

Jacqueline Taitano Terlaje, Esq.  
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**OFFICE OF PUBLIC ACCOUNTABILITY**

IN RE APPEAL OF

DATA MANAGEMENT RESOURCES, LLC,

Appellant.

) Docket No. OPA-PA

**NOTICE OF APPEAL**

RECEIVED  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

PART II. APPELLANT INFORMATION

**Data Management Resources, LLC.**  
891 Route Barrigada, Guam 96921  
Telephone No.: (671) 647-3674  
Email: [bids@dmrpacific.com](mailto:bids@dmrpacific.com)

DATE: 6/8/2022  
TIME: 3:46 PM BY: [Signature]  
FILE NO. OPA-PA: 22-004

Appellant is represented by Legal Counsel in this appeal. For purposes of this appeal, please direct correspondence intended for Data Management Resources, LLC. to Jacqueline Taitano Terlaje:

**LAW OFFICE OF JACQUELINE TAITANO TERLAJE, P.C.**  
284 West Chalan Santo Papa  
Hagåtña, Guam 96910  
Telephone 671.648.9001  
Facsimile 671.648.9002  
Email: [info@terlajelaw.com](mailto:info@terlajelaw.com)

PART III. APPEAL INFORMATION

- A) Purchasing Agency: Office of the Governor ("OOG")
- B) Request for Proposal No.: RFP-OOG-2022-001

**ORIGINAL**

- C) Appellant appeals two denials of protest made by Venido Torres issued on May 24, 2022. Neither Decision was made by the head of the purchasing agency. The Decision on Protest # 1 is attached as Exhibit 11. The Decision on Protest # 2 is attached as Exhibit 12.
- D) Appeal is made from a denial of protest pursuant to § 5425(e) of Title 5, Guam Code Annotated (G.C.A).
- E) Name of competing bidders and/or prospective offerors known to Appellant:  
Unavailable, as the RFP is pre-proposal submission.

#### PART IV. FORM AND FILING

##### (a) **Grounds for Appeal**

1. DMR appeals the denial of protests related to RFP-OOG-2022-001, Information Technology Services for a government licensing and permitting system.
2. RFP-OOG-2022-001 specifically directs all pre-proposal submission communications to be submitted in writing to the Single Point of Contact, Matthew Santos. *See* RFP-OOG-2022-001, Section 1 Instructions to Offerors, H. Questions/Communications of Offerors Prior to Proposal Submission and Single Point of Contact. It specifically required, “All communications and any questions concerning possible discrepancies, omissions or doubts as to the meaning of any provision of this RFP,” to be submitted by February 25, 2022.
3. DMR submitted its questions to OOG. A true and correct copy is attached hereto as Exhibit 3.
4. On March 5, 2022, OOG by Matthew Santos issued its responses to prospective offeror questions submitted before the submission deadline of February 25, 2022. A true and correct copy is attached hereto as Exhibit 4.
5. On March 19, 2022, DMR submitted its first protest to the Office of the Governor related to RFP-OOG-2022-001 on the following basis:

- (i) the failure to clearly describe minimum specifications by the incomplete response to the questions submitted, the failure to

- adequately describe the licensing and permitting system required, and inaccurate information provided adversely affects and compromises the competition required under Guam law, and places prospective offerors at a significant disadvantage;
- (ii) bad faith conduct and unreasonable conditions imposed upon prospective offeror of five year initial contract term with no certification of fund availability for the term of the contract; and
  - (iii) based upon the Responses provided to questions submitted in relation to the request for proposal, no standard is clearly described, which arbitrarily subjects to prospective offerors to unreasonable conditions to qualify to do business with the Government; unreasonable conditions are arbitrary.

A true and correct copy of the protest is attached hereto as Exhibit 6.

6. On March 21, 2022, an acknowledgement of receipt of the protest was received by DMR. A true and correct copy is attached hereto as Exhibit 7.

7. No stay of procurement was issued by OOG, pursuant to Guam law; rather a “suspension” was issued via email to DMR on March 21, 2022. A true and correct copy is attached hereto as Exhibit 8.

8. 5 G.C.A. § 5425(a) requires protests to be made within fourteen (14) days of the issues leading to the protest being known. On March 5, 2022, DMR received responses to its questions submitted on February 25, 2022. DMR lodged its protest on March 19, 2022 within the fourteen days of the grounds for the protest. Therefore, DMR’s protest to the OOG is within the time required by 5 G.C.A. §5425(a).

9. On March 28, 2022, DMR became aware of the failure of OOG to comply with 5 G.C.A. § 5141(b). Specifically, Government of Guam employee Matthew Santos is the identified as the Single Point of Contact for the RFP. *See* RFP-2022-001, p. 5 Section E; p 7, Section H. Matthew Santos is also identified as the Author for RFP-2022-001. *See* RFP-2022-001, p. 5 Section O.

10. Upon information and belief, Matthew Santos is also the author of the Responses provided by OOG on the questions submitted by vendors dated March 5, 2022, and the subject of the Protest dated March 9, 2022.

11. On March 28, 2022, the Guam Community College Procurement Program, dated March 28, 2022, confirmed that there exists no record of the completion of procurement training of

Government of Guam employee, Matthew C. Santos. A true and correct copy is attached hereto as Exhibit 9.

12. On April 8, 2022, DMR submitted its second protest to the Office of the Governor related to RFP-OOG-2022-001 on the following basis:

The Government has engaged in arbitrary conduct in failing to ensure the compliance of its procurement personnel with certification requirements imposed by 5 G.C.A. § 5141(b).

A true and correct copy of the protest is attached hereto as Exhibit 10.

13. On May 24, 2022, DMR received a document entitled "Decision on Letter of Protest # 1" from Venido Torres. A true and correct copy of the Decision is attached hereto as Exhibit 11.

14. On May 24, 2022, DMR received a document entitled "Decision on Letter of Protest # 2" from Venido Torres. A true and correct copy of the Decision is attached hereto as Exhibit 12.

15. On May 24, 2022, DMR received a document entitled "Notice of Determination on Procurement." A true and correct copy is attached as Exhibit 13.

16. Upon information and belief, Venido Torres is not the Chief Procurement Officer, Director of Public Works, nor the head of the Office of the Governor.

17. The document entitled "Notice of Determination on Procurement" fails to comply with 5 G.C.A. §5425(g)(1), and any action taken in contravention of the automatic stay required by Guam law is void.

**(b) Potential Disqualification**

18. 2 GAR, Div. 4, Chapter 12 § 12216 provides for the recusal and/or disqualification of the Public Auditor.

19. Upon information and belief, Matthew C. Santos is a family member of current Public Auditor, Benjamin J. Santos.

20. DMR submits these facts for consideration of the recusal and/or disqualification of the Public Auditor.

(c) Supporting Exhibits, Evidence or Documents

Appellant submits the following Exhibits:

Exhibit No.	Description
1.	Request for Proposal-OOG-2022-001
2.	February 14, 2022 Amendment No. 1
3.	February 25, 2022 DMR Request for Responses
4.	March 5, 2022 OOG Responses to Offeror Questions
5.	March 5, 2022 Amendment No. 2
6.	March 19, 2022 DMR Protest
7.	March 21, 2022 OOG Acknowledgment of Receipt
8.	March 21, 2022 OOG Suspension
9.	March 28, 2022 Guam Community College Response Re: Matthew Santos
10.	April 8, 2022 DMR Second Protest
11.	May 24, 2022 OOG Decision on Letter of Protest # 1
12.	May 24, 2022 OOG Decision on Letter of Protest # 2
13.	May 24, 2022 OOG Notice of Determination to Proceed with Procurement
14.	May 27, 2022 Amendment No. 3

Appellant submits additional evidence of the non-compliance of OOG with Guam

Procurement Law:

1. 5 G.C.A. § 5249 requires the OOG to maintain a complete procurement record.
2. 5 G.C.A § 5220 requires the OOG to publish RFP documents, announcements and notices on its website.
3. <https://governor.guam.gov/request-for-proposals-rfp/> contains RFP-GOV-2022-001 Procurement of Professional Services to provide Licensing and Permitting System to the Government Guam.

4. <https://governor.guam.gov/wp-content/uploads/2022/03/GOV-RFP-2022-01-RFP-Amendment-1-2142022.pdf> Amends the organizations units for licensing and permitting.

5. <https://governor.guam.gov/wp-content/uploads/2022/03/GOV-RFP-2022-01-RFP-Amendment-2-352022.pdf> Amends the proposal deadline to March 25, 2022, and restricts the number of personnel for participation in presentations.

6. <https://governor.guam.gov/wp-content/uploads/2022/06/GOV-RFP-2022-01-RFP-Amendment-3-with-Cover-Sheet-5272022.pdf> Amends the proposal submission deadline to June 10, 2022, and modifies the offer presentation deadline prospective dates.

7. Notwithstanding the protests herein, no notice of any automatic stay is identified on the website. No notice of any lift of stay is identified on the website. No other information than in the aforementioned paragraphs are posted.

#### **(d) Ruling Requested**

DMR respectfully requests that the Office of Public Accountability Order the following:

1. Public Auditor expedited determination of disqualification and/or recusal due to personal family relationship to Matthew C. Santos.

2. An expedited ruling voiding the Notice of Determination to Proceed pursuant to 5 G.C.A. §5425(g)(1).

3. An expedited order to stay the procurement pending resolution of this appeal pursuant to 5 G.C.A. § 5425(g) based upon the unauthorized Notice of Determination to Proceed set forth in Exhibit.

4. An order sustaining the Protest and directing the OOG to respond to questions in order to ensure the integrity of the procurement process, to protect fair competition in this RFP, and to restrict the conduct of government from engaging in unfair practices to the prejudice of all prospective offerors.

5. An order sustaining the Protest and directing the OOG to comply with good faith requirement for entry into a contract only for the term permitted by allotted funding subject to 5 G.C.A. § 22401(a)(1), (2) and (3), and a factual finding that entry into a multi-year contract without

any reasonable and significant identification of funding is an unreasonable condition imposed by the RFP in contravention of applicable federal law.

6. An order requiring the OOG to comply with posting requirements imposed by 5 G.C.A. § 5220.

7. An order requiring the OOG to comply with the record maintenance imposed by 5 G.C.A. § 5249.


**(e) Declaration Re Court Action and Related Procurement Appeal**

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

RESPECTFULLY SUBMITTED on this 8th day of June, 2022.

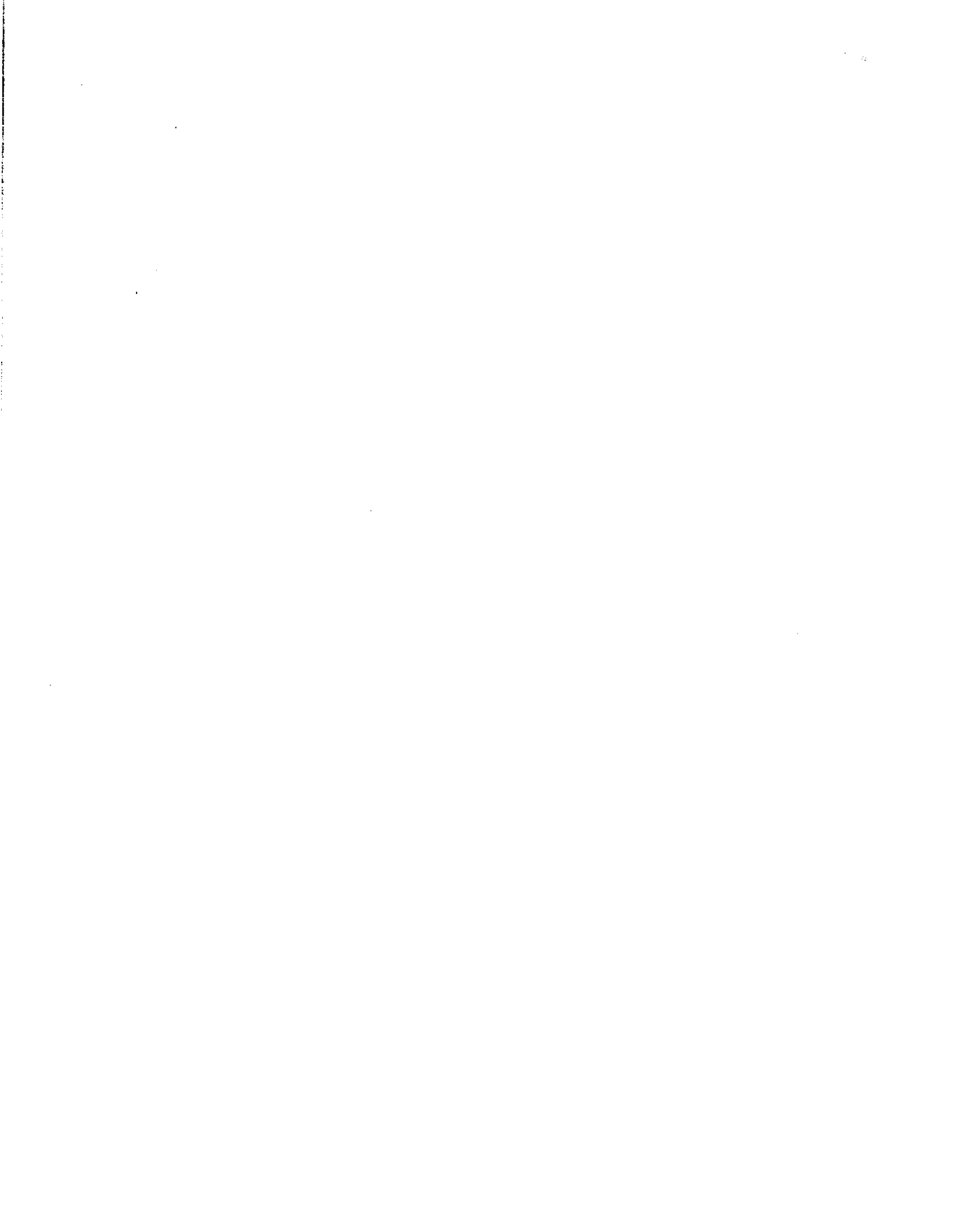
**LAW OFFICE OF JACQUELINE TAITANO  
TERLAJE, P.C.**

By:



\_\_\_\_\_  
**JACQUELINE TAITANO TERLAJE**

Attorney for Appellant *Data Management Resources, LLC*





LOURDES A. LEON GUERRERO  
GOVERNOR



JOSHUA F. TENORIO  
LT. GOVERNOR

UFISINAN I MAGA'HÅGAN GUÅHAN  
OFFICE OF THE GOVERNOR OF GUAM

**Procurement of Professional Services for the government of Guam Licensing and  
Permitting System**

**Request for Proposal: RFP-Office of the Governor-  
2022-001**

ISSUED BY:	Office of the Governor 513 West Marine Corps Drive Ricardo J. Bordallo Governor's Complex Hagåtña, Guam 96910
PROPOSAL NO:	RFP-Office of the Governor-2022-001
ISSUE DATE:	February 7, 2022
PROPOSAL SUBMISSION DEADLINE:	March 25, 2022, 5:00 P.M. Chamorro Standard Time

Office of the Governor  
513 West Marine Corps Drive  
Ricardo J. Bordallo Governor's Complex  
Hagåtña, Guam 96910

Office of the Governor Division:

Guam State Clearinghouse

TABLE OF CONTENTS OF REQUEST FOR PROPOSALS: RFP-OFFICE  
OF THE GOVERNOR-2022-001

- Section I.** Instructions to Offerors
- Section II.** General Terms and Conditions
- Section III.** Scope of Services
- Section IV.** Declaration Disclosing Ownership and Commissions (AG Form 002)
- Section V.** Declaration re: Non-Collusion (AG Form 003)
- Section VI.** Declaration re: No Gratuities or Kickbacks (AG Form 004)
- Section VII.** Declaration re: Ethical Standards (AG Form 005)
- Section VIII.** Declaration re: Compliance with U.S. DOL Wage Determination (AG Form 006)
- Section IX.** Declaration re: Contingent Fees (AG Form 007)
- Section X.** U.S. Department of Labor Wage and Benefit Determination (SCA)
- Section XI.** Subcontractor Utilization Form
- Section XII.** Conflict-of-Interest Disclosure Form
- Section XIII.** Conflict-of-Interest Guidelines
- Section XIV.** Certification of Non-Employment of Convicted Sexual Offenders
- Section XV.** Certification Regarding Lobbying, Form SF-LLL
- Section XVI.** OTECH-POL2021-002, IT System Development Requirements & Security Assessment Standards policy
- Section XVII.** Grant Terms and Conditions

## **Section I. INSTRUCTIONS TO OFFERORS**

### **TABLE OF CONTENTS OF INSTRUCTIONS TO OFFERORS**

These Instructions to Offerors contain the following lettered paragraphs:

- A.** Purpose
- B.** Type of Contract to be Offered and Term
- C.** Installment Payments
- D.** Request for Proposals Package and Forms
- E.** Submission of Proposals and Due Date
- F.** Pre-Proposal Conference/Site Visit
- G.** No Pre-Proposal Discussions with Offerors
- H.** Questions/Communications with Offerors Prior to Proposal Submission and Single Point of Contact
- I.** Other Communications
- J.** Offeror Presentations with Product Demonstration
- K.** Proposal Format and Content
- L.** Plan for Performing the Services
- M.** Ability, Qualifications, Experience, and Quality of Personnel, IT Systems, Equipment, and Facilities
- N.** Availability and Capacity of Offeror to Perform
- O.** Offeror's Record of Performance on Similar Projects
- P.** Offeror's General Experience and General Past Performance
- Q.** Age and Size of Offeror's Business
- R.** Quality of Offerors Product Demonstration
- S.** Evaluation Factors for Proposals
- T.** Request for Non-Disclosure of Confidential Data
- U.** Multiple, Alternate, or Late Proposals
- V.** All or None Proposals
- W.** Amendments to Request for Proposals
- X.** Price Proposals
- Y.** Cost or Pricing Data and Certification of Cost or Pricing Data [must be used if RFP is more than \$100,000]
- Z.** Status of Funding and Compliance with Funding Terms and Conditions
- AA.** Wage and Benefit Requirements
- BB.** Subcontractors
- CC.** Conflicts of Interest
- DD.** Disclosure of Major Shareholders
- EE.** Project Manager

## A. PURPOSE

The Office of the Governor is issuing this Request for Proposals ("RFP") because it is seeking an experienced and qualified Offeror to provide professional Information Technology services ("Services") for the government of Guam Licensing and Permitting System project ("Project"). The issuance of this RFP in no way constitutes a commitment by the Office of the Governor to award a contract.

The purpose of this RFP is to solicit proposals from a qualified professional entity, including off-island entities, to implement a new licensing and permitting system ("System") to the government of Guam. The intent is to procure a configurable, scalable, system that can meet the current and future needs of the government of Guam.

The government of Guam intends to use an existing system that is available and proven to operate effectively over time. This System should be provided by a Vendor who has demonstrated long-term viability as a company and a long-term commitment to customers through regular product enhancements and on-going support.

The government of Guam understands that even the most comprehensive and sophisticated solutions will require some configuration to meet the operational and regulatory requirements that are unique to the government of Guam. Thus, the government seeks to procure professional services from a vendor that will provide a proven, effective, and carefully structured approach to implementation of the chosen system. In this context, implementation refers to all efforts required to provide a complete and functioning system and to prepare the government of Guam to use it effectively. This includes technology and implementation planning, detailed design, interfaces, software integration, designing minimal software modifications, testing, training, data conversion, end user and technical documentation, project management, implementation change management, and post-implementation support as described in the Scope of Services.

## B. TYPE OF CONTRACT TO BE OFFERED AND TERM

The estimated time for performance of the implementation of the system and services outlined in the Scope of Services in the RFP is approximately twelve (12) months ("Implementation Period"), with a maintenance and operation period of approximately four (4) years ("Maintenance and Operation Period"), constituting an Initial Term of five (5) years, with possible renewal or extension periods of up to an additional total of five (5) years. Please note that this is an estimated implementation time frame, and that all Offerors are expected to submit a Proposed Project Schedule for the implementation of the System. Any contract that results from this solicitation will be a multi-year professional services contract for the implementation, maintenance, and operation of the new System.

**1. Initial Term.** The initial term of the contract shall be for five (5) years. The initial term ("the Initial Term") shall consist of the Implementation Period and the Maintenance and Operation Period. The date on which the Governor signs the contract will be the effective date of the contract. Services shall begin upon the date that the Office of the Governor issues a written Notice to Proceed ("NTP") to the awarded contractor. After the Governor has approved the contract by executing it, the Office of the Governor will issue the NTP to notify the awarded contractor that Services may begin and that the Initial Term has commenced.

**2. Renewal Maintenance and Operation Terms.** At the sole option of the Office of the Governor and upon satisfactory performance by the awarded contractor, the contract may be renewed or extended for any number of time period(s) determined to be in the best interests of the government of Guam, for a total of up to five (5) additional years (each renewal being a "Renewal Term") for the purpose of continued maintenance, support, upgrades and/or operation of the installed System. Any renewal of the contract for continued services will not be subject to negotiation and shall be on the same terms and conditions and pricing as in effect under the existing contract.

**3. No Cost Extension Terms.** Should the awarded contractor require additional time to complete any contract/Project objectives, for good cause, and at the sole option of the government of Guam, the Initial Term of the resulting contract may be extended for one No Cost Extension Term of up to six (6) months with no additional obligation of any funds by the government of Guam and no additional obligation of funds.

All renewals, extensions, Renewal Terms, or No Cost Extension Terms are subject to the availability of funds. In no case shall any extension or renewal extend the total term of the contract beyond ten (10) years. Unless cancelled for lack of funds, terminated, renewed, or extended prior to expiration, the contract shall expire at the end of the Initial term or at the end of any subsequent Renewal Term, or any No Cost Extension term exercised by the government of Guam.

#### 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. REQUEST FOR PROPOSALS PACKAGE AND FORMS

The Request for Proposals package and forms will be available on the Office of the Governor's website at the web address below under the tab labeled "Requests for Proposals" until March 25, 2022. The Office of the Governor's web address is <https://governor.guam.gov>. Hard copies of the Request for Proposals package will be available at 513 West Marine Corps Drive, Ricardo J. Bordallo Governor's Complex, Hagåtña, Guam 96910. In the event a hard copy is requested, the Office of the Governor will charge a non-refundable fee of \$25.00 per copy of the RFP. All payments shall be made in advance of receiving the documents, and payments may be made by cash, certified check, or money order. Certified checks and money orders shall be made payable to the Treasurer of Guam. All required forms attached to this RFP must be completed, executed by the authorized representative of the Offeror, and included with the Offeror's Proposal.

#### E. SUBMISSION OF PROPOSALS AND DUE DATE

Sealed Proposals shall be submitted including one (1) fully executed original and five (5) copies. Faxed or E-mailed Proposals will be accepted. The Office of the Governor will accept electronic submission of Proposals by e-mail to the Single Point of Contact, Matthew Santos,

at procurement@guam.gov. Proposals electronically submitted to any other person through any other method of electronic transmission will not be accepted.

Proposals and Proposal Documents may be signed by the Offeror electronically, and in any number of counterparts, each of which shall be deemed an original, but all of which together shall be submitted with the Proposal and shall constitute the Proposal. Failure to submit the required forms in the number or format required may be cause for rejection of Proposals due to non-responsiveness. See the Proposal Format and Content provisions for full instructions and minimum requirements for the content of the Proposal.

By submitting a Proposal in response to this solicitation, the Offeror agrees to accept and comply with the terms and conditions included in the attached sample contract, the terms and conditions incorporated in this RFP, and to be bound by all applicable federal law, the terms and conditions of any funding source, Guam's Procurement Law, and the Guam Procurement Rules and Regulations

The Offeror further agrees that the Proposal offer shall remain open and firm, and may not be withdrawn for one-hundred eighty (180) 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 not later than March 25, 2022 at 4:00 p.m., Chamorro Standard Time (C.S.T.). Proposals received after the closing time for receipt will not be considered. Office hours for receipt of Proposal are Monday through Friday (excluding government of Guam Holidays), 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m. Proposals must be e-mailed to the Single Point of Contact, Matthew Santos, at procurement@guam.gov., or hard copy Proposals must be hand-delivered, delivered by mail, or delivered by other courier service to:

Mailing Address:	Office of the Governor 513 West Marine Corps Drive, Ricardo J. Bordallo Governor's Complex, Hagåtña, Guam 96910
Physical Address:	Office of the Governor 513 West Marine Corps Drive, Ricardo J. Bordallo Governor's Complex, 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 declarations and certification forms, in the form provided with this RFP. Such declarations 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 may result in rejection of the Proposal.

#### F. PRE-PROPOSAL CONFERENCE/SITE VISIT

The Office of the Governor may, at its discretion, conduct a pre-Proposal conference in accordance with 2 GAR Div. 4 § 3114(g). In the event a pre-Proposal conference is scheduled, the Office of the Governor will announce the time and place of the conference to all prospective offerors that have registered their contact information with the agency.

#### 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.

#### H. QUESTIONS/COMMUNICATIONS OF 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 February 25, 2022, 5:00 p.m., C.S.T. to the following Single Point of Contact for the Office of the Governor:

The Office of the Governor  
Matthew Santos, at [procurement@guam.gov](mailto:procurement@guam.gov)  
513 West Marine Corps Drive, Ricardo J. Bordallo Governor's Complex  
Hagåtña, Guam 96910  
Email: [procurement@guam.gov](mailto:procurement@guam.gov)

All written communications or questions must reference RFP-Office of the Governor-2022-001 in the subject or reference line. Written answers to all timely and properly submitted written questions shall be provided within a reasonable time prior to the submission due date for Proposals. The Office of the Governor will notify all Offerors of any substantive modification or clarification provided in response to any timely and properly submitted written questions. The Office of the Governor 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 Office of the Governor 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 Office of the Governor at any time prior to the submission date for Proposals, except as permitted by Guam's Procurement Law and Guam's Procurement Rules and Regulations. Any communication 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 Office of the Governor 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 Office of the Governor 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 Office of the Governor 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 2 GARR, Div. 4 § 3114(i) and/or 2 GARR, Div. 4 § 3116. (See also General Terms and Conditions, Clarification/Discussion of Proposals.)

Direct or indirect contact or communication concerning this RFP with any other Office of the Governor employees, other employees or representatives of the government of Guam 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 Guam's Procurement Law and Guam's Procurement Rules and Regulations.

#### **J. OFFEROR PRESENTATIONS WITH PRODUCT DEMONSTRATION**

Offerors will be allowed to make demonstrations of their system that is available to the Evaluation Team, after submission of the Proposals. Key management and technical personnel will be expected to participate in presentations. No more than three (4) personnel shall be allowed to conduct the presentation in two (2) hours or less. The presentation shall demonstrate the Offeror's product's ability to fulfill the requirements described in the RFP's Scope of Services and provide examples of what their product offers.

The offeror will make their demonstrations virtually.

For the virtual presentations the Office of the Governor will use their ZOOM virtual meeting account. The offerors demonstration will be recorded for the procurement record and serve as part of their presentation submission.

No other materials, items, promotional materials, products, or similar items may be submitted, given, or provided to the Office of the Governor or the Office of the Governor Evaluation Team by any Offeror at any time before, during, or after the formal presentations, and at any time prior to contracting. (Please also see the Prohibition of Gratuities, Kickbacks, and Favors in Section II, General Terms and Conditions, Paragraph I of this RFP.)

Offeror Presentations are tentatively scheduled for April 4, 2022. All Offerors who submit a Proposal and register their contact information with the Office of the Governor for this RFP will be notified of the exact date, time, and virtual meeting information to conduct their presentations.

#### **K. PROPOSAL FORMAT AND CONTENT**

Facsimile or E-mail submission of written Proposals will be accepted. If submitting a Proposal by e-mail, the subject line of the e-mail transmission shall contain the Offeror's name and the name of Offeror's authorized representative, along with the following caption:

Page 8 of 96



“Proposal for the Government of Guam Licensing and Permitting System Project, RFP-Office of the Governor-2022-001.”

If submitting a hard copy, 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: “Proposal for the Government of Guam Licensing and Permitting System Project, RFP-Office of the Governor-2022-001”. The envelope shall also be marked with the Offeror’s name and the name of Offeror’s authorized representative.

Office of the Governor
Proposal for the Government of Guam Licensing and Permitting System Project RFP-Office of the Governor-2022-001
Offeror’s Name: Offeror’s Authorized Representative:
Offeror’s Address: Submittal Date: ____/____/____ Submittal Time: _____ a.m. / p.m.
Attention: PROCUREMENT OFFICER

Hard copy 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 Office of the Governor.

All Proposals 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. 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 Office of the Governor. The cover letter should also contain the following:

- Offeror’s identity including federal employer identification number or System of Award Management (“SAM”) number;
- Designation and name, title, and contact information of the Offeror’s representative for matters related to the RFP;
- An acknowledgement that the Offeror has read the RFP and accepts the term, conditions, and instructions in the RFP;
- A statement that the Offeror’s proposal is valid for a minimum of one hundred twenty (120) days from the Proposal submission deadline contained in the RFP; and

- Signature of Offeror's authorized representative.

The Proposal shall include the following:

- A detailed description of their product. This applies to the capabilities, functionality, and security;
- A detailed plan for performance of the Services listed in the Scope of Services;
- A statement of the abilities, qualifications, and experience of all persons who would be assigned to provide the required Services under this RFP;
- A statement of the availability and capacity of the Offeror to perform the Services under this RFP;
- A listing of other contracts under which services similar in scope, size, or discipline were performed;
- A listing of any other contracts under which any services were performed within the last five (5) years; and
- A statement addressing any other factors deemed relevant to the RFP and stated as evaluation factors herein.

All Proposals 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. All costs associated with preparation of a Proposal in response to this RFP shall be solely the Offeror's responsibility. The Office of the Governor 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 Office of the Governor 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 the requested information. Failure to follow the prescribed format or omission of required information may 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.

Price Proposals shall not be submitted simultaneously with the written Proposal, and shall only be submitted when and as requested. Any hard copy Price Proposal shall be submitted in another sealed envelope, separate from the written proposal. The outer envelope shall be marked in bold letters, "Price Proposal for the Government of Guam Licensing and Permitting System Project, Request for Proposal: RFP-Office of the Governor-2022-001." The envelope shall also be marked with the Offeror's name and the name of Offeror's authorized representative. See Paragraph X, Price Proposals, for full instructions.

Cost or Pricing Data will be required from any Offeror selected to conduct contract negotiations, and must be submitted prior to the negotiations. A Certification of the Cost or Pricing Data will also be required from the Offeror with whom a successful contract is negotiated. The Cost or Pricing Data and/or Certification of the Cost or Pricing Data shall be separately requested by Office of the Governor when required. Neither the Cost or Pricing Data nor a Certification of the Cost or Pricing Data shall be submitted with the Offeror's Proposal.

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

- Cover letter referencing RFP-Office of the Governor-2022-001 which lists the contents of the Proposal and all required information about the Offeror, as set forth in this Paragraph above
- Offeror's Proposal addressing all informational items and factors required in the RFP
- Proof of any required licensure to perform the Services on Guam (unless not required until a later time pursuant to the terms of this RFP)
- Declaration Disclosing Ownership and Commissions (AG Form 002) (attached)
- Declaration re: Non-Collusion (AG Form 003) (attached)
- Declaration re: No Gratuities or Kickbacks (AG Form 004) (attached)
- Declaration re: Ethical Standards (AG Form 005) (attached)
- Declaration re: Compliance with U.S. DOL Wage Determination (AG Form 006) (attached)
- Declaration re: Contingent Fees (AG Form 007) (attached)
- Current U.S. Department of Labor Wage and Benefit Determination (SCA) (attached)
- Subcontractor Utilization Form (attached)
- Conflict-of-Interest Disclosure Form (attached)
- Certification of Non-Employment of Convicted Sexual Offenders (attached)
- Certification Regarding Lobbying, Form SF-LLL

The failure to include any items of information required by this Paragraph, or any of these documents and forms with the Proposal may 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.

#### L. PLAN FOR PERFORMING THE REQUIRED 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 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 government of Guam the most advantage. The proposed plan shall include a Proposed Project Schedule.

The Proposal should describe clearly and fully the proposed product and its features and components, as well as the proposed approach to project execution and management. The use of standard product documentation, including user manuals and technical maintenance manuals, is encouraged. Demonstration software and sample help files may be included.

System or platform capabilities should be described with specific, and illustrated with examples and/or cross-referenced to user and technical manuals where appropriate.

Implementation Approach:

Offerors should describe their recommended approach to successfully implementing the new government of Guam Licensing and Permitting System based on their experience with other similar projects and any unique aspects of the government of Guam's situation. This description should address configuration management, change orders, software quality assurance, and resources to respond to unanticipated conditions without delaying implementation beyond the proposed implementation date.

Process Improvements / Adjustments:

In implementing the government of Guam Licensing and Permitting System, the government of Guam is willing to consider modifying its own internal processes to take advantage of system features it considers valuable.

Because it is very important for the government of Guam to understand how flexible the system will be in allowing customization to fit the government of Guam's best practices and needs, vendors should describe and demonstrate their proposed solution's ability to be flexible and be customized to fit established processes and reporting needs. Vendors should also describe any available capabilities to assist the government of Guam to improve its internal procedures to take advantage of operational features of the proposed software product.

**M. ABILITY, QUALIFICATIONS, EXPERIENCE, AND QUALITY OF PERSONNEL, IT SYSTEMS, 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 two (2) 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.
- Unique qualifications of key personnel or team members.

- 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.

#### N. 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.

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.

#### O. OFFEROR'S RECORD OF PERFORMANCE ON SIMILAR PROJECTS

As part of the written Proposal, the Offeror is required to provide proof that it has delivered a quality work product on similar projects. The Offeror shall provide its past performance record on similar projects and that are intended to automate and streamline Business License and Permit projects.

The 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 Proposal shall include:

- A list of projects similar in scope and with emphasis on experience in systems for Business License and Permit centers.
- 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.

#### P. OFFEROR'S GENERAL EXPERIENCE AND PAST PERFORMANCE

As part of the written Proposal, the Offeror is required to provide proof that it has delivered a quality work product in a majority of its areas of work and projects. The Office of the Governor is interested in Offeror's overall experience on Guam, other U.S. Territories, and the fifty (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.

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 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 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.

**Q. AGE AND SIZE OF OFFEROR'S BUSINESS**

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

**R. QUALITY OF OFFEROR'S PRODUCT DEMONSTRATION**

As part of the Proposal, the Offeror shall present a demonstration of their product featuring the functionality that is applicable and relevant to government of Guam Licensing and Permitting. The Offeror will be allowed to also present a configured version of their product that demonstrates their products ability to be customized.

The Offeror shall provide their existing cyber security and support standards for their systems.

If the system is SaaS-based, PaaS-based, and/or operates in a cloud environment, the Offeror shall provide detail all layers of security, and any federal security compliance certifications consistent with FedRAMP.

**S. 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 70 points may be rejected from consideration for the award of the contract. The total of 100 possible points is broken down as follows:

EVALUATION FACTORS	SCORE
<b>Quality of Proposal Content and Plan for Performing the Required Services:</b> 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	<b>20 Points</b>

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 government's goals for the Services. The Plan shall include the Proposed Project Schedule.	
<b>Ability, Qualifications, Experience, and Quality of Personnel, Equipment, and Facilities:</b> 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.	<b>20 Points</b>
<b>Availability and Capacity of Offeror:</b> 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 government of Guam. 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.	<b>15 Points</b>
<b>Offeror's Record of Past Performance on Similar Projects:</b> 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.	<b>20 Points</b>
<b>Offeror's General Experience and Past Performance:</b> 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.	<b>5 Points</b>
<b>Age and Size of Offeror's Business:</b> The age of the offeror's business and average number of employees over a previous period of time, as specified in Paragraph R.	<b>5 Points</b>
<b>Quality of Offeror's Product and Live Demonstration</b> The quality of the Offeror's product and demonstration of their system product featuring the functionality that is applicable and relevant to government Licensing and Permitting. The Offeror's existing cyber security and support standards for their systems. If the system is SaaS-based, PaaS-based, and/or operates in a cloud environment, the Offeror's layers of security, and any federal security compliance certifications consistent with FedRAMP.	<b>15 Points</b>
<b>Total Points</b>	<b>100 Points</b>



#### T. 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. However, 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 Office of the Governor will examine the request. The Office of the Governor may review the material declared to be confidential to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. The Office of the Governor 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 Office of the Governor may disclose those portions of the Proposal for which a non-disclosure request was not granted.

#### U. 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.

#### V. ALL OR NONE PROPOSALS

Proposals may limit acceptance to the entire Proposal offering. Proposals that violate this provision shall be deemed to be nonresponsive. If a Proposal is properly limited, the Office of the Governor shall not reject part of such Proposal and award on the remainder.

#### W. AMENDMENTS TO REQUEST FOR PROPOSALS

The Office of the Governor reserves the right to amend this RFP at any time, as provided under Guam's Procurement Law and Guam's Procurement Rules and 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. Amendments shall be distributed to allow prospective Offerors time to consider the amendments in

preparing their Proposals or other documents. Office of the Governor may extend any due date if any amendment makes compliance with the original due date impractical.

## X. PRICE PROPOSALS

The Price Proposal shall not be submitted with the Offeror's Proposal. It shall only be submitted when and if requested by the Office of the Governor. After evaluation of all Proposals, only any Offeror selected for negotiations will be required to submit a Price Proposal.

