.85
01263 - Personnel Assistant (Employment) III	19.89
01270 - Production Control Clerk	22.97
01290 - Rental Clerk	11.10***
01300 - Scheduler, Maintenance	15.55***
01311 - Secretary I	15.55***
01312 - Secretary II	17.40
01313 - Secretary III	19.39
01320 - Service Order Dispatcher	15.40***
01410 - Supply Technician	21.97
01420 - Survey Worker	16.99***
01460 - Switchboard Operator/Receptionist	10.78***
01531 - Travel Clerk I	13.65***
01532 - Travel Clerk II	15.32***
01533 - Travel Clerk III	16.60***
01611 - Word Processor I	14.53***
01612 - Word Processor II	16.31***
01613 - Word Processor III	18.26
05000 - Automotive Service Occupations	
05005 - Automobile Body Repairer, Fiberglass	17.40
05010 - Automotive Electrician	16.34***
05040 - Automotive Glass Installer	15.28***
05070 - Automotive Worker	15.28***
05110 - Mobile Equipment Servicer	13.11***
05130 - Motor Equipment Metal Mechanic	17.40

05160 - Motor Equipment Metal Worker	15.28***
05190 - Motor Vehicle Mechanic	17.40
05220 - Motor Vehicle Mechanic Helper	12.00***
05250 - Motor Vehicle Upholstery Worker	14.22***
05280 - Motor Vehicle Wrecker	15.28***
05310 - Painter, Automotive	16.34***
05340 - Radiator Repair Specialist	15.28***
05370 - Tire Repairer	12.67***
05400 - Transmission Repair Specialist	17.40
07000 - Food Preparation And Service Occupations	
07010 - Baker	12.21***
07041 - Cook I	15.29***
07042 - Cook II	17.82
07070 - Dishwasher	10.00***
07130 - Food Service Worker	10.18***
07210 - Meat Cutter	13.34***
07260 - Waiter/Waitress	9.89***
09000 - Furniture Maintenance And Repair Occupations	
09010 - Electrostatic Spray Painter	19.70
09040 - Furniture Handler	11.94***
09080 - Furniture Refinisher	19.70
09090 - Furniture Refinisher Helper	14.47***
09110 - Furniture Repairer, Minor	17.15***
09130 - Upholsterer	19.70
11000 - General Services And Support Occupations	
11030 - Cleaner, Vehicles	10.12***
11060 - Elevator Operator	10.38***
11090 - Gardener	15.28***
11122 - Housekeeping Aide	10.38***
11150 - Janitor	10.38***
11210 - Laborer, Grounds Maintenance	11.55***
11240 - Maid or Houseman	10.24***
11260 - Pruner	10.34***
11270 - Tractor Operator	13.99***
11330 - Trail Maintenance Worker	11.55***
11360 - Window Cleaner	11.60***
12000 - Health Occupations	
12010 - Ambulance Driver	20.86
12011 - Breath Alcohol Technician	20.86
12012 - Certified Occupational Therapist Assistant	28.62
12015 - Certified Physical Therapist Assistant	28.62
12020 - Dental Assistant	18.79
12025 - Dental Hygienist	39.73

12030 - EKG Technician	31.60
12035 - Electroneurodiagnostic Technologist	31.60
12040 - Emergency Medical Technician	20.86
12071 - Licensed Practical Nurse I	18.65
12072 - Licensed Practical Nurse II	20.86
12073 - Licensed Practical Nurse III	23.25
12100 - Medical Assistant	14.50***
12130 - Medical Laboratory Technician	18.93
12160 - Medical Record Clerk	14.97***
12190 - Medical Record Technician	17.77
12195 - Medical Transcriptionist	18.65
12210 - Nuclear Medicine Technologist	45.85
12221 - Nursing Assistant I	12.43***
12222 - Nursing Assistant II	13.99***
12223 - Nursing Assistant III	15.26***
12224 - Nursing Assistant IV	17.12***
12235 - Optical Dispenser	20.86
12236 - Optical Technician	18.65
12250 - Pharmacy Technician	15.49***
12280 - Phlebotomist	18.65
12305 - Radiologic Technologist	31.60
12311 - Registered Nurse I	25.85
12312 - Registered Nurse II	31.60
12313 - Registered Nurse II, Specialist	31.60
12314 - Registered Nurse III	38.24
12315 - Registered Nurse III, Anesthetist	38.24
12316 - Registered Nurse IV	45.85
12317 - Scheduler (Drug and Alcohol Testing)	25.85
12320 - Substance Abuse Treatment Counselor	25.85
13000 - Information And Arts Occupations	
13011 - Exhibits Specialist I	21.42
13012 - Exhibits Specialist II	26.53
13013 - Exhibits Specialist III	32.45
13041 - Illustrator I	21.42
13042 - Illustrator II	26.53
13043 - Illustrator III	32.45
13047 - Librarian	29.38
13050 - Library Aide/Clerk	17.05***
13054 - Library Information Technology Systems Administrator	26.53
13058 - Library Technician	18.11
13061 - Media Specialist I	19.15
13062 - Media Specialist II	21.42
13063 - Media Specialist III	23.87

13071 - Photographer I	19.15
13072 - Photographer II	21.42
13073 - Photographer III	26.53
13074 - Photographer IV	32.45
13075 - Photographer V	39.27
13090 - Technical Order Library Clerk	21.42
13110 - Video Teleconference Technician	19.15
14000 - Information Technology Occupations	
14041 - Computer Operator I	15.71***
14042 - Computer Operator II	17.22
14043 - Computer Operator III	19.19
14044 - Computer Operator IV	21.33
14045 - Computer Operator V	23.62
14071 - Computer Programmer I	(see 1) 15.73***
14072 - Computer Programmer II	(see 1) 19.50
14073 - Computer Programmer III	(see 1) 23.84
14074 - Computer Programmer IV	(see 1)
14101 - Computer Systems Analyst I	(see 1) 24.23
14102 - Computer Systems Analyst II	(see 1)
14103 - Computer Systems Analyst III	(see 1)
14150 - Peripheral Equipment Operator	15.71***
14160 - Personal Computer Support Technician	21.33
14170 - System Support Specialist	21.24
15000 - Instructional Occupations	
15010 - Aircrew Training Devices Instructor (Non-Rated)	24.23
15020 - Aircrew Training Devices Instructor (Rated)	29.32
15030 - Air Crew Training Devices Instructor (Pilot)	34.91
15050 - Computer Based Training Specialist / Instructor	24.23
15060 - Educational Technologist	31.17
15070 - Flight Instructor (Pilot)	34.91
15080 - Graphic Artist	20.47
15085 - Maintenance Test Pilot, Fixed, Jet/Prop	34.91
15086 - Maintenance Test Pilot, Rotary Wing	34.91
15088 - Non-Maintenance Test/Co-Pilot	34.91
15090 - Technical Instructor	17.67
15095 - Technical Instructor/Course Developer	23.78
15110 - Test Proctor	15.70***
15120 - Tutor	15.70***
16000 - Laundry, Dry-Cleaning, Pressing And Related Occupations	
16010 - Assembler	11.38***
16030 - Counter Attendant	11.38***
16040 - Dry Cleaner	12.98***
16070 - Finisher, Flatwork, Machine	11.38***

