

1 **GUAM DEPARTMENT OF EDUCATION**  
2 Andrew T. Perez, Legal Counsel  
3 P.O. Box DE  
4 Hagåtña, Guam 96910  
5 Telephone (671) 300-1537  
6 Email: legal-admin@gdoe.net

7 *Attorney for Guam Department of Education*

**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

DATE: 10/21/2013

TIME: 4:00  AM  PM BY: Ry

FILE NO OPA-PA: 13-013

8 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**

9 IN THE APPEAL OF  
10 G4S SECURITY SYSTEMS (GUAM) INC.,  
11 Appellant.

APPEAL NO.: OPA-PA-13-013

**SUBMISSION OF AGENCY REPORT**

12 The Guam Department of Education ("GDOE"), the purchasing agency in this matter,  
13 hereby submits the following exhibits as the Agency Report required by 2 GAR §12105:

14 a. A copy of the protest(s):

15 G4S Security Systems (Guam) Inc. Protest  
16 **Bates Stamp Nos. GDOE00247**

**Exhibit 12**

17 b. A copy of the bid submitted by the Appellant.

18 *A copy of the Appellant's bid is included in the Procurement  
19 Record as Exhibit 4, Bates Stamp Nos. GDOE009-0061.*

20 c. A copy of the solicitation, including the specifications or portions thereof relevant  
21 to the Appeal:

22 *A copy of IFB 032-2013, Amendments and Clarifications are  
23 included in the Procurement Record as Exhibit 6, Bates Stamp  
24 Nos. GDOE0086-00197.*

25 d. A copy of the abstract of bids or offers or relevant or portions thereof relevant to  
26 the Appeal:

27 *A copy of Abstract of Bids is included in the Procurement Record  
28 as Exhibit 7, Bates Stamp Nos. GDOE00198-00200.*

1 e. Any other documents which are relevant to the Appeal; including the contract, if  
2 one has been awarded, pertinent amendments, and plans and drawings:

3 Determination  
4 **Bates Stamp Nos. GDOE00248** **Exhibit 13**

5 Notice of Stay of Procurement  
6 **Bates Stamp Nos. GDOE00249** **Exhibit 14**

7 Notice to Lift the Stay of Procurement  
8 **Bates Stamp Nos. GDOE00250** **Exhibit 15**

9 Agreement for Construction Services Between GDOE and  
10 Orion Construction Corporation (Guam) for Services  
11 Pursuant to GDOE IFB 032-2013  
12 **Bates Stamp Nos. GDOE00251-00294** **Exhibit 16**

13 GDOE Purchase Order 20135001-00  
14 **Bates Stamp Nos. GDOE00295** **Exhibit 17**

15 f. The decision from which the Appeal is taken, if different than the decision  
16 submitted by Appellant:

17 GDOE's September 19, 2013 Written Response to G4S  
18 Security Systems (Guam) Inc.'s Protest  
19 **Bates Stamp Nos. GDOE00296-00312** **Exhibit 18**

20 g. A statement answering the allegation of the Appeal and setting forth findings,  
21 actions, and recommendations in the matter together with any additional evidence or information  
22 deemed necessary in determining the validity of the Appeal. The statement shall be fully  
23 responsive to the allegations of the Appeal:

24 GDOE's Agency Statement  
25 **Bates Stamp Nos. GDOE00313-00317** **Exhibit 19**

26 h. If the award was made after receipt of the Appeal, the report will include the  
27 determination required under 2 GAR §9101(e):

28 *Not applicable.*

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i. A statement in substantially the same format as Appendix B to this Chapter, indicating whether the matter is the subject of a court proceeding:


Declaration of Court Action  
**Bates Stamp Nos. GDOE00318**

**Exhibit 20**

Dated this 21<sup>st</sup> day of October, 2013.

Respectfully submitted,

**GUAM DEPARTMENT OF EDUCATION**

By:   
**ANDREW T. PEREZ, ESQ.**  
*Legal Counsel*

# **Exhibit 12**



**G4S Security Systems (Guam) Inc.**  
1851 Army Drive  
Harmon, GU. 96913  
Tel: (671) 646-2307  
Fax: (671) 649-7245  
Email: [sil.kadidasang@gu.g4s.com](mailto:sil.kadidasang@gu.g4s.com)

September 16, 2013

To: Mr. Marcus Pido  
GDOE Supply Management Administrator  
Fax; 671-472-5001

From: Silas Kadidasang   
Project/Implementation Manager  
Fax: 671-646-7245

RE: IFB No. 032-2113

Dear Mr. Pido,

We have received your BID STATUS that indicates G4S bid was rejected because Clarification No. 2 and Amendment No. 2 was not submitted within our bid documents.

In fact Mr. Pido, we did not receive any Clarification No. 2, or Amendment No. 2. If you have proof that we received them, please let us know. Otherwise we protest the rejection of our bid and the award recommendation to Orion construction.

Thank you for your kind consideration.