When submitting a hard copy Price Proposal, it must be placed in a sealed envelope and marked on the outside of the envelope in bold letters: "Price Proposal for the Government of Guam Licensing and Permitting System Project. RFP-Office of the Governor-2022-001." If submitting an e-mailed Price Proposal, the subject line of the e-mail shall state: "Price Proposal for the Government of Guam Licensing and Permitting System Project. RFP-Office of the Governor-2022-001."

The Price Proposal shall include a proposed Project budget addressing: the initial phases of the contract (including implementation, testing, and go-live phases of the Project) and the entire time of performance of the contract (including the maintenance and operation phase of the Project).

The Price Proposal, when and if requested, shall provide a cost summary and a cost schedule of all expenses, including the breakdown of its pricing for system and software costs for the first five years, and professional services costs by proposed work plan phases. All costs must be itemized and included in the Offeror's Price Proposal. The Offeror's cost quotations must include detailed pricing and all itemized costs associated to fully implement the successful operation of the new System (e.g., software cost, license fees, system install/setup, modifications, data input or import, training, interfaces, annual maintenance/support, documentation, hardware, add-on third-party software, discounts, and any other anticipated costs). Please provide a single price quote for the entire system and a separate quote for each separate module.

The cost summary and cost schedule should include any costs for implementation, including training and inputting any required data from the current system, and shall be exclusive of any/all applicable taxes. Also include the annual maintenance and license fee along with standard indexing associated with the fee. Indicate the length of time over which your price quotes apply. If enhancements are required to accommodate a specific task, please identify the cost of such enhancement. All anticipated costs to the government of Guam, including all costs associated with the software, any hardware, implementation services, and ongoing maintenance of the proposed System/PaaS/SaaS/On-premise hosted solution shall be identified and itemized. Profit must be identified and itemized as a separate element of the price in the cost schedule pursuant to 2 CFR § 200.324.

A unit price shall be given for each type of service, and such unit prices shall be the same throughout the solicitation and resulting contract. All deliverables will be payable upon completion, delivery, approval, and acceptance by the government of Guam. Monthly or other regularly scheduled deliverables should be itemized and priced by task. Regularly recurring monthly tasks, e.g., offsite data storage, month end batch reconciliation, flat rate

hardware maintenance, 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.

The Offeror must provide the annual maintenance fees associated with the new system and shall entitle the government of Guam to any upgrades released during the duration of any awarded contract without additional price increases. In the event a product or service is provided at no additional cost, the item should be noted as "no charge" or words to that effect. If certain future software upgrades are not provided free of charge, include the typical cost of the complete upgrade, including the cost of all modules and any migration, training, and other fees associated with the upgrade.

In addition to the cost schedule, describe Offeror's approach to establishing a payment schedule and typical payment terms applied during each phase of the Project, and describe the pricing model used for the estimated cost provided in the Price Proposal. Discuss the typical payment terms and the method of determining future cost adjustments on a year over year basis (e.g., general price increases, changes in user counts).

Any price adjustments must be agreed to by the Parties and shall be in accordance with the Price Proposal or any cost or pricing data submitted. Price adjustments in the Price Proposal may be considered as a result of documented changes in pricing of materials or labor.

Pursuant to 2 CFR § 200.324(b), if the Offeror is selected for negotiations, Office of the Governor 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." **Offeror's Price Proposal must include profit as a separate line item in its proposed budget and pricing.**

#### Y. COST OR PRICING DATA AND CERTIFICATION OF COST OR PRICING DATA

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 Office of the Governor prior to beginning price negotiations at any reasonable time and in any reasonable manner requested by the Office of the Governor. The Cost or Pricing Data documentation is separate from Offeror's Price Proposal; however, both the Price Proposal and the Cost or Pricing Data shall be submitted together, and labeled respectively. 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, a Certification of the Cost or Pricing Data 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 to the successful Offeror by Office of the Governor 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 or pricing data submitted are accurate, complete, and current.

Cost or Pricing Data shall be submitted with the Offeror's Price Proposal. Any Certification of Cost or Pricing Data shall only be submitted when and as requested by Office of the Governor.

#### **Z. STATUS OF FUNDING AND COMPLIANCE WITH FUNDING TERMS AND CONDITIONS**

Funds are available for this solicitation. These funds are currently available from the U.S. Department of Interior Grant Award No. D20AP00048 until the end of FY 2022. The Office of the Governor's obligation under any proposed contract is contingent upon the availability of funds from which payment for contract purposes can be made. (See also Section II, General Terms and Conditions, Paragraph E for Multi-term Contracts.) The issuance of this solicitation does not compel the award of any contract.

All Offerors and Subcontractors are required to comply with the terms and conditions of the government's applicable funding requirements under the Federal Award's Terms and Conditions attached hereto at Section XVII.

#### **AA. WAGE AND BENEFIT REQUIREMENTS**

Whenever the government of Guam enters into a procured contractual arrangement with an Offeror for the provision of a service to the government of Guam, and the Offeror employs a person(s) whose purpose, in whole or in part, is the direct delivery of the service contracted by the government of Guam, 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 for such labor as is employed in the direct delivery of the 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 the Offeror by the government of Guam shall be used to determine the wages which shall be paid to employees pursuant to Guam's 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's Procurement Law, that the Wage Determination promulgated by the U.S. Department of Labor 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. Department of Labor 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 may result in rejection of the Proposal. Offeror must also attach the most current applicable Wage Determination issued by the U.S. Department of Labor for Guam and the Marianas Islands, located at Section X of this RFP, to the Proposal. Failure to submit this document with the Proposal may result in rejection of the Proposal.

**BB. SUBCONTRACTORS**

**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 Office of the Governor the names of all known persons or entities (including those who are to furnish materials or equipment fabricated to a special design) 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 Office of the Governor may conduct discussions with the Offeror: (1) stating whether The Office of the Governor has reasonable objection to any such proposed person or entity; or (2) stating whether The Office of the Governor 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 may be disqualified. If this occurs The Office of the Governor will select the next highest ranked qualifying Offeror for negotiations.

b. The Office of the Governor, the government of Guam, and the U.S. Department of Interior reserve 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 Office of the Governor, the government of Guam, or the U.S. Department of Interior 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 Office of the Governor.

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 Office of the Governor, or unless the Office of the Governor requires such substitution. Offeror must notify the Office of the Governor 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.

d. The Offeror shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within ten (10) working days of award of any subcontract in excess of \$10,000 at any tier of services under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

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 government of Guam. Each subcontract agreement shall preserve and protect the rights of the government of Guam 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 this Paragraph.

If Offeror enters into any subcontracts for this procurement, Offeror shall also take all necessary affirmative steps, consistent with 2 CFR § 200.321, including: (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists; (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

#### CC. CONFLICTS OF INTEREST

This is a federally funded project and pursuant to 2 CFR §§ 200.318 (c)(2) and 200.319(b), 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, or requests for proposals related to this solicitation must be excluded from competing for such procurements.

Therefore, all Offerors shall follow the Conflict-of-Interest ("COI") Guidelines attached to this RFP when submitting a Proposal in response to this federally funded Office of the Governor solicitation or procurement, or when entering any federally funded contract with Office of the Governor. 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 Subconsultants and Subcontractors at any tier of a 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 this RFP or any awarded Contract. The Office of the Governor will follow and apply these COI Guidelines when conducting procurements. If a conflict of interest or potential conflict of interest is determined to exist, Office of the Governor will attempt to determine whether the conflict of interest can be avoided or mitigated. Before determining

Page 22 of 96

to withhold an award based on Conflict-of-Interest considerations, Office of the Governor shall notify the Offeror, provide the reasons therefor, and allow the Offeror a reasonable opportunity to respond.

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

#### **DD. DISCLOSURE OF MAJOR SHAREHOLDERS**

As a condition of submitting a Proposal, any partnership, sole proprietorship, business entity, or corporation doing business with the government shall submit a declaration that lists the name and address of any person/entity who has held more than ten percent (10%) of the outstanding interest or shares in said partnership, sole proprietorship or corporation at any time during the twelve (12) month period immediately preceding publication of the solicitation on the Declaration Disclosing Ownership, Influence, Commissions and Conflicts of Interest attached to this RFP at Section IV. This Declaration shall contain the number of shares or the percentage of all assets of such partnership, sole proprietorship or corporation, which have been held by each such person/entity during the preceding twelve (12) month period, and other ownership disclosures in accordance with Public Law 36-13. In addition, the Declaration shall contain the name and address of any person/entity 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, and shall list any required conflicts of interest. Any Offeror selected for negotiations must keep this Declaration current through the date that a Notice of Award is issued in this procurement, and throughout any awarded contract, if the Offeror is awarded the contract. A Proposal from any Offeror listing a person with a potential conflict of interest on the Declaration will be rejected. The Declaration shall be open and available to the public inspection and copying. This Declaration Disclosing Ownership, Influence, Commissions and Conflicts of Interest attached to this RFP must be completed and returned with the Offeror's Proposal. Failure to submit the Declaration with the Offeror's Proposal shall be deemed nonresponsive and cause for rejection of the Proposal upon opening.

#### **EE. PROJECT MANAGER**

1. The selected Contractor will work under the direction of the Office of the Governor and the Office of Technology. The Office of Technology is the designated Project Manager pursuant to 5 GCA § 12.107. The Office of the Governor and the Project Manager reserve the right to designate and delegate Project Management duties and assign any other consultants or agents to act on the Office of the Governor's behalf in writing, as permitted by statute and the funding source for this RFP. The Project Manager and designees will have authority to act on behalf of the Office of the Governor to the extent provided in the RFP, the awarded contract or any Amendments thereto, or as otherwise may be provided

for in a written notice signed by the Procurement Officer or the Chief Technology Officer. The Project Manager shall not perform any duties or responsibilities of an engineer, professional engineer, engineer intern, or architect as defined in 22 GCA § 32101 et seq. unless lawfully authorized to do so and specifically authorized to do so by Office of the Governor or the Project Manager. The Project Manager may perform its duties and make recommendations as described in the contract in consultation with any other consultants or agents that Office of the Governor or the Project Manager may designate.

2. The Project Manager or the Office of the Governor's designees may visit the worksite at any times that the Office of the Governor or the Project Manager may deem appropriate to become familiar with the progress and quality of the Services completed, to determine if the Services is being performed in accordance with the contract.

3. Communications Facilitating Administration of the Services. Except as otherwise provided in the contract or when direct communications have been specially authorized, the Office of the Governor, the Project Manager, and any awarded contractor shall endeavor to communicate with each other through the Project Manager about matters arising out of or relating to the Services. Communications by and with subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Office of the Governor or the Project Manager.

4. Based on the Project Manager's evaluations of the awarded contractor's applications for payment, the Project Manager and authorized consultants/designees will review and make recommendations to the Office of the Governor regarding the amounts due the awarded contractor.

5. The Project Manager and the Office of the Governor have authority to reject Services or Equipment that does not conform to the contract. Whenever the Project Manager or other consultants, or agents as the Office of the Governor may designate, considers it necessary or advisable, the Project Manager will have authority to require inspection or testing of the equipment, systems, materials, products or any of the Services, whether or not such services have been completed, or equipment or systems have been fabricated, installed or completed. However, neither this authority of the Project Manager nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Project Manager to the awarded contractor, subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Services.

6. The Project Manager, in conjunction with the Office of the Governor or any consultants or agents as may be required, may conduct inspections to determine: payment; the date or dates of Substantial Completion and the date of Final Completion of the system or Project; make recommendations to the Office of the Governor regarding the issuance of any required Certificates of Substantial Completion; receive and forward to the Office of the Governor, for the Office of the Governor's review and records, written warranties and related documents required by the contract and assembled by the awarded contractor.

7. Notwithstanding any other provision of the RFP or the contract, the Office of the Governor or the Project Manager, by and through its Project Manager and/or designees, may require the awarded contractor to cease work if, in the opinion of the Office of the Governor,



the Project Manager, or the Project Manager's designees, continuing the Services would be a threat to public health, safety, or governmental security.

8. The Project Manager shall serve as the liaison between the contractor and the Office of the Governor as necessary or designated by the Office of the Governor.

## **Section II. GENERAL TERMS AND CONDITIONS**

### **TABLE OF CONTENTS OF GENERAL TERMS AND CONDITIONS**

These General Terms and Conditions contain the following lettered paragraphs:

- A.** Authority
- B.** Special RFP Terms for Fixed-Price with Price Adjustment Contract
- C.** Method of Award
- D.** Cancellation and Rejection
- E.** Taxes
- F.** Withholding Assessment Fee
- G.** Permits, Licensing, and Compliance with Laws
- H.** Mandatory Prohibitions
- I.** Mandatory Warranties
- J.** Disclosure of Major Shareholders
- K.** Equal Employment Opportunity
- L.** Compliance with Americans with Disabilities Act (ADA)
- M.** Proposals
- N.** Independent Price Determination
- O.** Acceptance of Solicitation Terms and Applicable Laws
- P.** Modification and Withdrawal of Proposals
- Q.** Clarification/Discussion of Proposals
- R.** Evaluation Criteria for Selection
- S.** Responsibility of Offerors
- T.** Selection of Best-Qualified Offeror
- U.** Negotiation and Award of Contract
- V.** Access to Records, Inspection, and Audit Review
- W.** Local Procurement Policy
- X.** Relations with Other Government Agencies
- Y.** Obligations of the Offeror
- Z.** Procurement of Recovered Materials
- AA.** Guam and Federal Debarment
- BB.** Certification Regarding Lobbying

#### **A. AUTHORITY**

This Request for Proposal ("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 General Services Agency of the government of Guam). 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. SPECIAL RFP TERMS FOR FIXED-PRICE WITH PRICE ADJUSTMENT CONTRACT OR ANY CONTRACT OTHER THAN FIRM FIXED-PRICE CONTRACT**

Whenever a Fixed-Price Contract with Price Adjustment is offered, "[t]he formula or other basis by which the adjustment in contract price can be made shall be specified in the solicitation and the resulting contract." 2 GARR, Div. 4 § 3119(d)(3)(A).

#### **D. CANCELLATION AND REJECTION**

The Office of the Governor 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 Office of the Governor determines such to be in the best interest of the government of Guam and/or the Office of the Governor of Guam.

#### **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**

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 government of Guam contracts for any professional services provided by a non-resident person or company residing outside of Guam, as a cost of doing business with the government of Guam, in accordance with 11 GCA § 71114 (P.L. 33-166).

#### 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 the government of Guam. Specific information on licenses required by the government of Guam may be obtained from the Director of Revenue and Taxation. The Offeror shall provide a copy of its current, appropriate business licenses or a statement of exemption pursuant to Title 11 of the Guam Code Annotated, §§ 70126 and 70130, and any required Certificate of Authority (“COA”) issued by the Director of Revenue and Taxation, Guam Board of Registration for Professional Engineers, Architects & Land Surveyors (PEALS), or other applicable regulating agency or board, pursuant to applicable Guam laws, including, but not limited to: 22 GCA § 15307; 22 GCA § 15102; 18 GCA § 7102; and 11 GCA § 106213, must accompany the Offeror’s Proposal when and if the Offeror receives a Notice of Award from the Office of the Governor.

All Offerors agree by submitting this 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.

**Prohibition of Employment of Sex Offenders.** No person convicted of a sex offense under the provisions of Chapter 25 of Title 9 Guam Code Annotated, or an offense as defined in Article 2 of Chapter 28, Title 9 GCA 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 the government of Guam, shall work for his employer on the property of the government of Guam other than a public highway.

**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.

**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 Article 11 of the government of Guam Procurement Regulations.

## I. MANDATORY WARRANTIES

**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 §11-206 (Gratuities and Kickbacks) of the Guam Procurement Regulations. Offeror further agrees to execute and file a Non-Gratuity Declaration before final payment under the contract is made by the government.

**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 Chapter 25 of Title 9 Guam Code Annotated or of an offense defined in Article 2 of Chapter 28 of Title 9 Guam Code Annotated, 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 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 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 Chief of Staff of the Office of the Governor of Guam 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 Office of the Governor will give notice to Offeror to take corrective action. Offeror shall take corrective action within twenty-four (24) hours of

notice from the Office of the Governor, and Offeror shall notify the Office of the Governor when action has been taken. If Offeror fails to take corrective steps within twenty-four (24) hours of notice from the Office of the Governor, then the Office of the Governor, in its sole discretion, may temporarily suspend this agreement.

**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 Office of the Governor 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.

**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 Article 11 of the government of Guam Procurement Regulations.

#### J. EQUAL EMPLOYMENT OPPORTUNITY (EEO)

By submitting a Proposal, the Offeror and all subcontractors agree to comply with the following policies: Executive Order 11246; 41 CFR pt. 60-1; 29 CFR pt. 1625; 23 U.S.C. § 140, the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d *et seq.*); and related regulations including 49 CFR pts. 21, 25, and 27, and 23 CFR pts. 200, 230, and 633. The Offeror and all subcontractors must also comply with the requirements of the Equal Opportunity Clause provided under 41 CFR § 60-1.4. The EEO requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (e.g., 28 CFR pt. 35, 29 CFR pt. 1630, 29 CFR pts. 1625 to 1627, 41 CFR pt. 60-1, and 49 CFR pt. 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 Offeror shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. If awarded the contract, the Offeror will take affirmative action to ensure that its employees are treated equally during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

#### K. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)

Offerors must meet all applicable ADA regulations and requirements. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*) set forth under 28 CFR pt. 35, and 29 CFR pt. 1630 are incorporated by reference in this RFP.

#### 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 Office of the Governor in whole or in part.

#### M. REVIEW OF PROPOSALS

The Office of the Governor 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 Office of the Governor reserves the right to waive any minor information or irregularity in the Proposals received. The Office of the Governor may award, allow amendments, or reject Proposals in whole or in part as permitted by law. The Office of the Governor is not responsible for any costs incurred by the Offerors. The Office of the Governor 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 constitutes 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 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 Guam's Procurement Law (5 GCA §§ 5001, *et seq.*) and the Guam Procurement Regulations, copies of which are available for inspection at the General Services Agency of Guam.

Guam's 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 Office of the Governor 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 Guam's Procurement Law and Guam's Procurement Rules and 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 Office of the Governor 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 Office of the Governor 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 Guam's Procurement Law and Guam's Procurement Rules and 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. However, 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 Office of the Governor 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 Office of the Governor 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 Office of the Governor must be satisfied that the Offeror is responsible. Offerors shall supply information requested by the Office of the

Page 32 of 96



Governor 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 Office of the Governor 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 the Office of the Governor of Guam; and
7. Whether the Offeror has supplied all necessary information in connection with any inquiry concerning responsibility.

#### T. SELECTION OF BEST-QUALIFIED OFFEROR

Upon the conclusion of the discussion and evaluations procedures as provided under this RFP and Guam's Procurement Law, the Office of the Governor shall notify the selected Offerors of their rankings with the intent to begin negotiating a contract with the highest ranked and best-qualified Offeror first.

#### U. NEGOTIATION AND AWARD OF CONTRACT

The Office of the Governor will negotiate a contract with the best-qualified Offeror for the Services at a compensation determined in writing by the Office of the Governor to be fair and reasonable. The Office of the Governor 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 2 CFR § 200.324(b), if the Offeror is selected for negotiations, the Office of the Governor 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."

- 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 the Office of the Governor 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, the Office of the Governor 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 the Office of the Governor 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 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 Office of the Governor, the U.S. Department of Interior, Office of Insular, Inspectors General, the Comptroller General of the United States, 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 Office of the Governor, the U.S. Department of Interior, Office of Insular Affairs, Inspectors General, the Comptroller General of the United States, and authorized representatives, unless the Offeror is notified in writing by the Office of the Governor, the cognizant agency for audit, the oversight agency for audit, the cognizant agency for indirect costs, or the Office of the Governor 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 Office of the Governor, the U.S. Department of Interior, Office of Insular Affairs, Inspectors General, the Comptroller General of the United States, or any of their authorized representatives to readily identify Offeror's assets, expenses, costs of goods, and use of funds. The Office of the Governor, U.S. Department of Interior, Office of Insular Affairs, Inspectors General, the Comptroller General of the United States, and its 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 Office of the Governor, the U.S. Department of Interior, Office of Insular Affairs, Inspectors General, the Comptroller General of the United States, or any of their 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 the Office of the Governor, the U.S. Department of Interior, Office of Insular Affairs, Inspectors General, the Comptroller General of the United States, or any of their authorized representatives. Such records shall be made available to the Office of the Governor, U.S. Department of Interior, Office of Insular Affairs, Inspectors General, the Comptroller General of the United States, or any of their 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 Office of the Governor, the U.S. Department of Interior, Office of Insular Affairs, Inspectors General, the Comptroller General of the United States, or any of their authorized representatives. Offeror shall ensure the Office of the Governor, the U.S. Department of Interior, Office of Insular Affairs, Inspectors General, the Comptroller General of the United States, or any of their 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 Office of the Governor, U.S. Department of Interior, Office of Insular Affairs, Inspectors General, the Comptroller General of the United States, or any of their authorized representatives. Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by the Office of the Governor, the U.S. Department of Interior, Office of Insular Affairs, Inspectors General, the Comptroller General of the United States, or any of their authorized representatives unless certain exemption criteria are met. If the audit identifies overpricing or overcharges (of any nature) by the Offeror to the Office of the Governor in excess of one-half of one percent (.5%) of the total contract billings, the Offeror shall reimburse the Office of the Governor, the U.S. Department of Interior, Office of Insular Affairs, Inspectors General, the Comptroller General of the United States, or any of their authorized representatives for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, the Office of the Governor, the U.S. Department of Interior, Office of Insular Affairs, Inspectors General, the Comptroller General of the United States, or any of their authorized representatives 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 90 days) from presentation of the findings of the Office of the Governor, the U.S. Department of Interior, Office of Insular Affairs, Inspectors General, the Comptroller General of the United States, or any of their authorized representatives to Offeror.

C. *Right to Enter and Inspect.* The Office of the Governor, the U.S. Department of Interior, Office of Insular Affairs, Inspectors General, the Comptroller General of the United States, or any of their authorized representatives may, at any time, without notice 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 Office of the Governor, the U.S. Department of Interior, Office of Insular Affairs, Inspectors General, the Comptroller General of the United States, or any of their 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 Office of the Governor, the Office of the Governor of Guam, the U.S. Department of Interior, Office of Insular Affairs, Inspectors General, the Comptroller General of the United States, and/or any 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 § 9102 (Authority to Debar or Suspend) of the Guam Procurement Rules and 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 Chief of Staff of the Office of the Governor and the Offerors and any awarded Contractor shall not accept such direction from others. Information provided by other governmental agencies or entities which seemingly conflicts with information provided by the Office of the Governor in this solicitation will be discussed with the Chief of Staff of the Office of the Governor 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 The Office of the Governor or the government of Guam, 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 Office of the Governor.

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

#### **Z. PROCUREMENT OF RECOVERED MATERIALS**

Pursuant to 2 CFR § 200.323, any Offeror awarded a contract under this RFP and all of its subcontractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962. The requirements of 42 U.S.C. § 6962 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR pt. 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, with CFR 121 Office of Management and Budget (“OMB”) Guidance § 200.324 where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

#### **AA. GUAM AND FEDERAL 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

Page 37 of 96

not employ any subcontractors who have been federally debarred or debarred by the government of Guam. Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award of federal funds (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (“SAM”), in accordance with the OMB guidelines at 2 CFR pt. 180 that implement Executive Orders 12549 and 12689. SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. By submitting a Proposal, Offeror warrants that it is not a party listed on the government-wide exclusions in the SAM, and will comply with the provisions of 2 CFR pt. 1326, “Nonprocurement Debarment and Suspension,” which generally prohibits entities that have been debarred, suspended, or voluntarily excluded from participating in non-procurement transactions either through primary or lower tier covered transactions, and which sets forth the responsibilities of recipients of federal financial assistance regarding transactions with other persons, including subrecipients and contractors.

If awarded any contract offered under this RFP, Offeror agrees to the Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion, Lower Tier Covered Transaction (Sub-Recipient), which is a material representation of fact, and agrees to include the following notice in the awarded contract, sub-award, or subcontract, as applicable:

Applicants/bidders for a lower tier covered transaction (except procurement contracts for goods and services under \$25,000 not requiring the consent of a government official) are subject to 2 CFR pt. 1326, “Nonprocurement Debarment and Suspension,” Subpart C. In addition, applicants/bidders for a lower tier covered transaction for a sub-award, contract, or subcontract greater than \$100,000 of Federal funds at any tier are subject to 15 CFR pt. 28, “New Restrictions on Lobbying.”

Offerors should familiarize themselves with these provisions, including the certification requirements. Applications for any lower tier covered transaction must include a Form CD-512, “Certification Regarding Lobbying Lower Tier Covered Transactions,” completed without modification.

**BB. CERTIFICATION REGARDING LOBBYING**

The Certification Regarding Lobbying Form Standard Form-LLL (SF-LLL) found in Section IX, shall be submitted with the Proposal. Offeror agrees, by submitting a Proposal, to comply with the requirements set forth under the Certification Regarding Lobbying and Disclosure Form and the implementing regulations published at 15 CFR pt. 28, “New Restrictions on Lobbying.” These provisions prohibit the use of Federal funds for lobbying the Executive or Legislative branches of the Federal government in connection with an award and require the disclosure of the use of non-Federal funds for lobbying. If awarded a contract from this RFP, Offeror agrees to the following Certification Regarding Lobbying as a material representation of fact. This certification is a pre-requisite for entering into the agreement offered under this RFP, imposed by Appendix A to 15 CFR pt. 28.

“The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or

employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure occurring on or before October 23, 1996, and of not less than \$11,000 and not more than \$110,000 for each such failure occurring after October 23, 1996."

### **Section III. SCOPE OF SERVICES**

#### TABLE OF CONTENTS OF SCOPE OF SERVICES

This Scope of Services contains the following lettered paragraphs:

- A. General Information**
- B. General System Needs**
- C. Public Facing Needs**
- D. Organizational Units**
- E. Licenses and Permits in Scope**
- F. Inspections and Clearances**
- G. Technology**
- H. Third-Party Integration**
- I. Additional Features**
- J. Configuration and Customization (For non-SaaS Cloud-based Proposals)**
- K. Training and Installation Support**
- L. Implementation Services**
- M. Other Deliverables**
- N. Proposed Project Schedule**
- O. Author and Reference Materials for Scope of Services**



## A. GENERAL INFORMATION

The objective of this Request for Proposals is to obtain professional services ("Services") to design and implement a state-of-the-art system ("System") to streamline and modernize the government of Guam's licensing and permitting processes.

A general Scope of Services is provided by the government of Guam; however, Offerors are encouraged to offer their own opinions and suggestions regarding the Scope of Services for the System, equipment, and Services in their Proposals. The government of Guam has developed lists of goals and factors desired for the new Licensing and Permitting System, hereinafter contained in this Scope of Services; but these listings of goals and factors are not definitive. They are merely provided as guidelines for Offerors. The government of Guam seeks a comprehensive solution to address its needs for support for the automation and integration of public licensing and permitting processes, therefore, this procurement will rely upon the Offerors to refine many of the technical objectives and provide an innovative concept/plan for the new System in their Proposals.

The successful Offeror should demonstrate an extraordinary knowledge of system security relative to system software operating programs, physical facilities, and electronic protection to safeguard the System from man-made attacks as well as natural events. The government of Guam seeks to award the contract for these Services and the new System to the Offeror who provides the best value to the government of Guam and the people of Guam, with reference to the items, features, and goals generally described in this Scope of Services, and with reference to the government of Guam's future needs.

## B. GENERAL SYSTEM NEEDS

The Offeror shall provide a System that is available for land management and planning, permitting, and licensing. Once configured, the System should offer the following solutions at a minimum:

- i. **Permitting.** Administer and issue a variety of permit types and account for all appropriate fees.
- ii. **Licensing.** Process applications, administer and issue business licenses.
- iii. **Process Automation:** automated workflows, intelligent routing, and concurrent application review by multiple departments. Notifications should be included throughout the licensing and permitting process for both public users and department users. This includes notifications instructing internal users and public users to take specific actions, providing status updates to public users, and providing confirmation of completion for the various steps.
- iv. **Electronic Plan Review:** Functionality to allow both the public and the agencies to upload documents or digital plans. Upon upload the agencies should have the ability to comment and markup plans for revisions, and submit approvals. This function should also include version control where changes are tracked and annotated.
- v. **License, Permit, and Clearance Integration:** Allow for the linking of other applications or existing licenses, permits, or clearances where the permit or license is interdependent of them e.g., the Business License Track of new Sanitary Permit issuance
- vi. **Inspection tracking and scheduling.** Allow automatic creation of specific inspection types based on permit applications. Provide calendaring functionality that allows creation of a daily

schedule from inspection requests. Allow real time inspection results to be available to all users including via e-mail to the permit holder.

- vii. **Digital License, Permit, Notice and Clearance Document Generation:** the solution should have the ability to generate digitally signed License, Permit, Notice and Clearance PDFs.
- viii. **Searching.** The solution must be searchable by multiple data fields including, but not limited to, address, tax map number, applicant, business name (dba), permit number, and business license number.
- ix. **Reporting.** The solution must generate reports using combinations of the data elements.
- x. **Land management and tracking.** Ability to manage permits and licenses based on Guam Land PINs (Parcel Identification Number), addresses, zoning, code and geographic areas.
- xi. **Mobile usage.** View, schedule and modify inspections and record notes while in the field from mobile devices (e.g., tablets and/or cell phones). The solution must be compatible with iOS, Android, and Windows operation systems.
- xii. **GIS integration.** Provide the ability to integrate permitting and licensing with the existing government of Guam ESRI GIS systems based upon regularly updated land pins.
- xiii. **Internal user management.** Solutions must allow for administrative users and plan review/inspection users with an ability to easily control user access.
- xiv. **Long-term archiving.** All records (digital documents, non-financial transaction data, etc.) produced should be able to be maintained and easily distributed, during and after transactions are finished, as long as required by law and government of Guam department regulations or internal policies.

### C. PUBLIC FACING NEEDS

- i. **Public Portal.** Ability to provide a public portal for applicants to view licensing and permitting or other ancillary information handled by the solution. The online application must include the following parts:
  - Application submittal
  - Status of application or clearances associated with the application
  - Compute and pay fees
  - Request inspections
  - View inspection results
  - Ability to easily link and search permits
  - Ability to view, print, and download approved and paid permits, licenses and clearances.

1. **Allow the public user to view and manage multiple license applications, permits, or land use applications.**
2. Ability to submit updates, inquiries, and upload additional documents to an application in review
3. Provide instant online messaging system to document communication between the end user and government agent during the application review process.
4. Email notification options to provide real-time updates. SMS updates may be included as a method to provide updates
5. Ability to submit Agency provided online forms.
6. Scheduling module to schedule face-to-face and/or virtual

Page 42 of 96

meetings with various Agencies utilizing available virtual meeting platforms.

- ii. **Application workflow.** Provide a workflow status that is clear to both public and internal users.
- iii. **Payment processing.** Software must facilitate online payment processing through a secure third party.

**D. ORGANIZATIONAL UNITS**

Several agencies are expected to utilize the Licensing and Permit System. Those agencies are listed below. Please refer to the appendix to the processes and forms the government of Guam intends to automate through this project:

License and Permit Application Owners and Clearance Users	Autonomous Agency Users (For Clearance Purposes)
Department of Revenue and Tax (DRT)	Guam Power Authority
Guam Environmental Protection Agency	Guam Waterworks Authority
Department of Public Works	
Department of Agriculture	
Department of Land Management	
Guam Land Use Commission (DLM)	
The Guam Historic Resources Division	
Department of Parks and Recreation	
Department of Public Health & Social Services	
Professional Engineers, Architects and Land Surveyors (PEALS) Board	
Contractor's License Board	
Guam Fire Department	
Bureau of Statistics and Plans	

**E. LICENSES AND PERMITS IN SCOPE**

The License and Permit System should support a full range of types of licenses and permits. The government of Guam agencies and their respective Licenses and Permits that the solution applies to shall include the following:

Agency Owner	Licenses and Permits
Department of Revenue and Tax (DRT)	Business License Application
Department of Public Works	Clearing/Grading Permit
	Building Construction Permit
	Building Occupancy Permit

Department of Land Management Guam Seashore Protection Guam Land Use Commission	Zone Change, Split Zone, and Summary Zone Change, Zone Variance/Subdivision Variance Tentative and Final Development Plans Conditional Use Permit
Department of Public Health & Social Services	Sanitary Permit
Guam Fire Department	Activities, Materials, and Use Permit

#### F. INSPECTIONS AND CLEARANCES

The System should include all internal clearance forms and inspection checklists applicable to business license applications, building permit, and occupancy permits. The internal forms and checklists apply to the following departments:

- Department of Revenue and Taxation (DRT)
- Guam Environmental Protection Agency (GEPA)
- Department of Public Works (DPW)
- Department of Agriculture (DoAg)
- Department of Land Management (DLM)
- Guam Land Use Commission (GLUC-DLM)
- The Guam Historic Resources Division, Department of Parks and Recreation
- Department of Public Health & Social Services
- Professional Engineers, Architects and Land Surveyors (PEALS) Board
- Contractors' License Board
- Guam Fire Department

#### G. TECHNOLOGY

The Office of the Governor of Guam will accept proposals where the software solution is either On-premise or hosted Software as a Service (SaaS).

The System shall be web based and support most, if not all web browsers. The System shall be optimized to run on mobile browsers.

The System shall support users securely from within and outside the government of Guam GGWAN network.

It is encouraged to implement multi-step authentication.

The vendor shall meet all the requirements and guidelines on the OTECH-POL2021-002, IT System Development Requirements & Security Assessment Standards policy.

(<https://otech.guam.government/policies/>) Policy OVERVIEW AND INTRODUCTION text found in Section XVI of this RFP.

For on-premise solution, vendor must provide hardware and software to support the development, testing, and future growth of the System. Virtual (VM) environment resources may be available for moderately sized systems; however, vendor must provide hardware resources to support resource intensive systems. Vendor must also provide storage solution to support their document management solution. Vendor provided hardware and software shall also include system backup process and restore procedures. Vendor provided equipment must be compatible with existing government of Guam IT infrastructure and network and must be supported under (hardware and software) warranty for the duration of the awarded contract.

For hosted or cloud-based solutions, vendor must be able to provide a secured tunnel for government access to admin modules. The solution must also be compatible with existing government of Guam IT infrastructure and network.

The System shall be integrated with native government of Guam applications, to include, the eGIS system, the DRT IBM AS400, TPS and TaxMap systems, LandWeb, and the DOA TPS system.

Proposals must include the benefits and advantages of the solution type e.g., security, up-time, reliability, elimination of server licensing, etc.

This requirement does not prevent proposals with On-Premise systems, as long as the System has web access.

#### **H. THIRD-PARTY INTEGRATION**

Management Systems: The On-Premise System or SaaS solution shall be integrated with DRT IBM DB2 database used for its internal management of business licenses.

GIS: The System or SaaS shall have ESRI as its GIS component.

The System shall integrate with the government of Guam's GIS servers and maps. The solution will display layers created through ESRI maps such as tax parcels, lots, rights of way, zoning, land use etc.

The System will also create layer data used in ESRI web maps so that both pending and current licenses or permits can be displayed.

The System shall also provide a workflow to collect payment fees and integrate payment information back into the government of Guam Transaction Processing System (TPS).

#### **I. ADDITIONAL FEATURES**

The government of Guam intends to streamline its licensing and permitting operating procedures wherever possible, and the Vendor's capability to advise and assist as necessary

during System implementation will be considered in evaluating proposals.

Additional permit types and related features beyond the list of desired features contained in this Scope of Services are encouraged to be included in the proposed licensing and permitting System. Vendors may propose such additional features as options if in their judgement and experience they would add value beyond any associated additional startup and ongoing costs.

#### **J. CONFIGURATION AND CUSTOMIZATION (FOR NON-SAAS CLOUD BASED PROPOSALS)**

The Office of the Governor of Guam expects that proposed systems will need to be configured and customized to work in the government of Guam's specific environment. Additional customizations may be required from time to time as the government of Guam's requirements change. Such customization should ideally not require software redevelopment or modifications to program source-language code that would cause the installed System to not be maintained as part of the company's normal update and maintenance program. Proposed Systems should be designed and constructed to allow substantial customization through the manipulation of configuration tables, or similar external data structures, preferably by non-programming departmental "user" staff.

#### **K. TRAINING AND INSTALLATION SUPPORT**

Vendors will be expected to provide training and installation support at time of implementation. Vendors should describe all training available, and propose selected training modules that will ensure smooth, successful implementation and operation in the government of Guam.

Training and installation support will be needed in all stages of the System's implementation:

- Pre-installation familiarization overview
- Business process and procedure advisory consulting
- Configuration/customization assistance
- Database loading
- End-user operational training
- System administrator training
- Post-implementation tuning

Training should be provided for both end users and technical system administrators. Topics covered should include system operation, system configuration & customization, system tuning, problem diagnosis and resolution, database management (If applicable), and system management. Classes should be held on-site on Guam if possible if the timing of training occurs after Guam achieves herd immunity. Otherwise, it will be provided remotely. Initial training should be delivered to a core group of "expert" system users. This core group should be sufficiently trained to act as trainers and mentors to other system users. The core group should also be sufficiently trained to be able to customize and expand the System to the full extent allowable by the System. Subsequent training may be delivered by government of Guam staff. However, the availability of regular training classes at other locations for follow-up or refresher training is desirable.