16090 - Presser, Hand	11.38***
16110 - Presser, Machine, Drycleaning	11.38***
16130 - Presser, Machine, Shirts	11.38***
16160 - Presser, Machine, Wearing Apparel, Laundry	11.38***
16190 - Sewing Machine Operator	13.53***
16220 - Tailor	14.07***
16250 - Washer, Machine	11.91***
19000 - Machine Tool Operation And Repair Occupations	
19010 - Machine-Tool Operator (Tool Room)	19.70
19040 - Tool And Die Maker	24.77
21000 - Materials Handling And Packing Occupations	
21020 - Forklift Operator	15.36***
21030 - Material Coordinator	22.97
21040 - Material Expediter	22.97
21050 - Material Handling Laborer	13.83***
21071 - Order Filler	10.62***
21080 - Production Line Worker (Food Processing)	15.36***
21110 - Shipping Packer	17.12***
21130 - Shipping/Receiving Clerk	17.12***
21140 - Store Worker I	16.59***
21150 - Stock Clerk	23.33
21210 - Tools And Parts Attendant	15.36***
21410 - Warehouse Specialist	15.36***
23000 - Mechanics And Maintenance And Repair Occupations	
23010 - Aerospace Structural Welder	25.04
23019 - Aircraft Logs and Records Technician	19.47
23021 - Aircraft Mechanic I	23.84
23022 - Aircraft Mechanic II	25.04
23023 - Aircraft Mechanic III	26.30
23040 - Aircraft Mechanic Helper	16.58***
23050 - Aircraft, Painter	22.39
23060 - Aircraft Servicer	19.47
23070 - Aircraft Survival Flight Equipment Technician	22.39
23080 - Aircraft Worker	21.03
23091 - Aircrew Life Support Equipment (ALSE) Mechanic I	21.03
23092 - Aircrew Life Support Equipment (ALSE) Mechanic II	23.84
23110 - Appliance Mechanic	19.70
23120 - Bicycle Repairer	15.81***
23125 - Cable Splicer	24.19
23130 - Carpenter, Maintenance	17.58
23140 - Carpet Layer	18.43
23160 - Electrician, Maintenance	20.04
23181 - Electronics Technician Maintenance I	18.43

23182 - Electronics Technician Maintenance II	19.70
23183 - Electronics Technician Maintenance III	20.98
23260 - Fabric Worker	17.15***
23290 - Fire Alarm System Mechanic	16.77***
23310 - Fire Extinguisher Repairer	15.81***
23311 - Fuel Distribution System Mechanic	20.98
23312 - Fuel Distribution System Operator	15.81***
23370 - General Maintenance Worker	13.77***
23380 - Ground Support Equipment Mechanic	23.84
23381 - Ground Support Equipment Servicer	19.47
23382 - Ground Support Equipment Worker	21.03
23391 - Gunsmith I	15.81***
23392 - Gunsmith II	18.43
23393 - Gunsmith III	20.98
23410 - Heating, Ventilation And Air-Conditioning Mechanic	20.22
23411 - Heating, Ventilation And Air Conditioning Mechanic (Research Facility)	21.51
23430 - Heavy Equipment Mechanic	20.41
23440 - Heavy Equipment Operator	18.33
23460 - Instrument Mechanic	20.98
23465 - Laboratory/Shelter Mechanic	19.70
23470 - Laborer	13.83***
23510 - Locksmith	19.70
23530 - Machinery Maintenance Mechanic	25.08
23550 - Machinist, Maintenance	20.98
23580 - Maintenance Trades Helper	11.77***
23591 - Metrology Technician I	20.98
23592 - Metrology Technician II	22.31
23593 - Metrology Technician III	23.62
23640 - Millwright	20.98
23710 - Office Appliance Repairer	19.46
23760 - Painter, Maintenance	18.74
23790 - Pipefitter, Maintenance	19.96
23810 - Plumber, Maintenance	18.75
23820 - Pneudraulic Systems Mechanic	20.98
23850 - Rigger	20.98
23870 - Scale Mechanic	18.43
23890 - Sheet-Metal Worker, Maintenance	20.80
23910 - Small Engine Mechanic	18.43
23931 - Telecommunications Mechanic I	20.98
23932 - Telecommunications Mechanic II	22.31
23950 - Telephone Lineman	22.68
23960 - Welder, Combination, Maintenance	19.96

23965 - Well Driller	21.13
23970 - Woodcraft Worker	20.98
23980 - Woodworker	15.81***
24000 - Personal Needs Occupations	
24550 - Case Manager	16.09***
24570 - Child Care Attendant	10.22***
24580 - Child Care Center Clerk	13.25***
24610 - Chore Aide	14.06***
24620 - Family Readiness And Support Services Coordinator	16.09***
24630 - Homemaker	16.12***
25000 - Plant And System Operations Occupations	
25010 - Boiler Tender	22.79
25040 - Sewage Plant Operator	22.89
25070 - Stationary Engineer	22.79
25190 - Ventilation Equipment Tender	15.72***
25210 - Water Treatment Plant Operator	22.89
27000 - Protective Service Occupations	
27004 - Alarm Monitor	11.21***
27007 - Baggage Inspector	10.02***
27008 - Corrections Officer	14.59***
27010 - Court Security Officer	14.59***
27030 - Detection Dog Handler	11.21***
27040 - Detention Officer	14.59***
27070 - Firefighter	14.59***
27101 - Guard I	10.02***
27102 - Guard II	11.21***
27131 - Police Officer I	14.59***
27132 - Police Officer II	16.21***
28000 - Recreation Occupations	
28041 - Carnival Equipment Operator	13.44***
28042 - Carnival Equipment Repairer	14.68***
28043 - Carnival Worker	9.93***
28210 - Gate Attendant/Gate Tender	13.18***
28310 - Lifeguard	11.60***
28350 - Park Attendant (Aide)	14.74***
28510 - Recreation Aide/Health Facility Attendant	11.84***
28515 - Recreation Specialist	18.26
28630 - Sports Official	11.74***
28690 - Swimming Pool Operator	17.71
29000 - Stevedoring/Longshoremen Occupational Services	
29010 - Blocker And Bracer	26.02
29020 - Hatch Tender	26.02
29030 - Line Handler	26.02

29041 - Stevedore I		24.21
29042 - Stevedore II		27.82
30000 - Technical Occupations		
30010 - Air Traffic Control Specialist, Center (HFO)	(see 2)	45.21
30011 - Air Traffic Control Specialist, Station (HFO)	(see 2)	31.17
30012 - Air Traffic Control Specialist, Terminal (HFO)	(see 2)	34.34
30021 - Archeological Technician I		18.41
30022 - Archeological Technician II		20.59
30023 - Archeological Technician III		25.51
30030 - Cartographic Technician		25.51
30040 - Civil Engineering Technician		25.51
30051 - Cryogenic Technician I		28.25
30052 - Cryogenic Technician II		31.21
30061 - Drafter/CAD Operator I		18.41
30062 - Drafter/CAD Operator II		20.59
30063 - Drafter/CAD Operator III		22.96
30064 - Drafter/CAD Operator IV		28.25
30081 - Engineering Technician I		17.32
30082 - Engineering Technician II		19.44
30083 - Engineering Technician III		21.74
30084 - Engineering Technician IV		26.94
30085 - Engineering Technician V		32.95
30086 - Engineering Technician VI		39.86
30090 - Environmental Technician		25.51
30095 - Evidence Control Specialist		25.51
30210 - Laboratory Technician		22.96
30221 - Latent Fingerprint Technician I		28.25
30222 - Latent Fingerprint Technician II		31.21
30240 - Mathematical Technician		25.51
30361 - Paralegal/Legal Assistant I		19.54
30362 - Paralegal/Legal Assistant II		24.21
30363 - Paralegal/Legal Assistant III		29.61
30364 - Paralegal/Legal Assistant IV		35.83
30375 - Petroleum Supply Specialist		31.21
30390 - Photo-Optics Technician		25.51
30395 - Radiation Control Technician		31.21
30461 - Technical Writer I		25.51
30462 - Technical Writer II		31.21
30463 - Technical Writer III		37.75
30491 - Unexploded Ordnance (UXO) Technician I		28.73
30492 - Unexploded Ordnance (UXO) Technician II		34.76
30493 - Unexploded Ordnance (UXO) Technician III		41.67
30494 - Unexploded (UXO) Safety Escort		28.73

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

***Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.20 per hour). Please see the Note at the top of the wage determination for more

information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to contracts or contract-like instruments entered into with the federal government in connection with seasonal recreational services or seasonal recreational equipment rental for the general public on federal lands. The minimum wage requirements of Executive Order 14026 also are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**** HAZARDOUS PAY DIFFERENTIAL ****

An 8 percent differential is applicable to employees employed in a position that represents a high degree of hazard when working with or in close proximity to ordnance, explosives, and incendiary materials. This includes work such as screening, blending, dying, mixing, and pressing of sensitive ordnance, explosives, and pyrotechnic compositions such as lead azide, black powder and photoflash powder. All dry-house activities involving propellants or explosives. Demilitarization, modification, renovation, demolition, and maintenance operations on sensitive ordnance, explosives and incendiary materials. All operations involving re-grading and cleaning of artillery ranges.

