

REQUEST FOR PROPOSALS
FOR
TECHNICAL SUPPORT SERVICES
ISLANDWIDE RIGHT-OF-WAY ACQUISITION AND RELOCATION
GU-NH-OARS(001)



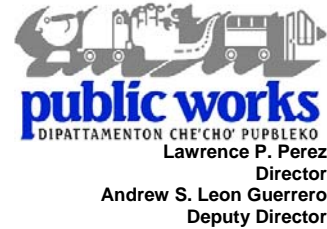
FEDERAL-AID HIGHWAY SECTION
DEPARTMENT OF PUBLIC WORKS
GOVERNMENT OF GUAM

NOVEMBER 2009



The Honorable
Felix P. Camacho
Governor

The Honorable
Michael W. Cruz, M.D.
Lieutenant Governor



SPECIAL REMINDER TO PROSPECTIVE OFFERORS

Proposers are reminded to read the Request for Proposals and to comply with the mandatory requirements listed below. Proposals not in compliance with the mandatory requirements will be disqualified.

DPW
Check-off

() **PROPOSAL PACKAGE**

- Package must be sealed and the outside clearly marked with the Project Name, Project No. and the name of the Proposer
- One (1) original and six (6) copies of the Proposal enclosed
- Copy of Guam Business License enclosed
- Copy of Real Estate License issued by the Department of Revenue and Taxation enclosed

() **COVER LETTER**

- name and phone number of the Proposer's contact person relative to the proposal
- principal place of business and the location of the office proposing/sponsoring the work relative to this proposal
- brief statement acknowledging understanding of the scope of work
- positive commitment to perform the services described and provide the personnel specified in the submission
- acknowledgement that all addenda were received (list addendum no. and date)
- the name(s) and Guam license number(s) of the Real Estate Broker or Agent (s) that will provide the acquisition and relocation services.

() **BODY OF THE PROPOSAL** (excluding the cover letter and forms)

- does not exceed ten (10) single-sided 8½" x 11" unfolded pages
- single-spaced and numbered consecutively on the bottom
- subdivided into the five sections identified in the Consultant Evaluation Criteria

() **PROPOSER'S AFFIRMATION AND DECLARATION**

- The affidavit must be notarized and dated

() **PROPOSAL SIGNATURE FORM**

() **MAJOR SHAREHOLDERS DISCLOSURE AFFIDAVIT**

- The affidavit must be notarized and dated

() **NON-COLLUSION AFFIDAVIT**

- The affidavit must be notarized and dated

**REQUEST FOR PROPOSALS
TECHNICAL SUPPORT SERVICES
ISLANDWIDE RIGHT-OF-WAY ACQUISITION AND RELOCATION
GU-NH-OARS(001)**

I. INTENT

The Government of Guam, Department of Public Works (DPW) is soliciting proposals from qualified firms and individuals to provide Islandwide Right-of-Way Acquisition and Relocation Services as described herein. The DPW intends to contract with independent firm(s) or individual(s), hereinafter referred to as Consultant, Proposer or Offeror.

It is intended that an indefinite delivery, indefinite quantity (IDIQ) contract for professional services will be awarded to the most responsible and responsive Proposer(s) whose proposals meet the needs of the DPW to the best degree.

II. PERIOD OF PERFORMANCE

The period of performance of technical services is for a one (1) year period commencing from the date of award with an option to extend the contract for an additional one (1) year period on the same terms and conditions.

III. BACKGROUND

The DPW is engaged in a Territory Transportation Improvement Program funded primarily through the use of U.S. Department of Transportation, Federal Highway Administration (FHWA) funds, and other federal funds.

IV. SCOPE OF WORK

See Exhibit "A" – Scope of Work

V. PROGRAM MANAGEMENT ORGANIZATION

The Consultant will report to the Program Management Team (PMT) who in turn will report to the acting Program Administrator (PA) overseeing the Division of Highways Federal-aid Highway Section.

The PMT will directly handle project management and monitoring of the project on behalf of DPW. The DPW will hold all contracts and the Consultants will contractually report to the PA. The day-to-day management of these contracts will be by the PMT.

For all transactions, the PMT will prepare, recommend, certify, execute, manage, direct, review, compile, organize, assist, host, conduct, etc.; DPW will approve, negotiate, attend, select, issue, implement, concur, etc.; and the FHWA will oversee, advise, concur, approve, and attend if possible, etc.

The Consultant will maintain a working office in Guam to enable the PMT, DPW and the FHWA to inspect, review and discuss proposed deliverables, compliance with Guam and Federal policies, and other requirements to further the prosecution of the work with the least delay.

VI. REVIEW AND APPROVAL BY THE DPW AND THE FEDERAL HIGHWAY ADMINISTRATION

All work submitted to the DPW, funded by federal-aid highway funds, are subject to the review and approval of FHWA and/or other appropriate federal agencies. The Consultant shall coordinate reviews and meetings with the PMT, DPW, FHWA and other federal agencies as needed.

VII. DBE REQUIREMENTS

There are no Disadvantaged Business Enterprises (DBE) requirements for this project.