Installation support should include initial software installation and operational demonstration, business process and procedure consulting, system configuration and customization services, database loading, functional testing, performance testing, initial operational support, and post-operational system tuning. Specific training curriculum decisions will be subject to negotiation between the parties.

All user and administrator trainings, including all workflows and business processes, shall be documented, and provided to the government of Guam.

Vendor shall develop end-user "customer" video guides on how to use and navigate the System.

Video links shall be provided on the government of Guam websites.

Vendor shall also develop end-user "customer" FAQ for System use.

#### **L. IMPLEMENTATION SERVICES**

The government of Guam seeks professional services to:

1. Assess current business processes of the government of Guam for business license applications and land use, building, sanitary, fire, and occupancy permits.
2. Analyze requirements and plan necessary customization, modification, and data conversion efforts.
3. Execute customization plan and update internal government of Guam licensing and permit processing procedures.
4. Create any required data conversion software.
5. Test and demonstrate planned functionality using completed software.
6. Test and verify acceptable performance levels at two times the anticipated initial volumes of data input, online access, and report generation. Tune System as needed.
7. Perform any final activities necessary to complete implementation
8. Begin operational use of new System.
9. After implementation, tune System as needed.
10. Proceed to any subsequent implementation phases.

#### **M. OTHER DELIVERABLES**

In addition to the items found in Part 1 of the Scope of Services, the Selected Respondent must provide the deliverables noted below. In responding, please identify any objectives, tasks, or areas that may be necessary to complete the Scope of Services, even if not specifically noted below.

##### **1. Source Documentation**

In addition to a configured System and implementation services, the vendor must provide all raw materials or Source Documentation used to draft the core deliverables of this engagement.

##### **2. Engagement Project Management Deliverables**

The Selected Respondent must work with the government of Guam to develop and maintain the following Project Management Deliverables related to this Project during the engagement.

1. Project Management Plan
2. Project Schedule
3. Project issues and Risk Logs
4. Weekly Project Status Reports

The reports should provide sufficient information for policy decisions regarding operational and service options.

#### N. PROPOSED PROJECT SCHEDULE

All Offerors must submit a Proposed Project Schedule with the Proposal. Offerors shall estimate the time required for completion of the implementation of a fully functional and operating System as generally outlined in this Scope of Services, and provide time estimates for this phase of the Project in the form of a proposed schedule/timeline for the estimated start time and completion time of the Project from the beginning of the Project through the time that the new System will be in full operation providing Services to the public. Please address your proposed preliminary implementation timeline and phasing, recommended implementation approach (i.e., parallel versus serial implementation of modules), and the costs and/or risk associated with the approach you are recommending. Include a Project schedule display, highlighting each required task for this phase of the Services with an estimated start and completion time. Please also describe any suggested activities that the government of Guam could complete prior to the start of the implementation project that would accelerate or facilitate the implementation effort.

Time is of the essence for the implementation and seamless transition from the current licensing and permitting processes to a new, fully functional and operational System. Offerors will be evaluated on the speed, efficiency, and feasibility of the proposed schedule/timeline for this implementation phase of the Services.

#### O. AUTHOR AND REFERENCE MATERIALS FOR SCOPE OF SERVICES

This Scope of Services was drafted by:

- Matthew Santos
- Business Requirements were developed in collaboration with Government of Guam Licensing and Permitting Agencies
- Technical and Security requirements were provided by the Guam Office of Technology



**Section IV. DECLARATION DISCLOSING OWNERSHIP,  
INFLUENCE, COMMISSIONS AND CONFLICTS OF INTEREST**

(Required by 5 GCA § 5233 as amended by P.L. 36-13 (4/9/2021))

Preface. As a condition of submitting a Bid/Offer/Proposal or responding to any method of source selection under Guam's Procurement Law for the purpose of entering into a contract with the Office of the Governor of Guam, this Declaration 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 Declaration 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 and fill out 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.

Name of Owner	Principal Place of Business Street Address	% of Interest
_____	_____	_____
_____	_____	_____
_____	_____	_____

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 Tier 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/Prospective 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 Declaration is submitted are as follows (if none, please so state):

Name	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 Declaration 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 herein. 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

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

\_\_\_\_\_ [state name of declarant signing below], declares 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 declaration and in the Proposal are true to the best of the knowledge of the undersigned. This statement is made pursuant to 2 GAR Division 4 § 3126(b).

3. I make this statement on behalf of myself as a representative of the Offeror, and on behalf of the Offeror's officers, representatives, agents, subcontractors, and employees.

I certify 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:

Offeror, if the Offeror is an individual;  
Partner, if the Offeror is a partnership;  
Officer, if the Offeror is a corporation

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

\_\_\_\_\_ [state name of declarant signing below], declares that:

1. The name of the offering firm or individual is \_\_\_\_\_ [state name of Offeror company or Offeror]. Declarant 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 declarant's knowledge, neither declarant, 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 Division 4 § 11107(e). Further, declarant promises, on behalf of Offeror, not to violate the prohibition against gratuities and kickbacks as set forth in 2 GAR Division 4 § 11107(e).
3. To the best of declarant's knowledge, neither declarant, 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 Division 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.

I certify 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:

Offeror, if the offeror is an individual;  
Partner, if the offeror is a partnership;  
Officer, if the offeror is a corporation

**Section VII. DECLARATION RE: ETHICAL STANDARDS  
(AG Form 005)**

\_\_\_\_\_ [state name of declarant signing below], declares that:

1. The name of the offering company or individual is [state name of company] \_\_\_\_\_ making the foregoing identified Bid or Proposal. To the best of declarant's knowledge, neither declarant nor any officers, representatives, agents, subcontractors or employees of Offeror have knowingly influenced any government of Guam employee to breach any of the ethical standards set forth in 5 GCA Chapter 5, Article 11. Further, declarant promises that neither he or she, nor any officer, representative, agent, subcontractor, or employee of Offeror will knowingly influence any government of Guam employee to breach any ethical standards set forth in 5 GCA Chapter 5, Article 11. These statements are made pursuant to 2 GAR Division 4 § 11103(b).

I certify 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:

Offeror, if the offeror is an individual;  
Partner, if the offeror is a partnership;  
Officer, if the offeror is a corporation

**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.

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

\_\_\_\_\_  
Signature

**Section IX. DECLARATION RE: CONTINGENT FEES  
(AG Form 007)**

\_\_\_\_\_ [state name of declarant signing below], declares that:

1. The name of the offering company or individual is [state name of company]  
\_\_\_\_\_.

2. As a part of the offering company's bid or proposal, to the best of my knowledge, the offering company has not retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract. This statement is made pursuant to 2 GAR Division 4 11108(f).

3. As a part of the offering company's bid or proposal, to the best of my knowledge, the offering company has not retained a person to solicit or secure a contract with the government of Guam upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. This statement is made pursuant to 2 GAR Division 4 11108(h).

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

Executed on: \_\_\_\_\_ (date)

\_\_\_\_\_  
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



**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  Wage Determination No.: 2015-5693 Revision No.: 15 Date Of Last Revision: 12/27/2021
Daniel W. Simms Director	Division of Wage Determinations	

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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 \$15.00 per hour (or the applicable wage rate listed on this wage determination if it is higher) for all hours spent performing on that contract in 2022.

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](http://www.dol.gov/whd/govcontracts).

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States: Guam Northern Marianas Wake Island

Area: Guam Statewide

Northern Marianas Statewide

Wake Island Statewide

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\*\*Fringe Benefits Required Follow the Occupational Listing\*\*

OCCUPATION CODE - TITLE	FOOTNOTE	RATE
01000 - Administrative Support And Clerical Occupations		
01011 - Accounting Clerk I		13.57
01012 - Accounting Clerk II		15.23
01013 - Accounting Clerk III		17.04
01020 - Administrative Assistant		21.43
01035 - Court Reporter		17.40
01041 - Customer Service Representative I		11.51
01042 - Customer Service Representative II		12.94
01043 - Customer Service Representative III		14.12
01051 - Data Entry Operator I		12.15
01052 - Data Entry Operator II		13.25
01060 - Dispatcher Motor Vehicle		17.39
01070 - Document Preparation Clerk		13.85
01090 - Duplicating Machine Operator		13.85
01111 - General Clerk I		10.35

Page 57 of 96

01112 - General Clerk II	11.29
01113 - General Clerk III	12.68
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	21.78
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	21.43
01420 - Survey Worker	16.96
01460 - Switchboard Operator/Receptionist	10.36
01531 - Travel Clerk I	13.01
01532 - Travel Clerk II	14.12
01533 - Travel Clerk III	15.09
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	15.46
05010 - Automotive Electrician	14.52
05040 - Automotive Glass Installer	13.58
05070 - Automotive Worker	13.58
05110 - Mobile Equipment Servicer	11.65
05130 - Motor Equipment Metal Mechanic	15.46
05160 - Motor Equipment Metal Worker	13.58
05190 - Motor Vehicle Mechanic	15.46
05220 - Motor Vehicle Mechanic Helper	10.66
05250 - Motor Vehicle Upholstery Worker	12.64
05280 - Motor Vehicle Wrecker	13.58
05310 - Painter Automotive	14.52
05340 - Radiator Repair Specialist	13.58
05370 - Tire Repairer	12.67
05400 - Transmission Repair Specialist	15.46
07000 - Food Preparation And Service Occupations	
07010 - Baker	10.47
07041 - Cook I	13.26
07042 - Cook II	15.46
07070 - Dishwasher	9.31
07130 - Food Service Worker	9.45
07210 - Meat Cutter	12.13
07260 - Waiter/Waitress	9.27
09000 - Furniture Maintenance And Repair Occupations	
09010 - Electrostatic Spray Painter	18.04
09040 - Furniture Handler	10.95
09080 - Furniture Refinisher	18.04
09090 - Furniture Refinisher Helper	13.27
09110 - Furniture Repairer Minor	15.70
09130 - Upholsterer	18.04
11000 - General Services And Support Occupations	
11030 - Cleaner Vehicles	9.35
11060 - Elevator Operator	9.54
11090 - Gardener	13.00
11122 - Housekeeping Aide	9.54
11150 - Janitor	9.54
11210 - Laborer Grounds Maintenance	9.82
11240 - Maid or Houseman	9.32
11260 - Pruner	8.79
11270 - Tractor Operator	11.90
11330 - Trail Maintenance Worker	9.82

11360 - Window Cleaner	10.66
12000 - Health Occupations	
12010 - Ambulance Driver	18.23
12011 - Breath Alcohol Technician	18.23
12012 - Certified Occupational Therapist Assistant	25.01
12015 - Certified Physical Therapist Assistant	25.01
12020 - Dental Assistant	16.32
12025 - Dental Hygienist	36.12
12030 - EKG Technician	25.99
12035 - Electroneurodiagnostic Technologist	25.99
12040 - Emergency Medical Technician	18.23
12071 - Licensed Practical Nurse I	16.30
12072 - Licensed Practical Nurse II	18.23
12073 - Licensed Practical Nurse III	20.32
12100 - Medical Assistant	12.26
12130 - Medical Laboratory Technician	18.82
12160 - Medical Record Clerk	13.61
12190 - Medical Record Technician	17.77
12195 - Medical Transcriptionist	16.30
12210 - Nuclear Medicine Technologist	40.06
12221 - Nursing Assistant I	11.34
12222 - Nursing Assistant II	12.75
12223 - Nursing Assistant III	13.91
12224 - Nursing Assistant IV	15.61
12235 - Optical Dispenser	18.23
12236 - Optical Technician	16.30
12250 - Pharmacy Technician	15.49
12280 - Phlebotomist	16.30
12305 - Radiologic Technologist	25.33
12311 - Registered Nurse I	23.18
12312 - Registered Nurse II	28.36
12313 - Registered Nurse II Specialist	28.36
12314 - Registered Nurse III	34.32
12315 - Registered Nurse III Anesthetist	34.32
12316 - Registered Nurse IV	41.13
12317 - Scheduler (Drug and Alcohol Testing)	22.58
12320 - Substance Abuse Treatment Counselor	22.58
13000 - Information And Arts Occupations	
13011 - Exhibits Specialist I	21.20
13012 - Exhibits Specialist II	26.27
13013 - Exhibits Specialist III	32.13
13041 - Illustrator I	21.20
13042 - Illustrator II	26.27
13043 - Illustrator III	32.13
13047 - Librarian	29.09
13050 - Library Aide/Clerk	16.88
13054 - Library Information Technology Systems Administrator	26.27
13058 - Library Technician	16.64
13061 - Media Specialist I	18.96
13062 - Media Specialist II	21.20
13063 - Media Specialist III	23.63
13071 - Photographer I	18.96
13072 - Photographer II	21.20
13073 - Photographer III	26.27
13074 - Photographer IV	32.13
13075 - Photographer V	38.88
13090 - Technical Order Library Clerk	21.20
13110 - Video Teleconference Technician	18.96
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		27.61
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		10.12
16030 - Counter Attendant		10.12
16040 - Dry Cleaner		11.56
16070 - Finisher Flatwork Machine		10.12
16090 - Presser Hand		10.12
16110 - Presser Machine Drycleaning		10.12
16130 - Presser Machine Shirts		10.12
16160 - Presser Machine Wearing Apparel Laundry		10.12
16190 - Sewing Machine Operator		12.04
16220 - Tailor		12.52
16250 - Washer Machine		10.60
19000 - Machine Tool Operation And Repair Occupations		
19010 - Machine-Tool Operator (Tool Room)		19.46
19040 - Tool And Die Maker		24.46
21000 - Materials Handling And Packing Occupations		
21020 - Forklift Operator		13.96
21030 - Material Coordinator		21.78
21040 - Material Expediter		21.78
21050 - Material Handling Laborer		11.37
21071 - Order Filler		9.76
21080 - Production Line Worker (Food Processing)		13.96
21110 - Shipping Packer		17.12
21130 - Shipping/Receiving Clerk		17.12
21140 - Store Worker I		15.22
21150 - Stock Clerk		21.40
21210 - Tools And Parts Attendant		13.96
21410 - Warehouse Specialist		13.96
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		19.46

23120 - Bicycle Repairer	15.61
23125 - Cable Splicer	19.59
23130 - Carpenter Maintenance	16.07
23140 - Carpet Layer	18.20
23160 - Electrician Maintenance	18.05
23181 - Electronics Technician Maintenance I	18.20
23182 - Electronics Technician Maintenance II	19.46
23183 - Electronics Technician Maintenance III	20.72
23260 - Fabric Worker	16.94
23290 - Fire Alarm System Mechanic	16.77
23310 - Fire Extinguisher Repairer	15.61
23311 - Fuel Distribution System Mechanic	20.72
23312 - Fuel Distribution System Operator	15.61
23370 - General Maintenance Worker	12.01
23380 - Ground Support Equipment Mechanic	23.84
23381 - Ground Support Equipment Servicer	19.47
23382 - Ground Support Equipment Worker	21.03
23391 - Gunsmith I	15.61
23392 - Gunsmith II	18.20
23393 - Gunsmith III	20.72
23410 - Heating Ventilation And Air-Conditioning Mechanic	17.50
23411 - Heating Ventilation And Air Contidioning Mechanic (Research Facility)	18.61
23430 - Heavy Equipment Mechanic	19.27
23440 - Heavy Equipment Operator	17.76
23460 - Instrument Mechanic	20.72
23465 - Laboratory/Shelter Mechanic	19.46
23470 - Laborer	11.37
23510 - Locksmith	19.46
23530 - Machinery Maintenance Mechanic	23.13
23550 - Machinist Maintenance	20.72
23580 - Maintenance Trades Helper	10.67
23591 - Metrology Technician I	20.72
23592 - Metrology Technician II	22.03
23593 - Metrology Technician III	23.33
23640 - Millwright	20.72
23710 - Office Appliance Repairer	19.46
23760 - Painter Maintenance	14.08
23790 - Pipefitter Maintenance	18.39
23810 - Plumber Maintenance	17.27
23820 - Pneudraulic Systems Mechanic	20.72
23850 - Rigger	20.72
23870 - Scale Mechanic	18.20
23890 - Sheet-Metal Worker Maintenance	17.35
23910 - Small Engine Mechanic	18.20
23931 - Telecommunications Mechanic I	19.76
23932 - Telecommunications Mechanic II	21.01
23950 - Telephone Lineman	18.24
23960 - Welder Combination Maintenance	18.31
23965 - Well Driller	21.13
23970 - Woodcraft Worker	20.71
23980 - Woodworker	15.61
24000 - Personal Needs Occupations	
24550 - Case Manager	15.01
24570 - Child Care Attendant	10.09
24580 - Child Care Center Clerk	13.25
24610 - Chore Aide	12.78
24620 - Family Readiness And Support Services Coordinator	15.01
24630 - Homemaker	16.12
25000 - Plant And System Operations Occupations	
25010 - Boiler Tender	20.72
25040 - Sewage Plant Operator	21.59
25070 - Stationary Engineer	20.72
25190 - Ventilation Equipment Tender	14.29
25210 - Water Treatment Plant Operator	21.59

27000 - Protective Service Occupations	
27004 - Alarm Monitor	10.90
27007 - Baggage Inspector	9.48
27008 - Corrections Officer	12.05
27010 - Court Security Officer	12.05
27030 - Detection Dog Handler	10.90
27040 - Detention Officer	12.05
27070 - Firefighter	12.05
27101 - Guard I	9.48
27102 - Guard II	10.90
27131 - Police Officer I	12.05
27132 - Police Officer II	13.40
28000 - Recreation Occupations	
28041 - Carnival Equipment Operator	13.24
28042 - Carnival Equipment Repairer	14.46
28043 - Carnival Worker	9.78
28210 - Gate Attendant/Gate Tender	13.18
28310 - Lifeguard	11.01
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	25.98
29020 - Hatch Tender	25.98
29030 - Line Handler	25.98
29041 - Stevedore I	24.18
29042 - Stevedore II	27.79
30000 - Technical Occupations	
30010 - Air Traffic Control Specialist Center (HFO) (see 2)	40.29
30011 - Air Traffic Control Specialist Station (HFO) (see 2)	27.78
30012 - Air Traffic Control Specialist Terminal (HFO) (see 2)	30.59
30021 - Archeological Technician I	17.49
30022 - Archeological Technician II	19.56
30023 - Archeological Technician III	24.21
30030 - Cartographic Technician	23.18
30040 - Civil Engineering Technician	23.08
30051 - Cryogenic Technician I	25.57
30052 - Cryogenic Technician II	28.24
30061 - Drafter/CAD Operator I	17.49
30062 - Drafter/CAD Operator II	19.56
30063 - Drafter/CAD Operator III	20.77
30064 - Drafter/CAD Operator IV	25.57
30081 - Engineering Technician I	14.84
30082 - Engineering Technician II	16.66
30083 - Engineering Technician III	18.64
30084 - Engineering Technician IV	23.08
30085 - Engineering Technician V	28.24
30086 - Engineering Technician VI	34.16
30090 - Environmental Technician	23.08
30095 - Evidence Control Specialist	23.08
30210 - Laboratory Technician	20.77
30221 - Latent Fingerprint Technician I	25.57
30222 - Latent Fingerprint Technician II	28.24
30240 - Mathematical Technician	23.34
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	28.24
30390 - Photo-Optics Technician	21.93
30395 - Radiation Control Technician	28.24
30461 - Technical Writer I	23.08
30462 - Technical Writer II	28.24
30463 - Technical Writer III	34.16
30491 - Unexploded Ordnance (UXO) Technician I	25.60

30492 - Unexploded Ordnance (UXO) Technician II	30.98
30493 - Unexploded Ordnance (UXO) Technician III	37.13
30494 - Unexploded (UXO) Safety Escort	25.60
30495 - Unexploded (UXO) Sweep Personnel	25.60
30501 - Weather Forecaster I	25.57
30502 - Weather Forecaster II	31.09
30620 - Weather Observer Combined Upper Air Or (see 2)	20.77
Surface Programs	
30621 - Weather Observer Senior (see 2)	23.08
31000 - Transportation/Mobile Equipment Operation Occupations	
31010 - Airplane Pilot	30.98
31020 - Bus Aide	8.15
31030 - Bus Driver	10.66
31043 - Driver Courier	9.69
31260 - Parking and Lot Attendant	9.91
31290 - Shuttle Bus Driver	11.65
31310 - Taxi Driver	11.41
31361 - Truckdriver Light	10.59
31362 - Truckdriver Medium	11.61
31363 - Truckdriver Heavy	14.64
31364 - Truckdriver Tractor-Trailer	14.64
99000 - Miscellaneous Occupations	
99020 - Cabin Safety Specialist	15.10
99030 - Cashier	9.63
99050 - Desk Clerk	9.70
99095 - Embalmer	25.60
99130 - Flight Follower	25.60
99251 - Laboratory Animal Caretaker I	23.38
99252 - Laboratory Animal Caretaker II	25.54
99260 - Marketing Analyst	21.54
99310 - Mortician	25.60
99410 - Pest Controller	14.61
99510 - Photofinishing Worker	13.45
99710 - Recycling Laborer	17.32
99711 - Recycling Specialist	23.38
99730 - Refuse Collector	16.40
99810 - Sales Clerk	9.87
99820 - School Crossing Guard	17.27
99830 - Survey Party Chief	23.01
99831 - Surveying Aide	13.08
99832 - Surveying Technician	17.00
99840 - Vending Machine Attendant	23.38
99841 - Vending Machine Repairer	29.78
99842 - Vending Machine Repairer Helper	23.38

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Note: Executive Order (EO) 13706 Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Service Contract Act for which the contract is awarded (and any solicitation was issued) on or after January 1 2017. If this contract is covered by the EO the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness injury or other health-related needs including preventive care; to assist a family member (or person who is like family to the employee) who is ill injured or has other health-related needs including preventive care; or for reasons resulting from or to assist a family member (or person who is like family to the employee) who is the victim of domestic violence sexual assault or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

HEALTH & WELFARE: \$4.60 per hour up to 40 hours per week or \$184.00 per week or \$797.33 per month

HEALTH & WELFARE EO 13706: \$4.23 per hour up to 40 hours per week or \$169.20 per week or \$733.20 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: Under the SCA at section 8(b) this wage determination does not apply to any employee who individually qualifies as a bona fide executive administrative or professional employee as defined in 29 C.F.R. Part 541. Because most Computer System Analysts and Computer Programmers who are compensated at a rate not less than \$27.63 (or on a salary or fee basis at a rate not less than \$455 per week) an hour would likely qualify as exempt computer professionals (29 C.F.R. 541.400) wage rates may not be listed on this wage determination for all occupations within those job families. In addition because this wage determination may not list a wage rate for some or all occupations within those job families if the survey data indicates that the prevailing wage rate for the occupation equals or exceeds \$27.63 per hour conformances may be necessary for certain nonexempt employees. For example if an individual employee is nonexempt but nevertheless performs duties within the scope of one of the Computer Systems Analyst or Computer Programmer occupations for which this wage determination does not specify an SCA wage rate then the wage rate for that employee must be conformed in accordance with the conformance procedures described in the conformance note included on this wage determination.



Additionally because job titles vary widely and change quickly in the computer industry job titles are not determinative of the application of the computer professional exemption. Therefore the exemption applies only to computer employees who satisfy the compensation requirements and whose primary duty 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).

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

Page 65 of 96

(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:

Page 66 of 96

- 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 subcontractors<sup>1</sup> (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

\_\_\_\_\_  
  
<sup>1</sup> 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 government of Guam.

Page 68 of 96

**Section XII. CONFLICT-OF-INTEREST (COI) DISCLOSURE FORM**  
**RFP-Office of the Governor-2022-001**

Offerors under Contract or proposing to enter into a Contract with the Office of the Governor of Guam or the government of Guam 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 government of Guam employees and Office of the Governor of Guam employees).

This COI Disclosure Form is submitted in response to:

- The Office of the Governor RFP# \_\_\_\_\_ [or] IFB# \_\_\_\_\_ (check only one)
- Contract # \_\_\_\_\_ (if applicable)
- Changes to COI Disclosure Form previously submitted for RFP # \_\_\_\_\_, IFB # \_\_\_\_\_ (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 the government of Guam within the last year? No  Yes

b) Is any Associate of the Offeror a Relative or Member of the Household of a current government of Guam 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 Government 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 an Office of the Governor 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 the Office of the Governor, 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 the government of Guam? No  Yes  **Comments:**
  
8. Does the prospective Contract/WOC include development of an Environmental Assessment (EA) or Environmental Impact Statement (EIS)? No  Yes

**If yes, in accordance with the disclosure statement requirements of Council on Environmental Quality Regulation, 40 C.F.R 1506.5(c), does the Offeror have any financial or other interest in the outcome of this Project; and/or does the Offeror have any agreement, enforceable promise, or guarantee to provide any future work on this Project? No  Yes**   
**Comments:**

9. 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:
10. 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:
11. Has the Offeror or any Associate of the Offeror entered into personal services contract(s) with the government of Guam 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 Government Employees - Roles and Signatures listing is located on the next page)**

**Relatives and Former Government of Guam Employees - Roles and Signatures**

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

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

(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 federally funded government solicitation or procurement or when entering into any federally funded Contract with the government of Guam. The Contractor shall follow these COI Guidelines throughout the period during which the Proposal/Bid 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. The government of Guam will follow and apply these COI Guidelines when conducting government procurements.

### **1. Definitions.**

The definitions that apply to these COI Guidelines and the government's 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 government of Guam or federal government 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 The Office of the Governor):
  1. Is any Associate of the Offeror a former employee of the government (within the last year)?
  2. Is any Associate of the Offeror a Relative or Member of the Household of a current employee of the government 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 an Office of the Governor 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 the government?
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 the government?
9. Does the prospective Contract include development of an environmental assessment (EA) or environmental impact statement (EIS)?
10. 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?
11. Has the Offeror or any Associate of the Offeror entered into any contract(s) with the government 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 the government) 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 the government, 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 under a federally funded procurement. The disclosure requirements of these COI Guidelines apply to all government 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 government employees, and the employment of former government employees, which are applicable to this procurement, and are explained below.

#### **Standards of Conduct Policy Regarding Former Government Employees**

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

Use of a former government employee by an Offeror on the same, or substantially similar Procurement, for which the employee performed a role or function for the government, unless mitigated to the satisfaction of the government, is prohibited for a period of one year following separation of employment with the government. 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. The government 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 the government 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 the government staff formerly under his/her supervision.

For each Procurement, Offerors shall disclose to the government the identification of any of Offeror's employee(s) that had been employed by the government 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 government 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 the government 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 Government of Guam 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's 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.”

The government’s 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 Guam’s 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 The government’s aforesisted 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 the government 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 government 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

Page 79 of 96

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 the government to restrict Offeror's use of confidential or proprietary information obtained from previous affiliations with the government or the Office of the Governor when competing for government 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 the Office of the Governor 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 the Office of the Governor on the COI Disclosure Form.

#### **Specific Federal Standards—Procurements Related to Design-Build and Design-Bid-Build**

Pursuant to 23 USC § 112(b)(3), the FHWA has promulgated administrative rules that affect federally funded Design-Build procurements and related procurements. These rules, which are in Chapter 23 of the CFR pt. 636, are used as the basis for The Office of the Governor's guidelines on the subject and specifically regulate both Organizational and Individual Conflicts of Interest. The government's COI Guidelines incorporate a number of concepts from these federal provisions.

The primary rule governing Organizational Conflicts of Interest in Design-Build transactions is 23 CFR § 636.116. This rule affects not only Design-Build procurements, but also "any contract for engineering services, inspection or technical support in the administration of the Design-Build contract." Following is a summary of this federal rule (The government of Guam's COI Guidelines apply this rule to design-bid-build and non-A&E activities as well):

Page 81 of 96

Generally, a consultant who assists the state in preparing a Request for Proposals (RFP) document may not, subsequently, propose in response to the RFP. However, the state may determine that the consultant does not have a conflict of interest for a subsequent Procurement, if the consultant furnished only "low-level" documents that were incorporated into the RFP and made available to all offerors, and did not assist the state in the development of instructions to offerors or evaluation criteria for the RFP. These Design-Build regulations also apply to "improper business practices and personal conflicts of interest" of the government's selection team members. 23 CFR § 636.117 indicates that Federal Acquisition Regulations ("FARs"---specifically 48 CFR pt. 3, Improper Business Practices and Personal Conflicts of Interest) will apply to the state's selection team members in the absence of relevant state laws and procedures. These regulations require government business to be "above reproach," conducted "with complete impartiality and with preferential treatment for none" and with "the highest degree of public trust and an impeccable standard of conduct" to avoid "even the appearance of a conflict of interest." In design-bid-build transactions, where engineering services are procured separately from the construction services, ordinarily the consulting Offeror providing the engineering services is not eligible to bid on the construction work for the Project.

No Offeror or any Associate of an Offeror in connection with a Transportation Project shall have, directly or indirectly, any interest, other than his employment or retention by a State or other governmental instrumentality, in any Contract in connection with such Project. No firm or an Associate of an Offeror shall have, directly or indirectly, any interest in any real property acquired or to be acquired for a Project unless such interest is openly disclosed upon the records of the government and such Offeror or Associate has not participated and will not participate in such acquisition for and in behalf of the government (see 23 CFR § 1.33).

#### **Specific Federal Standards - National Environmental Policy Act (NEPA)**

No Offeror preparing or providing environmental analysis or impact documents relating to a Project, including draft and final Environmental Assessments (EA) or Environmental Impact Statements (EIS) may have a financial or other interest in the outcome of the Project. A financial or other interest in the outcome of the Project includes any known benefits other than general enhancement of professional reputation, and includes any agreement, enforceable promise, guarantee or expectation of future work on the Project as well as any indirect benefit the Offeror is aware of such as if the Project would aid proposals sponsored by the Offeror's other clients. Compliance with 40 C.F.R. 1506.5(c) is required, which includes the requirement for a COI disclosure statement from each Offeror establishing that the Offeror does not have a financial or other interest in the Project.

#### **4. COI Considerations Related to Previous Work on Projects.**

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

(a) such services were completed prior to initiation of the Procurement for the Project (exceptions may apply for NEPA services on a case-by-case evaluation of the project specifics against the applicable CFRs);

- (b) such services included only Low-Level Documents and did not include development of instructions to offerors or evaluation criteria for the RFP;
- (c) such services did not provide the Offeror with access to or knowledge of government confidential or inside information that could provide an unfair competitive advantage with respect to the Procurement;
- (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;
- (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 the government demonstrated independent decision-making authority during the environmental process.

In such instances where the government is satisfied in the manner described above, the government 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 Guam's Procurement Law.

## **5. COI Disclosure Process.**

An Offeror shall certify its compliance with these COI Guidelines at the time of submitting a Proposal to the government, during the Procurement Process, and during the time of performance of any awarded Contract with the government. 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 the government, the Offeror and the Offeror's team. An Offeror must work together with the government in an atmosphere of candor and accountability during the period of negotiation or performance of the Contract with the government. The government makes the final determination as to the adequacy of any COI disclosures or COI management plan offered by the Offeror.

The government'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 the government 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 does 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.**

The government 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 the government 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 the government 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, the government might determine in writing that the multi-specialty engineering Offeror is eligible to propose.
2. The government seeks comprehensive project management services for a series of Transportation Projects. One of the proposing Offerors employed a senior official from the government who played a significant role in providing direction for the solicitation, six months ago. The government 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 Proposer 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 The government, will not engage in any activities that would violate The government 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, the government 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. The government 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

Page 84 of 96

company under common ownership with a major electronics manufacturer desires to bid. The government 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 the government 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 the government's concerns about the conflict. Depending on the particular facts, the government determines that the company has an actual conflict of interest.

4. The government 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, the government 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. The government contracts with an A&E Offeror to develop "low-level" documents prior to establishing a schedule for a 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. The government 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 a government website prior to the RFP release. The government 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. The government contracts with a consulting Offeror to assist the government 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 the government 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. The government seeks comprehensive program management services for a series of Transportation Projects. Prior to release of the RFP, the government 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-

Page 85 of 96

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.). The government may conclude the proposing Offeror does not have a conflict of interest that detracts from its eligibility for the program management award. The government 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 Proposer.

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. The government 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 the government under a separate contract. The government'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. The government 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 the government under a separate contract. The government'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 the government's COI Disclosure Form:

**“Actual Conflict-of-Interest”** means that an individual or Offeror is unable to render impartial assistance or advice to the government, 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 in the ORS Chapter 244 definition for “Potential Conflict-of-Interest” (see definition below).

**“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 the government’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 government, 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.

**“Offeror”** means a Proposer or Bidder under a Procurement solicitation, a consultant or contractor under a Contract, or a Subcontractor at any tier of a Proposer, 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.

**“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 The government 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 The government’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 the government.

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

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

**“Proposer”** 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 government of Guam and federal government 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 Chapter 25 of Title 9 of the Guam Code Annotated or of an offense defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated, 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 the Office of the Governor 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 the Office of the Governor 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 the Office of the Governor, and the service provider shall notify the Office of the Governor when action has been taken. If the service provider fails to take corrective steps within twenty-four hours of notice from the Office of the Governor, then the Office of the Governor in its sole discretion may suspend temporarily any contract for services.

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I, \_\_\_\_\_ being a duly authorized representative of the  
(print name)

Offeror, 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)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

**Section XV. CERTIFICATION REGARDING LOBBYING FORM  
STANDARD FORM-LLL (SF-LLL)**

Approved by OMB

0348-0046

**Disclosure of Lobbying Activities**

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352  
(See reverse for public burden disclosure)

<p><b>1. Type of Federal Action:</b>  a. contract  ___ b. grant  ___ c. cooperative agreement  ___ d. loan  ___ e. loan guarantee  ___ f. loan insurance</p>	<p><b>2. Status of Federal Action:</b>  a. bid/offer/application  ___ b. initial award  ___ c. post-award</p>	<p><b>3. Report Type:</b>  a. initial filing  ___ b. material change</p> <p><b>For material change only:</b>  Year ___ quarter ___  Date of last report _____</p>
<p><b>4. Name and Address of Reporting Entity:</b>  ___ Prime ___ Subrecipient  Tier ____, if Known:</p> <p><i>Congressional District, if known:</i></p>	<p><b>5. If Reporting Entity in No. 4 is Subrecipient,</b>  Enter Name and Address of Prime:</p> <p><i>Congressional District, if known:</i></p>	
<p><b>6. Federal Department/Agency:</b></p>	<p><b>7. Federal Program Name/Description:</b></p> <p>CFDA Number, if applicable: _____</p>	
<p><b>8. Federal Action Number, if known:</b></p>	<p><b>9. Award Amount, if known:</b>  \$ _____</p>	
<p><b>10. a. Name and Address of Lobbying Registrant</b>  <i>(if individual, last name, first name, MI):</i></p>	<p><b>b. Individuals Performing Services</b> <i>(including address if different from No. 10a)</i>  <i>(last name, first name, MI):</i></p>	
<p><b>11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b></p>	<p><b>Signature:</b> _____  <b>Print Name:</b> _____  <b>Title:</b> _____  <b>Telephone No.:</b> _____ <b>Date:</b> _____</p>	
<p><b>Federal Use Only</b></p>	<p><b>Authorized for Local Reproduction</b>  <b>Standard Form - LLL (Rev. 7-97)</b></p>	

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subrecipient or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subrecipient, e.g., the first subrecipient of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subrecipient," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

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According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

**SECTION XVI. POLICY# OTECH-POL2021-002**


**IT SYSTEM DEVELOPMENT REQUIREMENTS & SECURITY  
ASSESSMENT STANDARDS**

**\*\* PLEASE FIND THE CURRENT POLICY DETAILS AT THE LINK  
BELOW.  
POLICY OVERVIEW AND INTRODUCTION ARE INCLUDED IN  
THIS SECTION\*\***

<https://otech.guam.government/wp-otech-content/uploads/2022/01/OTECH-POL2021-002-IT-System-Development-Requirement-Security-Assessment-Standards-Final-mod-1.20.2022.pdf>



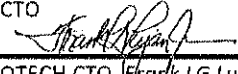
Overview

<b>Policy Number:</b>	OTECH-POL2021-002
<b>Title:</b>	IT System Development Requirements & Security Assessment Standards
<b>Purpose:</b>	To provide security control standards for all Government of Guam (GovGuam) Information Systems, to include all GovGuam information systems hosted outside of the GovGuam Network (GGWAN).
<b>Authority:</b>	5 GCA Chapter 1 Article 12.105 (a)(3), (a)(9), 12.109, 12.110
<b>Publication Date:</b>	January 20, 2022
<b>Policy Approval:</b>	 Frank LG Lujan, Jr Chief Technology Officer
<b>Target Audience:</b>	The intended recipient of this policy includes all entities under the authority of the Office of Technology, pursuant to 5GCA Ch 1, Article 12.102.
<b>Contact Details:</b>	Office of Technology – Government of Guam 211 Aspinall Avenue Hagåtña, Guam 96910 O: 671.635.4500 F: 671.472.9508 otech.guam.gov





### Revision History

Date of Change	Responsible	Summary of Change
June 2021	ValidUSA	Draft Template
June 2021	OTECH Systems Support	Update policy
August 2021	CTO, DPM	Review draft, approve and disseminate
January 2022	CTO	Corrected format and typo errors
January 2022	OTECH Systems Support	Add Review & Internal Audit section
January 2022	CTO  <hr/> OTECH CTO, Frank LG Lujan, Jr. Date: January 20, 2022	Review and Approve policy updates for dissemination.