A 4 percent differential is applicable to employees employed in a position that represents a low degree of hazard when working with, or in close proximity to ordnance, (or employees possibly adjacent to) explosives and incendiary materials which involves potential injury such as laceration

of hands, face, or arms of the employee engaged in the operation, irritation of the skin, minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used. All operations involving, unloading, storage, and hauling of ordnance, explosive, and incendiary ordnance material other than small arms ammunition. These differentials are only applicable to work that has been specifically designated by the agency for ordnance, explosives, and incendiary material differential pay.

**** UNIFORM ALLOWANCE ****

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

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

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

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

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

Conformance Process:

The contracting officer shall require that any class of service employee which is not listed herein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination (See 29 CFR 4.6(b)(2)(i)). Such conforming procedures shall be initiated by the contractor prior to the performance of

contract work by such unlisted class(es) of employees (See 29 CFR 4.6(b)(2)(ii)). The Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be paid to all employees performing in the classification from the first day of work on which contract work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or fully determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract. (See 29 CFR 4.6(b)(2)(v)). When multiple wage determinations are included in a contract, a separate SF-1444 should be prepared for each wage determination to which a class(es) is to be conformed.

The process for preparing a conformance request is as follows:

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

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

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

Section XI. SUBCONTRACTOR UTILIZATION FORM

RFP NO. _____

PROJECT TITLE:

NAME OF PRIME OFFEROR:

E-MAIL ADDRESS:

ADDRESS:

TELEPHONE NO.:

FAX NO.:

The following subcontractors¹ (if known at the time of proposal submission) will be used on this Project (continue list on additional page if necessary):

COMPANY NAME, ADDRESS, PHONE NUMBER, AND E- MAIL ADDRESS:	TYPE OF WORK TO BE PERFORMED:	ESTIMATED DOLLAR AMOUNT OF SUBCONTRACT:
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I certify under penalty of perjury that the foregoing statements are true and correct. In the event that substitution or replacement of a subcontractor is required, I will adhere to the substitution or replacement requirements of the government of Guam.

Signature of Offeror (Prime Contractor)

Date

Print Name

Title

¹ Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services to a prime contractor or higher tier subcontractor under a contract awarded or to be awarded by the GovGuam.

Section XII. CONFLICT OF INTEREST DISCLOSURE FORM

OFFICE OF PUBLIC ACCOUNTABILITY

RFP No. OPA-RFP-24-010

Offerors under Contract or proposing to enter into a Contract with OPA must comply with the “Conflict of Interest Guidelines” attached to this solicitation. The definitions of terms used in this COI Disclosure Form shall be those provided in the Conflict of Interest Guidelines (note that “Public Employee” includes all OPA employees).

This COI Disclosure Form is submitted in response to:

- OPA RFP# OPA-RFP-24-010
- Contract # _____ (if applicable)
- Changes to COI Disclosure Form previously submitted for RFP# OPA-RFP-24-010 (check only one), or Contract # _____ (if applicable)

This COI Disclosure Form must be signed in ink by an authorized representative of Offeror to certify that it is correct. An Offeror’s certification that its disclosure form is correct includes the disclosure by its Associates and Subcontractors.

My signature certifies that as disclosed on or attached to the present form:

- (a) the Offeror’s disclosures are complete, accurate, and not misleading.
- (b) the Offeror has provided the COI Guidelines to all Associates and Subcontractors (if any) and this form includes or has attached any required COI disclosures from those sources.

I hereby certify that I am authorized to sign this COI Disclosure Form as an Authorized Representative for the Offeror identified below:

Complete Legal Name of Offeror: _____

Address: _____

Telephone: _____

Fax No: _____

Signature: _____ **Date:**

Please answer all questions “Yes”, “No” or “N/A” (if uncertain answer “Yes.”) If the answer to any of the questions is “Yes,” then use the applicable “Comments” fields to:

- (a) furnish all relevant facts that are necessary to make the response complete, accurate, and not misleading; and
- (b) identify any actions that must be taken to avoid, neutralize, or mitigate such conflict of interest (e.g. communications barriers, restraint or restriction upon future contracting activities, or other precaution)

Please add additional sheets as necessary to respond to the “Comments” field.

1. a) Is any Associate of the Offeror a former employee of OPA within the last year? No
Yes

b) Is any Associate of the Offeror a Relative or Member of the Household of a current OPA employee that had or will have any involvement with this Procurement or Contract Authorization? No Yes

If the answer to either of the above questions is “Yes”, complete the attached “Relatives and Former OPA Employees - Roles and Signatures” table (Part A and/or Part B, as applicable).

2. Does the Offeror or any Associate of the Offeror have an Actual, Apparent or Potential Conflict of Interest (“Individual” or “Organizational”) with regard to any known member of OPA Procurement evaluation or selection team? No Yes **Comments:**

3. Did the Offeror or any Associate of the Offeror conduct prior work on the Project described in the Procurement, or participate in preparing any part of the Procurement or any documents or reports related to the Procurement or to which the Procurement refers? No Yes
Comments:

4. Does the Offeror or any Associate of the Offeror have any past, present or currently planned personal or financial interests which are an Actual, Apparent or Potential Conflict of Interest (“Individual” or “Organizational”), with respect to the Procurement or award of this Contract or performing the work for OPA or acquisition of any real property for the Project? No Yes
Comments:

5. Has the Offeror or an Associate of the Offeror offered to a Public Employee, or is the Offeror aware of any Public Employee that has solicited or received, directly or indirectly, any pledge or promise of employment or other benefit based on the understanding that the Public Employee’s vote, official action or judgment would be influenced thereby? No Yes
Comments:

6. Has (or will) the Offeror or an Associate of the Offeror provided a direct beneficial financial interest to any person within two years after the person ceased to hold a position as a Public Employee who was involved in the Procurement or Authorization for the Contract, or is the Offeror aware of any such person or Public Employee who has or will receive a direct beneficial financial interest within the two-year period? No Yes **Comments:**

7. Is the Offeror aware of any current or former Public Employee that has an Actual, Apparent or Potential Conflict of Interest with respect to the Procurement or award of this Contract or performing the work for OPA? No Yes **Comments:**

8. Have Subcontractors or other Associates furnished COI Disclosure Forms, separate from the present form, which included conflicts or potential conflicts of interest? (If yes, attach the disclosures.) No Yes N/A **Comments:**

9. If the prospective Contract/WOC includes personal services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract, is the Offeror or an Associate or an Affiliate of the Offeror a party to the subject public contract?

No Yes N/A **Comments:**

10. Has the Offeror or any Associate of the Offeror entered into personal services contract(s) with OPA for the purpose of advising or assisting in developing specifications, a scope or statement of work, an invitation to bid, a request for proposals or other solicitation documents and materials related to this procurement?

No Yes **Comments:**

Space for Additional Comments to any questions above (please list question number and corresponding comment):

(COI FORM for Relatives and Former OPA Employees - Roles and Signatures listing is located on the next page)

Relatives and Former OPA Employees - Roles and Signatures

For each employee of the Offeror that was employed by OPA within the last year, state the job the employee performed for OPA, the role the employee now serves for the Offeror and the date the employee left OPA. Use Part B for Offeror Associates with Relatives or Members of the Household working for OPA that have had or will have involvement with this Procurement or Contract.