VIII. SELECTION SCHEDULE

The selection schedule is projected to be as follows (all dates and times are Guam Standard Time):

REQUEST FOR PROPOSAL RELEASE.....	NOVEMBER 12, 2009
PRE-PROPOSAL CONFERENCE / TELECONFERENCE	NOVEMBER 26, 2009, 9:00 A.M.
DEADLINE FOR QUESTIONS/CLARIFICATIONS.....	DECEMBER 3, 2009, 4:00 P.M.
RESPONSE / REPLIES FOR QUESTIONS /CLARIFICATIONS	DECEMBER 10, 2009
PROPOSALS SUBMISSION DEADLINE	JANUARY 14, 2010, 4:00 P.M.
ANTICIPATED LETTER(S) OF INTENT TO AWARD	MARCH 18, 2010

IX. GENERAL REQUIREMENTS

1. PRE-PROPOSAL CONFERENCE

A pre-proposal conference will be held as stated in Section VIII. SELECTION SCHEDULE at the Conference Room, Division of Highways Building, Second Floor, Room 201. All interested firms or individuals are encouraged to participate either in person or via telephone (671-647-0014).

2. QUESTIONS REGARDING SPECIFICATIONS OR PROPOSAL PROCESS

To ensure fair consideration for all Proposers, the Government of Guam prohibits any Proposers to communicate with any Department employee during the submission process, or any employee of the PMT. Questions relative to the interpretation of the proposal process shall be sent in writing prior to the date and time stated in Section VIII. SELECTION SCHEDULE to:

Lawrence Perez, Director
Department of Public Works
542 N. Marine Drive, Upper Tumon
Tamuning, Guam 96931
(671)646-3131
highways@dpw.guam.gov

Additionally, the Government of Guam prohibits communications initiated by a proposer with any Government of Guam official or employee, or employee of the PMT, evaluating or considering the proposals prior to the time a selection has been made, except as initiated by the appropriate Government of Guam official or employee, or PMT employee, in order to obtain information or clarification needed to develop a proper, accurate evaluation of the proposals.

Communications so initiated by a Proposer may be grounds for disqualifying the offending Proposer from consideration of the proposal and/or any future proposal.

3. PROPOSAL DUE DATE

Sealed proposals with one (1) original and six (6) complete copies shall be submitted no later than the date and time stated in Section VIII SELECTION SCHEDULE. Proposals will not be accepted after that time.

Deliver Proposals to:

Department of Public Works
Design, Contracts & Analysis Section
Division of Highways Building, 2nd Floor Conference Room 201
Highways (Horizontal) Engineering and Maintenance Division
542 North Marine Corps Drive
Tamuning, Guam 96913
(671)649-3121

The outside of the package must be clearly marked "Islandwide Consultant Services – Acquisition and Relocation Services, Project No. GU-NH-OARS(001)" and the name of the Proposer. All proposals must be in writing and submitted in sealed packages. Unsealed proposals will be disqualified and rejected.

X. CONTENT OF PROPOSAL

All proposals shall be in writing. The Consultant may designate those portions of the proposal which contain trade secrets or other proprietary data which may remain confidential.

1. COVER LETTER

Each proposal shall include a one-page single-sided 8½" x 11" cover letter signed by an authorized representative. The cover letter shall include the following information:

- the name and phone number of the CONSULTANT's contact person relative to the proposal
- principal place of business and the location of the office proposing/sponsoring the work relative to this proposal
- a brief statement acknowledging understanding of the scope of work
- a positive commitment to perform the services described within and provide the personnel specified in the submission.
- an acknowledgement that all addenda were received (list addendum no. and date)

Proposals without this information **will not** be considered.

2. CONSULTANT EVALUATION CRITERIA

The body of the proposal shall be brief and to the point. The body of the proposal, excluding the cover letter and forms, shall not exceed ten (10) single-sided 8½" x 11" unfolded pages, be single-spaced, and numbered consecutively on the bottom. The proposal shall be subdivided into five sections, with one section devoted to each topic listed below.

a) Project Team.

- 1) Provide a summary of the experience and education of the Project Manager (Real Estate Broker or Agent) and key staff on the project team, including any Principals who will be directly involved in the project.
- 2) Include a project team organization chart identifying project team members and their responsibilities including any subconsultants.
- 3) Explain how team coordination will be achieved.

b) Capacity.

- 1) Provide a table listing all current projects of the project team and the estimated completion date for each project.
- 2) In view of this information, describe the team's ability to provide services within the period of performance.

c) Past Performance.

- 1) Describe your project team's experience providing similar services. Provide a description of each assignment listed.
- 2) For each assignment listed, provide performance information on cost control, quality of work, and compliance with project schedules.
- 3) Provide a reference name and phone number for each assignment listed.

d) Local Knowledge and Proximity to the Project.

- 1) Describe your knowledge of the project location including any issues that must be addressed in meeting the requirements.
- 2) Identify the local agencies that are likely to be involved in providing the services and your team's experience in working with these agencies.
- 3) Identify the locations where work will be performed. If multiple offices will be involved, provide the percentage of work to be performed at each location.

e) Project Approach.

- 1) Identify the specific methods to be used to complete the requirements contained in the Scope of Work.
- 2) Identify potential complications or difficulties that might be encountered along with suggested resolutions for each.
- 3) Offerors may designate those portions of the proposal which contain trade secrets or other proprietary data which may remain confidential.

3. FORMS

Submit all completed forms provided in Section XIII. ATTACHMENTS with this RFP, including Proposer's Affirmation and Declaration, Proposal Signature Form, Major Shareholders Disclosure Affidavit, and Non-Collusion Affidavit.