### Introduction

The Office of Technology (OTECH) is responsible for safeguarding all GovGuam Information Systems. Security must be considered at all stages of life cycle of an information system (i.e., feasibility, planning, development, implementation, maintenance, and retirement) to:

- a. Ensure conformance with all appropriate security requirements,
- b. Protect sensitive information throughout its life cycle,
- c. Facilitate efficient implementation of security controls,
- d. Prevent the introduction of new risks when the system is modified, and
- e. Ensure proper removal of data when the system is retired.

This policy provides guidance to ensure that systems security is considered during the acquisition, development and maintenance and testing stages of an information system’s life cycle.

### Third-Party Security Control Requirements

The intention of this guideline is to provide security control requirements for all GovGuam Third-Party vendors and contractors who provide external information system services to GovGuam Agencies. These standards not only cover network services, but should also extend to the people, processes, and technology required by the hosted information system.

All providers of external information system services are required to comply with the following organizational information security requirements, and organization-defined security controls in accordance with applicable state and federal laws, Executive Orders, directives, polices, regulations, standards, and guidance.

Third-Party vendors and/or contractors, hereafter referred to as “Contractor”, are required to submit quarterly security audit reports to ensure continued security control compliance as detailed in the requirements below.



## **SECTION XVII. GRANT TERMS & CONDITIONS**

U.S. Department of Interior, Office of Insular Affairs under Federal Award No.  
D20AP00048, attached.



## U.S. Department of the Interior – Office of Insular Affairs (OIA)

### GRANT TERMS AND CONDITIONS

Acceptance of a Federal Financial Assistance award from the Department of the Interior (DOI) carries with it the responsibility to be aware of and comply with the terms and conditions of award. Acceptance is defined as the start of work, drawing down funds, or accepting the award via electronic means. Awards are based on the application submitted to, and as approved by DOI and are subject to OIA's Standard Terms and Conditions as detailed in this document, as well as DOI's Standard Terms and Conditions which can be found at the following link: <https://www.doi.gov/sites/doi.gov/files/migrated/doi-standard-award-terms-and-conditions-effective-december-2-2019.pdf>.

#### 1. Recipient Responsibilities

You as the recipient are responsible for compliance with the provisions of all laws and regulations governing the use of Federal grant funds, as applicable. In those instances in which you are not in compliance with applicable laws or regulations, or do not believe you can comply, you should immediately notify the Office of Insular Affairs (OIA). If feasible, the OIA will provide assistance to help correct the deficient area(s). **Failure of a recipient to comply with any applicable laws and regulations may be the basis for withholding payments and/or for grant termination.**

#### 2. Procurement of Goods and Services with Grant Funds and Record Retention

All grant awards and sub-awards must fully comply with the procurement regulations as detailed in the applicable subparts of 2 CFR 200, Subpart D, "Post Federal Award Requirements", including updates to the NDAA Micro-Purchases and Simplified Acquisition Thresholds policy, implemented on December 23, 2017; and all other Congressional directives and guidance for the use or reprogramming of appropriated funds. Records related to this award, including procurement records, must be retained and made accessible per the requirements of the applicable retention and access requirements as detailed in 2 CFR 200, Subpart D, .333-.337, "Record Retention and Access." The OIA shall have the right to access any pertinent books, documents, papers, or other records of grantees and sub-grantees which are pertinent to the grant, including but not limited to procurement records, to determine compliance with the applicable laws and regulations.

#### 3. Limitations on the Use of Grant Funds

Grant funds are not to be used for any purpose other than that for which they are offered without prior approval from the OIA. Any change in the approved scope of work or project budget must be submitted to the grant manager for approval. Changes shall not be implemented until the OIA grant manager sends written approval to the grantee. Costs associated with the administration of OIA grant projects and programs by the grantee are to be charged against the grant funds only as approved in the project budget.

#### 4. Scope of Work Requirements

- a. Costs associated with the administration of OIA grant projects and programs are to be charged against the grant funds only as approved in the project budget from the proposal. Outside expertise may be procured and charged against the grant only if it is included in the project budget and approved by OIA.

- b. Any substantial change in the scope of work or project budget must be submitted to the Grant Manager. The project revisions shall not be implemented until the OIA Grant Manager sends written approval to grantee. If a construction activity is involved and the grantee proposes a substantial change to the scope of work or if significant new circumstances or information emerge, OIA will determine whether supplemental environmental documentation must be prepared to comply with NEPA and all other environmental laws and regulations. This determination must be made prior to OIA approval of any project revisions.

The OIA Grant Manager must be informed in writing of any changes to the proposed project schedule that are likely to cause substantial delays to the project's completion.

## 5. Conflicts of Interest

- a. **Applicability**
  - i. This section intends to ensure that non-Federal entities and their employees take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements.
  - ii. In the procurement of supplies, equipment, construction, and services by recipients and by sub-recipients, the conflict of interest provisions in 2 CFR 200.318 apply.
- b. **Requirements**
  - i. Non-Federal entities must avoid prohibited conflicts of interest, including any significant financial interests that could cause a reasonable person to question the recipient's ability to provide impartial, technically sound, and objective performance under or with respect to a Federal financial assistance agreement.
  - ii. In addition to any other prohibitions that may apply with respect to conflicts of interest, no key official of an actual or proposed recipient or sub-recipient, who is substantially involved in the proposal or project, may have been a former Federal employee who, within the last one (1) year, participated personally and substantially in the evaluation, award, or administration of an award with respect to that recipient or sub-recipient or in development of the requirement leading to the funding announcement.
  - iii. No actual or prospective recipient or sub-recipient may solicit, obtain, or use non-public information regarding the evaluation, award, or administration of an award to that recipient or sub-recipient or the development of a Federal financial assistance opportunity that may be of competitive interest to that recipient or sub-recipient.
- c. **Notification**
  - i. Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with 2 CFR 200.112, Conflicts of interest.
  - ii. Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the Financial Assistance Officer in writing of any conflicts of interest that may arise during the life of the award, including those that have been reported by sub-recipients.
- d. **Restrictions on Lobbying.** Non-Federal entities are strictly prohibited from using funds under this grant or cooperative agreement for lobbying activities and must provide the required certifications and disclosures pursuant to 43 CFR Part 18 and 31 USC 1352.
- e. **Review Procedures.** The Financial Assistance Officer will examine each conflict of interest disclosure on the basis of its particular facts and the nature of the proposed grant or cooperative agreement, and will determine whether a significant potential conflict exists and, if it does, develop an appropriate means for resolving it.
- f. **Enforcement.** Failure to resolve conflicts of interest in a manner that satisfies the Government may be cause for termination of the award. Failure to make required disclosures may result in

any of the remedies described in 2 CFR 200.338, Remedies for Noncompliance, including suspension or debarment (see also 2 CFR Part 180).

6. Data Availability

- a. **Applicability.** The Department of the Interior is committed to basing its decisions on the best available science and providing the American people with enough information to thoughtfully and substantively evaluate the data, methodology, and analysis used by the Department to inform its decisions.
- b. **Use of Data.** The regulations at 2 CFR 200.315 apply to data produced under a Federal award, including the provision that the Federal Government has the right to obtain, reproduce, publish, or otherwise use the data produced under a Federal award as well as authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.
- c. **Availability of Data.** The recipient shall make the data produced under this award and any subaward(s) available to the Government for public release, consistent with applicable law, to allow meaningful third party evaluation and reproduction of the following:
  - (i) The scientific data relied upon;
  - (ii) The analysis relied upon; and
  - (iii) The methodology, including models, used to gather and analyze data.

7. Grant Fund Payment and Drawdown Requirements

A completed SF-270 Request for Advance or Reimbursement, along with supporting documentation (e.g. receipts, invoices), must be submitted to the OIA grant manager for the drawdown of funds. The SF-270 shall specify the OIA grant number, recipient bank account number in which the funds are to be deposited as well as the American Banking Association (ABA) routing number, for the electronic transfer of funds. The frequency of drawdowns is up to the grantee's discretion. When the grant expires, the final liquidation period is 90 days after expiration.

8. Reporting Requirements

- a. A SF-425 Federal Financial Report and a narrative project status report will be submitted quarterly for the following periods:
  - i. January 1<sup>st</sup> – March 31<sup>st</sup> (reports due April 30<sup>th</sup>)
  - ii. April 1<sup>st</sup> – June 30<sup>th</sup> (reports due July 30<sup>th</sup>)
  - iii. July 1 – September 30<sup>th</sup> (reports due October 30<sup>th</sup>)
  - iv. October 1<sup>st</sup> – December 31<sup>st</sup> (due January 30<sup>th</sup>)
- b. Reports are due within 30 days of the end of the period. Final reports are due 90 days after the expiration or termination of the award.
- c. All required reports must be submitted to the OIA grant manager listed below.
- d. Failure to comply with these reporting requirements may be considered non-compliance with the terms and conditions of this award. Non-compliance may result in withholding of payments, whole or partial suspension or termination of the award, or other legal remedies in accordance with 2 CFR 200.

9. Marketing and Branding

A graphic of the U.S. flag, accompanied by the following language, "Funding provided by the U.S. Department of the Interior, Office of Insular Affairs", should be displayed on all signage that is intended

to identify the project and funders, as appropriate. The graphic and language should be included for all programs, projects, assistance, activities, and public communications, including news articles, partially or fully funded by the Office of Insular Affairs. The U.S. flag may replace or be used in conjunction with the Department of the Interior, Office of Insular Affairs seal. If the seal is displayed, it must remain intact and unchanged, and may only be displayed using either the standard color scheme or a single color that complements the background where it appears. The U.S. flag and language should be publicly displayed on the final product. The OIA grant manager should be contacted for an electronic version of the U.S. flag and Office of Insular Affairs seal if needed.

10. Special terms and conditions for grant TAP-Guam-2020-1 (D20AP00048)

- a. With each drawdown that is submitted, a detailed budget should be included that will show how the funds were utilized. Advances will be approved as long as the required information is submitted. OIA grant managers may require additional documentation such as receipts for our files.
- b. With each drawdown that is submitted, you should indicate how the drawdown supports Guam's Pandemic Plan. With the first drawdown, please include a copy of Guam's Pandemic Plan or a status update on the completion of a Pandemic Plan. OIA may require submission of the completed Pandemic Plan prior to payment of drawdowns.
- c. If Guam does not require the full amount awarded for COVID-19, OIA should be notified prior to the expiration of the grant.

11. Contact Information

a. Recipient grant manager:

Mr. Lester Carlson  
Director  
Guam Bureau of Budget and Management Research  
lester.carlson@bbmr.guam.gov

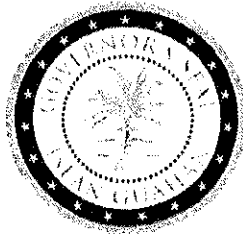
b. OIA grant manager:

Hailey McCoy  
Grants Management Specialist  
Office of Insular Affairs  
U.S. Department of the Interior  
1849 C Street, NW - MS 3117  
Washington, DC 20240  
Phone: 202-513-7746  
Hailey\_McCoy@ios.doi.gov



**REQUEST FOR PROPOSALS**  
**RFP Number: GOV 2022-001**

Office of the Governor  
**Amendment No. 001**



**2/14/2022**

Office of the Governor  
513 West Marine Corps Drive  
Ricardo J. Bordallo Governor's Complex  
Hagåtña, Guam 96910

RFP Number: 2022-001

**Amendment No. 001**

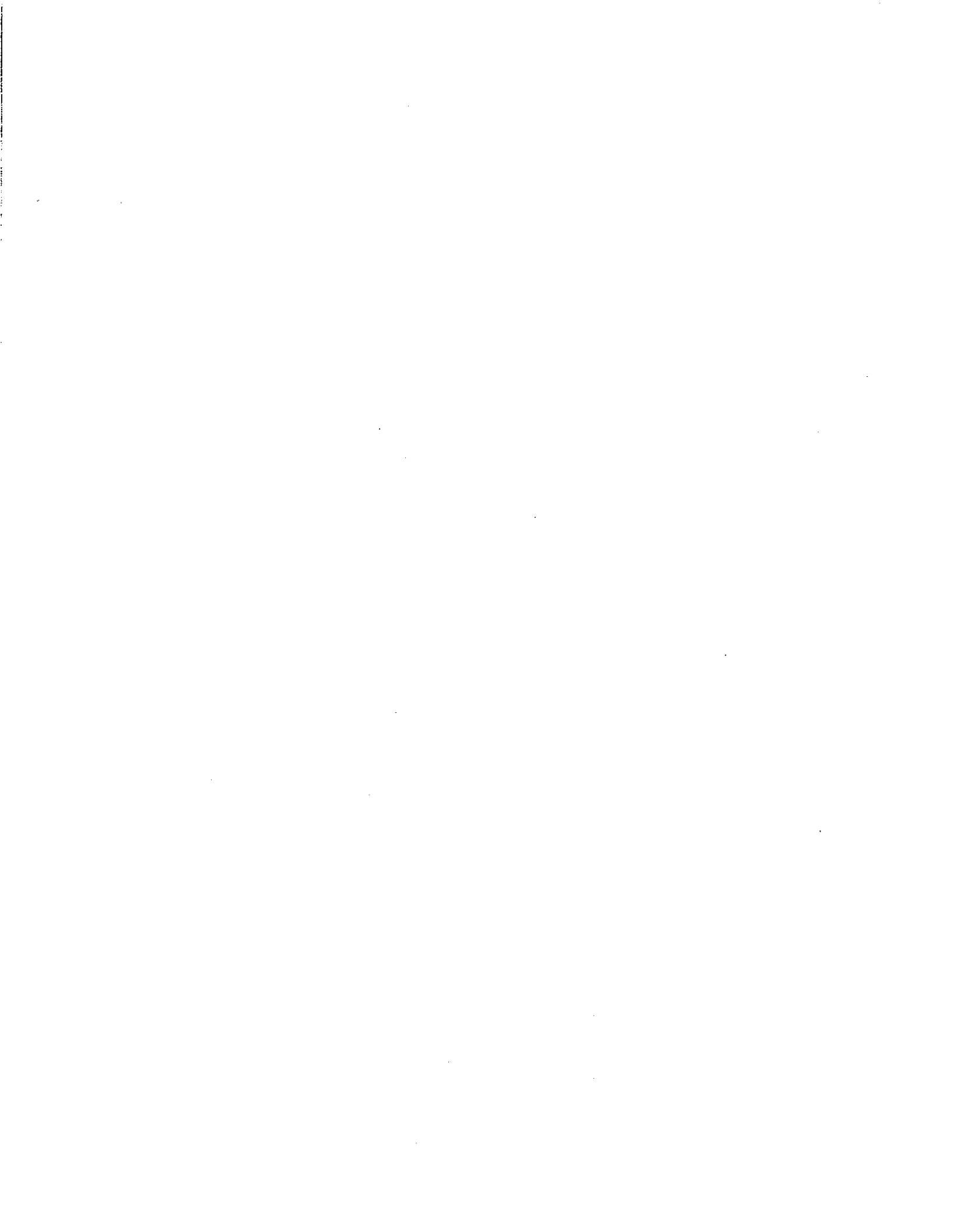
THE FOLLOWING AMENDMENTS HAVE BEEN MADE TO RFP NUMBER GOV 2022-001:

1. REQUEST FOR PROPOSAL, GOV 2022-001, “Section IV Scope of Services, D. Organizational Units” is hereby amended to read as follows:

“Several agencies are expected to utilize the Licensing and Permit System. Those agencies are listed below. Please refer to the “Guidebook to Development Requirements on Guam” for the processes and forms the government of Guam intends to automate through this project. The latest edition can be found at <https://bsp.guam.gov/guam-development-guidebook/>

License and Permit Application Owners and Clearance Users	Autonomous Agency Users (For Clearance Purposes)
Department of Revenue and Tax (DRT) Guam Environmental Protection Agency Department of Public Works Department of Agriculture Department of Land Management Guam Land Use Commission (DLM) The Guam Historic Resources Division Department of Parks and Recreation Department of Public Health & Social Services Professional Engineers, Architects and Land Surveyors (PEALS) Board Contractor’s License Board Guam Fire Department Bureau of Statistics and Plans	Guam Power Authority Guam Waterworks Authority

**-NOTHING ELSE FOLLOWS-**







February 25, 2022

The Office of the Governor  
Matthew Santos  
513 West Marine Corps Drive, Ricardo J. Bordallo Governor's Complex  
Hagåtña, Guam 96910  
Email: [procurement@guam.gov](mailto:procurement@guam.gov)

**RE: RFP-Office of the Governor-2022-001**

Dear Mr. Santos:

Relative to the above referenced Request for Proposal, Data Management Resources, LLC. (DMR) submits the following questions:

1. Ref. RFP Page 1: The cover page for RFP-OOG-2022-001 indicates a submission deadline of "March 25, 2022, 5:00 P.M."; page 6 lists time as 4:00 P.M.
  - a. Please confirm the correct time for the deadline.
2. Ref. RFP Page 5: "Any renewal of the contract for continued services will not be subject to negotiation and shall be on the same terms and conditions and pricing as in effect under the existing contract."
  - a. The Initial Term is defined as five (5) years, with a renewal or extension period of an additional five (5) years (page 4). Is the Government requiring the vendor to provide a fixed price proposal for a ten (10) year period without adjustments for costs or inflation?
  - b. Is the Government requiring the vendor to submit two separate price proposals, one for the Initial Term and one for the Renewal Term?
3. Ref. RFP Page 5: "Unless cancelled for lack of funds, terminated, renewed, or extended prior to expiration, the contract shall expire at the end of the Initial Term or at the end of any subsequent Renewal Term, or any No Cost Extension term exercised by the government of Guam."
  - a. Is it the Government's assertion that it has the ability to cancel the contract for lack of funds, after the vendor has performed services?
  - b. Is it the Government's assertion that it has the ability to cancel the contract for lack of funds, before the vendor has performed services?
  - c. On what basis, other than lack of funds, is the Government stating that it may terminate the contract?
4. Ref. RFP Page 8: "No more than three (4) personnel shall be allowed to conduct the presentation in two (2) hours or less."
  - a. Please clarify, is it three or four personnel?
  - b. Does "conduct" as used herein restrict the presence of other vendor personnel?
  - c. What is the reason for restricting vendor personnel?
  - d. Is the Government restricting the presence of Government personnel in the presentation?
  - e. How many representatives of the Government will be present for the presentation?



- f. Will the Government be restricting the number of Government personnel who may ask questions during the presentation due to the limited time available?
5. Ref. RFP Page 8: "No other materials, items, promotional materials, products, or similar items may be submitted, given, or provided to the Office of the Governor or the Office of the Governor Evaluation Team by any Offeror at any time before, during, or after the formal presentations, and at any time prior to contracting."
  - a. At the request of the Office of the Governor and before the publication of RFP-OOG-2022-001, in 2021, DMR presented a permitting solution, to members of the Office of the Governor. Does this restriction apply to any presentations conducted before the publication of RFP-OOG-2022-001?
  - b. If the restriction is applied to pre-publication of RFP-OOG-2022-001, please identify the basis and authority for such restriction.
6. Ref. RFP Page 11: "The use of standard product documentation, including user manuals and technical maintenance manuals, is encouraged."
  - a. What is the definition of "standard product documentation"?
  - b. Is "encouraged" as used herein synonymous with "required"?
  - c. Is custom documentation created specifically for the Government discouraged or prohibited?
  - d. Is "standard product documentation" an evaluation factor?
  - e. If so, under which evaluation factor can a vendor expect this to be applied?
7. Ref. RFP Page 13: "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 this type; the Offeror's current or demonstrated available resources, and how the Offer will implement Quality Assurance/Quality Control measures."
  - a. The "Availability and Capacity to Perform" a contract, and the "Ability, Qualifications, Experience and Quality of Personnel, IT Systems and Facilities" are interrelated. What specific information is RFP-OOG-2022-001 requiring independent of the skill level, availability and identification of the vendor and its personnel necessary to perform the Contract?
  - b. How will the specific information required be utilized in the Evaluation of the proposals submitted?
  - c. Is participation in this procurement process insufficient to confirm availability to perform?
  - d. Define "internal quality and cost-control measures."
  - e. Define "internal quality and cost-control procedures."
8. Ref. RFP Page 14: "Provide a disclosure of financial resources sufficient to demonstrate an ability to complete this Project."
  - a. Define "Disclosure of financial resources."



- b. If financial resources includes real property holdings, identify the statutory authority requiring the disclosure of private, confidential and proprietary information unrelated to the performance of services.
  - c. If financial resources includes identification of financial institution information, identify the statutory authority requiring the disclosure of private and confidential information unrelated to the performance of services?
  - d. Will a letter of financial stability from a financial institution suffice under this section requiring "Disclosure of financial resources"?
  - e. Is the Government requiring vendors to own or control a minimum amount of resources to participate in this procurement?
  - f. If so, what is the minimum amount of resources required to participate in procurements for the Government?
  - g. What weight of the 15 point allocation for Availability and Capacity of Offeror in the Evaluation Factors, does the vendor's financial resources have?
9. Ref. RFP Page 18: "Profit must be identified and itemized as a separate element of the price in the cost schedule pursuant to 2 CFR § 200.324."
- a. Is Guam a State or non-federal entity under U.S. Department of Interior Grant Award No. D20AP00048?

2 CFR § 300.324(b) provides:

The non-Federal entity 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. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

2 CFR § 200.317 further provides the applicable provisions to the Procurements by states, as follows:

When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with §§ 200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by § 200.327. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§ 200.318 through 200.327.

2 CFR § 200.1 defines Guam as a "State," as opposed to a non-federal entity.

10. Ref. RFP Page 19: "Pursuant to 2 CFR § 200.324(b), if the Offeror is selected for negotiations, Office of the Governor 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. Offeror's Price Proposal must include profit as a separate line item in its proposed budget and pricing."



- a. Because Guam is a "State" as defined by the CFR, why is the Office of the Governor utilizing sections inapplicable to States and applicable only to non-federal entities?

200 CFR § 300.324(b) provides:

The non-Federal entity 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. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

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2 CFR § 200.1 defines Guam as a "State," as opposed to a non-federal entity.

- b. If 2 CFR § 200.324 is inapplicable to Guam, what authority under Guam law is the Government relying upon to require negotiation of profit?
- c. If this is a COTS solution, are vendors expected to provide their COGs plus profit margin?
11. Ref. RFP Page 20: "These funds are currently available from the U.S. Department of Interior Grant Award No. D20AP00048 until the end of FY 2022. The Office of the Governor's obligation under any proposed contract is contingent upon the availability of funds from which payment for contract purposes can be made. (See also Section II, General)
- a. Government of Guam public documents identify Department of Revenue and Taxation (DRT) - Business License and Permit Center (Project #16) under U.S. Department of Interior Grant Award No. D20AP00048 at <http://bbmr.guam.gov/wp-bbmr-content/uploads/2021/10/FY2021-GOVGUAM-Federal-Stimulus-Assistance-Programs-Update-Report-CARES-ACT-COVID-19-As-of-9-30-21.pdf> The information provided indicates that the funding for the grant being utilized in this proposal expires on September 30, 2022. If funding for RFP-OOG-2022-001 expires at the end of fiscal year 2022, what reassurances do vendors have that the Government is acting in good faith to certify fund availability for the Initial Term, and five (5) year renewal periods referenced in the proposal?
- b. If funding for RFP-OOG-2022-001 is not provided beyond September 30, 2022 under this grant, has the Government certified other funds available for this procurement?
- c. Does execution of the contract between the vendor and the Government require that the Government certify funds availability for the entire contract award amount?



12. Ref. RFP Page 23: "The selected Contractor will work under the direction of the Office of the Governor and the Office of Technology. The Office of Technology is the designated Project Manager pursuant to 5 GCA § 12.107."
  - a. Is there a current person assigned as Project Manager?
  - b. Is the Grant Manager, as identified in Section XVII, the "Project Manager"?
  - c. Is the Chief of Staff of the Office of the Governor the "Project Manager"?
  - d. What is the role of the Project Manager with regard to decision-making authority?
  - e. Will the Project Manager have the authority to sign the acceptance of deliverables?
13. Ref. RFP Page 24: . . . "the Project Manager and authorized consultants/designees will review and make recommendations to the Office of the Governor regarding the amounts due the awarded contractor."
  - a. What is the role of the "authorized consultants/designees" in RFP-OOG-2022-001?
  - b. Is the Office of the Governor by the Chief of Staff the one with authority to sign the acceptance of deliverables?
14. Ref. RFP Page 27: "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."
  - a. Based upon the limited availability known to the Government under U.S. Department of Interior Grant Award No. D20AP00048, is the Government asserting unavailability of funds after September 30, 2022?
15. Ref. RFP Page 37: "All directions within the scope of the RFP and the awarded contract will be issued by the Chief of Staff of the Office of the Governor and the Offerors and any awarded Contractor shall not accept such direction from others. Information provided by other governmental agencies or entities which seemingly conflicts with information provided by the Office of the Governor in this solicitation will be discussed with the Chief of Staff of the Office of the Governor immediately."
  - a. This section appears in conflict with the role of the Project Manager. If the Governor's Chief of Staff is the primary authoritative contact for the project, what is the role of OTECH as Project Manager?
16. Ref. RFP Page 41: General Information: The objective of the project is to "streamline and modernize the government of Guam's licensing and permitting processes."
  - a. Is the Licensing and Permitting system expected to replace the existing processes currently in place for the issuance of the identified licenses and permits?
  - b. Is the Licensing and Permitting System intended to replace the existing systems at each of the identified departments for issuance of the identified licenses and permits?
  - c. Please identify and provide detail on each of the processes that need to be streamlined.
  - d. If the existing license/permit systems will not be replaced, is the new Licensing and Permitting system expected to interact with or accommodate data/applications processed through the existing systems? If so, please specify scope of data sharing/integration.
17. Ref. RFP Page 41: General System Needs: Permitting. Administer and issue a variety of permit types and account for all appropriate fees.



- a. Does the Department of Public Works currently have an automated system for the issuance of the permits identified in the RFP?
  - b. Does the Department of Land Management currently have an automated system for the issuance of the permits identified in the RFP?
  - c. Does the Guam Seashore Protection Commission currently have an automated system for the issuance of the permits identified in the RFP?
  - d. Does the Guam Land Use Commission currently have an automated system for the issuance of the permits identified in the RFP?
  - e. Does the Department of Public Health and Social Services currently have an automated system for the issuance of the permits identified in the RFP?
  - f. Does the Guam Fire Department currently have an automated system for the issuance of the permits identified in the RFP?
18. Ref. RFP Page 41: Licensing. Process applications, administer and issue business licenses.
- a. Is the Licensing and Permitting system expected to replace the Department of Revenue and Taxation's existing system for the application, administration and issuance of business licenses?
19. Ref. RFP Page 41. – Mobile usage. "View, schedule and modify inspections and record notes while in the field from mobile devices (e.g., tablets and/or cell phones). The solution must be compatible with iOS, Android, and Windows operation systems."
- a. Do the designated government users currently use mobile devices for work processes?
  - b. Who are the administrators of these devices?
20. Ref. RFP Page 42. Long-term archiving
- a. What are the government's retention policies for each of the associated permitting/licensing processes?
  - b. What is the minimum required retention period?
  - c. What is the maximum retention period?
21. Ref. RFP Page 42: GIS Integration "GIS integration. Provide the ability to integrate permitting and licensing with the existing government of Guam ESRI GIS systems based upon regularly updated land pins."
- a. What integrations are required?
22. Ref. RFP Page 42. Public Portal
- a. Is the portal expected to provide public access to non-applicant users to view issued permits or licenses?
23. Ref. RFP Page 43. Payment processing: "Software must facilitate online payment processing through a secure third party."
- a. Is vendor to provide this payment processing platform, or is an existing payment processor to be used?



- b. If existing, please specify vendor and solution.
24. Ref. RFP Page 44, Section F. Inspections and Clearances – “The System should include all internal clearance forms and inspection checklists applicable to business license applications, building permit, and occupancy permits.”
- a. Please provide samples of each of the required internal clearance forms and inspection checklists for each of the departments listed.
25. Ref. RFP Page 45: “For on-premise solution . . .”
- a. If vendor opts to provide an on-premise solution, please identify the location for the on-premise equipment.
  - b. If vendor opts to provide an on-premise solution, is the Government requiring ownership of the equipment?
  - c. If vendor opts to provide an on-premise solution, is the Government requiring the vendor to maintain the equipment for the full term of the contract?
  - d. If vendor opts to provide an on-premise solution, is the Government requiring a warranty on the equipment for ten (10) years, both the Initial Term and Renewal Term?
  - e. If the Government does not renew for the Renewal Term of five (5) additional years, will the Government accept a proposal that does not carry any warranty on the equipment for the Renewal Term?
26. Ref. RFP Page 45-46: “The government of Guam intends to streamline its licensing and permitting operating procedures wherever possible, and the Vendor’s capability to advise and assist as necessary during System implementation will be considered in evaluating proposals.”
- a. Under which evaluation factor does this evaluation fall?
27. Ref. RFP Page 46: Training.
- a. How many system administrators will require training?
  - b. How many users will be included in the core group to be trained?
  - c. Will the Government be providing the facility for training?
28. Ref. RFP Page 47: “data conversion efforts”
- a. Is data conversion a required deliverable for this project?
  - b. If so, what data is required to be converted?
29. Ref RFP Page 47: “Assess current business processes of the government of Guam for business license applications and land use, building, sanitary, fire, and occupancy permits... Execute customization plan and update internal government of Guam licensing and permit processing procedures.”
- a. Is the Licensing and Permitting System intended to replace all existing Government of Guam processes for issuing business licenses and permits?
  - b. Is the Licensing and Permitting System intended to replace any existing systems at each of the identified departments for issuance of the identified licenses and permits?



- c. If the existing license/permit systems will not be replaced, is the new Licensing and Permitting system expected to interact with or accommodate data/applications processed through the existing systems? If so, please specify scope of data sharing/integration.
30. Ref. RFP Page 47: "Test and verify acceptable performance levels at two times the anticipated initial volumes of data input, online access, and report generation."
- a. Please provide at least 5 years of historical processing statistics for each of the following prior to 2020:
- Number of business licenses issued annually
  - Number of clearing/grading permits issued annually
  - Number of building construction permits issued annually
  - Number of building occupancy permits issued annually
  - Number of Zone Change, Split Zone, and Summary Zone Change, Zone Variance/Subdivision Variance permits issued annually
  - Number of Tentative and Final Development Plans issued annually
  - Number of Conditional Use permits issued annually
  - Number of sanitary permits issued annually
  - Number of Activities, Materials, and User permits issued annually
31. How many user licenses are needed for all government agency users?
32. What is the requirement for maximum concurrent public users of the system?
33. Section XVII identifies the Grant Manager, as Lester Carlson.
- a. Is the vendor expected to communicate with the Grant Manager?
- b. If yes, what is the process of resolution should communication with the Grant Manager conflict with the Chief of Staff of the Office of the Governor and/or the Project Manager?
34. Please specify if Subject Matter Experts have been identified for each of the following agencies, and how many from each:
- Department of Revenue and Tax (DRT)
  - Guam Environmental Protection Agency
  - Guam Waterworks Authority
  - Department of Public Works
  - Department of Agriculture
  - Department of Land Management
  - Guam Land Use Commission (DLM)
  - The Guam Historic Resources Division
  - Department of Parks and Recreation
  - Department of Public Health & Social Services
  - Professional Engineers, Architects and Land
  - Surveyors (PEALS) Board
  - Contractor's License Board
  - Guam Fire Department
  - Bureau of Statistics and Plans
  - Guam Power Authority
  - Guam Waterworks Authority
35. If SMEs have not yet been identified, does the Government intend to identify the SMEs prior to project initiation?





36. How much of the SMEs' time will be dedicated to the project?
37. Assuming the Government elects to continue the contract for the Renewal Term, which agency of the Government will be responsible for the funding of the Licensing and Permitting system?
38. Please confirm that the latest edition of the "Guidebook to Development Requirements on Guam" referenced in Amendment 1 is from 2020.
39. Will the Government allow vendors to submit follow-up questions on responses received from the Government?

The Government has indicated it will provide responses to written questions within a reasonable time prior to the submission due date for Proposals. Please advise when are responses expected to be issued to offerors?

If the Government is not able to distribute responses at least three weeks prior to proposal submission deadline, we respectfully request an extension in the proposal submission deadline to allow for adequate proposal preparation time upon receipt of the Government's responses.

We look forward to the Government's responses so that we may respond appropriately to the RFP.

Sincerely,

Richard C. Taitano



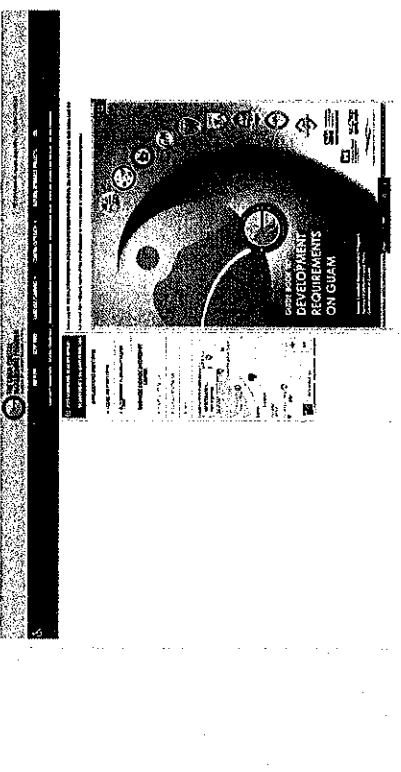
**REQUEST FOR PROPOSALS**  
**RFP Number: GOV 2022-001**

Office of the Governor  
**Responses to All Questions**



3/5/2022

Office of the Governor  
513 West Marine Corps Drive  
Ricardo J. Bordallo Governor's Complex  
Hagåtña, Guam 96910

Date and Time	Question	Answer
Feb 11, 2022, 5:01 AM	<p>Good Morning Matthew, on page 43 of the RFP, D. Organizational Units the following paragraph appears:            Several agencies are expected to utilize the Licensing and Permit System. Those agencies are listed below. Please refer to the appendix to the processes and forms the government of Guam intends to automate through this project            I do not see the appendix referenced here, can you please direct me accordingly. Thank you in advance for your assistance.</p>	<p>Please refer to RFP-GOV-2022-001 - Amendment 1</p>
Feb 15, 2022, 3:50 AM	<p>Hi Matthew,            I am unable to access your website as your security protocols are blocking access from Canada. Is it possible to get access to the bid site?</p>	<p>Canada has been unblocked from accessing websites on the guam.gov domain</p>
Feb 15, 2022, 3:55 AM	<p>When I go to the link provided in the PDF (<a href="https://bsp.guam.gov/guam-developmentguidebook/">https://bsp.guam.gov/guam-developmentguidebook/</a>) I get this result:</p>	<p>If your PDF viewer is adding special characters when clicking the link simply copy the link text from the amendment and paste it in your browser.</p> 

Feb 22, 2022, 2:48 AM

Lately, I've seen the RFP's require the acknowledgment of amendments received, typically by replying to the email which they were sent. In a recent government RFP, I've seen the government document in their amendment notification emails that the vendor reply their acknowledgment that they received the amendment. That's the reason I previously acknowledged the receipt of the amendment.

Second, I tried to retrieve the link documented in amendment 1 actually has some special characters in the link, it is correct as displayed on the pdf. But if you click the link or copy it, you'll find that there are special characters embedded in the link that is not visible, so users pressing the link from the pdf or copying it straight of the pdf will get a 404 error message returned. I went to the BSP home page and found the "2020 Guidebook to Development Requirements on Guam" with the same link of course.

Response to First Statement: Under Guam's Procurement Rules and Regulations, acknowledgment of amendments is not mandatory for Requests for Proposals (RFP's), unless the language of the RFP requires acknowledgment. Under the rules, acknowledgment of amendments is only mandatory for amendments to Invitations for Bids (IFB's). 2 GAR, Div. 4 § 3109(c)(6) and (f)(1). This RFP did not require acknowledgment of amendments.

Response to Second Statement: The web address found in the amendment is correct, copy and paste the text for the url and paste it in your browser as a working alternative to clicking on a link automatically generated by the PDF viewer you are using.

Feb 22, 2022, 2:42 PM

OFFEROR tried to use the link provided in the Amendment 1 for RFP-GOV-2022-001, however it's giving us error no results found.

Please kindly send us the correct link. Also please make sure to use OFFEROR Registered email address:

Feb 24, 2022, 6:11 AM

We have the following questions with regards to the RFP

- In order to provide license pricing, we would like to know: How many users are anticipated in each of the departments who will use the system?
- How many users would use the system in more than one department or business area?
- How many users would use the system from a mobile device only?
- In order to provide license pricing for Electronic Plan Review we would like to know how many users would be using the Electronic Plan Review features of the system?

The web address found in the amendment is correct, copy and paste the text for the url and paste it in your browser as a working alternative to clicking on a link automatically generated by the PDF viewer you are using.