Part A: Employees that left OPA in the last year.			
Employee Name/Signature	Job Performed for OPA	Current Role with Offeror	Date left OPA
Name: _____ Sign: _____ Involved with this Procurement on behalf of OPA? No <input type="checkbox"/> Yes <input type="checkbox"/> Involved with Proposal development for this Procurement? No <input type="checkbox"/> Yes <input type="checkbox"/>			
Name: _____ Sign: _____ Involved with this Procurement on behalf of OPA? No <input type="checkbox"/> Yes <input type="checkbox"/> Involved with Proposal development for this Procurement? No <input type="checkbox"/> Yes <input type="checkbox"/>			
Name: _____ Sign: _____ Involved with this Procurement on behalf of OPA? No <input type="checkbox"/> Yes <input type="checkbox"/> Involved with Proposal development for this Procurement? No <input type="checkbox"/> Yes <input type="checkbox"/>			
Part B: Identify Associates of the Offeror that are Relatives or Members of the Household of OPA employees currently working for OPA, if OPA employee had or will have any involvement with this Procurement or Contract.			
Offeror Associate's Name	Name and Relationship of Relative or Member of Household Employed at OPA	Role at OPA	OPA employee's Role with this Procurement

(Make copies of this page as necessary to list additional employees or associates.)

Section XIII. CONFLICT OF INTEREST GUIDELINES

Offerors shall follow these Conflict of Interest (COI) Guidelines when submitting any Proposal in response to a locally funded OPA solicitation or procurement or when entering into any locally funded Contract with OPA. The Contractor shall follow these COI Guidelines throughout the period during which the Proposal is open or the Contract is in effect. An Offeror shall provide the COI Guidelines and associated COI Disclosure Form to all of its Subconsultants and Subcontractors at any tier of a Proposal or Contract and shall ensure that the Offeror and each of its Subconsultants or Subcontractors make any disclosures required by these guidelines or as required by a specific Procurement or Contract. OPA will follow and apply these COI Guidelines when conducting OPA procurements.

1. Definitions.

The definitions that apply to these COI Guidelines and OPA COI Disclosure Form are at the end of this document.

2. Required Disclosures.

Submittal of a Correct and signed COI Disclosure Form is required if any of the following apply (note that for the purposes of these COI Guidelines “Public Employee” includes all OPA employees):

- an Offeror or any of its Associates have any Apparent, Potential or Actual Conflicts of Interest per these COI guidelines or per the criteria of any COI Form included as part of a Procurement or Contract;
- a Procurement or Contract document specifically requires submittal of a COI Disclosure Form (e.g., if the prospective Project includes preparation of an Environmental Impact Statement or Environmental Assessment, submittal of COI Disclosure Forms is always required.);
- an Offeror has any changes to its staffing or organization (whether before or after entering into a Contract) that result in an Apparent, Potential or Actual Conflict of Interest per these guidelines or per the criteria of any COI form associated with a particular Procurement or Contract. Any such changes shall be disclosed within 10 business days via submittal of a complete and signed COI Disclosure Form.
- the response to any of the following questions is “yes” (with respect to a Procurement or current Contract with OPA):
 1. Is any Associate of the Offeror a former employee of OPA (within the last year)?
 2. Is any Associate of the Offeror a Relative or Member of the Household of a current employee of OPA who had or may have a role in this Procurement, Authorization of the Contract, Contract administration, or oversight of the Contractor’s performance?
 3. Does the Offeror or any Associate of the Offeror have an Actual, Apparent or Potential Conflict of Interest (“Individual” or “Organizational”) with regard to any member of OPA Procurement evaluation or selection team?
 4. Did the Offeror or any Associate of the Offeror conduct prior work on the Project described in the Procurement, or participate in preparing any part of the Procurement or any documents or reports related to the Procurement or to which the Procurement refers?

5. Does the Offeror or any Associate of the Offeror have any past, present or currently planned interests which are an Actual, Apparent or Potential Conflict of Interest (“Individual” or “Organizational”) with respect to performing the work for OPA?
6. Has the Offeror or an Associate of the Offeror offered to a Public Employee, or is the Offeror aware of any Public Employee that has solicited or received, directly or indirectly, any pledge or promise of employment or other benefit based on the understanding that the Public Employee’s vote, official action or judgment would be influenced thereby?
7. Has (or will) the Offeror or an Associate of the Offeror provided a direct beneficial financial interest to any person within one year after the person ceased to hold a position as a Public Employee who was involved in the Procurement or Authorization for the Contract, or is the Offeror aware of any such person or Public Employee who has or will receive a direct beneficial financial interest within the one-year period?
8. Is the Offeror aware of any current or former Public Employee that has an Actual, Apparent or Potential Conflict of Interest with respect to the Procurement or award of this Contract or performing the work for OPA?
9. If a Procurement is to obtain personal services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract, is the Offeror or an Associate or an Affiliate of the Offeror a party to the subject public contract?
10. Has the Offeror or any Associate of the Offeror entered into any contract(s) with OPA for the purpose of advising or assisting in developing any part of the solicitation documents, including specifications, requirements, a scope or statement of work, an invitation to bid, a request for proposals or other documents and materials used in, or related to this procurement?

If none of the foregoing apply, an Offeror shall provide a written and signed certification (specified by OPA) that the Offeror has read and complied with these COI Guidelines and the COI Disclosure Form and did not answer “Yes” to any of the questions, or, if required by OPA, the Offeror shall complete and submit a Correct and signed COI Disclosure Form.

An Offeror shall incorporate in each required COI Disclosure Form any COI disclosure information provided by its staff and attach COI Disclosure Forms from each of its Subcontractors (that have required disclosures of conflicts or potential conflicts of interest), prior to such Offeror performing any services under a Contract.

The COI Disclosure Form is attached to the solicitation as a mandatory form that must be signed and submitted with Offeror’s Proposal.

3. Governing Standards.

Both Guam and federal laws govern disclosure and management of conflicts of interest in contracting processes. The disclosure requirements of these COI Guidelines apply to all OPA contracting activities {Architectural and Engineering (A&E) and non-A&E, public improvements, goods, and trade services} without regard to which particular federal or Guam laws govern the activity. There are also Standards of Conduct Policies for conflicts of interest regarding current

OPA employees, and the employment of former OPA employees, which are applicable to this procurement, and are explained below.

Standards of Conduct Policy Regarding Former OPA Employees

When employees of firms which compete for or have Contracts with OPA come to work for OPA, and when OPA employees go to work for firms which compete for or have Contracts with OPA, a Potential Conflict of Interest may exist.

Use of a former OPA employee by an Offeror on the same, or substantially similar Procurement, for which the employee performed a role or function for OPA, unless mitigated to the satisfaction of OPA, is prohibited for a period of one year following separation of employment with OPA. Roles and functions of particular concern include drafting specifications or statements of work, reviewing or scoring a bid or proposal, authorizing service or assigning work, awarding a Contract, administering a Contract, or overseeing Contractor's performance. OPA may determine that the role or Procurement is not substantially similar because of differences in location of the Project or work, because of the type and method of Procurement, because the employee did not participate personally or substantially in the procurement, because the role performed was minor in nature, such as a technical sufficiency review, or because the Civil Service Commission has granted the employee an applicable waiver. Examples of mitigation that may, in appropriate situations, be acceptable to OPA include separation of certain decision-making functions concerning the Project, not using the employee in preparation of proposals but allowing them to perform work on the Project, and not having the employee have direct contact with OPA staff formerly under his/her supervision.