XI. EVALUATION OF PROPOSALS AND AWARD

Proposals will not be opened publicly, and will be opened in the presence of two or more procurement officials. Proposals will be evaluated and ranked by the criteria provided in this RFP. Failure to comply with any mandatory requirements may disqualify a proposal.

The DPW may conduct discussions at the designated date and time as stated in Section VIII.

After the conclusion of the validation of proposals, evaluation, and discussions (if needed), the DPW may select, in the order of their respective proposal ranking, no fewer than three acceptable offerors (or such lesser number if less than three acceptable proposals were received) deemed to be the best qualified to provide the required services.

The DPW will negotiate a contract with the best qualified offeror(s) for the required services at compensation determined in writing to be fair and reasonable. Compensation must be in accordance with FAR, Part 31. If compensation, contract requirements, or contract documents cannot be agreed upon, the DPW may enter into negotiations with the next most qualified offeror.

XII. LEGAL REQUIREMENTS

- 1. GOVERNMENT RIGHTS.** The Government of Guam reserves the rights to:
 - a) Require presentations or make investigations of the proposals of proposers as it deems appropriate, including, but not limited to, a background investigation.
 - b) Request that proposals be modified to more fully meet the needs of the Government of Guam or to furnish additional information as the Government of Guam may reasonably require.
 - c) Accord fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. Such revisions may be permitted after submission of proposals and prior to selection.
 - d) Reject any and all proposals, in whole and or part.
 - e) Process the selection of the successful Proposer without further discussion.
 - f) Waive any irregularity in any proposal, or reject any and all proposals, should it be deemed in its best interest to do so. The Government of Guam shall be the sole judge of Proposer's proposals.

2. FINANCIAL STATEMENTS. The Government of Guam reserves the right to request that proposers submit their annual financial statements, for the last three (3) fiscal years, including company financial statement summaries and cash flow summaries certified by a Certified Public Accountant. If the organization has been in business for a period of less than three (3) years, proposers may be required to submit a detailed business plan in addition to any pertinent information that would allow the Government of Guam to evaluate the sufficiency of financial resources and the ability of the business to successfully perform the services enumerated in the RFP. Unless otherwise stated, such requests would be made after the submission of the proposals and prior to award of a contract.

3. HOLD HARMLESS. The successful Proposer shall agree to indemnify and hold the Government of Guam and its PMT from and against any and all liabilities, damages, charges of expenses (including attorney's fees, whether at trial or appeal) which the Government of Guam or the PMT may suffer, sustain, incur or in any way be subjected to by reason of or as a result of any negligent act or omission on the part of the successful Proposer, its agents or employees, in the execution or performance of the obligations assumed under or incidental to, the contract into which the successful Proposer and the Government of Guam may enter.

4. INCURRED EXPENSES. The Government of Guam is not responsible for any expenses which Proposers may incur in the preparation and submittal of proposals requested by this RFP, including but not limited to, costs associated with travel, accommodations, interviews or presentations or proposals.

5. PROHIBITION: SEX OFFENDERS PROHIBITED FROM EMPLOYMENT IN AGENCIES AND FACILITIES OF THE GOVERNMENT OF GUAM.

All contracts for services to agencies listed herein shall include the following provisions:

- 1) Warranties that no person providing services on behalf of the contractor has been convicted of sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry; and
- 2) That if any person providing services on behalf of the contract is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry, that such person will be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.

XIII. ATTACHMENTS

Exhibit A - Scope of Work

Exhibit B – Minimum Qualifications

Exhibit C - Consultant Evaluation Form

Exhibit D - Sample Consultant Contract

Exhibit E - Proposer's Affirmation and Declaration

Exhibit F - Proposal Signature Form

Exhibit G - Major Shareholders Disclosure Affidavit

Exhibit H - Non-Collusion Affidavit

EXHIBIT A – SCOPE OF WORK

The Consultant(s) may be required to perform all or a portion of the services necessary to provide right-of-way acquisition, and/or relocation services for roadway, bridge and drainage related projects identified in the TTIP. Those services may include, but are not necessarily limited to, the following:

1. Acquisition Services – Consultants shall acquire all types of properties and land uses. Consultant hired by DPW to perform Acquisition and Relocation Services must be familiar with applicable Government of Guam and FHWA's and other policies, procedures and processes for Right of Way Acquisition and Relocation as it pertains to all aspects of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended. When the Government of Guam DPW's Right of Way Manual is approved, an electronic copy will be provided to the consultant for their use. They will be expected to have a good understanding and knowledge of the contents for the Right of Way Services they have been contracted to perform.
2. Relocation Services – Residential – Consultants shall perform Residential Relocation Services for any displaced individual or family. Consultant must be familiar with all Government of Guam and Federal Laws and Regulations as discussed within this RFP and be knowledgeable about the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended, 49 Code of Federal Regulations (CFR) Part 24.
3. Relocation Services – Non-Residential – Consultants shall perform complex relocation services for Non-Residential entities. Consultant must be very detail oriented and able to keep accurate records and logs and must be able to work well with all types of individuals and must be cognizant that they are representing DPW in their dealings with the public. Consultant must be familiar with all Government of Guam and Federal Laws and Regulations as discussed within this RFP and be knowledgeable about the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended, 49 Code of Federal Regulations (CFR) Part 24.