Table 1.: Response to

	Total Users	Electronic Plan Review Users	Mobil Users	Users by Application									
Bureau of Statistics and Plans	2	2					2	2	2				
Contractor's License Board	2												
Department of Agriculture	2	2	2				2	2	2				
Department of Land Management	10	10	5				10	5	5	5			
Department of Public Health & Social Services	4	4	4				4	4	4		4	4	
Department of Public Works	12	12	5				5	7	7	2	2	2	
Guam Fire	14	14	10				7	7	7				14

Department of Revenue and Tax (DRT)	3																			
Professional Engineers, Architects and Land Surveyors (PEALS) Board	2																			
The Guam Historic Resources Division	2	2																		
Department of Parks and Recreation	3	3																		
Guam Environmental Protection Agency	3	3																		
GPA	3	3																		
GWA	3	3																		
<b>Total</b>	<b>62</b>	<b>55</b>	<b>29</b>																	

Response to 1(a): See Amendment #2. The deadline is March 25, 2022, 5:00 P.M. Chamorro Standard Time.

Response to 2(a): No.

Response to 2(b): No.

Response to 3(a): Pursuant to 5 GCA § 5237(a) and (c) the government of Guam must cancel any contract if funds are not available to support the contract. A contract cannot be entered unless funds are available for the first fiscal period at the time of contracting." 5 GCA § 5237(a). "When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled..." 5 GCA § 5237(c)(emphasis added).

Response to 3(b): See Response to 3(a).

Response to 3(c): The government of Guam may terminate any contract pursuant to 5 GCA §§ 5350, 5452 and 5651; and 2 GAR, Div. 4 § 6101(b) and (10).

Response to 4(a): See Amendment #2. No more than 4 personnel shall be allowed to conduct the presentation.

Response to 4(b): Yes. This does not apply to subcontractors listed on the "subcontractor utilization form" submitted with the Proposal, or if a joint proposal is being submitted e.g. Software Company and partner.

Response to 4(c): Time, space, and safety constraints.

Response to 4(d): There will be a maximum number of participants due to time, space, and safety constraints.

Response to 4(e): This number has not been determined.

Response to 4(f): The time limitations placed upon the presentations will be observed.

Feb 25, 2022, 3:37 PM  
 1. Ref: RFP Page 1: The cover page for RFP-OOG-2022-001 indicates a submission deadline of "March 25, 2022, 5:00 P.M."; page 6 lists time as 4:00 P.M.  
 a. Please confirm the correct time for the deadline.

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 c. On what basis, other than lack of funds, is the Government stating that it may terminate the contract?  
 4. Ref: RFP Page 8: "No more than three (4) personnel shall be allowed to conduct the presentation in two (2) hours or less."  
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 e. How many representatives of the Government will be present for the presentation?  
 f. Will the Government be restricting the number of Government personnel who may ask questions during the presentation due to the limited time available?

<p>5. Ref. RFP Page 8: "No other materials, items, promotional materials, products, or similar items may be submitted, given, or provided to the Office of the Governor or the Office of the Governor Evaluation Team by any Offeror at any time before, during, or after the formal presentations, and at any time prior to contracting."</p> <p>a. At the request of the Office of the Governor and before the publication of RFP-OOG-2022-001, in 2021, OFFEROR presented a permitting solution, to members of the Office of the Governor. Does this restriction apply to any presentations concluded before the publication of RFP-OOG-2022-001?</p> <p>b. If the restriction is applied to pre-publication of RFP-OOG-2022-001, please identify the basis and authority for such restriction.</p> <p>6. Ref. RFP Page 11: "The use of standard product documentation, including user manuals and technical maintenance manuals, is encouraged."</p> <p>a. What is the definition of "standard product documentation"?</p> <p>b. Is "encouraged" as used herein synonymous with "required"?</p> <p>c. Is custom documentation created specifically for the Government discouraged or prohibited?</p> <p>d. Is "standard product documentation" an evaluation factor?</p> <p>e. If so, under which evaluation factor can a vendor expect this to be applied?</p> <p>7. Ref. RFP Page 13: "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 this type; the Offeror's current or demonstrated available resources, and how the Offer will implement Quality Assurance/Quality Control measures."</p> <p>a. The "Availability and Capacity to Perform" a contract, and the "Ability, Qualifications, Experience and Quality of Personnel, IT Systems and Facilities" are interrelated. What specific information is RFP-OOG-2022-001 requiring independent of the skill level, availability and identification of the vendor and its personnel necessary to perform the Contract?</p> <p>b. How will the specific information required be utilized in the Evaluation of the proposals submitted?</p> <p>c. Is participation in this procurement process insufficient to confirm availability to perform?</p> <p>d. Define "internal quality and cost-control measures."</p> <p>e. Define "internal quality and cost-control procedures."</p>	<p>Response to 5(a): The government of Guam is required to conduct market research prior to issuing soliciting goods and services utilizing federal funds. 2 CFR §§ 200.319, 320, 324, 403, 404. This market research is used to plan the procurement. 2 GAR, Div. 4, §§ 4104 and 4108. The procurement record contains: brochures and submittals of potential vendors, manufacturers or contractors, and all drafts, signed and dated by the draftsman, and other papers or materials used in the development of specifications .... 5 GCA § 5249(d).</p> <p>Response to 5(b): No.</p> <p>Response to 5(c): Not applicable.</p> <p>Response to 5(a): Documentation that applies to the out of the box system use, administration and configuration.</p> <p>Response to 5(b): No.</p> <p>Response to 5(c): No.</p> <p>Response to 5(d): Yes.</p> <p>Response to 5(e): Quality of Offeror's Product and Live Demonstration</p>
<p>8. Ref. RFP Page 14: "Provide a disclosure of financial resources sufficient to demonstrate an ability to complete this Project."</p> <p>a. Define "Disclosure of financial resources."</p>	<p>Response to 7(a): The Merriam-Webster Online Dictionary defines "available" as:  1: present or ready for immediate use  2a: ACCESSIBLE, OBTAINABLE  2b: free and able to do something at a particular time  <a href="https://www.merriam-webster.com/dictionary/available">https://www.merriam-webster.com/dictionary/available</a></p> <p>The Merriam-Webster Online Dictionary defines "experience" as:  1a: direct observation of or participation in events as a basis of knowledge  1b: the fact or state of having been affected by or gained knowledge through direct observation or participation  1c: practical knowledge, skill, or practice derived from direct observation of or participation in events or in a particular activity  2b: the length of such participation  <a href="https://www.merriam-webster.com/dictionary/experience">https://www.merriam-webster.com/dictionary/experience</a></p> <p>The current availability of the personnel and resources of a vendor is not the same as the past experience and qualifications of a vendor.</p> <p>Response to 7(b): Please see RFP, Section I, Paragraphs N, P, and S.</p> <p>Response to 7(c): Please see RFP, Section I, Paragraph N.</p> <p>Response to 7(d): The Merriam-Webster Online Dictionary defines "quality control" as:  an aggregate of activities (such as design analysis and inspection for defects) designed to ensure adequate quality especially in manufactured products  <a href="https://www.merriam-webster.com/dictionary/quality%20control">https://www.merriam-webster.com/dictionary/quality%20control</a></p> <p>The Merriam-Webster Online Dictionary defines "cost control" as:  use by management of cost analyses and their interpretation in corrective measures toward increasing efficiency and economy of operation  <a href="https://www.merriam-webster.com/dictionary/cost%20control">https://www.merriam-webster.com/dictionary/cost%20control</a></p> <p>Response to 7(e): See Response to 7(d).  Response to 8(a): "Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered." 2 CFR § 200.320(b)(2)(iii)(emphasis added). "The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to</p>

b. If financial resources includes real property holdings, identify the statutory authority requiring the disclosure of private, confidential and proprietary information unrelated to the performance of services.

c. If financial resources includes identification of financial institution information, identify the statutory authority requiring the disclosure of private and confidential information unrelated to the performance of services?

d. Will a letter of financial stability from a financial institution suffice under this section requiring "Disclosure of financial resources"?

e. Is the Government requiring vendors to own or control a minimum amount of resources to participate in this procurement?

f. If so, what is the minimum amount of resources required to participate in procurements for the Government?

g. What weight of the 15 point allocation for Availability and Capacity of Offeror in the Evaluation Factors, does the vendor's financial resources have?

such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources." 2 CFR § 200.318(h)(emphasis added). See also 2 CFR § 200.14.

2 GAR, Div. 4 § 3116(b)(2)(A)(i) states: "Standards of Responsibility. (A). Standards. Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective contractor has: (i) 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; ...."

The government of Guam is requesting a disclosure of financial resources sufficient to determine whether the Offeror has available the financial resources to meet the needs of the project and complete the project in accordance with the above citations. Each Offeror is to determine the content of a sufficient financial disclosure in accordance with 2 GAR, Div. 4 § 3116(b)(3), and if the disclosure provided is found to be insufficient by the government of Guam, the government of Guam may request additional information. Id. If the Offeror does not supply requested information, pursuant to 2 GAR, Div. 4 § 3116(a): "[t]he unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror."

Response to 8(b): See Response to 8(a).

Response to 8(c): See Response to 8(a).

Response to 8(d): See Response to 8(a).

Response to 8(e): See Response to 8(a).

Response to 8(f): See Response to 8(a).

Response to 8(g): See Response to 8(a).

9. Ref. RFP Page 18: "Profit must be identified and itemized as a separate element of the price in the cost schedule pursuant to 2 CFR § 200.324."

a. Is Guam a State or non-federal entity under U.S. Department of Interior Grant Award No. D20AP00048?

2 CFR § 200.324(b) provides:

The non-Federal entity 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. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

2 CFR § 200.317 further provides the applicable provisions to the Procurements by states, as follows:

When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with §§ 200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by § 200.327. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§ 200.318 through 200.327.

2 CFR § 200.1 defines Guam as a "State," as opposed to a non-federal entity.

10. Ref. RFP Page 19: "Pursuant to 2 CFR § 200.324(b), if the Offeror is selected for negotiations, Office of the Governor 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. Offeror's Price Proposal must include profit as a separate line item in its proposed budget and

Response to 10(a): See Response to 9(a).

Response to 10(b): 2 CFR § 200.324 is applicable.

Response to 10(c): Yes.



pricing." Because Guam is a "State" as defined by the CFR, why is the Office of the Governor utilizing sections inapplicable to States and applicable only to non-federal entities?

200 CFR § 300.324(b) provides:

The non-Federal entity 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. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

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2. CFR § 200.1 defines Guam as a "State," as opposed to a non-federal entity.

b. If 2. CFR § 200.324 is inapplicable to Guam, what authority under Guam law is the Government relying upon to require negotiation of profit?

c. If this is a COTS solution, are vendors expected to provide their COGs plus profit margin?

11. Ref: RFP Page 20: "These funds are currently available from the U.S.

Department of Interior Grant Award No. D20AP00048 until the end of FY 2022. The Office of the Governor's obligation under any proposed contract is contingent upon the availability of funds from which payment for contract purposes can be made. (See also Section II, General)

a. Government of Guam: public documents identify Department of Revenue and Taxation

(ORT) - Business License and Permit Center (Project #16) under U.S. Department of Interior Grant Award No. D20AP00048 at <http://bbmr.guam.gov/wp-content/uploads/2021/10/FY2021-GOVGUAM-Federa1-Stimulus-Assistance-Programs-Updates-Report-CARES-ACT-COVID-19-As-of-9-30-21.pdf> The information provided indicates that the funding for the grant being utilized in this proposal

expires on September 30, 2022. If funding for RFP-006-2022-001 expires at the end of fiscal year 2022, what reassurances do vendors have that the Government is acting in good faith to certify fund availability for the Initial Term, and five (5) year renewal periods referenced in the proposal?

b. If funding for RFP-006-2022-001 is not provided beyond September 30, 2022 under this grant, has the Government certified other funds available for this procurement?

c. Does execution of the contract between the vendor and the Government require that the Government certify funds availability for the entire contract award amount?

12. Ref: RFP Page 23: "The selected Contractor will work under the direction of the Office of the Governor and the Office of Technology. The Office of Technology is the designated Project Manager pursuant to 5 GCA § 12.107."

a. Is there a current person assigned as Project Manager?

b. Is the Grant Manager, as identified in Section XVII, the "Project Manager"?

c. Is the Chief of Staff of the Office of the Governor the "Project Manager"?

Response to 11(a): See 5 GCA § 5237(a): "funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds thereafter."

Response to 11(b): See Response to 11(a).

Response to 11(c): See Response to 11(a).

Response to 12(a): The Chief of Staff is the Procurement Officer for this procurement. By law, the Procurement Officer is the person "authorized to enter into and administer contracts." 5 GCA § 5050(p). Pursuant to Guam's Procurement Law, this is the only person who may make determinations regarding the contract, adjustments in prices, time of performance, or other contract provisions, changes in the work within the scope of the contract, variations occurring between estimated quantities of work in a contract and actual quantities, suspension of work, remedies for delay or non-performance, and termination of the contract. 5 GCA §§ 5030, 5306 and 5307.

d. What is the role of the Project Manager with regard to decision-making authority?  
e. Will the Project Manager have the authority to sign the acceptance of deliverables?

The Office of Technology is the Project Manager for this procurement. By law, the Project Manager's duties are to "establish a steering committee." 5 GCA §12.108(c). The steering committee shall provide ongoing oversight for the major information technology project, and have the authority to approve or reject any changes to the project's scope, schedule or budget." 5 GCA §12.108(e). An individual person does not fulfill this role.

The Procurement Officer has authority over all contract issues, documents, and requirements. The steering committee established provides "oversight" for the project, which is governed by the contract. *Id.*

Response to 12(b): See Response to 12(a).

Response to 12(c): See Response to 12(a).

Response to 12(d): See Response to 12(a).

Response to 12(e): See Response to 12(a).

Response to 13(a): See Response to 12(a).

Response to 13(b): See Response to 12(a).

Response to 14(a): See 5 GCA § 5237(a): "Funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor."

Response to 15(a): The Chief of Staff is the Procurement Officer for this procurement. The Procurement Officer is the person "authorized to enter into and administer contracts and make written determinations with respect thereto." 5 GCA §§ 5030(p), 5121(c), 5114(a) and (b); 4 GCA § 13102(g). Pursuant to Guam's Procurement Law, this is the only person who may make determinations regarding the contract, adjustments in prices, time of performance, or other contract provisions, changes in the work within the scope of the contract, variations occurring between estimated quantities of work in a contract and actual quantities, suspension of work, remedies for delay or non-performance, and termination of the contract. 5 GCA §§ 5030, 5249, 5250, 5306, and 5307.

The Office of Technology is the Project Manager for this procurement. The Office of Technology's project management duties are to "establish a steering committee." 5 GCA §12.108(d). "The steering committee shall provide ongoing oversight for the major information technology project, and have the authority to approve or reject any changes to the project's scope, schedule or budget." 5 GCA §12.108(e).

The Procurement Officer has authority over all contract issues and requirements. The steering committee established provides "oversight" for the project, which is governed by the contract. *Id.*

Response to 16(a): Each Offeror is responsible for proposing and designing its own unique solution to the government of Guam's needs that will offer the best value services to the government of Guam. The Office of the Governor has developed lists of goals and factors desired for the desired licensing and permitting system, which are contained in the Scope of Services for the RFP; however, the information provided in the Scope of Services of the RFP, and any listings of goals and factors are not definitive. These informational items are merely provided as guidelines for Offerors in crafting their Proposals.

Offerors are encouraged to offer their own opinions and suggestions regarding the Scope of Services for the System, equipment, and Services in their Proposals. Offerors shall provide a detailed description of the benefits and quality of any resources, equipment, platforms, applications, and/or services Offeror intends to offer to the government of Guam. Points are awarded and Offerors are ranked based on the quality of the solution and

13. Ref. RFP Page 24: "...the Project Manager and authorized consultants/designees will review and make recommendations to the Office of the Governor regarding the amounts due the awarded contractor."  
a. What is the role of the "authorized consultants/designees" in RFP-00G-2022-001?  
b. Is the Office of the Governor by the Chief of Staff the one with authority to sign the acceptance of deliverables?

Ref. RFP Page 27: "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."  
a. Based upon the limited availability known to the Government under U.S. Department of Interior Grant Award No. D20AP00048, is the Government asserting unavailability of funds after September 30, 2022?

14. Ref. RFP Page 37: "All directions within the scope of the RFP and the awarded contract will be issued by the Chief of Staff of the Office of the Governor and the Offerors and any awarded Contractor shall not accept such direction from others. Information provided by other governmental agencies or entities which seemingly conflicts with information provided by the Office of the Governor in this solicitation will be discussed with the Chief of Staff of the Office of the Governor immediately."  
a. This section appears in conflict with the role of the Project Manager. If the Governor's Chief of Staff is the primary authoritative contact for the project, what is the role of OTECH as Project Manager?

15. Ref. RFP Page 41: General information: The objective of the project is to "streamline and modernize the government of Guam's licensing and permitting processes."  
a. Is the Licensing and Permitting system expected to replace the existing processes currently in place for the issuance of the identified licenses and permits?  
b. Is the Licensing and Permitting System intended to replace the existing systems at each of the identified departments for issuance of the identified licenses and permits?

DMR Notice of Appeal  
Exhibit 4  
Page 8 of 13

c. Please identify and provide detail on each of the processes that need to be streamlined.  
 d. If the existing license/permit systems will not be replaced, is the new Licensing and Permitting system expected to interact with or accommodate data/applications processed through the existing systems? If so, please specify scope of data sharing/integration.

services offered in the Proposal. Please describe your planned approach to addressing the needs of the government of Guam within your solution, related to creating, configuring, and/or modifying business process models and workflows for the needed permitting and licensing transactions. Address any approaches you have successfully used in the past with regard to addressing other clients' needs.

Response to 16(b): See Response to 16(a).

Response to 16(c): See RFP Section III, Scope of Services.

Response to 16(d): See Response to 16(a).

Response to 17(a): No

Response to 17(b): No

Response to 17(c): No

Response to 17(d): No

Response to 17(e): No

Response to 17(f): No

17. Ref: RFP Page 41: General System Needs: Permitting. Administer and issue a variety of permit types and account for all appropriate fees.

- a. Does the Department of Public Works currently have an automated system for the issuance of the permits identified in the RFP?
- b. Does the Department of Land Management currently have an automated system for the issuance of the permits identified in the RFP?
- c. Does the Guam Seashore Protection Commission currently have an automated system for the issuance of the permits identified in the RFP?
- d. Does the Guam Land Use Commission currently have an automated system for the issuance of the permits identified in the RFP?
- e. Does the Department of Public Health and Social Services currently have an automated system for the issuance of the permits identified in the RFP?
- f. Does the Guam Fire Department currently have an automated system for the issuance of the permits identified in the RFP?

18. Ref: RFP Page 41: Licensing. Process applications, administer and issue business licenses.

a. Is the Licensing and Permitting system expected to replace the Department of Revenue and Taxation's existing system for the application, administration and issuance of business licenses?

Response to 18(a): Each Offeror is responsible for proposing and designing its own unique solution to the government of Guam's needs that will offer the best value services to the government of Guam. The Office of the Governor has developed lists of goals and factors desired for the desired licensing and permitting system, which are contained in the Scope of Services for the RFP; however, the information provided in the Scope of Services of the RFP, and any listings of goals and factors are not definitive. These informational items are merely provided as guidelines for Offerors in crafting their proposals.

Offerors are encouraged to offer their own opinions and suggestions regarding the Scope of Services for the System, equipment, and Services in their Proposals. Offerors shall provide a detailed description of the benefits and quality of any resources, equipment, platforms, applications, and/or services Offeror intends to offer to the government of Guam. Points are awarded and Offerors are ranked based on the quality of the solution and services offered in the Proposal. Please describe your planned approach to addressing the needs of the government of Guam within your solution, related to creating, configuring, and/or modifying business process models and workflows for the needed permitting and licensing transactions. Address any approaches you have successfully used in the past with regard to addressing other clients' needs.

Response to 19(a): Not through any type of system.

Response to 19(b): Not applicable.

19. Ref: RFP Page 41: - Mobile usage. "View, schedule and modify inspections and record notes while in the field from mobile devices (e.g., tablets and/or cell phones). The solution must be compatible with iOS, Android, and Windows operation systems."

a. Do the designated government users currently use mobile devices for work processes?

b. Who are the administrators of these devices?

20. Ref: RFP Page 42: Long-term archiving

a. What are the government's retention policies for each of the associated permitting/licensing processes?

b. What is the minimum required retention period?

c. What is the maximum retention period?

Response to 20(a): For record retention, please review Title 5 GCA, Chapter 20, Article 6, Records Management Act, and Title 2 GAO, Div. 2, Chapter 10, Records Management Rules and Regulations; see also Executive Order 80-03, and the Department of Administration's Records Management Handbook.

Response to 20(b): See Response to 20(a).

Response to 20(c): See Response to 20(a).

Response to 21(a):

- a. The purpose of this requirement is:
  - leverage the Government's existing enterprise license with ESRI

21. Ref: RFP Page 42: GIS integration "GIS integration. Provide the ability to integrate permitting and licensing with the existing government of Guam ESRI GIS systems based upon regularly updated land plans."

<p>a. What integrations are required?</p>	<ul style="list-style-type: none"> <li>• use layers or geospatial data stored in the Government's ESRI Enterprise Account's cloud storage for the analysis and assessment of applications and their supporting plans and documents</li> <li>• and to utilize lot and parcel data from Land Management's system (through export, batch file, or API depending on the cost and time to implement) approving or clearing licenses or permits.</li> </ul>
<p>22. Ref. RFP Page 42: Public Portal</p>	<p>Response to 21(a): The public portal is for the use of applicants or their authorized representatives or business associates that the individual or company has allowed to access or submit applications on their behalf.</p>
<p>a. Is the portal expected to provide public access to non-applicant users to view issued permits or licenses?</p> <p>23. Ref. RFP Page 43: Payment processing: "Software must facilitate online payment processing through a secure third party."</p>	<p>Response to 22(a): This will be determined based on what option will be the most economical for the Government of Guam.</p> <p>Response to 23(b): Not applicable at this time</p>
<p>a. Is vendor to provide this payment processing platform, or is an existing payment processor to be used?</p> <p>b. If existing, please specify vendor and solution.</p> <p>24. Ref. RFP Page 44, Section F: Inspections and Clearances - "The System should include all internal clearance forms and inspection checklists applicable to business license applications, building permits, and occupancy permits."</p>	<p>Response to 24(a): For existing forms or checklists please refer to the 2020 Guidebook to Development Requirements on Guam. The requirements, criteria, or specifications that apply to the internal forms or checklists are either described in the Guidebook, included in the applications portion designated for department use or official use, or are associated with the version of building code associated with the application and/or one of its sections.</p>
<p>a. Please provide samples of each of the required internal clearance forms and inspection checklists for each of the departments listed.</p> <p>25. Ref. RFP Page 45: "For on-premise solution ..."</p>	<p>Response to 25(a): The primary location is at DRT Data Center in Barrigada, Guam. The replication location is at the Office of Technology Data Center in Hagatna, Guam.</p>
<p>a. If vendor opts to provide an on-premise solution, please identify the location for the on-premise equipment.</p> <p>b. If vendor opts to provide an on-premise solution, is the Government requiring ownership of the equipment?</p> <p>c. If vendor opts to provide an on-premise solution, is the Government requiring the vendor to maintain the equipment for the full term of the contract?</p> <p>d. If vendor opts to provide an on-premise solution, is the Government requiring a warranty on the equipment for ten (10) years, both the Initial Term and Renewal Term?</p>	<p>Response to 25(b): No</p> <p>Response to 25(c): Yes</p> <p>Response to 25(d): The chosen vendor is to maintain or warrant all on-premise equipment for the full term of the contract, including renewals.</p> <p>Response to 25(e): The chosen vendor is required to maintain all on-premise equipment for the full term of the contract, including renewals.</p>
<p>e. If the Government does not renew for the Renewal Term of five (5) additional years, will the Government accept a proposal that does not carry any warranty on the equipment for the Renewal Term?</p> <p>26. Ref. RFP Page 45-46: "The government of Guam intends to streamline its licensing and permitting operating procedures wherever possible, and the Vendor's capability to advise and assist as necessary during System implementation will be considered in evaluating proposals."</p>	<p>Response to 26(a): Offerors should describe their capability to advise and assist the government of Guam in the statement of abilities, qualifications, and experience in the Proposal.</p>
<p>a. Under which evaluation factor does this evaluation fall?</p> <p>27. Ref. RFP Page 46: Training.</p>	<p>Response to 27(a): 2-3</p>
<p>a. How many system administrators will require training?</p> <p>b. How many users will be included in the core group to be trained?</p> <p>c. Will the Government be providing the facility for training?</p>	<p>Response to 27(b): If the core group is synonymous with the staff that processes and clears these applications then the total will be 62</p> <p>Response to 27(c): Yes. Location will be determined by the number recommended the contractor awarded. For virtual training the Government of Guam has both Teams and Zoom accounts that can be used for training purposes as well.</p> <p>Response to 28(a): See RFP, Section III, Paragraphs A and L.</p>
<p>28. Ref. RFP Page 47: "data conversion efforts"</p> <p>a. Is data conversion a required deliverable for this project?</p> <p>b. If so, what data is required to be converted?</p>	<p>Response to 28(b): See Response to 28(a).</p> <p>Response to 29(a): Each Offeror is responsible for proposing and designing its own unique solution to the government of Guam's needs that will offer the best value services to the government of Guam. The Office of the Governor has developed lists of goals and factors desired for the desired licensing and permitting System, which are contained in the Scope of Services for the RFP; however, the information provided in the Scope of Services of the RFP, and any listings of goals and factors are not definitive. These informational items are merely provided as guidelines for Offerors in crafting their Proposals.</p>
<p>29. Ref. RFP Page 47: "Assess current business processes of the government of Guam for business license applications and land use, building, sanitary, fire, and occupancy permits ... Execute customization plan and update internal government of Guam licensing and permit processing procedures."</p> <p>a. Is the Licensing and Permitting System intended to replace all existing Government of Guam processes for issuing business licenses and permits?</p>	<p>Response to 29(a): Each Offeror is responsible for proposing and designing its own unique solution to the government of Guam's needs that will offer the best value services to the government of Guam. The Office of the Governor has developed lists of goals and factors desired for the desired licensing and permitting System, which are contained in the Scope of Services for the RFP; however, the information provided in the Scope of Services of the RFP, and any listings of goals and factors are not definitive. These informational items are merely provided as guidelines for Offerors in crafting their Proposals.</p> <p>Response to 29(b): Offerors are encouraged to offer their own opinions and suggestions regarding the Scope of Services for the System, equipment, and Services in their Proposals. Offerors shall provide a detailed description of the benefits and quality of any resources, equipment, platforms, applications, and/or</p>

b. Is the Licensing and Permitting System intended to replace any existing systems at each of the identified departments for issuance of the identified licenses and permits?  
 c. If the existing license/permit systems will not be replaced, is the new Licensing and Permitting system expected to interact with or accommodate data/data/applications processed through the existing systems? If so, please specify scope of data sharing/integration.

services Offeror intends to offer to the government of Guam. Points are awarded and Offerors are ranked based on the quality of the solution and services offered in the Proposal. Please describe your planned approach to addressing the needs of the government of Guam within your solution, related to creating, configuring, and/or modifying business process models and workflows for the needed permitting and licensing transactions. Address any approaches you have successfully used in the past with regard to addressing other clients' needs.

Response to 29(b): See Response to 29(a). The licensing and permitting system is intended to be a single system for processing new application online, and issuing new certificates, permits or licenses associated with those new applications.

Currently "new" business license, permit and Land Use applications are not processed through a system, thus there is no system to replace.

Response to 29(c): See Response to 29(a).  
 Response to 30(a)(i-ix): can be found below:

30. Ref. RFP Page 47: "Test and verify acceptable performance levels at two times the anticipated initial volumes of data input, online access, and report generation."  
 a. Please provide at least 5 years of historical processing statistics for each of the following prior to 2020:  
 i. Number of business licenses issued annually  
 ii. Number of clearing/grading permits issued annually  
 iii. Number of building construction permits issued annually  
 iv. Number of building occupancy permits issued annually  
 v. Number of Zone Change, Split Zone, and Summary Zone Change, Zone Variance/Subdivision Variance permits issued annually  
 vi. Number of Tentative and Final Development Plans issued annually  
 vii. Number of Conditional Use permits issued annually  
 viii. Number of sanitary permits issued annually  
 ix. Number of Activities, Materials, and User permits issued annually

By Fiscal Year (October to September)

Agency Owner	Licenses and Permits					2016
	2019	2020	2018	2017	2016	
Department of Revenue and Tax (DRT)		578	3,726	3,464	2,820	2,292
	i. New Business License Application					
Department of Public Works		79	163	63	60	
	ii. Clearing/Grading Permit					Not Available at the Time of This Response will provide once the information becomes available
	iii. Building Construction Permit	623	1,078	1,172	1,118	1,172
	iv. Building Occupancy Permit	309	346	354	301	408
Department of Land Management		4	6	10	10	
	v. Zone Change, Split Zone, and Summary Zone Change, Zone Variance/Subdivision Variance					
Guam Seashore Protection		3	5	9	9	
	vi. Tentative and Final Development Plans					
Guam Land Use Commission		4	10	3	4	
	vii. Conditional Use Permit					
Department of Public Health & Social Services		2,948	3,370	3,247	3,212	3,300
	viii. Sanitary Permit					
Guam Fire Department		1,270	2,126	2,087	1,012	2,176
	ix. Activities, Materials, and Use Permit (GFD Operations Permit)					

31.	How many user licenses are needed for all government agency users?	Response to 31: 62
32.	What is the requirement for maximum concurrent public users of the system?	Response to 32: This has not been assessed.
33.	Section XVII identifies the Grant Manager, as Lester Carlson. Is the vendor expected to communicate with the Grant Manager? If yes, what is the process of resolution should communication with the Grant Manager conflict with the Chief of Staff of the Office of the Governor and/or the Project Manager?	Response to 33(a): See RFP Section I, Paragraph EE: "The selected Contractor will work under the direction of the Office of the Governor and the Office of Technology." Response to 33(b): See Response to 33(a).
34.	Please specify if Subject Matter Experts have been identified for each of the following agencies, and how many from each: a. Department of Revenue and Tax (ORT) b. Guam Environmental Protection Agency c. Department of Public Works d. Department of Agriculture e. Department of Land Management f. Guam Land Use Commission (OLM) g. The Guam Historic Resources Division h. Department of Parks and Recreation i. Department of Public Health & Social Services j. Professional Engineers, Architects and Land Surveyors (PEALS) Board k. Contractor's License Board l. Guam Fire Department m. Bureau of Statistics and Plans n. Guam Power Authority o. Guam Waterworks Authority p.	Response to 34(a): No. The amount will be determined based on the subject matter experts needed Response to 34(b): No. The amount will be determined based on the subject matter experts needed Response to 34(c): No. The amount will be determined based on the subject matter experts needed Response to 34(d): No. The amount will be determined based on the subject matter experts needed Response to 34(e): No. The amount will be determined based on the subject matter experts needed Response to 34(f): No. The amount will be determined based on the subject matter experts needed Response to 34(g): No. The amount will be determined based on the subject matter experts needed Response to 34(h): No. The amount will be determined based on the subject matter experts needed Response to 34(i): No. The amount will be determined based on the subject matter experts needed Response to 34(j): No. The amount will be determined based on the subject matter experts needed Response to 34(k): No. The amount will be determined based on the subject matter experts needed Response to 34(l): No. The amount will be determined based on the subject matter experts needed Response to 34(m): No. The amount will be determined based on the subject matter experts needed Response to 34(n): No. The amount will be determined based on the subject matter experts needed Response to 34(o): No. The amount will be determined based on the subject matter experts needed Response to 34(p): No. The amount will be determined based on the subject matter experts needed Response to 35: Yes
35.	If SMEs have not been yet been identified, does the Government intend to identify the SMEs prior to project initiation?	Response to 35: Yes
36.	How much of the SMEs' time will be dedicated to the project?	Response to 36: The amount of time dedicated will be determined based on the amount of time needed.
37.	Assuming the Government elects to continue the contract for the Renewal Term, which agency of the Government will be responsible for the funding of the Licensing and Permitting system?	Response to 37: The Office of the Governor is the awarding agency for the life of the contract.

38. Please confirm that the latest edition of the "Guidebook to Development Requirements on Guam" referenced in Amendment 1 is from 2020.	Response to 38: Yes, hence the year associated with the title. The third paragraph of the 1 <sup>st</sup> section of the Guidebook states: "This update is current as of March 2020"
39. Will the Government allow vendors to submit follow-up questions on responses received from the Government?	Response to 39: No.

E5



**REQUEST FOR PROPOSALS**  
**RFP Number: GOV 2022-001**

Office of the Governor  
**Amendment No. 002**



**3/5/2022**

Office of the Governor  
513 West Marine Corps Drive  
Ricardo J. Bordallo Governor's Complex  
Hagåtña, Guam 96910

RFP Number: 2022-001  
Amendment No. 002

THE FOLLOWING AMENDMENTS HAVE BEEN MADE TO RFP NUMBER GOV 2022-001:

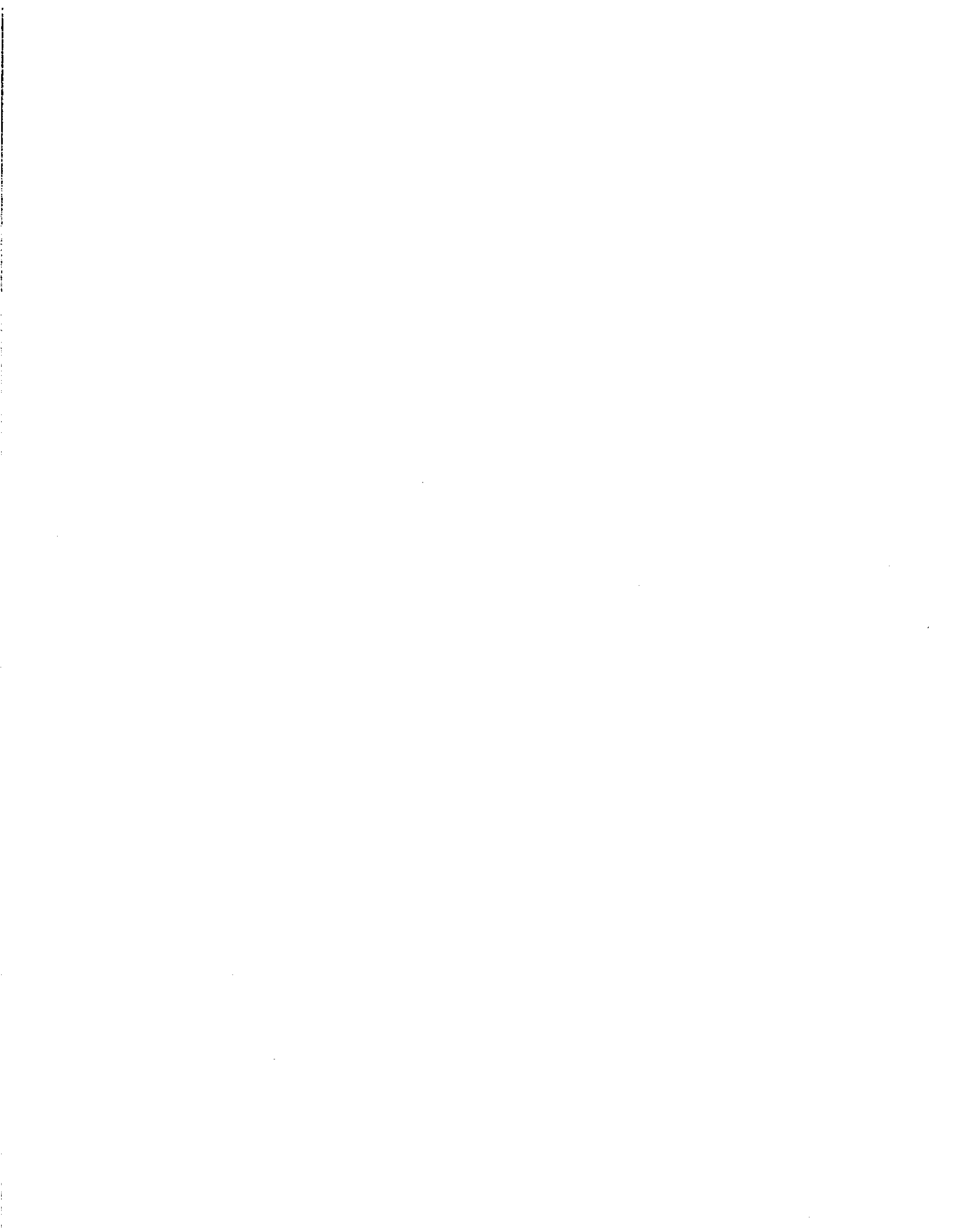
**1. REQUEST FOR PROPOSAL, GOV 2022-001, "Section I.INSTRUCTIONS TO OFFERORS, E.SUBMISSION OF PROPOSALS AND DUE DATE" Paragraph 5, on pg 6 is hereby amended to read as follows:**

" Proposals must be received not later than March 25, 2022 at 5:00 p.m., Chamorro Standard Time (C.S.T.). Proposals received after the closing time for receipt will not be considered. Office hours for receipt of Proposal are Monday through Friday (excluding government of Guam Holidays), 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m. Proposals must be e-mailed to the Single Point of Contact, Matthew Santos, at [procurement@guam.gov](mailto:procurement@guam.gov)., or hard copy Proposals must be hand-delivered, delivered by mail, or delivered by other courier service to:

**2. REQUEST FOR PROPOSAL, GOV 2022-001, "Section I.INSTRUCTIONS TO OFFERORS, J.OFFEROR PRESENTATIONS WITH PRODUCT DEMONSTRATION" Paragraph 1, on pg 8 is hereby amended to read as follows:**

"Offerors will be allowed to make demonstrations of their system that is available to the Evaluation Team, after submission of the Proposals. Key management and technical personnel will be expected to participate in presentations. No more than four (4) personnel shall be allowed to conduct the presentation in two (2) hours or less. The presentation shall demonstrate the Offeror's product's ability to fulfill the requirements described in the RFP's Scope of Services and provide examples of what their product offers."