For each Procurement, Offerors shall disclose to OPA the identification of any of Offeror's employee(s) that had been employed by OPA within the twelve-month period prior to the submission date for the Proposal or bid. Each Offeror's disclosure shall include a signed statement by the former OPA employee of their proposed role for the Offeror in the particular Procurement and any resulting Contract. The knowing failure of an Offeror to disclose such relationship or to remedy such potential violation will result in the rejection of the Offeror's Proposal or cancellation of any awarded Contract with OPA as well as constituting grounds for cancellation of any Offeror's pre-qualification status, or designation of an Offeror as ineligible for future Procurements as a non-responsible bidder or offeror. (Also see below regarding the ban on any direct beneficial or financial interest.)

Standards of Conduct Regarding Current OPA Employees Conflicts of Interest

The Guam Procurement Law statutory and regulatory framework, as generally applied, addresses conflicts of interest in public contracting by emphasizing the need for open and impartial Procurement methods and by prohibiting certain conflicts of interest involving public officials. The following statutes and administrative rules establish Guam general policies and the restrictions and prohibitions regarding conflicts of interest for public contracts and Public Employees:

- The policies of the Guam Procurement Law (5 GCA § 5001, et seq) encourage public contracting competition that supports openness and impartiality to the maximum extent

possible, while recognizing that the nature of effective and meaningful competition depends upon the service being procured.

- According to 5 GCA §§ 5001(b), 5003, and 5625, a sound and responsive public contracting system should instill public confidence through ethical and fair dealing, honesty, and good faith on the part of government officials and those who do business with the government.
- Article 11 of the Guam Procurement Law, Ethics in Public Contracting, and Article 2 of the Standards of Conduct for Elected Officers, Appointed Officers and Public Employees of the government of Guam prohibit conflicts of interest of Public Employees and prohibit Public Employees from obtaining outside financial benefits for the exercise of their official duties. Among the prohibitions are offering a public employee a fee, a pledge of future employment, or anything valued in excess of \$200 based on an understanding that the offer would influence the public employee's official action or judgment.
- 5 GCA § 5632(a) provides the following: "Contemporaneous Employment Prohibited. Except as may be permitted by regulations pursuant to this Chapter or pursuant to Title 4 GCA, or rulings of the Civil Service Commission pursuant to this Chapter, it shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement process to become or be, while such an employee, the employee of any person contracting with the governmental body by whom the employee is employed. Notice of this provision shall be provided in accordance with regulations promulgated by the Civil Service Commission."
- 5 GCA § 5632(c) and (d) provide the following:
 - "(c) Disqualification of Business When an Employee Has a Financial Interest. It shall be a breach of ethical standards for a business in which an employee has a financial interest knowingly to act as a principal, or as an agent for anyone other than the Territory, in connection with any:
 - (1) judicial or other proceeding, application, request for a ruling or other determination;
 - (2) contract;
 - (3) claim; or
 - (4) charge or controversy; in which the employee either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or which is the subject of the employee's official responsibility, where the Territory is a party or has a direct and substantial interest.
 - "(d) Selling to the Territory After Termination of Employment is Prohibited. It shall be a breach of ethical standards for any former employee, unless the former employee's last annual salary did not exceed Twelve Thousand Dollars (\$12,000.00), to engage in selling or attempting to sell supplies, services other than personal services, or construction to the Territory for ninety (90) days following the date employment ceased.

The term sell as used herein means signing a bid, proposal, or contract; negotiating a contract, contracting any employee for the purpose of obtaining, negotiating or discussing changes in specifications, price, cost allowances or other terms of a contract; settling disputes concerning performance of a contract; or any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract therefor is subsequently negotiated by another

person; provided, however, that this Section is not intended to preclude a former employee from accepting employment with private industry solely because the former employee's employer is a contractor with this Territory, nor shall a former employee be precluded from serving as a consultant to this Territory."

- 4 GCA § 15201 states:
"No employee shall solicit, accept, or receive, directly or indirectly, any gift valued singly or in the aggregate from a single source in excess of \$200, whether in the form of money, prize, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, when a reasonable person would infer that the gift is intended to influence the employee in the performance of that individual's official duties or is intended as a reward for any official action on that individual's part."
- 4 GCA § 15204 (a), (b), (c), and (d) provide:
"No employee shall use or attempt to use an official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for himself or herself, a spouse, children, or others, including but not limited to the following:
(a) seeking other employment or contract for services by the use or attempted use of the individual's office or position;
(b) accepting, receiving, or soliciting compensation for the performance of official duties or responsibilities except as provided by law;
(c) using government time, equipment, or other facilities for private business purposes;
(d) soliciting, selling, or otherwise engaging in a financial transaction with a subordinate or a person or business whom the employee inspects or supervises in official capacity."
- 4 GCA § 15205 (a), (b), (c), (d), and (e) provide:
"Conflicts of Interest.
(a) No employee shall take any official action directly affecting: (1) business or other undertaking in which the employee has a financial interest; or (2) private undertaking in which the employee is engaged as legal counsel, advisor, consultant, representative, or other agency capacity. A department head who is unable to be disqualified on any matter described in item (1) or (2) of this Subsection may be in violation of this Subsection even if the individual has complied with the disclosure requirements of § 15208; and a person whose position on a board, commission or committee is mandated by statute, resolution or executive order to have particular qualifications shall only be prohibited from taking official action that directly and specifically affects a business or undertaking in which such person has a financial interest; provided that the financial interest is related to the member's particular qualifications.
(b) No employee shall acquire financial interests in any business or other undertaking which the employee has reason to believe may be directly involved in official action to be taken by the employee.
(c) No employee shall assist any person or business or act in a representative capacity before any territorial agency for any compensation in any transaction involving the Territory.
(d) No employee shall assist any person or business or act in a representative capacity for a fee or other compensation to secure passage of a bill or to obtain a contract, claim, or other transaction or proposal in which the employee has participated or will participate as an employee, nor shall the employee assist any person, or business, or act in a representative capacity for a fee or other compensation on such bill, contract, claim, or

other transaction or proposal before the Legislature or territorial agency of which the individual is an employee.

(e) No employee shall assist any person or business or act in a representative capacity before a territorial agency for a fee or other compensation, on any bill, contract, claim, or other transaction or proposal involving official action by the agency if the employee has official authority over that agency unless such employee has complied with the disclosure requirements of § 15208.”

- 4 GCA § 15206 states:

“Contracts.

(a) A territorial agency shall not enter into any contract with an employee or with a business in which an employee has a controlling interest, unless the contract has been awarded through an open, public process. A territorial agency may, however, enter into such contract without resort to competitive bidding process when, in the opinion of the General Services Agency or the procurement officer of that branch of government, the property or services does not fall within the purview of competitive bidding; provided that written justification for the non-competitive award of such contract be made a matter of public record and shall be filed with the Guam Ethics Commission at least ten (10) days before such contract is entered into. With regards to members of boards, commissions, and committees, this Subsection shall apply only to contracts entered into between a business in which a member has a controlling interest and a territorial agency in which the board, commission, or committee to which the individual is appointed has jurisdiction.

(b) A territorial agency shall not enter into a contract with any person or business which is represented or assisted in a material manner in the matter by a person who has been an employee of that agency within the preceding twelve (12) months and who participated while in 8 territorial office or employment in a material manner in the matter with which the contract is directly concerned.”

OPA COI Guidelines embody the intent of encouraging competition through openness, impartiality, and public disclosure of relevant information (and the avoidance of conflicts of interest) as described in the Guam Procurement Law, Title 5, Chapter 5, Article 11, Ethics in Public Contracting; Title 4, Chapter 15, Standards of Conduct for Elected Officials, Appointed Officers, and Public Employees of the government of Guam, the Guam Department of Administration Personnel Code of Conduct and OPA afore listed Standards of Conduct Policies or any other applicable governmental ethics policies.