Services will be requested on a task order basis to support islandwide transportation infrastructure improvement projects.

EXHIBIT B – MINIMUM QUALIFICATIONS

1. Consultant must possess a current Guam Real Estate Broker or Agent's License issued by the License Division of the Department of Revenue and Taxation of the Government of Guam as per 21 Guam Code Annotated, Chapter 104 Real Estate Regulation Article 1.
2. Consultant must possess the knowledge and ability to perform Right of Way Acquisition Services for both Government of Guam and Federally funded projects. Must have knowledge of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Title 49, Code of Federal Regulations, Part 24 and Title 23, Part 710) (Uniform Act). The consultant must have a minimum of three years full-time experience within the last five years. Written references are required.
3. Consultant will be required to be familiar with the Guam Right of Way Manual once it has been approved and adopted. The consultant will be required to abide by the Territory of Guam Right of Way Manual Relocation Sections 7.1 Relocation Assistance Program, 7.2 General Relocation Requirements, 7.3 Payment for Moving and Related expenses, 7.4 Replacement Housing Payments, 7.5 Relocation Assistance for Mobile Homes, 7.6 Last Resort Housing, 21 Guam Code Annotated (GCA) 17101-17118 Relocation Assistance Act, Housing and Urban Development, Amendment Act of 1974, 21 GCA 5101-5415 Guam Housing & Urban Renewal Authority, 21 GCA 66101-66701 Building Law, 21 GCA Chapter 67 The Building Code, Title VIII of the Civil Rights Act of 1968.
4. Consultant must have the ability to read, comprehend and complete the required and necessary forms/documents/reports/titles used in all Right of Way acquisition activities related to the Uniform Act, the Government of Guam and FHWA's policies, procedures and processes, and the Scope of Services for the Acquisition Contract.
5. Consultant must have the ability to read, comprehend and analyze complex real estate appraisals and specialty reports. Consultant must be able to write legible, effective and concise justifications regarding property settlements to present to DPW for review and approval.
6. Consultant must be capable of presenting offers in a timely manner to property owners or any other person that have any interest in the property being acquired in accordance with the Uniform Act and the policies, procedures and processes of the Government of Guam and the FHWA.
7. Consultant shall be available to personally contact owners and affected parties to review and explain all offers and documents and any plans available that display how their property is affected. The consultant shall make all attempts to negotiate improved properties first.
8. Consultant must have the ability to present and explain any and all plans used in the Right of Way Acquisition process to an audience that may include an extremely wide segment of society that possesses an extremely varying knowledge of such information.
9. Consultant must have the ability to thoroughly record and legibly document all Right of Way Acquisition activities that occur which may include, but is not limited to: phone calls, individual meetings, multiple-party meetings, settlement agreements, counter proposals, objections to any matters of record or issues

- presented, justifications contradictory to or in support of any issues, legal proceedings and matters of title to property.
10. Consultant must submit to DPW all pertinent information relative to negotiations on a timely basis.
 11. Consultant must be or be able to become a licensed Notary Public from the Government of Guam before any work can begin.
 12. Consultant must be accessible to attend various meetings which may include, but not limited to: monthly status meetings, property owners meetings and project review meetings on an as needed basis.
 13. Consultant must be knowledgeable of and capable of preparing project certification packages to certify the project in preparation for project letting schedule.
 14. Consultant must possess the ability to work well under pressure with others that may be involved in any acquisition matters while displaying at all times professionalism and determination to resolve and bring to closure the acquisition proceedings either through a settlement agreement or through condemnation proceedings.
 15. Consultant shall ensure that any **CONFIDENTIAL INFORMATION** and material **ARE NOT** given to anyone outside DPW without **PRIOR WRITTEN AUTHORIZATION** from DPW or the Office of the Attorney General. The consultant shall ensure that all files/documentation are available for review by DPW/FHWA at all times and that any and all information kept on file is the property of the Government of Guam and should be delivered to DPW on a continual, timely basis.
 16. Consultant shall maintain any continuing educational requirements and ability to further expand knowledge through attendance of and successful completion of any educational courses/classes/training that may be required or offered for further development of Acquisition and Relocation skills or further Right of Way activities.

EXHIBIT B - CONSULTANT EVALUATION FORM

**PROJECT: ISLANDWIDE RIGHT-OF-WAY ACQUISITION AND RELOCATION SERVICES
GU-NH-OARS(001)**

CONSULTANT: _____

SUB-CONSULTANT(S): _____

<i>EVALUATION ITEMS</i>	<i>MAX SCORE</i>	<i>SCORE</i>
1. Project Team: Directly applicable experience and education of the Project Manager (Real Estate Broker or Agent) and other key staff on similar projects. Estimated effectiveness of the team's proposed organization and coordination process.	20	
2. Capacity: Availability of the key project team members for the duration of the project. Ability to provide services considering current backlog of work.	20	
3. Past Performance: Experience of the firm or individual on similar assignments completed in the past five (5) years. Documented performance in terms of cost control, quality of work, and compliance with project schedules.	15	
4. Local Knowledge and Proximity to the Project: Knowledge of the project location and local agency requirements. Location of the offices where work will be performed and percentage of work to be performed locally and at remote locations.	20	
5. Project Approach: Specific methods to complete the requirements. Understanding of critical tasks and plans for addressing and resolving potential difficulties.	25	
TOTAL	100	