**-NOTHING ELSE FOLLOWS-**



March 19, 2022

VIA EMAIL [procurement@guam.gov](mailto:procurement@guam.gov)

THE OFFICE OF THE GOVERNOR

Matthew Santos

513 West Marine Corps Drive, Ricardo J. Bordallo Governor's Complex  
Hagåtña, Guam 96910

Re: RFP-Office of the Governor-2022-001

Hafa Adái, Mr. Santos.

This firm represents Data Management Resources, LLC. ("DMR"), relative to RFP-Office of the Governor-2022-001 issued on February 7, 2022 (hereinafter "RFP-2022-001").

On February 25, 2022, DMR, as a prospective offeror to the RFP, submitted questions to the RFP to resolve questions related to specifications required (hereinafter "Specification Questions"). On Saturday, March 5, 2022, incomplete responses to the RFP were provided to DMR via email at 11:58 a.m. (hereinafter "Responses")

DMR, as a prospective offeror and aggrieved by the method of source selection, hereby submits its protest, pursuant to § 5425 of Title 5, Guam Code Annotated on the basis that failure to clearly describe minimum specifications by its incomplete response to the questions submitted violate Guam law, and is non-compliant with the obligations imposed by the U.S. Department of the Interior – Office of Insular Affairs, Grant and Cooperative Agreement D20AP0048 (hereinafter "Grant").

Responses provided to the Specification Questions are either non-responsive, or completely fail to clearly describe the minimum requirements and/or specifications under the RFP. Where the RFP or Responses omit clear description in its specifications, the government's conduct is unduly restricting the prospective offerors ability to present a cost effective proposal which meets the needs of the RFP.

**I. Responses to the Specifications Questions submitted by DMR do not clearly describe specifications required under the RFP; inaccurate and inadequate information violate Guam's law and policy in procurement.**

The provisions of Guam Procurement Law require the specifications of all government procurements to "encourage competition", and must "clearly describe" the performance requirements expected of the offerors.

5 G.C.A. § 5265 provides:

**Maximum Practicable Competition.** All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the Territory's needs, and shall not be unduly restrictive.

2 G.A.R.R. §4102. Regulation. This Chapter sets forth regulations governing the preparation, maintenance, and content of specifications for suppliers, services, and construction required by the territory, pursuant to 5 GCA §5261 of the Guam Procurement Act.

(a) General Purposes and Policies. (1) Purpose. The purpose of a specification is to serve as a basis for obtaining a supply, service, or construction item adequate and suitable for the territory's needs in a cost effective manner, taking into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs. It is the policy of the territory that specifications permit maximum practicable competition consistent with this purpose. Specifications shall be drafted with the objective of clearly describing the territory's requirements.

Each Specification Question will be addressed below, and the Responses are provided in RED:

Specification Question No. 16 submitted inquired as follows:

Ref. RFP Page 41: General Information: The objective of the project is to “streamline and modernize the government of Guam’s licensing and permitting processes.”

- a. Is the Licensing and Permitting system expected to replace the existing processes currently in place for the issuance of the identified licenses and permits?

Response to 16(a): Each Offeror is responsible for proposing and designing its own unique solution to the government of Guam’s needs that will offer the best value services to the government of Guam. The Office of the Governor has developed lists of goals and factors desired for the desired licensing and permitting System, which are contained in the Scope of Services for the RFP; however, the information provided in the Scope of Services of the RFP, and any listings of goals and factors are not definitive. These informational items are merely provided as guidelines for Offerors in crafting their Proposals. Offerors are encouraged to offer their own opinions and suggestions regarding the Scope of Services for the System, equipment, and Services in their Proposals. Offerors shall provide a detailed description of the benefits and quality of any resources, equipment, platforms, applications, and/or services Offeror intends to offer to the government of Guam. Points are awarded and Offerors are ranked based on the quality of the solution and services offered in the Proposal. Please describe your planned approach to addressing the needs of the government of Guam within your solution related to creating, configuring, and/or modifying business process models and workflows for the needed permitting and licensing transactions.

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Address any approaches you have successfully used in the past with regard to addressing other clients' needs.

b. Is the Licensing and Permitting System intended to replace the existing systems at each of the identified departments for issuance of the identified licenses and permits?

Response to 16(b): See Response to 16(a).

c. Please identify and provide detail on each of the processes that need to be streamlined.

Response to 16(c): See RFP Section III, Scope of Services.

d. If the existing license/permit systems will not be replaced, is the new Licensing and Permitting system expected to interact with or accommodate data/applications processed through the existing systems? If so, please specify scope of data sharing/integration.

Response to 16(d): See Response to 16(a).

As set forth above, the Responses do not provide any clear description of the licensing and permitting process currently in use to adequately inform prospective offerors of the required deliverables and expectations of performance. Rather, in Response to Specification Question No. 16, the Responses require the offeror to give an "opinion and suggestions" on a process not clearly defined by the RFP or the Responses. Furthermore, in response to Specification Question No. 39, "Will the Government allow vendors to submit follow-up questions on responses received from the Government?" the Response was "No."

The RFP and Responses do not provide any clear description of the process required to be streamlined, and do not identify any scope of data sharing/integration. The failure to adequately describe the licensing and permitting system it seeks adversely affects and compromises the competition required under Guam law.

Specification Question No. 28 submitted inquired as follows:

Ref. RFP Page 47: "data conversion efforts".

a. Is data conversion a required deliverable for this project?

Response to 28(a): See RFP, Section III, Paragraphs A and L.

b. If so, what data is required to be converted?

Response to 28(b): See Response to 28(a).

The Responses do not provide any specific system information, type of data, and scope of data. Importantly, the Responses further do not confirm or disavow "data conversion" as a deliverable, while at

the same time requiring unspecified and unidentified data to be converted. Absent a specific response to whether data conversion is a required deliverable, and the identification of the data, the systems, number of systems and manner of retrieval of the data required under the Scope of Services, the lack of clearly described information compromises the maximum competition under the RFP, and fails to meet the obligations set forth by Guam law to provide a clearly described specification to permit offerors to submit proposals in conformance with the expectations of the government.

Specification Question No. 29 submitted inquired as follows:

Ref RFP Page 47: "Assess current business processes of the government of Guam for business license applications and land use, building, sanitary, fire, and occupancy permits ... Execute customization plan and update internal government of Guam licensing and permit processing procedures."

- a. Is the Licensing and Permitting System intended to replace all existing Government of Guam processes for issuing business licenses and permits?

Response to 29(a): Each Offeror is responsible for proposing and designing its own unique solution to the government of Guam's needs that will offer the best value services to the government of Guam. The Office of the Governor has developed lists of goals and factors desired for the desired licensing and permitting System, which are contained in the Scope of Services for the RFP; however, the information provided in the Scope of Services of the RFP, and any listings of goals and factors are not definitive. These informational items are merely provided as guidelines for Offerors in crafting their Proposals.

Offerors are encouraged to offer their own opinions and suggestions regarding the Scope of Services for the System, equipment, and Services in their Proposals. Offerors shall provide a detailed description of the benefits and quality of any resources, equipment, platforms, applications, and/or services Offeror intends to offer to the government of Guam. Points are awarded and Offerors are ranked based on the quality of the solution and services offered in the Proposal. Please describe your planned approach to addressing the needs of the government of Guam within your solution, related to creating, configuring, and/or modifying business process models and workflows for the needed permitting and licensing transactions. Address any approaches you have successfully used in the past with regard to addressing other clients' needs.

- b. Is the Licensing and Permitting System intended to replace any existing systems at each of the identified departments for issuance of the identified licenses and permits?

Response to 29(b): See Response to 29(a). The licensing and permitting system is intended to be a single system for processing new application online, and issuing new certificates, permits or licenses associated with those new applications. Currently "new" business license, permit and land use applications are not processed through a system, thus there is no system to replace.

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- c. If the existing license/permit systems will not be replaced, is the new Licensing and Permitting system expected to interact with or accommodate data/applications processed through the existing systems? If so, please specify scope of data sharing/integration.

Response to 29(c): See Response to 29(a).

System information is critical to the development of a proposal to the RFP. While the Responses describe the Scope of Services as “lists of goals and factors desired for the desired licensing and permitting System” and explains that the “listings of goals and factors are not definitive. These informational items are merely provided as guidelines,” the Scope of Services and Responses do not clearly describe what systems and information are minimally required to be included in the offers submitted. By failing to clearly describe the required function expected by offers and failing to respond to Specification Questions, the government is creating an environment of unfair competition.

DMR further submits this protest based upon the Responses’ failure to accurately reflect the current automation environment of the stakeholder agency. In particular, the prospective offeror is aware that the Department of Revenue and Taxation has an automated system referred to as the “Business Module of the Guam Tax System.” The inaccurate information and failure to disclose known systems deprives the prospective offeror of information necessary to develop a “single system,” which integrates and converts data, as requested by the government. The lack of clear description places the prospective offerors at a significant disadvantage.

Specification Question No. 17 submitted inquired as follows:

Ref. RFP Page 41: General System Needs: Permitting. Administer and issue a variety of permit types and account for all appropriate fees.

- a. Does the Department of Public Works currently have an automated system for the issuance of the permits identified in the RFP?  
Response to 17(a): No
- b. Does the Department of Land Management currently have an automated system for the issuance of the permits identified in the RFP?  
Response to 17(b): No
- c. Does the Guam Seashore Protection Commission currently have an automated system for the issuance of the permits identified in the RFP?  
Response to 17(c): No
- d. Does the Guam Land Use Commission currently have an automated system for the issuance of the permits identified in the RFP?  
Response to 17(d): No



- e. Does the Department of Public Health and Social Services currently have an automated system for the issuance of the permits identified in the RFP?  
Response to 17(e): No
- f. Does the Guam Fire Department currently have an automated system for the issuance of the permits identified in the RFP?  
Response to 17(f): No

DMR similarly submits this protest based upon the Responses' failure to accurately reflect the current automation environment of the stakeholder agencies. In particular, the prospective offeror is aware that the Department of Public Health and Social Services has an automated system referred to as the "PH/PRO-D-E-H". Additionally, on page 45 of the RFP, III. Scope of Services, Section H. Third Party Integration, identifies specific systems for integration; notably, the Department of Public Health and Social Services system is not identified.

Importantly, while the Responses denies the existence of any automated systems covered by the RFP, the RFP simultaneously demands the integration of the following – "The System shall be integrated with native government of Guam applications, to include, the eGIS system, the DRT IBM AS400, TPS and TaxMap systems, LandWeb, and the DOA TPS system."

The inaccurate information and failure to disclose known systems and contradictory information provided deprives the prospective offeror of information necessary to develop a "single system," which integrates and converts data, as requested by the government. The lack of clear description places the prospective offerors at a significant disadvantage. *See* Specification Question No. 29 above.

Specification Question No. 11 submitted inquired as follows:

Ref. RFP Page 20: "These funds are currently available from the U.S. Department of Interior Grant Award No. D20AP00048 until the end of FY 2022. The Office of the Governor's obligation under any proposed contract is contingent upon the availability of funds from which payment for contract purposes can be made. (See also Section II, General)

- a. Government of Guam public documents identify Department of Revenue and Taxation (ORT) - Business License and Permit Center (Project #16) under U.S. Department of Interior Grant Award No. D20AP00048 at <http://bbmr.guam.gov/wpbbmr-content/uploads/2021/10/FY2021-GOVGUAM-Federal1-Stimulus-Assistance-Programs-Update-Report-CARES-ACT-COV1D-19-As-of-9-30-21.pdf> The information provided indicates that the funding for the grant being utilized in this proposal expires on September 30, 2022. If funding for RFP-OOG-2022-001 expires at the end of fiscal year 2022, what reassurances do vendors have that the Government is acting in good faith to certify fund availability for the Initial Term, and five (5) year renewal periods referenced in the proposal?

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Response to 11(a): See 5 GCA § 5237(a): “funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.”

- b. If funding for RFP-OOG-2022-001 is not provided beyond September 30, 2022 under this grant, has the Government certified other funds available for this procurement?  
Response to 11(b): See Response to 11(a).
- c. Does execution of the contract between the vendor and the Government require that the Government certify funds availability for the entire contract award amount?  
Response to 11(c): See Response to 11(a).

5 GCA § 5003. Requirement of Good Faith. This Chapter requires all parties involved in the negotiation, performance, or administration of territorial contracts to act in good faith. Notwithstanding that Guam law provides the Government the ability to cancel contracts where funding is unavailable after the first fiscal year, DMR, as a prospective offeror protests the requirement under the RFP for a minimum five (5) year contract, where the Government of Guam is fully aware that its funding availability does not exceed one (1) year. DMR further protests any bad faith entry into a contract for more than one (1) year, where the Government asserts that it has the ability to terminate the contract without cause at any time. Additionally, the RFP requires that the offeror provide a minimum five (5) year warranty on any equipment provided under its offer. The requirement of a minimum warranty period without any assertion of obligation to pay the offeror after the first year constitutes bad faith, and places an unreasonable condition upon the specifications of the proposal.

Specification Question No. 20 submitted inquired as follows:

Ref. RFP Page 42. Long-term archiving

- a. What are the government's retention policies for each of the associated permitting/licensing processes?  
Response to 20(a): For record retention, please review Title 5 GCA, Chapter 20, Article 6, Records Management Act, and Title 2 GAR, Div. 2, Chapter 10, Records Management Rules and Regulations; see also Executive Order 80-03, and the Department of Administration's Records Management Handbook.
- b. What is the minimum required retention period?  
Response to 20(b): See Response to 20(a).
- c. What is the maximum retention period?  
Response to 20(b): See Response to 20(a).

Minimum system integration, conversion and retention are not clearly described by the RFP or the Responses. 5 G.C.A. § 20601 et. seq. does not provide any minimum or maximum information. Additionally, 2 GARR § 10113 provides:

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Records Retention Control Schedules: General. Each agency shall compile a records control schedule for all major groups of its records having importance in terms of content, bulk or space and equipment occupied. The schedules will cover record material wherever located and will clearly identify and describe the series of records covered. Schedules should include instructions which, when approved, can be readily applied and should be reviewed at least once annually to effect necessary changes.

Additionally, the Department of Administration's Records Management Handbook further refers to a retention and disposition schedules required to be adopted by the Director. However, no retention or disposition schedule has been provided for any of the involved stakeholder agencies. The absence of a clearly described retention and disposition schedule, minimum obligations of the offeror on integration and conversion data of existing data, compromises the offeror's ability to meet the minimum obligations expected of its proposal. Moreover, the Responses refusal to clarify Responses further disadvantages the Government's ability to obtain the necessary offerors to participate in a cost-effective manner.

**II. RFP and Responses impose unreasonable conditions and impose arbitrary action in violation of Standard Terms and Conditions by the U.S. Department of Interior.**

The Government of Guam under Grant Agreement Number D20AP00048 is required to comply with the all applicable laws or regulations, as set forth in the Standard Terms and Conditions by the U.S. Department of the Interior – Office of Insular Affairs, which can be found at <https://www.doi.gov/sites/doi.gov/files/migrated/doi-standard-award-terms-and-conditions-effective-december-2-2019.pdf>, and the Code of Federal Regulations. DMR, as an aggrieved prospective bidder, hereby submits this protest under Guam law, for failure to comply with 2 CFR § 200.319, based upon the Responses ambiguous descriptions of financial disclosure and availability. Based upon the responses, no standard is clearly described, which arbitrarily subjects to prospective offerors to unreasonable conditions to qualify to do business with the Government. DMR further protests on the unreasonable conditions and arbitrary conduct imposed by the RFP.

2 CFR § 200.319 provides:

- (a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and § 200.320.
- (b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:
  - (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
  - (2) Requiring unnecessary experience and excessive bonding;

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- (3) Noncompetitive pricing practices between firms or between affiliated companies;
  - (4) Noncompetitive contracts to consultants that are on retainer contracts;
  - (5) Organizational conflicts of interest;
  - (6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and
  - (7) Any arbitrary action in the procurement process.

Specification Question No. 25 submitted inquired as follows:

Ref. RFP Page 45: "For on-premise solution ... "

- d. If vendor opts to provide an on-premise solution, is the Government requiring a warranty on the equipment for ten (10) years, both the Initial Term and Renewal Term?

Response to 25(d): The chosen vendor is to maintain or warrant all on-premise equipment for the full term of the contract, including renewals.

- e. If the Government does not renew for the Renewal Term of five (5) additional years, will the Government accept a proposal that does not carry any warranty on the equipment for the Renewal Term?

Response to 25(e): The chosen vendor is required to maintain all on-premise equipment for the full term of the contract, including renewals.

The Responses further provided the following information in response to Specification Question 11(a):

Response to 11(a): See 5 GCA § 5237(a): "funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor."

Based upon the requirement of warranty coverage beyond a one (1) year period, the Government is placing a minimum warranty coverage for ten (10) years while renouncing its obligation to maintain funds available for the warranty period. This requirement is not only an unreasonable condition for a prospective offeror to qualify to do business, but is an arbitrary act in the procurement process based upon the Government's rejection of its obligations to comply with a five (5) year initial term, and five (5) year renewal term.

Specification Question No. 8 submitted inquired as follows:

Ref. RFP Page 14: "Provide a disclosure of financial resources sufficient to demonstrate an ability to complete this Project."

- a. Define "Disclosure of financial resources."

Response to 8(a): "Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered." 2 CFR § 200.320(b)(2)(iii)(emphasis added). "The non-Federal entity must

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award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.” 2 CFR § 200.318(h)(emphasis added). See also 2 CFR § 200.14. 2 GAR, Div. 4 § 3116(b)(2)(A)(i) states: “Standards of Responsibility. (A). Standards. Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective contractor has: (i) 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; ....” The government of Guam is requesting a disclosure of financial resources sufficient to determine whether the Offeror has available the financial resources to meet the needs of the project and complete the project in accordance with the above citations. Each Offeror is to determine the content of a sufficient financial disclosure in accordance with 2 GAR, Div. 4 § 3116(b)(3), and if the disclosure provided is found to be insufficient by the government of Guam, the government of Guam may request additional information. Id. If the Offeror does not supply requested information, pursuant to 2 GAR, Div. 4 § 3116(a): “[t]he unreasonable failure of a bidder or offeror to promptly supply information in connection

- b. If financial resources includes real property holdings, identify the statutory authority requiring the disclosure of private, confidential and proprietary information unrelated to the performance of services.  
Response to 8(b): See Response to 8(a).
- c. If financial resources includes identification of financial institution information, identify the statutory authority requiring the disclosure of private and confidential information unrelated to the performance of services?  
Response to 8(c): See Response to 8(a).
- d. Will a letter of financial stability from a financial institution suffice under this section requiring “Disclosure of financial resources”?  
Response to 8(d): See Response to 8(a).
- e. Is the Government requiring vendors to own or control a minimum amount of resources to participate in this procurement?  
Response to 8(e): See Response to 8(a).
- f. If so, what is the minimum amount of resources required to participate in procurements for the Government?  
Response to 8(f): See Response to 8(a).
- g. What weight of the 15 point allocation for Availability and Capacity of Offeror in the Evaluation Factors, does the vendor's financial resources have?  
Response to 8(g): See Response to 8(a).

DMR protests the Responses failure to identify the minimum financial obligations required to participate in this RFP. While setting forth the statutory authority, the Response fails to identify the minimum financial obligation while definitively stating that “if the disclosure provided is found to be insufficient by the government of Guam.”

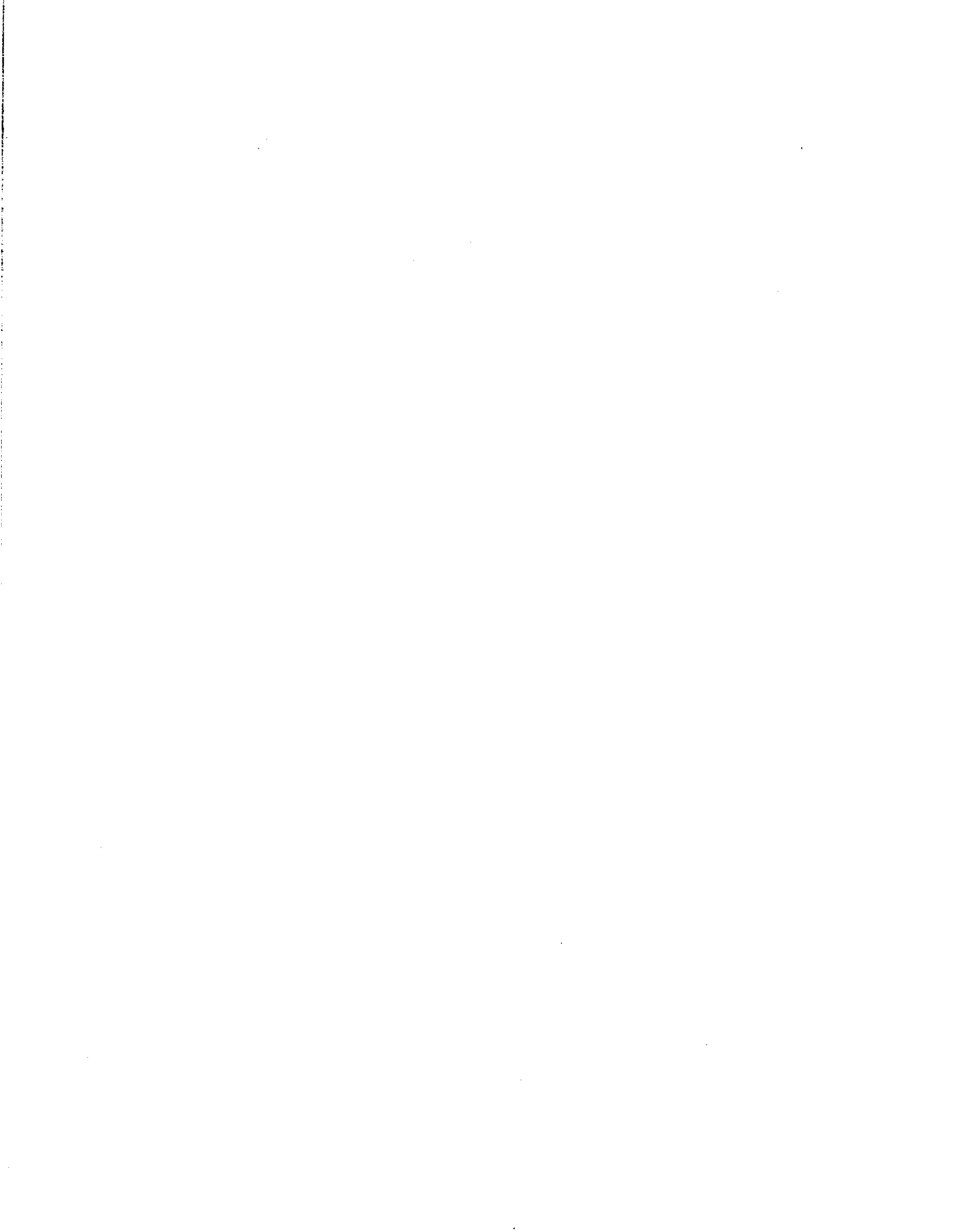
Based on the Response, there is obviously a standard being utilized by the Government in determining the minimum financial disclosure, and absent a clearly described value that would qualify an offeror to participate in this RFP, the act is arbitrary. The refusal to disclose the minimum obligations imposed by the RFP to determine the standard of “financial capacity to perform,” and what is determined “sufficient” versus “insufficient,” is an unreasonable condition which not only places an unreasonable requirement on an offeror to qualify to do business, but is arbitrary action in the refusal to identify and disclose the standard being applied.

Based on the foregoing, on behalf of Data Management Resources, LLC, I respectfully submit this PROCUREMENT PROTEST, pursuant to 5 G.G.A. § 5425 and within the time periods described therein, and request that you keep me informed of the status of the resolution of these matters.

Sincerely,

  
JACQUELINE TAITANO TERLAJE

cc: **Richard C. Taitano**, CEO Data Management Resources, LLC.

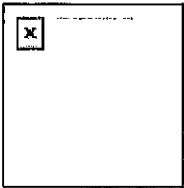


## Jacqueline Terlaje

---

**From:** Matthew Santos <matthew.santos@bsp.guam.gov>  
**Sent:** Monday, March 21, 2022 3:18 PM  
**To:** Jacqueline Terlaje  
**Cc:** procurement@guam.gov; Richard Taitano; Jon Junior Calvo; frank.lujan@otech.guam.gov; Jessica Toft  
**Subject:** Re: Procurement Protest, RFP-Office of the Governor-2022-001

Acknowledging receipt of the Protest submitted Mar 19, 2022, 11:32 AM.



**Matthew Santos**  
**Bureau of Statistics & Plans**  
PO Box 2950  
Hagåtña, Guam 96910  
Office: 671.475.9670  
[Matthew.Santos@BSP.Guam.Gov](mailto:Matthew.Santos@BSP.Guam.Gov)  
[www.BSP.Guam.Gov](http://www.BSP.Guam.Gov)

On Mon, Mar 21, 2022 at 3:13 PM Jacqueline Terlaje <[jterlaje@terlajelaw.com](mailto:jterlaje@terlajelaw.com)> wrote:

Kindly acknowledge receipt of the Protest dated March 19, 2022, and forwarded as set forth in the email dated March 19, 2022.

Senseramente,

JACQUELINE TAITANO TERLAJE

LAW OFFICE OF

JACQUELINE TAITANO TERLAJE, P.C.  
284 West Chalan Santo Papa

Hagåtña, Guam 96910

Telephone 671.648.9001

Facsimile 671.648.9002

[info@terlajelaw.com](mailto:info@terlajelaw.com)



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**From:** Jacqueline Terlaje  
**Sent:** Saturday, March 19, 2022 11:32 AM  
**To:** [procurement@guam.gov](mailto:procurement@guam.gov)  
**Cc:** Richard Taitano <[richard.taitano@dmrpacific.com](mailto:richard.taitano@dmrpacific.com)>; Jon Junior Calvo <[jon.calvo@guam.gov](mailto:jon.calvo@guam.gov)>; [frank.lujan@otech.guam.gov](mailto:frank.lujan@otech.guam.gov)  
**Subject:** Procurement Protest, RFP-Office of the Governor-2022-001

Hafa Adai. Please see enclosed.

Senseramente,

JACQUELINE TAITANO TERLAJE

LAW OFFICE OF

JACQUELINE TAITANO TERLAJE, P.C.  
284 West Chalan Santo Papa

Hagåtña, Guam 96910

Telephone 671.648.9001

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--

You received this message because you are subscribed to the Google Groups "Procurement" group.  
To unsubscribe from this group and stop receiving emails from it, send an email to [procurement+unsubscribe@guam.gov](mailto:procurement+unsubscribe@guam.gov).



## Jacqueline Terlaje

---

**From:** Richard Taitano <richard.taitano@dmrpacific.com>  
**Sent:** Monday, March 21, 2022 6:02 PM  
**To:** Jacqueline Terlaje  
**Subject:** Fwd: Request for Proposals-Office of the Governor-2022-001; Suspension of Submission of Proposal Deadline Until Further Notice

Begin forwarded message:

**From:** Richard Taitano <richard.taitano@dmrpacific.com>  
**Date:** March 21, 2022 at 17:17:29 GMT+10  
**To:** Gina Taitano <gina.taitano@dmrpacific.com>, Tricia Cruz <tricia.cruz@dmrpacific.com>  
**Subject:** Fwd: Request for Proposals-Office of the Governor-2022-001; Suspension of Submission of Proposal Deadline Until Further Notice

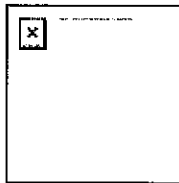
Looping you in ...

Begin forwarded message:

**From:** Matthew Santos <matthew.santos@bsp.guam.gov>  
**Date:** March 21, 2022 at 17:14:50 GMT+10  
**To:** Procurement@guam.gov  
**Cc:** Jon Junior M Calvo <jon.calvo@guam.gov>  
**Subject:** Request for Proposals-Office of the Governor-2022-001; Suspension of Submission of Proposal Deadline Until Further Notice

In the Request for Proposals-Office of the Governor-2022-001, the Single Point of Contact has received a document stating that it is a protest.

The submission date for Proposals in Request for Proposals-Office of the Governor-2022-001 is hereby suspended until further notice.



**Matthew Santos**  
**Bureau of Statistics & Plans**  
PO Box 2950  
Hagåtña, Guam 96910  
Office: 671.475.9670  
[Matthew.Santos@BSP.Guam.Gov](mailto:Matthew.Santos@BSP.Guam.Gov)  
[www.BSP.Guam.Gov](http://www.BSP.Guam.Gov)



## Jacqueline Terlaje

---

**From:** Mary Okada <mary.okada@guamcc.edu>  
**Sent:** Friday, April 8, 2022 4:38 PM  
**To:** Jacqueline Terlaje  
**Cc:** LEGAL ASST  
**Subject:** Re: Sunshine Reform Act Request Deadline: March 31, 2022

Attorney Terlaje,

This is to confirm that GCC does not have any procurement training records for Matthew Santos.

Please let me know if you have any additional questions.

Mary

---

**From:** Jacqueline Terlaje <jterlaje@terlajelaw.com>  
**Date:** Friday, April 8, 2022 at 9:48 AM  
**To:** Mary Okada <mary.okada@guamcc.edu>  
**Cc:** LEGAL ASST <legal@terlajelaw.com>  
**Subject:** RE: Sunshine Reform Act Request Deadline: March 31, 2022

President Okada,

May I request your clarification on any records for "Matthew Santos," as opposed to "Matthew C. Santos." Because the name "Matthew" and "Santos" may be common, your kind clarification is appreciated.

Senseramente,

**JACQUELINE TAITANO TERLAJE**

LAW OFFICE OF

JACQUELINE TAITANO TERLAJE, P.C.

284 West Chalan Santo Papa

Hagåtña, Guam 96910

Telephone 671.648.9001

Facsimile 671.648.9002

[info@terlajelaw.com](mailto:info@terlajelaw.com)

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**From:** Mary Okada <mary.okada@guamcc.edu>  
**Sent:** Monday, March 28, 2022 4:00 PM  
**To:** Jacqueline Terlaje <jterlaje@terlajelaw.com>  
**Cc:** LEGAL ASST <legal@terlajelaw.com>  
**Subject:** Re: Sunshine Reform Act Request Deadline: March 31, 2022

Hafa Adai Attorney Terlaje,

Please find my corrected note for the previous response:

GCC therefore reviewed its procurement training files and informs that it did not find any records regarding Government of Guam employee Matthew C. Santos.

Thank you for your patience.

Mary

---

**From:** Jacqueline Terlaje <jterlaje@terlajelaw.com>  
**Date:** Monday, March 28, 2022 at 11:01 AM  
**To:** Mary Okada <mary.okada@guamcc.edu>  
**Cc:** LEGAL ASST <legal@terlajelaw.com>  
**Subject:** RE: Sunshine Reform Act Request Deadline: March 31, 2022

President Okada,

My sincere apologies; however, your email indicates that you "did find" records. Please provide a copy of the records or provide a clear statement that no records are in your possession. Your kind cooperation is greatly appreciated.

Senseramente,

JACQUELINE TAITANO TERLAJE

LAW OFFICE OF

JACQUELINE TAITANO TERLAJE, P.C.

284 West Chalan Santo Papa

Hagåtña, Guam 96910

Telephone 671.648.9001

Facsimile 671.648.9002

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**From:** Mary Okada <mary.okada@guamcc.edu>  
**Sent:** Monday, March 28, 2022 10:35 AM  
**To:** Jacqueline Terlaje <jterlaje@terlajelaw.com>  
**Cc:** LEGAL ASST <legal@terlajelaw.com>  
**Subject:** Re: Sunshine Reform Act Request Deadline: March 31, 2022

Correction:

Hafa Adai Attorney Terlaje,

Although student records are not obtainable through the Sunshine Act, 5 GCA § 5141(n) makes public certain information about Government of Guam employees' completion of procurement training modules. GCC therefore reviewed its procurement training files and informs that it did find any records regarding Government of Guam employee Matthew C. Santos.

Please let me know if you have any questions. I would appreciate your acknowledgement of this email.

Mary

---

**From:** Jacqueline Terlaje <jterlaje@terlajelaw.com>  
**Date:** Monday, March 28, 2022 at 8:07 AM  
**To:** Mary Okada <mary.okada@guamcc.edu>  
**Cc:** LEGAL ASST <legal@terlajelaw.com>  
**Subject:** RE: Sunshine Reform Act Request Deadline: March 31, 2022

Hafa Adai, President Okada. Thank you for your response. Can you kindly confirm the information below? I requested for procurement module completion for Government of Guam employee, **Matthew C. Santos**. Please confirm that the formal response you are providing on behalf of GCC is the following:

**GCC reviewed its training record on or before March 28, 2022, and did not locate any record of the completion of procurement training modules consistent with section 5141 of Title 5, Guam Code Annotated.**

Si Yu'os Ma'ase for your kind attention. Based on the response below, I wanted to avoid any confusion over the response to the existence of records.

I look forward to your response.

Senseramente,  
**JACQUELINE TAITANO TERLAJE**  
LAW OFFICE OF  
JACQUELINE TAITANO TERLAJE, P.C.  
284 West Chalan Santo Papa  
Hagåtña, Guam 96910  
Telephone 671.648.9001



Facsimile 671.648.9002

[info@terlajelaw.com](mailto:info@terlajelaw.com)

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**From:** Mary Okada <[mary.okada@guamcc.edu](mailto:mary.okada@guamcc.edu)>  
**Sent:** Monday, March 28, 2022 6:36 AM  
**To:** Jacqueline Terlaje <[jterlaje@terlajelaw.com](mailto:jterlaje@terlajelaw.com)>  
**Cc:** LEGAL ASST <[legal@terlajelaw.com](mailto:legal@terlajelaw.com)>  
**Subject:** Re: Sunshine Reform Act Request Deadline: March 31, 2022

Hafa Adai Attorney Terlaje,

Although student records are not obtainable through the Sunshine Act, 5 GCA § 5141(n) makes public certain information about Government of Guam employees' completion of procurement training modules. GCC therefore reviewed its procurement training files and informs that it did find any records regarding Government of Guam employee Michael C. Santos.

Please let me know if you have any questions. I would appreciate your acknowledgement of this email.

Mary

---

**From:** Jacqueline Terlaje <[jterlaje@terlajelaw.com](mailto:jterlaje@terlajelaw.com)>  
**Date:** Friday, March 25, 2022 at 8:33 AM  
**To:** "mary.okada@guamcc.edu" <[mary.okada@guamcc.edu](mailto:mary.okada@guamcc.edu)>  
**Cc:** LEGAL ASST <[legal@terlajelaw.com](mailto:legal@terlajelaw.com)>  
**Subject:** Sunshine Reform Act Request Deadline: March 31, 2022

Hafa Adai, President Okada. Please see enclosed a Freedom of Information Request dated on today's date.

Senseramente,  
JACQUELINE TAITANO TERLAJE  
LAW OFFICE OF  
JACQUELINE TAITANO TERLAJE, P.C.  
284 West Chalan Santo Papa

Hagåtña, Guam 96910  
Telephone 671.648.9001  
Facsimile 671.648.9002  
[info@terlajelaw.com](mailto:info@terlajelaw.com)

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*E-mail administered by Guam Community College*



*E-mail administered by Guam Community College*



*E-mail administered by Guam Community College*



*E-mail administered by Guam Community College*



April 8, 2022

VIA EMAIL [procurement@guam.gov](mailto:procurement@guam.gov)

THE OFFICE OF THE GOVERNOR

Matthew Santos

513 West Marine Corps Drive, Ricardo J. Bordallo Governor's Complex

Hagåtña, Guam 96910

Re: RFP-Office of the Governor-2022-001, Second Protest

Håfa Adai, Mr. Santos.

This firm represents Data Management Resources, LLC. ("DMR"), relative to RFP-Office of the Governor-2022-001 issued on February 7, 2022 (hereinafter "RFP-2022-001"). On March 19, 2022, DMR submitted its Protest on numerous grounds. DMR has received no response to the issues raised in the March 19, 2022 Protest.

DMR now submits a Second Procurement Protest on the following grounds:

§ 5141(b) of Title 5 Guam Code Annotated requires all Government of Guam personnel tasked with responsibility of purchasing or otherwise procuring goods or services to receive training in the Guam Community College Procurement Program. DMR is in possession of information that the Office of the Governor has engaged in arbitrary conduct detrimental to RFP-2022-001. Specifically, Government of Guam employee Matthew Santos, is the identified as the Single Point of Contact for RFP-2022-001. *See* RFP-2022-001, p. 5 Section E; p 7, Section H. Matthew Santos is also identified as the Author for RFP-2022-001. *See* RFP-2022-001, p. 5 Section O.