The one-year prohibition against a Public Employee having a direct beneficial financial interest in a public contract as provided in 5 GCA § 5632(b) would generally preclude the person from working under the public contract and from representing the Offeror in dealings with the public agency for whom the person had worked. Sharing in the general profits of the Offeror (such as a year-end bonus for overall corporate profits) is likely not a direct beneficial financial interest, however, a bonus or other compensation paid just on the basis of the public contract would be subject to the prohibition.

Standards of Conduct for Offerors and Contractors, and Organizational Conflicts of Interest Policy

It is the policy of OPA to avoid, neutralize, or mitigate organizational conflicts of interest that might exist for all procurements. Each individual contracting situation shall be examined on the basis of its particular facts and the nature of the proposed contract. The exercise of common sense, good judgment, and sound discretion is required in both the decision on whether a significant potential conflict exists and, if it does, the development of an appropriate means for resolving it. The principles underlying this policy are: (1) preventing the existence of conflicting roles that might bias an Offeror's judgment; and (2) Preventing unfair competitive advantage. In addition to the other situations described in these COI Guidelines, an unfair competitive advantage exists where an Offeror competing for award of any OPA contract possesses: (1) proprietary information that was obtained from a Public Employee without proper authorization; or (2) source selection information that is relevant to the contract but is not available to all competitors, and such information would assist that Offeror in obtaining the contract.

The following situations constitute organizational conflicts of interest. This listing is not exhaustive:

- A conflict of interest exists when an Offeror that provides systems engineering and technical direction for a system is awarded a contract to supply the system or any of its major components; or is a subcontractor or consultant to a supplier of the system or any of its major components; even if the Offeror did not have overall contractual responsibility for the system's development, its integration, assembly, and checkout, or its production. In this example, systems engineering includes a combination of substantially all of the following activities: determining specifications, identifying and resolving interface problems, developing test requirements, evaluating test data, and supervising design. Technical direction includes a combination of substantially all of the following activities: developing work statements, determining parameters, directing other contractors' operations, and resolving technical controversies. In performing these activities, a contractor occupies a highly influential and responsible position in determining a system's basic concepts and supervising their execution by other contractors. Therefore, this Offeror should not be in a position to make decisions favoring its own products or capabilities.
- A conflict of interest exists when an Offeror develops, prepares, furnishes, or drafts any specifications, requirements, statements of work, scope of services, invitations for bids, or requests for proposals related to a solicitation covering non-developmental items, to be used in a competitive procurement, and also submits a proposal or bid to be allowed to furnish these items, either as a prime contractor or as a subcontractor, for a reasonable period of time including, at least, the duration of the initial contract.
- If a single contractor develops, prepares, furnishes, or drafts any specifications, requirements, statements of work, scope of services, invitations for bids, or requests for proposals related to a solicitation for non-developmental equipment, that contractor should be eliminated for a reasonable time from competition for production based on the specifications. This should be done in order to avoid a situation in which the contractor could draft specifications favoring its own products or capabilities. In this way the Government can be assured of getting unbiased

advice as to the content of the specifications and can avoid allegations of favoritism in the award of production contracts.

- When an Offeror develops, prepares, furnishes, or drafts any specifications, requirements, statements of work, scope of services, invitations for bids, or requests for proposals related to a solicitation to be used in competitively acquiring a system or services, or provides material leading directly, predictably, and without delay to such a statement of work, scope of services, or technical specifications, it is a conflict of interest if that Offeror submits a Proposal or bid to supply the system, major components of the system, or the services, unless:
 - (i) It is the sole source;
 - (ii) It has participated in the development and design work; or
 - (iii) More than one contractor has been involved in preparing the statement of work, scope of services, or technical specifications.
- Agencies should normally prepare their own statements of work, and scopes of services. When contractor assistance is necessary to develop, prepare, furnish, or draft any specifications, requirements, statements of work, scope of services, invitations for bids, or requests for proposals related to a solicitation, the contractor is in a position to favor its own products or capabilities. To overcome the possibility of bias, Offerors are prohibited from supplying a system or services acquired on the basis of a statement of work or scope of services growing out of their services, unless:
 - (i) It is the sole source;
 - (ii) It has participated in the development and design work; or
 - (iii) More than one contractor has been involved in preparing the statement of work, scope of services, or technical specifications.
- It is a conflict of interest for a contractor to participate in the evaluation of products or services that it offers. Contracts for the evaluation of offers for products or services shall not be awarded to an Offeror that will evaluate its own offers for products or services, or those of a competitor.

The following situations are not considered to constitute organizational conflicts of interest. This list is not exhaustive:

- In development work, it is normal to select firms that have done the most advanced work in the field. These firms can be expected to design and develop around their own prior knowledge. Development contractors can frequently start production earlier and more knowledgeably than firms that did not participate in the development, and this can affect the time and quality of production, both of which are important to the Government. In many instances the Government may have financed the development. Thus, while the development contractor has a competitive advantage, it is an unavoidable one that is not considered unfair; hence this is not considered an organizational conflict of interest.
- It is not an organizational conflict of interest for Offerors that furnish, at Government request, specifications or data regarding a product they provide, even though the specifications or data may have been paid for separately or in the price of the product.

- It is not an organizational conflict of interest where Offerors, acting as industry representatives, help Government agencies prepare, refine, or coordinate specifications, regardless of source, provided this assistance is supervised and controlled by Government representatives.

It is further the policy of OPA to restrict Offeror's use of confidential or proprietary information obtained from previous affiliations with OPA or the Government when competing for OPA contracts. When a contractor requires proprietary information to perform a Government contract and can use the leverage of the contract to obtain it, the contractor may gain an unfair competitive advantage unless restrictions are imposed. These restrictions protect the information and encourage companies to provide it when necessary, for contract performance. They are not intended to protect information: (1) furnished voluntarily without limitations on its use; or (2) available to the Government or contractor from other sources without restriction.

In addition, a contractor that gains access to proprietary information of other companies in performing advisory and assistance services for the Government must agree with the other companies to protect their information from unauthorized use or disclosure for as long as it remains proprietary and refrain from using the information for any purpose other than that for which it was furnished. The Offeror shall provide OPA with copies of these agreements and ensure that they are properly executed.

Contractors also obtain proprietary and source selection information by acquiring the services of marketing consultants which, if used in connection with an acquisition, may give the contractor an unfair competitive advantage. Contractors should make inquiries of marketing consultants to ensure that the marketing consultant has provided no unfair competitive advantage, and must disclose these relationships to OPA on the COI Disclosure Form.

4. COI Considerations Related to Previous Work on Projects.

No Offeror that has previously performed services on behalf of OPA for a Project may be a Offeror or participate as an equity owner, team member, Subcontractor of or to a Offeror on the Project, or have a financial interest in any of the foregoing entities with respect to the Project, unless OPA is satisfied in its sole discretion that:

- (a) such services were completed prior to initiation of the Procurement for the Project; and
- (b) such services included only Low-Level Documents and did not include development of instructions to offerors or evaluation criteria for the RFP; and
- (c) such services did not provide the Offeror with access to or knowledge of OPA confidential or inside information that could provide an unfair competitive advantage with respect to the Procurement; and
- (d) the prior Contract and information provided to the Offeror in the performance of its services are either irrelevant to the Procurement or are available on an equal and timely basis to all Offerors; and

(e) the work product from the Offeror incorporated into or relevant to the Procurement is available through Public Disclosure on an equal and timely basis to all Offerors; and

(f) any environmental documents prepared by the Offeror have been determined to be objective, and that OPA demonstrated independent decision-making authority during the environmental process.

In such instances where OPA is satisfied in the manner described above, OPA may still, in its sole discretion, restrict the scope of Procurement services for which the Offeror shall be eligible to perform in order to further the intent and goals of these COI Guidelines.

Public Disclosure of services or products is an important consideration in determining if an Organizational Conflict of Interest exists. All COI Disclosure Forms will be considered public records, as permitted under the Guam Procurement Law.