Evaluated by:

Evaluation Committee Member

Date

EXHIBIT C – SAMPLE CONSULTANT CONTRACT

RFP Contract No. _____

[SAMPLE ONLY]

FORMAL CONTRACT

BETWEEN

[CONTRACTOR]

and

**DEPARTMENT OF PUBLIC WORKS
GOVERNMENT OF GUAM**

CONTRACT FOR: _____
Project No. DPW _____

AMOUNT: \$ _____

PLACE: TAMUNING, GUAM

THIS CONTRACTUAL AGREEMENT is made and entered into this ____ day of _____, 2009, by and between the **DEPARTMENT OF PUBLIC WORKS, GOVERNMENT OF GUAM** (hereinafter referred to as the “Department”), an executive branch agency of the Government of Guam, whose address is 542 North Marine Corps. Drive, Tamuning, Guam 96913, and _____ (hereinafter referred to as “Contractor”), a corporation duly licensed to do business in Guam, whose address is _____.

RECITALS

WHEREAS, the Department desires to engage the services of Contractor to provide services to the Department on the “Project” as solicited for in Requests for Proposals No. _____ (the “RFP”) in accordance with the RFP, its Scope of Work, the Contractor’s submitted Proposal, and the other Contract Documents, all of which are incorporated herein by this reference;

WHEREAS, the Department, after engaging in a competitive selection procurement process in accordance with the Guam Procurement Laws (Title 5, Guam Code Annotated, Chapter 5) and Regulations (Volume 2, Guam Administrative Regulations, Division 4), is prepared to award this contract to Contractor as the most qualified, responsive, responsible offeror;

NOW THEREFORE, in consideration of the foregoing recitals and of the mutual terms, covenants, conditions set forth below, the parties **AGREE** as follows:

I. **SCOPE OF CONTRACT**

The Contractor shall furnish all necessary labor, materials, equipment, tools and services necessary to perform and complete in a workmanlike manner all the work required for the Project, in strict compliance with the Contract Documents as defined in this Contract, which are hereby incorporated into and made a part of this Contract as though set forth verbatim herein.

II. **TERM AND TIME OF PERFORMANCE**

The term of this Contract is for a period of _____ **year(s)/month(s)**. The parties agree that time is of the essence in the performance of the obligations under this Contract and, therefore, Contractor agrees to commence work under this Contract beginning _____ and ending _____.

III. **COMPENSATION**

3.1. As compensation for services rendered under this Contract, and in full satisfaction for all work, labor, equipment, materials and other requirements and specifications under the Contract, Contractor shall be paid the sum of (US\$ _____).

3.2. Other sums may be added and/or deducted as a result of extra and/or omitted work, as the case may be, as approved by the Department, the Guam Procurement Laws and Regulations (codified in Title 5, Guam Code Annotated, Chapter 5, and Title 2 Guam Administrative Rules and Regulations, Chapter 6) and this Contract. This amount shall be in full satisfaction of all work, labor, Contractor fees, gross receipt taxes, costs and expenses incurred by Contractor.

3.3. Contractor's Payment of Subcontractors. The Contractor shall pay each subcontractor under this Contract for satisfactory performance of its contract. Any delay or postponement of payment by the Contractor to its subcontractor may occur only for good cause following written approval of the Department.

3.4. All requests for payment that include compensation to subcontractor(s) shall be accompanied by a properly executed billing from the subcontractor(s). The Contractor shall also submit a Certificate of Payment to Subcontractor(s) to the Department, properly acknowledged by the subcontractor(s), on the next month following the Department's payment to Contractor which includes any compensation to the subcontractor(s). Failure to submit such a Certificate of Payment to Subcontractor(s) will result in the deduction of the amount due to subcontractor(s) in future payments to Contractor.

3.5. The Department's review, approval and payment of fees for services by Contractor shall not constitute a waiver of any rights or cause of action arising out of Contractor's failure to fully and completely perform its duties under this Contract and Contractor shall be and remain liable to the Department for all damages, costs and attorneys' fees which the Department may suffer or incur as a result of Contractor's negligent performance of any of the services required herein.

IV. **"CONTRACT DOCUMENTS" DEFINED**

It is hereby mutually agreed that the following list of documents which are attached hereto, bound herewith or incorporated herein by reference shall constitute the Contract Documents, all of which are made part hereof, and collectively evidenced and constitute the Contract between the parties hereto, and they are as fully a part of this Agreement, as if they were set out verbatim and in full herein:

- A. Request for Proposals and all attachments, forms, or exhibits thereto;
- B. Contractor's Proposal;
- C. Formal Contract;
- D. Notice of Award;
- E. Notice to Proceed;
- F. All Amendments or Addenda to the Request for Proposals; and
- G. All Amendments to Contract.

V.

CHANGES IN SCOPE OF WORK AND SERVICES

5.1 Change Orders. By a written order, at any time, and without notice to surety, the Department may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:

- (A) Drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the Territory in accordance therewith;
- (B) Method of shipment or packing; or
- (C) Place of delivery.

5.2. Adjustments of Price or Time for Performance. If any such change order increases or decreases the Contractor's cost of, or the time required for performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Guam Procurement Law and the Guam Procurement Regulations.