Based upon the response from the Guam Community College Procurement Program, dated March 28, 2022, the Office of the Governor and the Guam State Clearinghouse has engaged in arbitrary conduct due to its failure to ensure compliance with Guam Procurement Code, as the Guam Community College Procurement College has no record of the completion of procurement training of Government of Guam employee, Matthew C. Santos.

5 GCA § 5141(b) provides:

Mandatory Certification and Continuing Education. Notwithstanding any other provision of law or this Chapter and effective October 1, 2016, all government of Guam personnel tasked with the responsibility of purchasing or otherwise procuring goods, or services, or construction, including those employed by agencies with authority to conduct their own procurement, as well as any person within the Office of Public Accountability responsible for administering procurement appeals or auditing of the purchasing activities

of the government of Guam, must receive the training and continuing education to the extent required under this Section and offered by the College in consultation with the Guam Procurement Advisory Council. **A government of Guam employee who is required to receive the training may not participate in purchases by the employing agency unless the employee has received the required training or received equivalent training from a national association recognized by the College and the Guam Procurement Advisory Council, which shall be the judge of equivalency.** The equivalent training may count toward the continuing education requirements of this Section, as determined by the College, in consultation with the Guam Procurement Advisory Council.

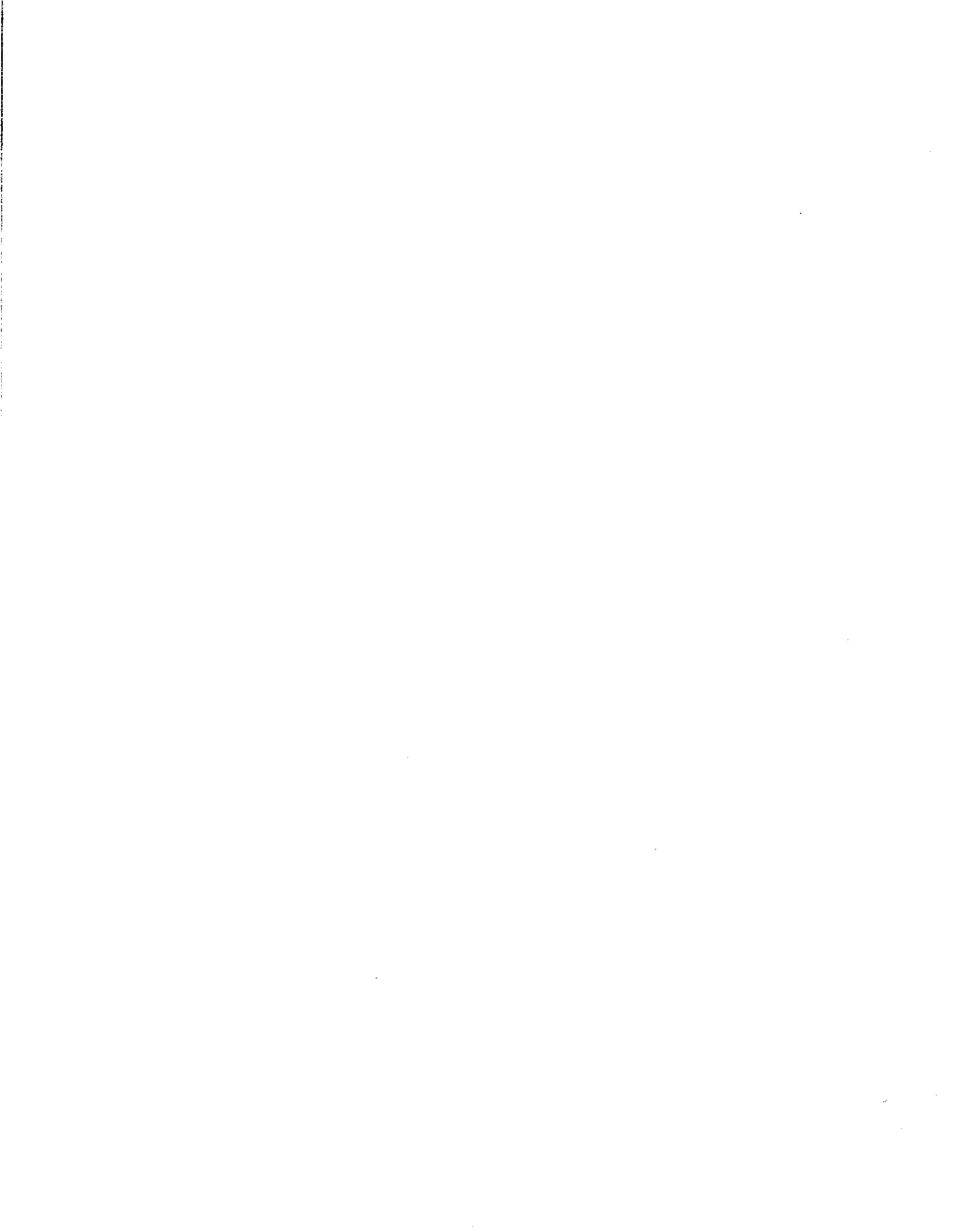
DMR further protests this arbitrary conduct as a violation of 2 C.F.R. § 200.319. Specifically, as a Recipient under U.S. Department of the Interior – Office of Insular Affairs, Grant and Cooperative Agreement D20AP0048, the use of federal funds specifically requires the Office of the Governor not only to ensure maximum competition, but to avoid the engagement of arbitrary conduct in the procurement process which is presumptive of restriction on competition. The failure to ensure compliance with procurement training and certification of the author and Single Point of Contact constitutes arbitrary conduct.

Based on the foregoing, on behalf of Data Management Resources, LLC, I respectfully submit this SECOND PROCUREMENT PROTEST, pursuant to 5 G.G.A. § 5425 and within the time periods described therein, and request that you keep me informed of the status of the resolution of these matters.

Sincerely,

  
JACQUELINE TAITANO TERLAJE

cc: **Richard C. Taitano**, CEO Data Management Resources, LLC.  
**Stephanie Flores**, Guam State Clearinghouse  
**Jessica Toft**, Office of the Attorney General  
**Jon Junior Calvo**, Chief of Staff, Office of the Governor



LOURDES A. LEON GUERRERO  
GOVERNOR



JOSHUA R TENORIO  
LT. GOVERNOR

**UFISINAN I MAGA'HAGAN GUAHAN**  
OFFICE OF THE GOVERNOR OF GUAM

VIA E-MAIL: [jterlaje@terlajelaw.com](mailto:jterlaje@terlajelaw.com); [bids@dmrpacific.com](mailto:bids@dmrpacific.com)  
NAME: Data Management Resources, LLC; Jacqueline Taitano Terlaje, Attorney for Data Management Resources, LLC  
DATE: May 24, 2022

RE: Decision on Letter of Protest filed by Data Management Resources, LLC on March 19, 2022 for Request for Proposals RFP-Office of the Governor of Guam-2022-001, re: Procurement of Professional Services for the government of Guam Licensing and Permitting System

**DECISION ON LETTER OF PROTEST #1**

Pursuant to 2 GAR, Div. 4 § 9101(g), the Office of the Governor of Guam ("Office of the Governor") hereby issues its decision on the matters raised in a letter stating that it is a "protest" ("Letter of Protest") sent by Data Management Resources, LLC ("DMR") via e-mail transmission to Matthew Santos on March 19, 2022. The Office of the Governor of Guam hereby denies the Letter of Protest.

**DMR LETTER OF PROTEST COMPLAINTS**

1. Responses to the Specifications Questions submitted by DMR do not clearly describe specifications required under the RFP; inaccurate and inadequate information violate Guam's law and policy in procurement.
2. RFP and Responses impose unreasonable conditions and impose arbitrary action in violation of Standard Terms and Conditions by the U.S. Department of Interior.

**DMR LETTER OF PROTEST REQUESTED REMEDIES**

DMR makes no request for remedies in the Letter of Protest.

**REQUESTS FOR PROPOSALS VS. INVITATIONS FOR BIDS**

An Invitation for Bids ("IFB") is issued when all of the product and contract requirements can be adequately defined in the solicitation, and price is the primary consideration. 5 GCA § 5211(b) and (g); and 2 CFR 200.320(b)(1)(i)(C) and (ii)(B).

A Request for proposals ("RFP") is issued when the government has a need for professional services involving a high level of technical knowledge, expertise, and judgment. 5 GCA §§ 5121(a) and 5216(b); see also *Fleet Services, Inc. v. Department of Administration*, 2006 Guam 6, ¶¶ 27-

**Ricardo J. Bordallo Governor's Complex**  
513 West Marine Corps Drive  
Hagåtña, Guam 96910

29. The qualifications of each offeror are the primary consideration, rather than price. 5 GCA § 5216(b) and (c); 2 CFR 200.320(b)(2)(i) and (iii).

These two procurement methods are also known as “competitive sealed bids” and “competitive proposals.” The competitive sealed bidding method is synonymous with the Invitation for Bid procedure, 5 GCA § 5211 and 2 CFR § 200.320(b)(1), and the competitive proposals method is synonymous with the Request for Proposals procedure, 2 GAR, Div. 4 § 3114(f) and 2 CFR 200.320(b)(2)(i).

“The Invitation for Bids shall include the following: ... the purchase description ...” 2 GAR, Div. 4 § 3109(c)(2)(B). “Unless the context requires otherwise, the terms specification and purchase description are used interchangeably” within the Guam Procurement Regulations. 2 GAR, Div. 4 § 4101(a)(4). Purchase descriptions and specifications in an IFB are firm, fixed requirements that can be measured and quantified. “Only objectively measurable criteria which are set forth in the Invitation for Bids shall be applied in determining the lowest bidder.” 2 GAR, Div. 4 § 3109(n)(4).

In competitive sealed bidding, the products, goods, or services being procured are capable of being specifically described so that submitted bids can be evaluated against the IFB purchase description. 2 GAR, Div. 4 § 3109(n). The terms and conditions in an IFB are nonnegotiable. “The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;” the IFB must include all mandatory, statutory, special, and contractual terms and conditions required by the procuring agency. 5 GCA § 5211(b).

Bids shall be evaluated based on the requirements set forth in the Invitation for Bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award *shall be objectively measurable*, such as discounts, transportation costs, and total or life cycle costs.

5 GCA § 5211(e)(emphasis added).

Accordingly, bids submitted in response to an IFB must “conform in all material respects to the Invitation for Bids.” 2 GAR, Div. 4, § 3115(e)(3)(A)(ii); 2 GAR, Div. 4 § 3109(n)(2); and 5 GCA § 5201(g). A bid will be rejected as “unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the Invitation for Bids.” 2 GAR, Div. 4, § 3115(e)(3)(A)(ii). Because all bids must objectively match the IFB purchase description/specifications, each bidding vendor produces the same or a similar product; therefore, the primary factor that separates acceptable bids is the cost of the product offered. 2 GAR, Div. 4 § 3109(n)(1).

In contrast, an RFP’s description of the need of the government does not consist of an inflexible, nonnegotiable “purchase description” or a precise set of specifications. 2 GAR, Div. 4 § 3114(f)(1). Under federal law, “[s]uch description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the



qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. *Detailed product specifications should be avoided if at all possible.*" 2 CFR § 200.319(d)(1)(emphasis added). Guam's Procurement Law states: "[t]he Request for Proposals shall describe the services required, list the type of information and data required of each offeror, and state the relative importance of particular qualifications." 5 GCA § 5216(c). The RFP's required description of its project or need consists of: "a description of the work involved; ...." 2 GAR, Div. 4 § 3114(f)(1)(B). This is generally called a "scope of work" or "scope of services."

Flexibility in the RFP's description of the government's needs is a crucial component of the RFP process, such that an RFP's description of the work or services involved may be changed even *after* offerors have already submitted proposals in response to the RFP: "the territory's stated requirements may be revised or clarified after proposals are submitted." 2 GAR, Div. 4 § 3115(e)(3)(B).

This flexibility in the RFP process extends to offerors' proposals as well. "Unless the solicitation states otherwise, proposals need not be unconditionally accepted without alteration or correction, ...." *Id.* Whereas "[b]ids shall be unconditionally accepted without alteration or correction," except in very limited circumstances, 5 GCA § 5211(e) and (f); "[p]roposals may be modified or withdrawn at any time prior to the conclusion of discussions." 2 GAR, Div. 4 § 3114(i)(3). During evaluation of the proposals the government may even conduct discussions with the offerors who have submitted proposals in order to: "(A) determine in greater detail such offeror's qualifications, and (B) explore with the offeror the scope and nature of the required services, the offeror's proposed method of performance, and the relative utility of alternative methods of approach." 2 GAR, Div. 4 § 3114(i)(1).

As a result, offerors' proposals are not evaluated on the exactness with which they "meet[] the requirements and criteria set forth" 2 GAR, Div. 4 § 3109(n)(1); instead, each offeror's experience, knowledge, performance, availability, and approach are the primary factors upon which each proposal is judged. 2 GAR, Div. 4 § 3114(f)(2). The offerors are evaluated on the subjective quality and merit of their work and abilities, and their planned solution for the government; not on a particular product or price. The offerors' proposals do not need to exactly match "specifications," and do not need to be exhaustively particularized; rather, each offeror's response to the RFP shall describe: "a plan giving *as much detail as is practical* explaining how the services will be performed ...." 2 GAR, Div. 4 § 3114(f)(1)(H)(v) (emphasis added).

Because the quality of the professional services offered is paramount, a firm fixed price based on objective criteria is generally not considered as an evaluation factor at the proposal stage of the RFP process. Price is eventually considered, but is negotiated, and is not required to be the lowest price available; it need only be determined to be "fair and reasonable." 5 GCA § 5216(e); and 2 GAR, Div. 4 § 3114(l).

In summary, the government issues an IFB when it has assessed its needs and has already determined the solution to those needs. The government then clearly and objectively defines the solution so that bidders can provide that specific solution at the lowest price.

In comparison, the government issues an RFP when it has discovered that it has an issue or need, but does not have the personnel or expertise to determine the solution on its own. 2 GAR, Div. 4 § 3114(c)(2). Instead, the government determines that it needs to obtain the services of a qualified professional who will exercise significant professional judgment to develop a solution to the government's need. *Id.* The government then describes the issue or need without narrowly defining the solution, and without imposing restrictive parameters, so that offerors can provide their own innovative solutions to the government's need, using their expertise and professional skill. This is the process that the Office of the Governor has followed in this procurement. DMR's Letter of Protest does not challenge Office of the Governor's use of the RFP process for this procurement.

**STATEMENT OF FINDINGS:**

The Office of the Governor of Guam makes the following findings:

I. DMR complains that responses to the "Specifications Questions" submitted by DMR do not clearly describe specifications required under the RFP; inaccurate and inadequate information violate Guam's law and policy in procurement.

1. Question No. 16 (a), (b), (c), and (d):
  - (a) Is the Licensing and Permitting system expected to replace the existing processes currently in place for the issuance of the identified licenses and permits?
  - (b) Is the Licensing and Permitting System intended to replace the existing systems at each of the identified departments for issuance of the identified licenses and permits?
  - (c) Please identify and provide detail on each of the processes that need to be streamlined.
  - (d) If the existing license/permit systems will not be replaced, is the new Licensing and Permitting system expected to interact with or accommodate data/applications processed through the existing systems? If so, please specify scope of data sharing/integration.

As stated in the RFP, "[t]he objective of this Request for Proposals is to obtain professional services ("Services") to *design and implement* a state-of-the-art system ("System") to *streamline* and *modernize* the government of Guam's licensing and permitting processes." RFP-Office of the Governor of Guam-2022-001("RFP"), Section III, Scope of Services, ¶A, General Scope of Services (emphases added).

This requires offerors to "[a]ssess current business processes of the government of Guam for business license applications and land use, building, sanitary, fire, and occupancy permits," and

“[a]nalyze requirements and plan necessary customization, modification, and data conversion efforts.” RFP, Section III, ¶L. “The government of Guam intends to streamline its licensing and permitting operating procedures wherever possible, and the Vendor’s capability to advise and assist as necessary during System implementation will be considered in evaluating proposals.” RFP, Section III, ¶I.

The answer provided to DMR’s Question #16 contains the following instruction: “[p]lease describe your planned approach to addressing the needs of the government of Guam within your solution related to creating, configuring, and/ or modifying business process models and workflows for the needed permitting and licensing transactions. Address any approaches you have successfully used in the past with regard to addressing other clients’ needs.” RFP Questions and Answers, Answer to Question #16(a) (March 4, 2022).

The RFP and answers to questions provided by the Office of the Governor clearly inform all offerors that they are expected to assess and analyze the current existing processes, and use their significant business judgment to determine whether the processes currently in place will need to be replaced as part of the solution offered in their proposals. DMR’s complaint does not constitute a valid objection to the RFP process.

2. Question No. 28(a) and (b):
  - (a) Is data conversion a required deliverable for this project?
  - (b) If so, what data is required to be converted?

The RFP informs offerors that they will be asked to “[a]nalyze requirements and plan necessary customization, modification, and data conversion efforts” and “[c]reate any required data conversion software. RFP, Section III, ¶L. The answers to questions provided referred offerors to this subsection of the RFP. RFP Questions and Answers, Answer to Question #28(a) (March 4, 2022).

The RFP and answers to questions provided by the Office of the Governor clearly inform all offerors that they are expected to assess and analyze the current existing processes, and use their significant business judgment to determine the extent and method of any necessary data conversion as part of the solution offered in their proposals. DMR’s complaint does not constitute a valid objection to the RFP process.

3. Question No. 29(a), (b), and (c):
  - (a) Is the Licensing and Permitting System intended to replace all existing Government of Guam processes for issuing business licenses and permits?
  - (b) Is the Licensing and Permitting System intended to replace any existing systems at each of the identified departments for issuance of the identified licenses and permits?
  - (c) If the existing license/permit systems will not be replaced, is the new Licensing and Permitting system expected to interact with or accommodate data/

applications processed through the existing systems? If so, please specify scope of data sharing/integration.

Question #29 merely reiterates the questions contained in Question #16. The RFP asks offerors to “[a]ssess current business processes of the government of Guam for business license applications and land use, building, sanitary, fire, and occupancy permits,” and “[a]nalyze requirements and plan necessary customization, modification, and data conversion efforts.” RFP, Section III, ¶L. “The government of Guam intends to streamline its licensing and permitting operating procedures wherever possible, and the Vendor’s capability to advise and assist as necessary during System implementation will be considered in evaluating proposals.” RFP, Section III, ¶I.

The answer provided to DMR’s Question #16 contains the following instruction: “[p]lease describe your planned approach to addressing the needs of the government of Guam within your solution related to creating, configuring, and/ or modifying business process models and workflows for the needed permitting and licensing transactions. Address any approaches you have successfully used in the past with regard to addressing other clients’ needs.” RFP Questions and Answers, Answer to Question #16(a) (March 4, 2022).

The RFP and answers to questions provided by the Office of the Governor clearly inform all offerors that they are expected to assess and analyze the current processes, and use their significant business judgment to determine whether the processes currently in place will need to be replaced as part of the solution offered in their proposals. DMR’s complaint does not constitute a valid objection to the RFP process.

4. Question No. 17(a), (b), (c), (d), (e), and (f):
  - (a) Does the Department of Public Works currently have an automated system for the issuance of the permits identified in the RFP?
  - (b) Does the Department of Land Management currently have an automated system for the issuance of the permits identified in the RFP?
  - (c) Does the Guam Seashore Protection Commission currently have an automated system for the issuance of the permits identified in the RFP?
  - (d) Does the Guam Land Use Commission currently have an automated system for the issuance of the permits identified in the RFP?
  - (e) Does the Department of Public Health and Social Services currently have an automated system for the issuance of the permits identified in the RFP?
  - (f) Does the Guam Fire Department currently have an automated system for the issuance of the permits identified in the RFP?

DMR complains that the “failure to accurately reflect the current automation environment of the stakeholder agencies. In particular, the prospective offeror is aware that the Department of Public Health and Social Services has an automated system referred to as the “PH/Pro-D-E-H.” DMR Letter of Protest, p. 7 (March 19, 2022).

This "PH/Pro-D-E-H" automated system was not included in the RFP or the answers provided on March 4, 2022 because it is not part of the Scope of Services for this Request for Proposals, and is not intended to be addressed by offerors in their proposals. DMR is not prejudiced by this alleged missing information.

5. Question No. 11(a), (b), and (c):
  - (a) Government of Guam public documents identify Department of Revenue and Taxation (ORT) - Business License and Permit Center (Project #16) under U.S. Department of Interior Grant Award No. D20AP00048 at <http://jbbmr.guam.gov/wp-bbmr-content/uploads/2021/10/FY2021-GOVGUAM-Federal-Stimulus-Assistance-Programs-Update-Report-CARES-ACT-COVID-19-As-of-9-30-21.pdf> The information provided indicates that the funding for the grant being utilized in this proposal expires on September 30, 2022. If funding for RFP-OOG-2022-001 expires at the end of fiscal year 2022, what reassurances do vendors have that the Government is acting in good faith to certify fund availability for the Initial Term, and five (5) year renewal periods referenced in the proposal?
  - (b) If funding for RFP-OOG-2022-001 is not provided beyond September 30, 2022 under this grant, has the Government certified other funds available for this procurement?
  - (c) Does execution of the contract between the vendor and the Government require that the Government certify funds availability for the entire contract award amount?

There is no obligation of the government to maintain funds available for the entire contract award amount. 5 GCA § 5237(a). It is illegal for the government to obligate funds in excess or in advance of appropriation. 5 GCA § 22401. This statute states in relevant parts:

No officer or employee of the government of Guam, including the Governor of Guam, shall: (1) Make or authorize any expenditure from, or *create or authorize any obligation under, any appropriation or fund in excess of the amount available therein*, or for other than an authorized purpose; (2) Commence, *continue*, or proceed *with any* operational activity, construction, improvement, *contract, or obligation* without an appropriation or fund for the payment thereof; or *after any such appropriation or fund is exhausted*; (3) *Involve the government of Guam in any contract or other obligation*, for the payment of money for any purpose, *in advance of the appropriation* made for such purpose; ....

5 GCA § 22401(a)(1), (2), and (3)(emphases added).

The RFP clearly states what the law requires: "[a]ny contract awarded under this RFP is subject to the availability of certified funds." RFP, Section II, ¶B; and 5 GCA § 5237(a). DMR's complaint does not constitute a valid objection to the RFP process.

6. Question No. 20 (a), (b), and (c):

- (a) What are the government's retention policies for each of the associated permitting/licensing processes?
- (b) What is the minimum required retention period?
- (c) What is the maximum retention period?

The answers provided on March 4, 2022, inform the offerors as to where they may locate this information. The Office of the Governor does not maintain records retention schedules or information in its possession. As directed by the citations provided in the answer to Question #20(a), the Department of Administration maintains all records retention schedules for the government of Guam agencies and instrumentalities, and these records are publicly available to the offerors. 5 GCA § 20605; 2 GAR, Div. 2, §§ 10109(i), 10122, and 10140(d); 5 GCA § 10102(d); Records Management Handbook, Records Disposition, p. 16; and RFP Questions and Answers, Answer to Question #20(a) (March 4, 2022). DMR and all other potential offerors may obtain these public documents for themselves at any time.

**II.** DMR complains that the RFP and Responses impose unreasonable conditions and impose arbitrary action in violation of Standard Terms and Conditions by the U.S. Department of Interior.

This section of the Letter of Protest does not raise complaints about the method of source selection, solicitation or award of a contract as provided in the law. See 5 GCA § 5425(a). Further, although the Letter of Protest claims violations of the Department of Interior Standard Award Terms and Conditions, no violations of these standard terms and conditions (which can be located at <https://www.doi.gov/sites/doi.gov/files/uploads/doi-standard-award-terms-and-conditions-effective-december-2-2019-revised-june-19-2020.pdf>) are cited in the allegations. Instead, DMR refers to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200); therefore, the Office of the Governor will address the complaints under this governing federal law.

1. Question No. 25(d) and (e); and Response to Question No. 11(a):  
25(d) If vendor opts to provide an on-premise solution, is the Government requiring a warranty on the equipment for ten (10) years, both the Initial Term and Renewal Term?  
25(e) If the Government does not renew for the Renewal Term of five (5) additional years, will the Government accept a proposal that does not carry any warranty on the equipment for the Renewal Term?  
Response to 11(a) See 5 GCA § 5237(a): "funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor."

DMR argues:

Based upon the requirement of warranty coverage beyond a one (1) year period, the Government is placing a minimum warranty coverage for ten (10) years while renouncing its obligation to maintain funds available for the warranty period. This requirement is not

only an unreasonable condition for a prospective offeror to qualify to do business, but is an arbitrary act in the procurement process based upon the Government's rejection of its obligations to comply with a five (5) year initial term, and five (5) year renewal term.

DMR Letter of Protest (March 19, 2022).

The government of Guam is not placing a minimum warranty coverage of ten (10) years on any selected vendor while renouncing its obligation to maintain funds available for the warranty period.

There is no ten-year minimum warranty coverage placed on any selected vendor. The term of the contract is not ten years. The RFP clearly states that the initial term of the contract expires after 5 years, but the contract may also be "cancelled for lack of funds, terminated, renewed, or extended prior to expiration ..." RFP, Section I, ¶B(1) and (3). "All renewals, extensions, Renewal Terms, or No Cost Extension Terms are subject to the availability of funds." RFP, Section I, ¶B(3). If the term of the contract ends for any reason, the contractors are under no further contractual obligations to the government of Guam, except as required by law. *See* 2 GAR, Div. 4, § 6101(8) and (10)(b)(upon termination of a contract, "[t]he contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work."); *see also* 5 GCA § 5237(c) ("When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract."); *see also* RFP, Section II, ¶B.

There is no obligation of the government to maintain funds available for the term of the contract. 5 GCA § 5237(a). It is illegal for the government to obligate funds in excess or in advance of appropriation. 5 GCA § 2240I. This statute states in relevant parts:

No officer or employee of the government of Guam, including the Governor of Guam, shall: (1) Make or authorize any expenditure from, or *create or authorize any obligation under, any appropriation or fund in excess of the amount available therein*, or for other than an authorized purpose; (2) Commence, *continue*, or proceed *with any operational activity, construction, improvement, contract, or obligation* without an appropriation or fund for the payment thereof; or *after any such appropriation or fund is exhausted*; (3) *Involve the government of Guam in any contract or other obligation*, for the payment of money for any purpose, *in advance of the appropriation* made for such purpose; ....

5 GCA § 2240I(a)(1), (2), and (3)(emphases added).

The RFP clearly states what the law requires: "[a]ny contract awarded under this RFP is subject to the availability of certified funds." RFP, Section II, ¶B; and 5 GCA § 5237(a).

The government's obligation is to "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." 2 GAR, Div. 4, § 3121(e)(1)(D). "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." RFP, Section II, ¶B; and 5 GCA § 5237(c). This language is required by law to be stated in the RFP. 2 GAR, Div. 4, § 3121(e)(1)(C).

DMR fails to allege any injury caused by the RFP's inclusion of the language required by law. The RFP only imposes the requirements of Guam's Procurement Law and Guam's Procurement Rules and Regulations, and therefore, its terms are not unreasonable, arbitrary, or capricious.

2. Question No. 8(a), (b), (c), (d), (e), (f), and (g):
  - (a) Define "Disclosure of financial resources."
  - (b) If financial resources includes real property holdings, identify the statutory authority requiring the disclosure of private, confidential and proprietary information unrelated to the performance of services.
  - (c) If financial resources includes identification of financial institution information, identify the statutory authority requiring the disclosure of private and confidential information unrelated to the performance of services?
  - (d) Will a letter of financial stability from a financial institution suffice under this section requiring "Disclosure of financial resources"?
  - (e) Is the Government requiring vendors to own or control a minimum amount of resources to participate in this procurement?
  - (f) If so, what is the minimum amount of resources required to participate in procurements for the Government?
  - (g) What weight of the 15 point allocation for Availability and Capacity of Offeror in the Evaluation Factors, does the vendor's financial resources have?

The Office of the Governor provided the Guam and federal statutory and regulatory requirements for financial disclosures in the RFP and in the answers provided to DMR's questions.

The RFP requests each offeror to "[p]rovide a disclosure of financial resources sufficient to demonstrate an ability to complete this Project." This is required pursuant to 2 CFR § 200.320(b)(2)(iii). "The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources." 2 CFR § 200.318(h); *see also* 2 CFR § 200.14 and 2 GAR, Div. 4 § 3116(b)(2)(A)(i).

The answers provided in response to DMR's questions informed the potential offerors that the offerors should use their own judgment in providing this information. "Each Offeror is to



determine the content of a sufficient financial disclosure in accordance with 2 GAR, Div. 4 § 3116(b)(3), and if the disclosure provided is found to be insufficient by the government of Guam, the government of Guam may request additional information. *Id.*" RFP Questions and Answers, Answer to Question #8(a) (March 4, 2022).

There is no penalty imposed on any offeror for supplying insufficient information in response to this request. Offerors are not prohibited from submitting proposals, nor are they disqualified from participation in the procurement for submitting insufficient information. If the Office of the Governor determines that insufficient information has been submitted, then the offeror will be requested to submit more information, in accordance with the law. DMR was informed of this. *Id.*

DMR fails to allege any injury. The RFP only imposes the requirements of Guam's Procurement Law and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200); therefore, its terms are not unreasonable, arbitrary, or capricious.

#### CONCLUSIONS:

The Office of the Governor of Guam denies the Letter of Protest on the following bases:

1. The Letter of Protest fails to comply with the filing requirements for all protests. All protests "shall be filed in duplicate" and are "considered filed when received by ... the head of a Purchasing Agency." 2 GAR, Div. 4 § 9101(c)(1). The protest must be filed in writing, and "the envelope should be labeled 'Protest.'" 2 GAR, Div. 4 § 9101(c)(3). In addition, "[t]he written protest shall include as a minimum the following: (a) the name and address of the protestor; ...." 2 GAR, Div. 4 § 9101(c)(3)(a).

The Letter of Protest was sent via e-mail to Matthew Santos, who is the Single Point of Contact for RFP-Office of the Governor-2022-001. It was not filed in an envelope labeled as a "Protest." It was not filed with the head of the Purchasing Agency. It was not filed in duplicate, and it did not include the address of the protestor. Therefore, the Letter of Protest was improperly submitted.

2. The Letter of Protest was untimely submitted. "Protests filed after the 14 day period shall not be considered." 2 G.A.R. § 9109(b)(l). The RFP was published on February 7, 2022, containing its Scope of Services and all alleged defective terms to which DMR objects. DMR registered for, and was sent a copy of the RFP on February 7, 2022 at 9:19 a.m. ChST. February 7, 2022 is the date that DMR was on notice that the RFP included these allegedly defective terms. These terms have not changed. As such, the Letter of Protest was submitted well beyond the 14-day time period of when DMR first knew or should have known of the facts giving rise to its complaints. 5 GCA § 5425(a) and 2 GAR, Div. 4 § 9101(c)(1); *see also In the Appeal of ASC Trust Corporation*, OPA-PA-09-010

(finding that the fourteen-day clock begins when a party first becomes aware of facts giving rise to the protest).

3. DMR failed to exhaust administrative remedies prior to submitting its Letter of Protest. "Complainants should seek resolution of their complaints initially with the Procurement Officer or the office that issued the solicitation." 2 GAR, Div. 4 § 9101(b). "It is the territory's policy, consistent with [the Guam Procurement Act], to try to resolve all controversies by mutual agreement without litigation. In appropriate circumstances, informal discussions between the parties can aid in the resolution of differences by mutual agreement and are encouraged." 2 GAR, Div. 4 § 9103(1). Failure to exhaust administrative remedies deprives a party of standing to pursue its claims. *DFS Guam L.P. v. The A.B. Won Pat International Airport Authority, Guam, et. al*, Superior Court Civil Case No. CV0685-13 (Dec. & Order, July 19, 2013). DMR never attempted to seek informal resolution of its complaints with Office of the Governor prior to submitting its Letter of Protest. DMR has never discussed or requested any remedy or resolution of its complaints with Office of the Governor by mutual agreement; and even in its Letter of Protest, DMR has not requested any remedy or resolution of its complaints.
4. DMR is not aggrieved pursuant to 5 GCA § 5425(a) or 2 GAR, Div. 4 § 9101(a)(1)(a). In order to pursue a protest, DMR must have standing. When standing is at issue, "the relevant inquiry is whether, assuming justiciability of the claim, the plaintiff has shown an injury to himself that is likely to be redressed by a favorable decision." *Simon v. E. Kentucky Welfare Rights Org.*, 426 U.S. 26, 38 (1976). Under 5 GCA § 5245(a): "[a]ny actual or prospective bidder, offeror, or contractor who may be aggrieved in connection with the method of source selection, solicitation or award of a contract, may protest to ... the head of the purchasing agency." Therefore, in order to protest, DMR must be "aggrieved" by the alleged violations of law. 5 GCA § 5425(a).

DMR's Letter of Protest was filed prior to the submission of proposals due date of the RFP. DMR argues that the information contained in the RFP "compromises the offeror's ability to meet the minimum obligations expected of its proposal." DMR Letter of Protest, p. 9 (March 19, 2022). However, DMR fails to show how any of the alleged defective terms of the RFP could or would prevent DMR from submitting a Proposal telling Office of the Governor about its qualifications; including its business information, technical training and education, specific and general experience, qualifications and ability, personnel, products and facilities, availability, plan to perform, financial resources, or record of past performance. 2 GAR, Div. 4, § 3114(f)(1)(H) and (f)(2); and RFP, Section I, ¶¶ K, L, M, N, O, P, Q, and R. All of the information sought concerning DMR's business is in DMR's possession. Further, the RFP informed DMR of its ability to modify any proposal submitted, even after submission, if needed for "clarification, to assure full understanding and responsiveness to the solicitation requirements, as permitted under Guam's Procurement Law and Guam's Procurement Rules and Regulations." RFP, Section II, ¶Q and ¶R; *see also* RFP, Section I, ¶I; *see also* RFP Questions and Answers,

Answer to Question #8(a) (March 4, 2022). If more information is necessary in the proposal, that may be remedied after receipt of proposals.

DMR further complains that the information in the RFP “is unduly restricting the prospective offerors (sic) ability to present a cost effective proposal which meets the needs of the RFP.” DMR Letter of Protest, p. 1 (March 19, 2022). As stated in this RFP, price is not an evaluation factor at the proposal stage of this RFP process. Price is not considered until after proposals are evaluated and a best qualified offeror is chosen. The “cost-effectiveness” of DMR’s proposal is not a consideration at this stage of the procurement process, and therefore, does not affect DMR’s ability to provide a proposal that addresses all of the evaluation factors stated in this RFP. A price proposal for the professional services offered will only be submitted by the offeror chosen for negotiations, and a “fair and reasonable” price will eventually be negotiated with a chosen offeror, at the negotiations stage of the procurement. RFP, Section I, ¶X.

This procurement was issued through a Request for Proposals, not an Invitation for Bids. In accordance with Guam’s Procurement Rules and Regulations, proposals will not be rejected unless “the proposals ultimately (*that is, after any opportunity has passed for altering or clarifying the proposal*) fails (sic) to meet the announced requirements of the territory in some material respect; ...” 2 GAR, Div. 4 § 3115(e)(1)(B)(ii)(emphasis added). None of the complaints raised operate to prevent DMR from submitting a proposal in response to the RFP. Proposals will not be rejected or disqualified as non-responsive for an initial failure to provide information. If any clarifications are needed, the Office of the Governor will afford the offerors an opportunity to modify or clarify the proposals. *Id.*; 2 GAR, Div. 4 § 3114(i)(3); and 2 GAR, Div. 4 § 3116(b)(2)(B). DMR has suffered no injury, and is not aggrieved by the alleged violations.

DMR further fails to show that it is aggrieved by any possible violations of the Department of Interior Standard Award Terms and Conditions. If the Office of the Governor violates any of the Department of Interior Standard Award Terms and Conditions or the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards imposed by virtue of receipt of a federal award, all penalties and remedies for non-compliance are imposed on the Office of the Governor, as the non-Federal entity Recipient of the federal award funds. *See* 2 CFR § 200.339, Remedies for Non-compliance; 2 CFR § 200.340(a)(1), Termination (“The Federal award may be terminated in whole or in part as follows: By the Federal awarding agency or pass-through entity, if a non-Federal entity fails to comply with the terms and conditions of a Federal award”); *see also* 2 CFR §§ 200.341, 200.342, 200.343, and 200.208. None of the complaints raised operate to penalize DMR or prevent DMR from participating in a federally funded Request for Proposals solicitation. DMR has suffered no injury, and is not aggrieved by the alleged violations.

5. The Letter of Protest has no merit. In order to sustain a protest, it must be determined that the solicitation “is in violation of law.” 2 GAR, Div. § 9104(a)(1); and 5 GCA § 5450.

DMR's Letter of Protest fails to allege any violations of the laws or rules governing the competitive proposals or Requests for Proposals procedure. DMR alleges violations of the Invitation for Bids and competitive sealed bids process. This is not applicable to this procurement.