5. COI Disclosure Process.

An Offeror shall certify its compliance with these COI Guidelines at the time of submitting a Proposal to OPA, during the Procurement Process, and during the time of performance of any awarded Contract with OPA. If submittal of COI Disclosure Form(s) is required per these COI Guidelines or a specific Procurement or Contract, an Offeror shall represent the correctness of a completed COI Disclosure Form. If an Offeror has any changes to its staffing or organization (whether before or after entering a Contract) that result in an Actual, Apparent or Potential Conflict of Interest (Individual or Organizational) per these COI Guidelines or per the criteria of any COI form associated with a particular Procurement or Contract, any such changes shall be disclosed within ten (10) business days via submittal of a Correct and signed COI Disclosure Form.

An Offeror shall assure that any COI Disclosure Form it submits includes any information required to be disclosed by its Subcontractors and other Associates, on behalf of the Offeror. An Offeror may submit either the Subcontractors' separate COI Disclosure Forms or incorporate Subcontractor information into its own COI Disclosure Form. The disclosure required with the proposal applies the prime and all proposed Subcontractors that are identified or anticipated at the time of proposal submission.

The identification, assessment, and management of Actual or Potential Conflicts of Interest are joint tasks among OPA, the Offeror and the Offeror's team. An Offeror must work together with OPA in an atmosphere of candor and accountability during the period of negotiation or performance of the Contract with OPA. OPA makes the final determination as to the adequacy of any COI disclosures or COI management plan offered by the Offeror.

OPA's COI determination is based on a number of factors such as:

- ✓ Situational Facts – description of the situation and all known facts specific to the actual or perceived COI
- ✓ Type of Work - specific product or service and Contract(s) involved
- ✓ Relationship to Management - specific interactions with OPA decision-makers
- ✓ Public Disclosure - timing and availability of product or service

The specific facts disclosed in any COI situation will be unique to that situation. Therefore, the decisions and conclusions reached in one situation may or may not be directly applicable to another. For example, the definition of “low-level” documents do not isolate an Offeror producing such documents from a potential COI situation. The ultimate determination will take into account the other factors described above.

6. Examples of Conflict of Interest Situations.

OPA offers the following examples to better illustrate conflict of interest situations that may arise during the course of the performance of a Personal Services Contract, Purchase Request, Purchase Order, or any Contract entered into between OPA and an Offeror, or during any government of Guam Procurement process, in order to provide guidance to Offerors as they determine if their specific situations warrant disclosure, evaluation, and management.

1. A Design-Build solicitation requires the responding teams to propose how to manage site features that were uncovered by a geotechnical engineering Offeror. The Offeror’s reports to OPA on the Project are available to the public. A multi-specialty engineering Offeror that is the parent company of the geotechnical engineering Offeror submits a proposal to design the overall Project. Depending on the particular mitigating facts, OPA might determine in writing that the multi-specialty engineering Offeror is eligible to propose.
2. OPA seeks comprehensive project management services for a series of Transportation Projects. One of the proposing Offerors employed a senior official from OPA who played a significant role in providing direction for the solicitation, six months ago. OPA initially assesses this situation as a potential Organizational Conflict of Interest and provides information to potential Offerors of this assessment through an addendum to the RFP. In its proposal, the Offeror provides mitigating information and written assurances that this individual works in an area of the company that will not be working on their program management proposal and that the individual will be isolated inside the company from any information associated with the program, will not be lobbying OPA, will not engage in any activities that would violate OPA Code of Conduct Policy for the prescribed one-year period, and for a period of one year will not have a direct beneficial interest in the contract. Depending on the particular facts, OPA might determine that, while the proposing Offeror has a potential Organizational Conflict of Interest, that conflict has been adequately mitigated and the Offeror will not be disqualified from submitting a proposal.
3. OPA issues an RFP for design and oversight of an intelligent system to collect bridge tolls. The RFP provides that companies having a financial interest in the relevant telecommunications hardware will be excluded from bidding. A company under common ownership with a major electronics manufacturer desires to bid. OPA initially assesses this situation as an Organizational Conflict of Interest, because it cannot know in advance whether the hardware products of this electronics manufacturer would be used in the Project, and OPA informs potential Offerors of its concern related to this type of conflict via addendum to the RFP. In its proposal, the company offers no mitigating facts or organizational plans that address OPA’s concerns about the conflict. Depending on the particular facts, OPA determines that the company has an actual conflict of interest.

4. OPA seeks advice of an industry advisory committee to formulate the specifications for an information technology (IT) RFP. An IT Offeror that participated in the advisory committee wishes to submit a proposal in response to the RFP. Depending on the particular facts, OPA might determine that the role of the Offeror was to represent the industry in the context of a public meeting where other Offerors were invited to submit comments, and that the Offeror therefore does not have an Organizational Conflict of Interest.
5. OPA contracts with an A&E Offeror to develop “low-level” documents prior to establishing a schedule for an RFP in which the “low level” documents, still under development, will be used by prospective Offerors. The A&E Offeror has attended the pre-proposal meeting and wishes to propose on the RFP. OPA determines that the company has a potential Organizational Conflict of Interest because of the fact that the low-level documents have not been made public and the Offeror will still be developing the documents during the solicitation. The company then mitigates the potential conflict of interest by suspending development of new reports during the open period of the solicitation and making all data and information sources available on OPA website prior to the RFP release. OPA determines that the potential conflict has been adequately managed and the Offeror will not be disqualified from submitting a proposal or being part of the proposing team.
6. OPA contracts with a consulting Offeror to assist OPA in the development of an RFP and sample Contract for a Design-Build Procurement for construction of certain Transportation Projects. The Offeror has close contact with OPA decision-makers in the development of the evaluation criteria for the RFP and the proposed Contract terms, and that information is shared throughout the Offeror with all management and technical personnel. The Offeror will not be able to submit a proposal in the design-build Procurement, or participate as a team member with an Offeror submitting a proposal in response to the RFP.
7. OPA seeks comprehensive program management services for a series of Transportation Projects. Prior to release of the RFP, OPA shared its interpretation of the applicable conflict of interest requirements with the industry. One of the proposing Offerors has a related entity with a planned interest in future design-build construction work related to the transportation program. The COI Disclosure Form does not clearly state whether the related entity is a subsidiary, major partner, Subcontractor, or affiliate of a Subcontractor. The proposing Offeror describes its intent to restrict the flow of information concerning construction Projects to the related entity and thereby to its affiliate construction company but does not clarify how much information will be shared between the principal and its Subcontractors and affiliates or the controls placed on the principal Subcontractor-affiliate relationship. Furthermore, the proposing Offeror has provided mitigation information, indicating that the related entity will not participate in providing services under the program management Contract (i.e., design, source selection, award of Contract, etc.). OPA may conclude the proposing Offeror does not have a conflict of interest that detracts from its eligibility for the program management award. OPA may determine that the related entity has a conflict of interest in future design-build construction work related to the bridge repair and replacement program that has not been adequately mitigated by the measures and information provided by the proposing Offeror. As a result, if the proposing Offeror is

awarded the program management Contract, the related construction company will be ineligible for construction work under the program. This determination will depend upon the precise relationship between the related entity and the Offeror.

8. Completion of a project may encourage construction of a shopping center or industrial park from which an Offeror stands to benefit. If an Offeror is aware that it has such an interest in the decision on the proposal, it will be disqualified from preparing an EIS to preserve the objectivity and integrity of the NEPA process.
9. OPA issues an RFP for A&E services to prepare plans, specifications, and estimate (PS&E) to replace a bridge. The PS&E will be completed as part of a design-bid-build process. One of the A&E firms proposing on the design services owns XYZ Inc., a subsidiary that provides program management services to OPA under a separate contract. OPA's intent, as advertised in the RFP, is to use XYZ Inc. for administration and oversight of the A&E design services for the bridge replacement project. The A&E firm that is the parent of XYZ Inc. would be ineligible for award of the A&E design contract.
10. OPA issues an IFB for construction services to replace a bridge. The replacement is being done using the design-bid-build process. One of the construction firms bidding on the public improvement project owns XYZ Inc., a subsidiary that provides construction contract administration and inspection services to OPA under a separate contract. OPA's intent, as advertised in the IFB, is to use XYZ Inc. for administration and inspection of the bridge replacement project. The construction firm that is the parent of XYZ Inc. would be ineligible for award of the construction contract.