Failure of the parties to agree to an adjustment shall not excuse the Contractor from proceeding with the contract as changed, provided that the Territory promptly and duly make such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

5.3. Time Period for Claim. Within thirty (30) days after receipt of a written change order under Paragraph 5.1 ("Change Orders") of this clause, unless such period is extended by the Department in writing, the Contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the Contractor's claim unless the Territory is prejudiced by the delay in notification.

5.4. Claims Barred After Final Payment. No claim by the Contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract.

5.5. Other Claims not Barred. In the absence of such a change order, nothing in this clause shall be deemed to restrict the Contractor's right to pursue a claim arising under the contract if pursued in accordance with the clause in the Guam Procurement

Regulations entitled, "Claims Based on a Procurement Officer's Actions or Omissions, Notice of Claim Clause, or for breach of contract."

VI. **TERMINATION OF AGREEMENT**

Termination by the Territory. Nothing herein shall be construed to waive the rights of the Department and the Government of Guam to stop work or otherwise terminate this Contract as provided for, and in accordance with, Guam law. If the Department terminates this Contract, then it shall be responsible for the payment of any preparatory work, engineering, material ordered and labor expended up to the date of termination. The Department shall give written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.

VII. **INDEMNIFICATION**

Pursuant to this Contract, Contractor shall indemnify and hold harmless the Department, the Government of Guam, and all its respective officers, agents, and employees from any loss, damage, liability, expense, claims, suits, actions, costs of suit and attorney's fees because of damage to property or injuries to persons (including death) arising from any negligent act, omission, or breach on the part of Contractor, its agents, employees and subcontractors, in connection with this Contract, or from any breach of any of its obligations under this Contract.

Contractor shall defend at its own expense any suits or other proceedings brought against the Department, the Government of Guam, its officers, agents, and employees, based on any alleged negligent act, omission, or breach by Contractor, its employees, agents or subcontractors, in connection with this Contract, or from any breach of any of its obligations under this Contract, and shall pay all expenses and satisfy all judgments which may be rendered against the Department, the Government of Guam, or its officers, agents or employees, based upon such negligent act, omission, or breach, including all costs, expenses of suit and attorney's fees.

VIII. **INSURANCE**

8.1. At its sole cost and expense, the Contractor shall place and maintain with responsible insurance carriers licensed in Guam, any insurance as required by the Department, and in form and with insurers acceptable to the Department. All policies, with the exception of Workers Compensation Insurance and Professional Liability Insurance, shall be endorsed to include the Consultant and the Client, and their respective officers, directors, agents and employees as additional insured.

8.2. Insurance Requirements. Contractor shall obtain and keep in force throughout the term of this Contract such policies of insurance with the limits and provisions as follows:

- (A) Workers Compensation in accordance with the statutory requirements of Guam;
- (B) Employer's Liability Insurance in the amount of One Million Dollars (\$1,000,000);
- (C) Commercial General Liability in a broad form and in an amount not less than Two Million Dollars (\$2,000,000) aggregate and per occurrence. This policy will provide coverage for personal and bodily injury, including death, for property damage, and include endorsements for contractual liability;
- (D) Automobile Liability Insurance with limits not less than One Million Dollars (\$1,000,000.00) for bodily injury and property damage applicable to owned, rented, leased, or borrowed automobiles while in the custody of the insured or anyone driving such vehicles with insured's permission; and
- (E) Professional Liability Insurance including errors and omissions in an amount not less than One Million Dollars (\$1,000,000) per claim and in the aggregate.

IX. INDEPENDENT CONTRACTOR

In the performance of this Agreement, it is expressly understood that Contractor's status is that of an Independent Contractor and not as an agent, partner, joint venturer or employee of the Department or the Government of Guam. Contractor's conduct shall be in accordance with that status. If Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

Contractor does not have, nor does it hold itself out as having, any right, power or Department to create any contract or obligation, either express or implied, on behalf of, in the name of, or binding upon the Department, or to pledge the Department's credit, or to extend credit in the Department's name. In addition, nothing contained in this Agreement shall be deemed or construed by the parties hereto, or by any third party, to create the relationship of principal and agent, or a partnership or a joint venture, or of any association between the Department and Contractor.

X. REPRESENTATIONS

The Contractor hereby makes the following representations:

A. The Contractor has not knowingly influenced, and will not knowingly influence a government employee to breach any of the ethical standards set forth in Chapter 11 of the Guam Procurement Regulations;

B. The Contractor has not violated, is not violating, and will not violate the prohibition against gratuities and kickbacks set forth in § 11107 of the Guam Procurement Regulations; and

C. The Contractor is not aware of any current engagement or relationship with any public or private party that could potentially create a conflict of interest with DPW, the Government of Guam or any of its Agencies or Instrumentalities. DPW reserves the right to terminate or modify this Contract in the event any conflict or potential conflict arises or is discovered.

XI. **SOVEREIGN IMMUNITY**

Nothing in this Contract shall be construed to waive, or to act as a waiver of, the sovereign immunity of the Government of Guam or the applicability of the Guam Government Claims Act.

XII. **MISCELLANEOUS PROVISIONS**

12.1. Venue and Governing Law. Contractor hereby specifically consents and agrees to the jurisdiction and forum of the Superior Court of Guam with respect to any and all claims or disputes which may arise hereunder, an expressly waives any and all rights it may otherwise have had to contest the same or to proceed in a different jurisdiction or forum. At all times, this Contract shall be governed by and construed in accordance with the laws of Guam.