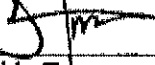
DMR's Letter of Protest further alleges no specific violations of any specific provisions of the Department of Interior Standard Award Terms and Conditions or the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and fails to raise complaints about the method of source selection, solicitation or award of a contract as provided in the law. *See* 5 GCA § 5425(a). DMR complains that the Office of the Governor has included terms in the RFP which are unreasonable and/or arbitrary, but the law requires these terms to be included in the RFP. DMR fails to show any language or provision which has been violated, and fails to show any prejudice stemming from any such violation.

6. DMR has not requested redress or remedy for the alleged defects in the RFP. 2 GAR, Div. 4 § 9105 and 5 GCA § 5451. "If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be: (a) cancelled; or (b) revised to comply with the law." 5 GCA § 5451. DMR does not request revision of the RFP, nor does it request cancellation of the RFP. Even if the Letter of Protest were to be sustained, there is no request for a remedy that can be granted, and therefore, no "injury ... that is likely to be redressed by a favorable decision." *Simon v. E. Kentucky Welfare Rights Org.*, 426 U.S. 26, 38 (1976).
7. DMR's Letter of Protest is frivolous and was made solely to disrupt and delay the procurement process. 5 GCA § 5425(h)(1) and 2 GAR, Div. 4 § 9101(g)(2). "Frivolous" means "groundless, without justification, and without merit." *People of Guam v. Carl T.C. Gutierrez*, Sup. Ct. Case No. CRA 04-0004, Order (May 5, 2005); *see also Harrah's Club v. Van Slitter*, 902 F.2d 774, 777 (9th Cir. 1990) ("A frivolous appeal is defined as one in which the result is obvious, or where the appellants' claims are utterly meritless"). There is no merit to any of DMR's complaints regarding the RFP process. DMR was not prevented from submitting a proposal, and is not aggrieved. Further, DMR did not submit its Letter of Protest to seek a certain remedy or redress any of its issues. DMR did not even attempt to resolve any concerns it may have had informally or through mutual agreement, without submitting a protest. DMR submitted its Letter of Protest prior to proposal submission and award to trigger the automatic stay provisions of 5 GCA § 5425 and 2 GAR, Div. 4, § 9101(g), to halt any award of a contract under Federal Award funding set to expire on September 30, 2022, and thereby disrupt the procurement process.

DMR's letter of protest is untimely and improperly submitted and does not meet the requirements of a valid procurement protest. DMR has failed to exhaust administrative remedies prior to submitting its Letter of Protest. DMR is not aggrieved by any alleged violations and lacks standing to protest. Further, DMR's letter of protest lacks merit, and fails to request any redress. It is frivolous and was filed for the purpose of delay and disruption of the procurement process.

Office of the Governor of Guam  
Request for Proposals RFP-Office of the Governor of Guam-2022-001, re: Procurement of Professional Services for  
the government of Guam Licensing and Permitting System  
Decision on Letter of Protest #1; May 24, 2022  
Page 15 of 15

Pursuant to 5 GCA § 5425(c) this decision on the letter of protest is final and conclusive. Protestor  
is advised that it has the right to administrative and judicial review.



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Venido Torres  
Procurement Officer  
Office of the Governor



LOURDES A. LEON GUERRERO  
GOVERNOR



JOSHUA R. TENORIO  
LT. GOVERNOR

**UFISINAN I MAGA'HAGAN GU'AHAN**  
OFFICE OF THE GOVERNOR OF GUAM

VIA E-MAIL: [jterlaje@terlajelaw.com](mailto:jterlaje@terlajelaw.com); [bids@dmrpacific.com](mailto:bids@dmrpacific.com)  
NAME: Data Management Resources, LLC; Jacqueline Taitano Terlaje, Attorney for Data Management Resources, LLC  
DATE: May 24, 2022

RE: Decision on Letter of Protest filed by Data Management Resources, LLC on April 8, 2022 for Request for Proposals RFP-Office of the Governor of Guam-2022-001, re: Procurement of Professional Services for the government of Guam Licensing and Permitting System

**DECISION ON LETTER OF PROTEST #2**

Pursuant to 2 GAR, Div. 4 § 9101(g), the Office of the Governor of Guam ("Office of the Governor") hereby issues its decision on the matters raised in a letter stating that it is a "protest" ("Letter of Protest") sent by Data Management Resources, LLC ("DMR") via e-mail transmission to Matthew Santos on April 8, 2022. The Office of the Governor of Guam hereby denies the Letter of Protest.

**DMR LETTER OF PROTEST COMPLAINTS**

- I. The Office of the Governor has engaged in arbitrary action in violation of 2 CFR § 200.319 and in violation of the Guam Procurement Code due to its failure to ensure that the Single Point of Contact for RFP-Office of the Governor of Guam-2022-001 (RFP) and contributor to the Scope of Services, Matthew Santos, has received training pursuant to 5 GCA 5141(b).

**DMR LETTER OF PROTEST REQUESTED REMEDIES**

DMR makes no request for remedies in the Letter of Protest.

**HISTORY AND BACKGROUND OF 5 GCA § 5141**

Bill 201-32 (COR) as amended, lapsed into law on February 14, 2014 as Public Law 32-131, and was codified as 5 GCA § 5141. In relevant portion, 5 GCA § 5141(b) states:

Mandatory Certification and Continuing Education. Notwithstanding any other provision of law or this Chapter and effective October 1, 2016, all government of Guam personnel tasked with the responsibility of purchasing or otherwise procuring goods, or services, or construction, including those employed by agencies with authority to conduct their own procurement, as well as any person within the Office of Public Accountability responsible for administering

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513 West Marine Corps Drive  
Hagåtña, Guam 96910

procurement appeals or auditing of the purchasing activities of the government of Guam, must receive the training and continuing education to the extent required under this Section and offered by the College in consultation with the Guam Procurement Advisory Council. A government of Guam employee who is required to receive the training may not participate in purchases by the employing agency unless the employee has received the required training or received equivalent training from a national association recognized by the College and the Guam Procurement Advisory Council, which shall be the judge of equivalency. The equivalent training may count toward the continuing education requirements of this Section, as determined by the College, in consultation with the Guam Procurement Advisory Council.

5 GCA § 5141(b).

This section requires certain described government employees to receive procurement training through the courses established by the Guam Community College (GCC). However, this subsection does not set forth by title the employees who are required to receive the training. This issue has been raised on several occasions throughout the law's history.

The Office of the Attorney General of Guam previously noted the ambiguities inherent throughout the language of 5 GCA § 5141 with regard to the employees who are required to attend the training. Attorney General Letter to Guam Community College, August 14, 2014, (attached as Attachment 1). Particularly, the Office observed:

[T]he law fails to identify the persons required to become certified by using job descriptions or classifications that actually exist within the job classification system now in effect in the Executive branch of the government of Guam. As a result, it is unclear which government employees in which job classifications are required to gain certification. For this reason, it is feared that the law will not be able to achieve the noteworthy and necessary objective intended by its adoption.

Attorney General Letter to GCC, August 14, 2014, p.1, ¶ 3.

This was not the first time this ambiguity was noticed and mentioned. On November 14, 2013, prior to passage of the law, the Committee on General Government Operations and Cultural Affairs (the Committee) convened a public hearing to receive and consider testimony concerning the proposed law. The Committee Report Digest issued from that hearing reports that during testimony, Senator Mike Lintiac, referring to subsections (h) and subsequent of Bill No. 201-32, asked if the job categories listed in the bill, such as "level-one purchaser," are specific job classifications within the Government of Guam. Bill No. 201-32 (COR) as substituted, *Committee Report*, Committee on General Government Operations and Cultural Affairs, January 27, 2014, Committee Report Digest, p. 6. Attorney John Thomas Brown, who was testifying on behalf of the bill, replied that he was only in charge of curriculum development and instruction, and that



GCC would be able to answer that question. *Id.* However, no representative from GCC answered this question. *Id.* No one present during the testimony answered this question. *Id.* Senator Limtiaco then suggested that the issue could be resolved on the floor by the Legislature of Guam. *Id.*

The General Services Agency (GSA) also raised the issue of this deficiency in its written testimony submitted regarding the bill. As part of GSA's "Revised Comments on Bill 201-13" submitted to the Committee on October 17, 2013, in an attempt to address this issue, the Chief Procurement Officer urged that a new section should be added to the bill stating: "The Department of Administration shall develop or amend the Government of Guam compensation schedule and job specifications for buyer positions to reflect the new minimum requirements imposed by this Act." *Id.* at p. 2, ¶ 4. The bill was not revised to include this language.

This issue was never addressed. No amendments to the bill were made changing the language or provisions to specify the personnel job classifications or positions within the Government of Guam that would be required to attend the GCC trainings, and it subsequently passed as P.L. 32-131 with no modification to these ambiguous provisions.

#### **STATEMENT OF FINDINGS:**

The Office of the Governor of Guam makes the following findings:

I. DMR complains that the Office of the Governor has engaged in arbitrary action in violation of 2 CFR § 200.319 and in violation of the Guam Procurement Code due to its failure to ensure that the Single Point of Contact for RFP-Office of the Governor of Guam-2022-001 ("RFP"), Matthew Santos, has received training pursuant to 5 GCA 5141(b).

#### **Requirements of 5 GCA § 5141(b)**

The statute sets forth two classes of personnel within the government of Guam who are required to attend the training described under 5 GCA § 5141: 1) any person in the Office of Public Accountability responsible for procurement appeals or auditing government of Guam purchases; and 2) "all government of Guam personnel *tasked with the responsibility of purchasing or otherwise procuring goods, or services, or construction*, including those employed by agencies with authority to conduct their own procurement...." 5 GCA § 5141(b)(emphasis added).

This Letter of Protest raises complaints concerning the latter category of personnel, specifically with regard to executive agency or line agency personnel.

With regard to general executive agency personnel, in 2014, the Office of the Attorney General stated that implementation of 5 GCA § 5141(b) would be difficult and problematic because the law did not particularly and expressly list the job titles of the personnel that would be required to attend the trainings. AG Letter to GCC, August 14, 2014, *see* Attachment 1. The law does not state that any particular position named in the Guam Code or the Department of Administration compensation or classification schedules must attend the trainings; nor does 5 GCA § 5141(b) state

that any of the particular positions mentioned within the other subsections of the statute (such as “level-one purchaser,” “level-two purchaser,” etc.,) must attend the trainings. *See* 5 GCA § 5141(b), (h), (i), and (j).

The drafters of this statute chose not to list any job titles or classifications of any administrative positions within the government of Guam who are required to attend the training under this subsection. Instead, the drafters chose to use a functional description to define the personnel who would be required to attend the training. The law states that all government of Guam personnel “tasked with the responsibility” for conducting procurements are required to attend the trainings. 5 GCA § 5141(b). The defining characteristic of personnel who must attend these trainings is that they are the persons “responsible” for conducting procurements. *Id.*

The individual agencies, departments, and instrumentalities of the executive branch do not have the authority or responsibility to conduct their own procurements. 5 GCA §§ 5120 and 5125. 5 GCA § 5141(b) explicitly acknowledges that only certain agencies have the authority to conduct their own procurements. *Id.* Guam has adopted a centralized procurement system, and the Chief Procurement Officer of the General Services Agency is vested with the duty, responsibility, and authority to “procure or supervise the procurement of *all* supplies and services needed by the Territory.” 5 GCA §§ 5110 and 5113 (emphasis added). Similarly, the Director of Public Works is vested with the duty, responsibility, and authority to “procure or supervise the procurement of *all* construction needed by the Territory.” 5 GCA § 5113 (emphasis added). These two officers are the “Principal Contracting Officers” for the government of Guam, in whom all procurement authority is centralized. *Id.*, and 5 GCA § 5120 (“all rights, powers, duties, and authority relating to the procurement of supplies, services, and construction...are hereby transferred to the Policy Office and the Chief Procurement Officer and the Director of Public Works....”). Only certain exceptions exist to this centralized system of procurement.

5 GCA § 5121 constitutes an exception to the centralization of procurement authority; allowing each executive branch agency to procure its own professional services. This exception is made for the procurement of professional services, and does not extend to the procurement of goods or construction over the small purchase threshold amounts. *Id.*; and 5 GCA § 5213.

Whenever an agency procures its own professional services, the Chief Procurement Officer’s authority and responsibility for conducting the procurement is delegated to a single official within the agency. 5 GCA § 5114(a) and (b); *see also* Comment to 5 GCA § 5120. This official, who is now responsible for the procurement of professional services for the agency is formally identified as the “Procurement Officer” under Guam’s Procurement Law. 5 GCA § 5121(c). The “Procurement Officer” is defined as “any person duly authorized to enter into and administer contracts and make written determinations with respect thereto. The term also includes an authorized representative acting within the limits of authority.” 5 GCA § 5030(p). 5 GCA § 5121(c) specifically designates the “Procurement Officer” of an agency as the only person authorized to execute contracts on behalf of the agency.

Accordingly, the “Procurement Officer” is the only person within an agency who is empowered to conduct procurements on behalf of individual agencies by way of the authority vested in him/her through the Chief Procurement Officer or the Director of Public Works. The Procurement Officer is the only person with the authority to enter into contracts, and with discretion over contract awards. 5 GCA §§ 5121(c), 5114(b), and 4 GCA § 13102(a). All official procurement documents, written determinations, and record items must be executed on behalf of the agency by the agency’s Procurement Officer, because only this official has this authority and responsibility. 5 GCA §§ 5030(p) and 5121(c); *see also* 5 GCA §§ 5249 and 5250. Government employees who administratively handle or conduct routine functions for agency procurements are not responsible for, and do not have the authority to conduct the procurements.

The “Procurement Officer” is the only general personnel title identified in the Guam Code<sup>1</sup> with the responsibility for conducting procurements on behalf of the individual agencies and instrumentalities of the government of Guam described under 5 GCA § 5030(k). The Procurement Officer must be the head of the agency or other duly appointed procurement official. 5 GCA §§ 5114(b), 5 GCA § 5121(c), and 4 GCA § 13102(a)(4). 5 GCA § 5125 affirms: “. . .the Director of each such governmental body or other above named(sic) body shall be substituted wherever there is reference to the Public Policy Office, Chief Procurement Officer or Director of Public Works. . . .” 5 GCA 5125. Multiple procurement statutes list the “head of the purchasing agency” as the only person who is allowed to exercise the statutory powers of the Chief Procurement Officer on behalf of an agency conducting its own procurement. *See* 5 GCA §§ 5008, 5127, 5150, 5211, 5214, 5215, 5216, 5219, 5236, 5350, 5425, 5426, 5427, 5707. The only generalized position/personnel title identified in the Guam Procurement Law that is “tasked with the responsibility of purchasing or otherwise procuring goods, services, or construction. . .” on behalf of the respective agencies is the “Procurement Officer” of each individual agency, department, or instrumentality. 5 GCA § 5141; 5 GCA §§ 5114 and 5125.

The description in 5 GCA § 5141(b) does not use language that is applicable to any person who merely assists in procurements or performs administrative functions. The description does not state that “any person who participates or assists in procurement” must receive the training, or that “any person who is tasked with any administrative procurement duties” must receive the training. Whenever a legislative body or rule-making body or uses or does not use a specific term, there is a presumption the use or non-use was purposeful. *Russello v. United States*, 464 U.S. 16, 23 (1983) (“Where [a legislative body] includes particular language in one section of a statute but omits it in another . . . it is generally presumed that [the legislative body] acts intentionally and purposely in

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<sup>1</sup> Other specifically identified individuals and entities have specific grants of authority to conduct certain procurement activities. The Chief Procurement Officer, the Director of the Department of Public Works, the Guam Power Authority Board of Directors, the Board of Directors of the Guam Preservation Trust, and other named entities/individuals within certain governmental entities enumerated by specific statutes are granted the authority to procure supplies and services within their respective statutory designations. *See, e.g.*, 5 GCA § 5110, *et seq.*; and 5 GCA § 5125. The “Procurement Officer” or “Director” is the only generalized government-wide position title within the non-autonomous executive branch line agencies or departments (generally described under 5 GCA § 5030(k)) that is otherwise named in the statutes, and granted this authority.

the disparate inclusion or exclusion.”). The statute specifically uses the contextual language of “the responsibility of purchasing or otherwise procuring...” in describing the job duties of those personnel who are required to receive the training. 5 GCA § 5141(b). “Words and phrases are construed according to the context and the approved usage of language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, or are defined in the succeeding section, are to be construed according to such peculiar and appropriate meaning or definition.” 1 GCA § 724. “[R]esponsibility of purchasing” is what defines the role of the personnel who are subject to the training requirements of this law.

2 GAR, Div. 4 § 2103, establishing the qualifications for a Chief Procurement Officer is instructive as to the responsibilities and training of Procurement Officers, who receive their authority from the Chief Procurement Officer:

...[T]he Chief Procurement Officer is a part of the Department of Administration, the Guam Procurement Law places procurement responsibilities with this Chief Procurement Officer, rather than with the Director of Administration, who still remains his superior. *Nonetheless, the Chief Procurement Officer must make the decisions and, to this end, it is he, not the Director of Administration, who must have the qualifications in the specialized area of public procurement.*

2 GAR, Div. 4 § 2103 (emphasis added).

Procurement responsibilities lie with the person who must make the ultimate decisions for each procurement; and therefore, it is the person who makes the decisions for each procurement and who “is tasked with responsibility” for the procurement who must have the required training and qualifications in the specialized area of public procurement. The statutorily granted decision-making authority and responsibility for conducting professional service procurements for the agencies is assigned only to the “Procurement Officer” of each agency, and cannot be delegated to other employees. 5 GCA § 5114(b); and 5 GCA § 5125.

5 GCA § 5141(j) further identifies the “responsible head of procurement” for each agency as the person who conducts procurements on behalf of the agency, and requires anyone serving in this capacity to complete training under subsection (j). 5 GCA § 5141(j). 5 GCA § 5249 refers to “the responsible procurement officer” as the officer who must certify and maintain the procurement record for each procurement. Guam’s Procurement Law repeatedly denotes each agency’s Procurement Officer as the person who is responsible for each agency procurement. The person who directs and oversees each procurement is the person “tasked with the responsibility” for conducting the procurements for an agency, or is the “responsible head of procurement” for the agency. This person is the “Procurement Officer,” and this is the person who is required to attend or receive training in the specialized area of procurement. 5 GCA § 5141(b) and (j).

Finally, the prohibition of 5 GCA 5141(h) states in relevant portion: “no person shall serve in the capacity of a level-one purchaser, and no person shall sign for any procurement requisition,

without the Certificate of Enrichment (Basic) provided by the College.” 5 GCA § 5141(h). The prohibition of subsection (i) states that “no person shall serve in the capacity of a level-two purchaser” without the Certificate of Enrichment (Advanced), but does not contain a specific task description or job description which is prohibited under its provisions. 5 GCA § 5141(i). The Procurement Officer is the only person who may sign contracts or other purchasing documents on behalf of a purchasing agency, unless specifically designated and approved for standard form contracts. 5 GCA § 5030(p) and (b); 2 GAR, Div. § 2112(c). Matthew Santos has not performed any of these functions for the RFP.

Any person, including consultants, experts, architects, designers, and other non-governmental personnel, may assist in the preparation of a Scope of Services for a procurement. 2 GAR, Div. 4 §§ 4105 and 4107(a). “When persons other than territorial personnel prepare specification (sic), the territory shall not be relieved from the comment and review requirements of this Chapter.” The Procurement Officer may authorize such other persons to prepare a Scope of Services when there is no conflict of interest, and “provided such officer retains the authority to finally approve the specifications.” 2 GAR, Div. 4 § 4103(a)(2)(a) and (b). Only the Procurement Officer is authorized to provide final review and approval of any Scope of Services. 2 GAR, Div. 4 §§ 4105 and 4107(a); *see also* 2 GAR, Div. 4 § 4102(b)(2)(a)(iii),(iv), and (v); (b)(2)(b)(iv); and (b)(2)(c)(i).

Any person may assist in the drafting of a Scope of Services, but such persons are not ultimately responsible for the Scope of Services, and are not required to attend the training set forth under 5 GCA § 5141(b). Only the person “responsible” for the procurement and the Scope of Services contained in the procurement is required to attend this training. 5 GCA § 5141(b).

Matthew Santos is not the Procurement Officer for this RFP. Matthew Santos is not responsible for the procurement or award of any contract under this RFP. Matthew Santos performs an administrative function as the Single Point of Contact for offerors for the RFP, and has no discretion or “responsibility of purchasing or otherwise procuring” any professional services under this RFP. Matthew Santos’ government title is not “level-one purchaser” or “level-two purchaser,” and he has not “sign[ed] for any procurement requisition.” 5 GCA § 5141(h) and (i). Matthew Santos is not required to attend the training set forth under 5 GCA § 5141(b) for providing assistance in the drafting of the Scope of Services of the RFP. 2 GAR, Div. 4 §§ 4105 and 4107(a); *see also* 2 GAR, Div. 4 §§ 4102 and 4103. The Procurement Officer reviewed and approved the final Scope of Services and exercised all authority and responsibility therefor. *Ids.*; and 5 GCA § 5141(b). Matthew Santos is not required to attend the training set forth under 5 GCA § 5141(b) in either his capacity as the Single Point of Contact or as a contributing drafter of the Scope of Services. The Procurement Officer is responsible for the conduct and award of a contract under this RFP, and the Procurement Officer has executed and maintained all required official record documents for this RFP. The Procurement Officer reviewed and provided final approval of the Scope of Services for the RFP. The Procurement Officer has made all required decisions concerning the conduct of this RFP, and has signed all procurement documents requiring signature. Accordingly, there is no “arbitrary conduct” of this RFP.

Finally, DMR fails to allege any injury from the conduct of this procurement. The Procurement Officer has performed all responsible required functions of this RFP, and therefore, the conduct of this RFP is not unreasonable or arbitrary. Further, DMR alleges violations of 2 CFR § 200.319, but to ensure effective competition, this regulation specifically requires that "the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period." 2 CFR § 200.319(e). DMR fails to allege or show how the inclusion of Matthew Santos as the Single Point of Contact or contributor of the Scope of Services, or other conduct of this RFP has precluded DMR from qualifying or taking any action with respect to the RFP, including receiving notice, registering, participating, submitting questions, or submitting a proposal to the RFP. DMR has not been prevented from taking any action with respect to this RFP, and is therefore, not "aggrieved" by the conduct of this RFP.

#### CONCLUSIONS:

The Office of the Governor of Guam denies the Letter of Protest on the following bases:

1. The Letter of Protest fails to comply with the filing requirements for all protests. All protests "shall be filed in duplicate" and are "considered filed when received by ... the head of a Purchasing Agency." 2 GAR, Div. 4 § 9101(c)(1). The protest must be filed in writing, and "the envelope should be labeled 'Protest.'" 2 GAR, Div. 4 § 9101(c)(3). In addition, "[t]he written protest shall include as a minimum the following: (a) the name and address of the protestor; ...." 2 GAR, Div. 4 § 9101(c)(3)(a).

The Letter of Protest was sent via e-mail to Matthew Santos, who is merely the Single Point of Contact for RFP-Office of the Governor-2022-001. It was not filed in an envelope labeled as a "Protest." It was not filed with the head of the Purchasing Agency/the Procurement Officer. It was not filed in duplicate, and it did not include the address of the protestor. Therefore, the Letter of Protest was improperly submitted.

2. The Letter of Protest was untimely submitted. "Protests filed after the 14 day period shall not be considered." 2 G.A.R. § 9109(b)(1). The RFP was published on February 7, 2022, containing its designation of Matthew Santos as the Single Point of Contact, and his involvement in drafting the Scope of Services, to which DMR objects. DMR registered for, and was sent a copy of the RFP on February 7, 2022 at 9:19 a.m. ChST. February 7, 2022 is the date that DMR was on notice that the RFP included this allegedly arbitrary conduct. As such, the Letter of Protest was submitted well beyond the 14-day time period of when DMR first knew or should have known of the facts giving rise to its complaints. 5 GCA § 5425(a) and 2 GAR, Div. 4 § 9101(c)(1); *see also In the Appeal of ASC Trust Corporation*, OPA-PA-09-010 (finding that the fourteen-day clock begins when a party first becomes aware of facts giving rise to the protest).

3. DMR failed to exhaust administrative remedies prior to submitting its Letter of Protest. "Complainants should seek resolution of their complaints initially with the Procurement Officer or the office that issued the solicitation." 2 GAR, Div. 4 § 9101(b). "It is the territory's policy, consistent with [the Guam Procurement Act], to try to resolve all controversies by mutual agreement without litigation. In appropriate circumstances, informal discussions between the parties can aid in the resolution of differences by mutual agreement and are encouraged." 2 GAR, Div. 4 § 9103(1). Failure to exhaust administrative remedies deprives a party of standing to pursue its claims. *DFS Guam L.P. v. The A.B. Won Pat International Airport Authority, Guam, et. al*, Superior Court Civil Case No. CV0685-13 (Dec. & Order, July 19, 2013). DMR never attempted to seek informal resolution of its complaints with Office of the Governor prior to submitting its Letter of Protest. DMR has never discussed or requested any remedy or resolution of its complaints with Office of the Governor by mutual agreement; and even in its Letter of Protest, DMR has not requested any remedy or resolution of its complaints.
4. DMR is not aggrieved pursuant to 5 GCA § 5425(a) or 2 GAR, Div. 4 § 9101(a)(1)(a). In order to pursue a protest, DMR must have standing. When standing is at issue, "the relevant inquiry is whether, assuming justiciability of the claim, the plaintiff has shown an injury to himself that is likely to be redressed by a favorable decision." *Simon v. E. Kentucky Welfare Rights Org.*, 426 U.S. 26, 38 (1976). Under 5 GCA § 5245(a): "[a]ny actual or prospective bidder, offeror, or contractor who may be aggrieved in connection with the method of source selection, solicitation or award of a contract, may protest to ... the head of the purchasing agency." Therefore, in order to protest, DMR must be "aggrieved" by the alleged violations of law. 5 GCA § 5425(a).

DMR's Letter of Protest was filed prior to the submission of proposals due date of the RFP. DMR fails to show how any of the alleged arbitrary conduct of the RFP could or would prevent DMR from taking any action with regard to the procurement, including submission of a proposal. DMR fails to show that it is aggrieved by any possible violations of 5 GCA § 5141(b). None of the complaints raised operate to penalize DMR or prevent DMR from participating in this federally funded Request for Proposals solicitation. DMR has suffered no injury, and is not aggrieved by the alleged violations.

5. The Letter of Protest has no merit. In order to sustain a protest, it must be determined that the solicitation "is in violation of law." 2 GAR, Div. § 9104(a)(1); and 5 GCA § 5450. DMR's Letter of Protest fails to show that Matthew Santos is the person "tasked with the responsibility of purchasing or otherwise procuring goods, or services, or construction" for this RFP. 5 GCA § 5141(b). Matthew Santos is not a "level-one purchaser" or a "level-two purchaser" and he does not sign procurement requisitions. Matthew Santos did not provide the final approval of the Scope of Services. Matthew Santos is the administrative Single Point of Contact for this RFP, and does not have the responsibility or authority to sign documents, maintain the procurement record, make procurement decisions, or award a contract under this RFP. Matthew Santos is not required to attend the training set forth

under 5 GCA 5141(b), and there is no violation of law. DMR's Letter of Protest further fails to show any prejudice stemming from any alleged violation, and fails to show that it was prevented from qualifying to participate in this RFP by any conduct of the Office of the Governor.

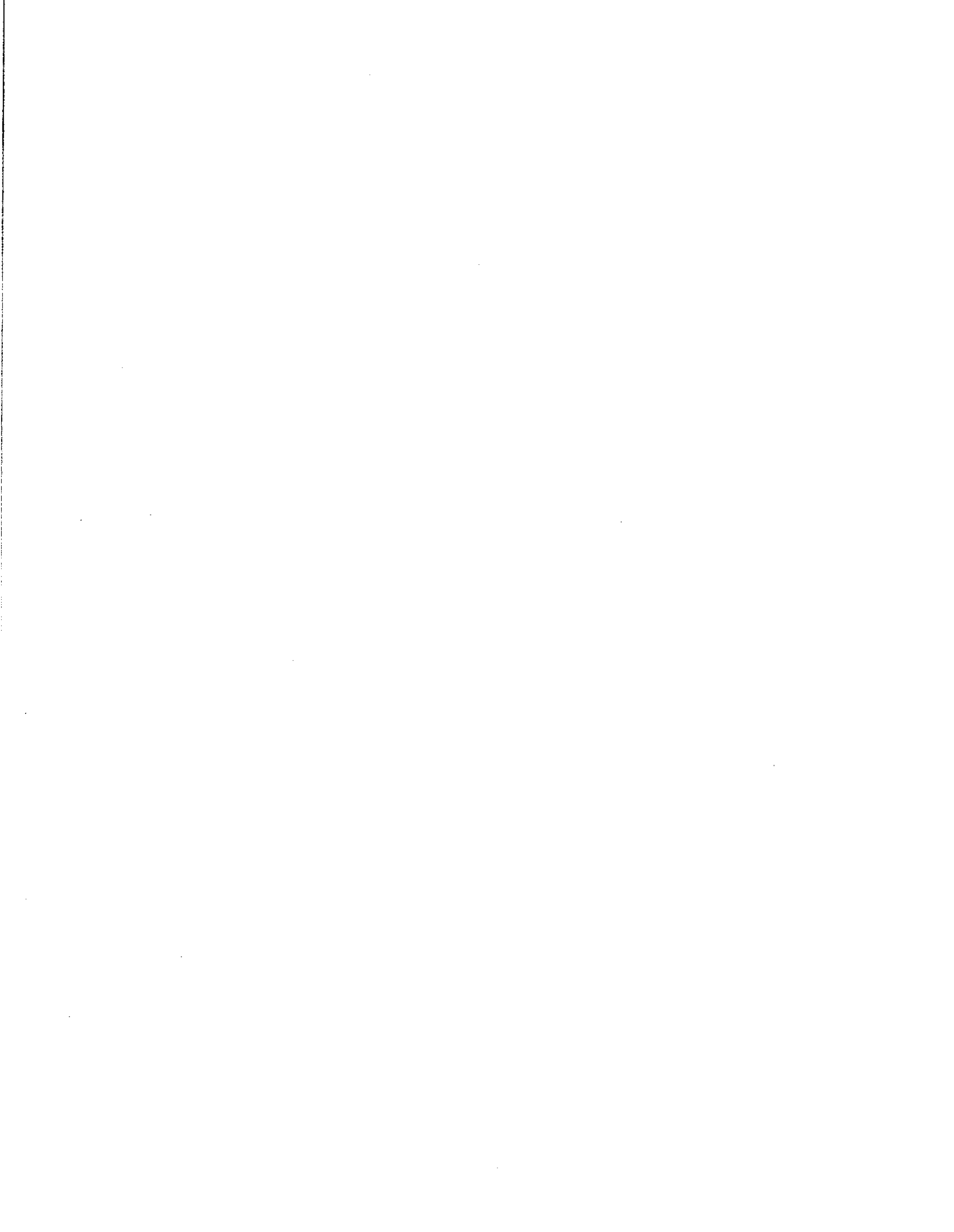
6. DMR has not requested redress or remedy for the alleged defects in the conduct of the RFP. 2 GAR, Div. 4 § 9105 and 5 GCA § 5451. "If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be: (a) cancelled; or (b) revised to comply with the law." 5 GCA § 5451. DMR does not request revision of the RFP, nor does it request cancellation of the RFP. Even if the Letter of Protest were to be sustained, there is no request for a remedy that can be granted, and therefore, no "injury . . . that is likely to be redressed by a favorable decision." *Simon v. E. Kentucky Welfare Rights Org.*, 426 U.S. 26, 38 (1976).
7. DMR's Letter of Protest is frivolous and was made solely to disrupt and delay the procurement process. 5 GCA § 5425(h)(1) and 2 GAR, Div. 4 § 9101(g)(2). "Frivolous" means "groundless, without justification, and without merit." *People of Guam v. Carl T.C. Gutierrez*, Sup. Ct. Case No. CRA 04-0004, Order (May 5, 2005); *see also Harrah's Club v. Van Slitter*, 902 F.2d 774, 777 (9th Cir. 1990) ("A frivolous appeal is defined as one in which the result is obvious, or where the appellants' claims are utterly meritless"). There is no merit to any of DMR's complaints regarding the RFP process. DMR was not prevented from submitting a proposal or taking any other action, and is not aggrieved. Further, DMR did not submit its Letter of Protest to seek a certain remedy or redress any of its issues. DMR did not even attempt to resolve any concerns it may have had informally or through mutual agreement, without submitting a protest. DMR submitted its Letter of Protest prior to proposal submission and award to trigger the automatic stay provisions of 5 GCA § 5425 and 2 GAR, Div. 4, § 9101(g), to halt any award of a contract under Federal Award funding set to expire on September 30, 2022, and thereby disrupt the procurement process.

DMR's letter of protest is untimely and improperly submitted and does not meet the requirements of a valid procurement protest. DMR has failed to exhaust administrative remedies prior to submitting its Letter of Protest. DMR is not aggrieved by any alleged violations and lacks standing to protest. Further, DMR's letter of protest lacks merit, and fails to request any redress. It is frivolous and was filed for the purpose of delay and disruption of the procurement process. Pursuant to 5 GCA § 5425(c) this decision on the letter of protest is final and conclusive. Protestor is advised that it has the right to administrative and judicial review.



Venido Torres  
Procurement Officer  
Office of the Governor





**LOURDES A. LEON GUERRERO**  
GOVERNOR



**JOSHUA F. TENORIO**  
LT. GOVERNOR

**UFISINAN I MAGA'HAGAN GUAHAN**  
OFFICE OF THE GOVERNOR OF GUAM

**NOTICE OF DETERMINATION TO PROCEED WITH PROCUREMENT**

**TO:** Data Management Resources, LLC and Jacqueline Taitano Terlaje, Attorney for  
Data Management Resources, LLC  
**E-MAIL:** [jterlaje@terlajelaw.com](mailto:jterlaje@terlajelaw.com); [bids@dmrpacific.com](mailto:bids@dmrpacific.com)  
**DATE:** 5/24/2022  
**RE:** Request for Proposals RFP-Office of the Governor of Guam-2022-001, re:  
Procurement of Professional Services for the government of Guam Licensing and  
Permitting System  
**SUBJECT:** Notice of Determination to Proceed with Procurement

Håfa Ådai,

Pursuant to 5 GCA § 5425(g)(1), 2 GAR, Div. 4 § 9101(e)(1), and 31 U.S.C. § 3553(c)(1), the Office of the Governor of Guam has determined that there are urgent and compelling circumstances and it is in the best interests and necessary to protect the substantial interests of the public, the government of Guam, and the Office of the Governor of Guam to proceed with the procurement process in Request for Proposals RFP-Office of the Governor of Guam-2022-001 without delay based on the denial of Data Management Resources, LLC's letters of protest, time constraints, and the terms and conditions and requirements of U.S. Department of Interior Grant Award No. D20AP00048

This notice does not constitute a decision on the merits of the letters of protest submitted by DMR. A decision on the merits of all letters of protest have already been issued pursuant to 2 GAR, Div. 4 § 9101(g)(1). This document constitutes notice of this determination.

Sincerely,

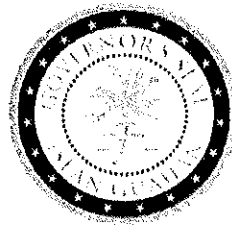
\_\_\_\_\_  
Venido Torres  
Procurement Officer,  
Office of the Governor of Guam

**Ricardo J. Bordallo Governor's Complex**  
513 West Marine Corps Drive  
Hagåtña, Guam 96910



**REQUEST FOR PROPOSALS**  
**RFP Number: GOV 2022-001**

Office of the Governor  
**Amendment No. 003**



**5/27/2022**

Office of the Governor  
513 West Marine Corps Drive  
Ricardo J. Bordallo Governor's Complex  
Hagåtña, Guam 96910

RFP Number: 2022-001  
Amendment No. 003

THE FOLLOWING AMENDMENTS HAVE BEEN MADE TO RFP NUMBER GOV 2022-001:

**1. REQUEST FOR PROPOSAL, GOV 2022-001, "Section I. INSTRUCTIONS TO OFFERORS, E. SUBMISSION OF PROPOSALS AND DUE DATE" Paragraph 5, on pg 6 is hereby amended to read as follows:**

" Proposals must be received not later than June 10, 2022 at 5:00 p.m., Chamorro Standard Time (C.S.T.). Proposals received after the closing time for receipt will not be considered. Office hours for receipt of Proposal are Monday through Friday (excluding government of Guam Holidays), 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m. Proposals must be e-mailed to the Single Point of Contact, Matthew Santos, at procurement@guam.gov., or hard copy Proposals must be hand-delivered, delivered by mail, or delivered by other courier service to:"

**2. REQUEST FOR PROPOSAL, GOV 2022-001, "Section I. INSTRUCTIONS TO OFFERORS OFFEROR J. PRESENTATIONS WITH PRODUCT DEMONSTRATION" Paragraph 4, on pg 8 is hereby amended to read as follows:**

"Offeror Presentations are tentatively scheduled for the week of June 17, 2022. All Offerors who submit a Proposal and register their contact information with the Office of the Governor for this RFP will be notified of the exact date, time, and virtual meeting information to conduct their presentations."

**-NOTHING ELSE FOLLOWS-**