DEFINITIONS

The following definitions apply to these COI Guidelines and OPA's COI Disclosure Form:

“Actual Conflict of Interest” means that an individual or Offeror is unable to render impartial assistance or advice to OPA, has impaired objectivity in performing the Project work, or has an unfair competitive advantage. “Actual Conflict of Interest” means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of the circumstances described, pursuant to 5 GCA § 5628 or 4 GCA § 15205.

“Affiliate” (of an Offeror) means a person or entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of the Offeror.

“Apparent Conflict of Interest” means that an individual or Offeror may reasonably be perceived to have an Actual Conflict of Interest or a Potential Conflict of Interest.

“Associate” (of the Offeror) means an employee, executive, director, key project personnel, consultant, contractor, or Subcontractor, or any immediate family member of the foregoing.

“Authorization” (of the Contract). A public contract is authorized by a Public Employee if the Public Employee participated substantially in the procurement selection process or performed a significant role in the selection of an Offeror or the execution of the Contract. A significant role includes recommending approval or signing of the Contract, including serving as a reference, recommending selection or serving on a selection committee or team, or having the final authorizing authority for the Contract.

“Bidder” means a legally operating business entity submitting a bid in response to a Procurement solicitation.

“Conflict of Interest” or “COI” means an Individual Conflict of Interest or Organizational Conflict of Interest and includes an Actual, Potential, or Apparent Conflict of Interest.

“COI Disclosure Form” means a manually signed disclosure of any Actual Conflict of Interest, Apparent Conflict of Interest or Potential Conflict of Interest documented in the form of OPA's COI Disclosure Form.

“COI Guidelines” refers to this document and all references herein.

“Contract” means an Agreement, Contract, Purchase Request (PR), Work Order Contract (WOC), Purchase Order (PO), or any other type agreement with the Public Auditor, regardless of what it may be called, for the procurement or disposal of supplies, services, or construction.

“Contractor” means a legally operating business entity that has been awarded a contract in response to a Procurement.

“Correct” means, in the context of determining the accuracy of a COI Disclosure Form, that the form, in all material respects, is complete, accurate, not misleading, and does not omit any material information.

“Mount Carmel Academy Charter School” means MCS.

“Offeror” means a Offeror or Bidder under a Procurement solicitation, a consultant or contractor under a Contract, or a Subcontractor at any tier of a Offeror, consultant, or contractor, and any partner or member of any of the foregoing. An Offeror includes all persons, individual or corporate, without regard to form of legal entity, and any partner or member of any of the foregoing.

“Member of the Household” (of the Public Employee) means any person who resides with the Public Employee.

“Individual Conflict of Interest” means that an individual has a conflict of interest because of a financial interest, gift, or other activities or relationships with other persons including but not limited to individuals with whom the individual has business, familial or household relationships.

“Interest” (in the context of a conflict of interest) means a direct or indirect interest and includes a personal as well as financial interest.

“Low-Level Document” means A&E, non-A&E and IT program or Project-related documents which provide a basic understanding of a specific aspect of the program or Project. With regard to A&E and related services, it means that the role of the consultant or subconsultant was limited to provision of preliminary design, reports, or similar “low-level” documents that will be incorporated into the solicitation, and did not include assistance in development of instructions to offerors or evaluation criteria.

“Office of Public Accountability” means OPA.

“Organizational Conflict of Interest” means that a relationship or situation exists whereby an Offeror or any of its Associates has past, present, or currently planned interests or activities that either directly or indirectly (through a client, contractual, financial, organizational or other relationship) may relate to the work to be performed under the proposed Contract with OPA and which: (a) diminish the Offeror’s or an Associate’s capacity to give impartial, technically sound, objective assistance or advice; (b) may impair the Offeror’s or an Associate’s objectivity in performing the Contract; (c) may impair OPA’s objectivity in oversight of the Contractor’s performance; or (d) may result in an unfair competitive advantage. It does not include the normal flow of benefits from the performance of the Contract.

“Potential Conflict of Interest” means that an individual or Offeror, as a result of current plans, may reasonably be expected to have an actual conflict of interest. “Potential Conflict of Interest” means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person’s relative, or a business with which the person or the person’s relative is associated, unless the pecuniary benefit or detriment arises out of the following: (a) an interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position; (b) any action in the person’s official capacity which would affect, to the same degree, a class consisting of all inhabitants of the state or a smaller class consisting of an industry,

occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged; or (c) membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

“Procurement” means a Request for Proposals (RFP), Request for Quotes (RFQ), Request for Information (RFI), Invitation for Bid (IFB), or any other form of solicitation or Procurement by OPA.

“Project” means any proposed or existing undertaking pertaining to such programs that are assigned to OPA under applicable law.

“Proposal” means a bid, proposal, or other submission appropriate to a Procurement.

“Offeror” means a legally operating business entity submitting a Proposal in response to a Procurement.

“Public Disclosure” means the work product or service (in connection with the preparation of a Procurement) is available for public review and analysis for a reasonable amount of time, typically at least thirty (30) calendar days.

“Public Employee” means any person who is serving the government of Guam or any of its political subdivisions or any other governmental body as defined in 5 GCA § 5125 as an elected official, appointed official, employee, agent, or otherwise, irrespective of whether the person is compensated for the services. (For the purposes of these COI Guidelines, all OPA employees are considered Public Employees under this definition.)

“Relative” (of a Public Employee) means:

- the Public Employee's spouse or domestic partner;
- the children, siblings, spouses of siblings or parents of the Public Employee or the Public Employee's spouse; or
- any individual for whom the Public Employee has a legal support obligation or for whom the Public Employee provides benefits arising from the Public Employee's public employment or from whom the Public Employee receives benefits arising from that individual's employment.

“Subcontractor” means a contractor or subcontractor at any tier lower than the awarded Contractor.

Section XIV. CERTIFICATION OF NON-EMPLOYMENT OF CONVICTED SEXUAL OFFENDERS

CERTIFICATION OF NON-EMPLOYMENT OF CONVICTED SEXUAL OFFENDERS

Pursuant to Guam Public Law 28-24, as amended by Guam Public Law 28-98, if a contract for services is awarded to an Offeror, then the service provider must warrant that no person in its employment who has been convicted of a sex offense under the provisions of 9 GCA Chapter 25 or of an offense defined in 9 GCA Chapter 28 Article 2, or who has been convicted in any other jurisdiction of an offense with the same elements as heretofore defined, or who is listed on the Sex Offender Registry, shall provide services on behalf of the service provider while on government of Guam property, with the exception of public highways. If any employee of a service provider is providing services on government property and is convicted subsequent to an award of a contract, then the service provider warrants that it will notify OPA of the conviction within twenty-four hours of the conviction and will immediately remove such convicted person from providing services on government of Guam property. If the service provider is found to be in violation of any of the provisions of this paragraph, then OPA will give notice to the service provider to take corrective action. The service provider shall take corrective action within twenty-four hours of notice from OPA, and the service provider shall notify OPA when action has been taken. If the service provider fails to take corrective steps within 24 hours of notice from OPA, then OPA in its sole discretion may suspend temporarily any contract for services.

I, _____ being a duly authorized representative of the Offeror,
(print name)
acknowledge the requirements described above, have ensured that the Proposal as submitted addresses these requirements, and certify that if awarded the contract, the Offeror will follow these mandates.

(Company Name)

(Primary Contractor's Signature)

Date

(Print Name)

Title