12.2. Compliance with Laws. Contractor shall comply with all applicable Federal, state and local laws, statutes and ordinances, and with all legal and applicable rules, regulations or orders of any governmental department, board, bureau or agency having jurisdiction over the subject of this Contract.

12.3. Interest of Members of the Department and Others. No officer, member, or employee of the Department who exercise any functions or responsibilities in the review or approval of the undertaking or carrying out of this Contract, shall participate in any decision relating to this Contract which affects his personal interest or have any personal or pecuniary interest, direct or indirect, in the Contract or the proceeds thereof.

12.4. Covenant Against Contingent Fees. The Contractor warrants that it has not employed any person to solicit or secure this Contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Department the right to terminate the Contract or, as consideration, deduct the amount

of such commission, percentage brokerage or contingent fee from the Contract price. This warranty shall not apply to commissions payable by Contractors upon contracts or sales secured or made through bonafide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

12.5. Other Contracts. The Department or other parties approved by the Department may award other contracts for additional work, and the Contractor shall fully cooperate with such other Contractors and carefully fit the work to that provided under other contracts as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other Contractor.

12.6. Disputes. All claims and disputes arising under or relating, directly or indirectly, to this Contract between the parties hereto shall be resolved first by written appeal to the Director of the Department of Public Works, then pursuant to the Government Claims Act (5 G.C.A § 6101, et seq.). If any legal action, suit or other proceeding is brought for the enforcement of this Contract or because of any alleged dispute, breach or default in connection with any of the provisions of this Contract, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and court costs incurred in the action, suit or proceeding, in addition to any other remedy or relief to which it may be entitled. Notwithstanding the pendency of any dispute arising under this Contract, the Contractor shall diligently proceed with the work as directed.

12.7. Contract Binding Upon Parties, Successors. It is agreed that this Contract and all of the Covenants hereof shall inure to the benefit of, and be binding upon, the Department and the Contractor respectively and the Contractor's partners, successors, assigns and legal representatives. Neither the Department, nor the Contractor, shall have the right to assign, transfer, or sublet the Contractor's interest or obligations hereunder without written consent of the other party.

12.8. Liens. It is hereby mutually agreed by and between the parties hereto that no mechanic, contractor, subcontractor, material supplier or other person can or will contract for or in any other manner have or acquire any lien upon the works covered by this Contract.

12.9. Non-Gratuity. The Contractor further agrees to execute and file a Non-Gratuity Affidavit before final payment under the Contract is made by the Department.

12.10. Notices, Correspondence and Payments. All notices, correspondence, and payments required to be sent to either party hereunder shall be sent to the parties at the address stated below, either by mail or delivered personally or by facsimile and confirmed by letter. Service of any notice or demand by mail shall be by registered letter, receipt requested, and shall be deemed effective ten (10) days after mailing or on the date actually received, whichever is first.

For the DEPARTMENT:

Department of Public Works
Office of the Director
542 North Marine Corps. Drive
Tamuning, Guam 96913

For the CONTRACTOR:

Each party may change its designated address by serving notice, in writing, on the other party as provided above.

12.11. Subcontractors. Contractor shall not be permitted to subcontract any portion of the Agreement without the prior written consent of the Department. The Contractor shall file a copy of all subcontracts with the Department. The Department’s approval of a subcontract shall not, in any event, relieve Contractor of its responsibility under the Agreement. Any attempted assignment or subcontract without the prior written consent of the Department shall be void. Where a subcontract is permitted, the Contractor agrees to bind every subcontractor by the terms of this Contract and all Contract Documents. Nothing in this Contract or the Contract Documents shall be construed as creating any contractual relation between any subcontractor and the Department.

12.12. Severability. If a provision of this Contract, or the application thereof to any person or circumstances is rendered or declared illegal for any reason or shall be invalid or unenforceable, the remainder of this Contract and the application of such provision to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by applicable law. The parties agree to negotiate in good faith for a proper amendment to this Contract in the event any provision hereof is declared illegal, invalid, or unenforceable.

12.13. Equal Employment Opportunity. Section 2.02 of the President’s Executive Order 11246 dated September 24, 1965 (as amended) requires the Contractor to not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin.

12.14. Warranty Against Employment of Sex Offenders (Public Law 28-98:2). Contractor warrants that no person providing services on behalf of Contractor has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry. If any person providing services on behalf of Contractor is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an

offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry, that such person will immediately be removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.

12.15. Entire Agreement. This Contract and the Contract Documents constitute the entire agreement between the parties, and no prior or contemporaneous written or oral promises, representations or assurances shall be deemed to alter the provisions hereof.

12.16. Effective Date. The effective date of this Contract shall be the date of the Governor of Guam’s signature on this Contract.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above-written.

CONTRACTOR:
[Name of Contractor]:

[SAMPLE]

[Name of Contractor’s authorized signatory]
[Title or Position]

Date: _____

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GOVERNMENT OF GUAM
Department of Public Works:

[SAMPLE]

LAWRENCE P. PEREZ
Director

Date: _____

Department of Public Works:
DPW Certifying Officer
Subject to the Availability of Funds

[SAMPLE]

JOAQUIN R. BLAZ, BMA IV
Acting Program Administrator,
Highways (Horizontal) Engineering
and Maintenance

CLEARED AS PER BBMR'S REVIEW:
Amount: \$ _____
Subject to the Availability of Funds

**APPROVED AS TO LEGALITY
AND FORM:**

[SAMPLE]

BERTHA M. DUENAS
Director
Bureau of Budget and Management
Research

Date: _____

[SAMPLE]

ALICIA G. LIMTIACO
Attorney General of Guam

Date: _____

APPROVED:
[SAMPLE]

HONORABLE FELIX P. CAMACHO
Governor of Guam

Date: _____

EXHIBIT D – PROPOSER'S AFFIRMATION AND DECLARATION

Before me, the undersigned authority who is duly authorized by law to administer oaths and take acknowledgements, personally appeared

AFFIANTS NAME: _____

Who, after being duly cautioned and sworn (or who is unsworn if that be the case) and being fully aware of the penalties of perjury, does hereby state and declare, on his own behalf or on behalf of a partnership or corporation, whoever or whichever is the Proposer in the matter at hand, as follows:

1. That the Proposer, if an individual, is of lawful age.
2. That if the Proposer is a partnership or a corporation, it has been formed legally and it is duly authorized and registered to do business in Guam, and is in good standing under the laws of Guam (Department of Revenue & Taxation, Department of Labor (Wage & Hour), etc.).
3. That if the Proposer is using a fictitious name, he/she/it has complied with the Fictitious Name statutes of Guam.
4. That the Proposer is not in arrears to the Government of Guam upon debt or contract and is not a defaulter, as surety or otherwise, upon any obligation to the Government of Guam.
5. That no officer or employee of the Government of Guam, either individual or through any firm, corporation or business of which he/she is a stockholder or holds office, shall receive any substantial benefit or profit out of the contract or obligation entered into between the Government of Guam and this Proposer or awarded to this Proposer; nor shall any Government of Guam officer or employee have any financial interest in assisting the Proposer to obtain, or in any other way effecting, the award of the contract or obligation of this Proposer.
6. That by submitting this proposal, the Proposer certifies that he/she has fully read and understands the solicitation method and has full knowledge of the scope, nature, and quality of work to be performed and the services to be rendered.
7. That Proposer acknowledges, affirms, and ratifies that he/she/it has received all addenda and amendments to the solicitation.
8. Every solicitation for a supply, service, or construction item shall conspicuously set forth the following provision to be completed and submitted with every prospective contractor's bid or proposal:

PROSPECTIVE CONTRACTOR'S REPRESENTATION REGARDING CONTINGENT FEES

The prospective Contractor/Proposer represents as a part of its bid or proposal that such contractor **HAS / HAS NOT** (*please circle applicable word or words*) retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.

Further, affiant sayeth naught.

Date: _____

Signature of individual if Proposer is a sole proprietorship;
Partner, if the Proposer is a partnership;
Officer, if the Proposer is a corporation.

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

By: _____

Notary Public

In and for _____

My commission expires _____

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

EXHIBIT E – PROPOSAL SIGNATURE FORM

In compliance with this RFP and to all the conditions imposed herein, the undersigned offers and agrees to provide services and products in accordance with the attached signed proposal, or as mutually agreed upon by subsequent negotiation. This completed Proposal Signature form shall be submitted with the Proposer’s written proposal and will become a part of any agreement that may be awarded. The Proposal Signature Form must be signed by an authorized representative.

Please type or print:

Name of Firm: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Contact Person: _____

Telephone Number: _____ Fax Number: _____

Type of Organization: Individual Small Business Non-Profit
 Partnership Corporation Joint Venture

ATTACH COPIES OF ALL SUCH LICENSES, PERMITS OR CERTIFICATES ISSUED TO THE BUSINESS ENTITY

Business is licensed, (unless exempt by applicable law) permitted or certified to do business on Guam:

Yes No License# _____

Guam Corporation ID#: _____

Guam Fictitious Name Reg. #: _____

Federal I.D.#: _____

Authorized Signature: _____

Minority Business Status: Black Asian/Pacific Islander Woman

Is your business certified as a minority business with any government agency?

Yes No

If yes, please list below:

Agency Name	Certification Number	Expiration Date
_____	_____	_____
_____	_____	_____

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

EXHIBIT F – MAJOR SHAREHOLDERS DISCLOSURE AFFIDAVIT

TERRITORY OF GUAM)

HAGATNA, GUAM) SS.
)

I, the undersigned, _____, being first duly
 (a partner or officer of the company of, etc.)
 sworn, deposes and says:

1. That the persons who have held more than ten percent (10%) of the company's shares during the past twelve (12) months are as follows:

<u>Name</u>	<u>Address</u>	<u>Percentage of Shares Held</u>	<u>Dates Shares Held</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
Total Number of Shares		_____	

2. Persons who have received or are entitled to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the bid or proposal for which this Affidavit is submitted are as follows:

<u>Name</u>	<u>Address</u>	<u>Amount of Commission or Other Compensation</u>
_____	_____	_____
_____	_____	_____

Further, affiant sayeth naught.

Date: _____

Signature of individual if Proposer is a sole proprietorship;
 Partner, if the Proposer is a partnership;
 Officer, if the Proposer is a corporation

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

By: _____

Notary Public

In and for _____

My commission expires _____

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