Regards,

# **Exhibit 13**



**DEPARTMENT OF EDUCATION  
OFFICE OF SUPPLY MANAGEMENT**

[www.gdoe.net](http://www.gdoe.net)

Manuel F.L. Guerrero/Administration Building  
2<sup>nd</sup> Floor, Suite B-220  
Hagatna, Guam 96932  
Telephone: (671) 300-1581 Fax: (671) 472-5001  
Email: [procurement@gdoe.net](mailto:procurement@gdoe.net)




Jon J.P. Fernandez  
Superintendent of Education

Marcus Y. Pido  
Supply Management Administrator

**MEMORANDUM**

September 4, 2013

To: Procurement File

From: Supply Management Administrator 

Re: **IFB 032-2013 Design Build Fire Alarm System Upgrade/Replacement and Fire Suppression/Sprinkler System Repair for Southern High School** (FUNDED BY ADEQUATE EDUCATION TRUST FUNDS)  
**2 GAR § 3109(d) Bidding Time**

This memo serves to formally determine that the circumstances concerning this formal solicitation, IFB 032-2013 Design Build Fire Alarm System Upgrade/Replacement and Fire Suppression/Sprinkler System Repair for Southern High School, warrant a bidding time shorter than fifteen (15) days.

2 GAR § 3109(d) states, "Bidding time is the period of time between the date of distribution of the Invitation for Bids and the time and date set for receipt of bids. In each case bidding time will be set to provide bidders a reasonable time to prepare their bids. A minimum of 15 days shall be provided unless a shorter time is deemed necessary for a particular procurement as determined in writing by the procurement officer."

Over the past year, since May 21, 2012, GDOE has awarded contracts to no less than five (5) separate contractors for eight (8) bids of similar size and scope as this IFB 032-2013. Specifically, the IFB's are:

- IFB 001-2012 Fire Alarm, PA and Electrical Upgrades – Northern A
- IFB 002-2012 Fire Alarm, PA and Electrical Upgrades – Northern B
- IFB 003-2012 Fire Alarm, PA and Electrical Upgrades – Central A
- IFB 004-2012 Fire Alarm, PA and Electrical Upgrades – Central B
- IFB 005-2012 Fire Alarm, PA and Electrical Upgrades – Central C
- IFB 006-2012 Fire Alarm, PA and Electrical Upgrades – Southern A
- IFB 021-2012 Fire Alarm Repair/Installation – Northern Schools
- IFB 022-2012 Fire Alarm Repair/Installation and Electrical MDP Upgrade – Southern Schools

As more than three (3) commercial fire alarm repair and installation companies are in the practice of providing quotations for projects similar in scope and size as this IFB 032-2013, DOE determines that ten (10) calendar days is an adequate period of time for potential bidders to submit bids in response to this formal solicitation IFB 032-2013.

*RULSWART TO PL 31-234, WHICH EXTENDED THE OBLIGATION DATE OF THE ADEQUATE EDUCATION TRUST ACCOUNT FUNDS TO SEPT. 30, 2013, THE FUNDING OF THIS IFB WILL NO LONGER BE AVAILABLE PAST THAT DATE.* GDOE 00248

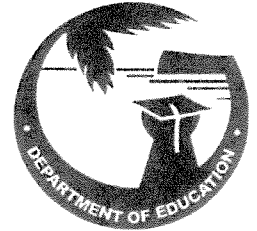
# **Exhibit 14**





**OFFICE OF SUPPLY MANAGEMENT  
GUAM DEPARTMENT OF EDUCATION**

*Manuel F.L. Guerrero Administration Building  
2nd. Floor, Suite B-202  
Hagåtña, Guam 96910  
Telephone: (671) 300-1581  
Fax: (671) 472-5001*



Jon J. P. Fernandez  
Superintendent of Education

Marcus Y. Pido  
Supply Management Administrator

September 18, 2013

**NOTICE OF STAY OF PROCUREMENT**

To: All Participating Bidders  
From: GDOE Office of Supply Management  
Reference: **DESIGN BUILD FIRE ALARM SYSTEM UPGRADE/REPLACEMENT AND FIRE SUPPRESSION/SPRINKLER SYSTEM REPAIR FOR SOUTHERN HIGH SCHOOL**  
**Formal Bid: GDOE IFB 032-2013**

This notice is to advise you that the Department has received a Letter of Protest regarding the referenced Invitation for Bid (IFB). Therefore, pursuant to 5 GCA §5425(g), a **"STAY OF PROCUREMENT"** is hereby issued and shall remain in effect until the protest is resolved.

Once resolution of this matter is achieved, the Department will advise all participating bidders.

Should you have any questions regarding this matter, please do not hesitate to call our office at (671) 300-1581.

Please acknowledge receipt of this **NOTICE OF STAY OF PROCUREMENT** for **GDOE IFB 032-2013** by signing below and returning the signed document via fax at (671) 472-5001 or email to [aggarcia@gdoe.net](mailto:aggarcia@gdoe.net).

MARCUS Y. PIDO  
Supply Management Administrator

Acknowledge Receipt:

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Time

\_\_\_\_\_  
AM/PM

# **Exhibit 15**



**DEPARTMENT OF EDUCATION  
OFFICE OF SUPPLY MANAGEMENT**

[www.gdoe.net](http://www.gdoe.net)

Manuel F.L. Guerrero Administration Building  
2<sup>nd</sup> Floor, Suite B-220  
Hagatna, Guam 96910  
Telephone: (671) 475-0438/Fax: (671) 472-5001



Jon J. P. Fernandez  
Superintendent of Education

Marcus Y. Pido  
Supply Management Administrator

September 19, 2013

**NOTICE TO LIFT THE STAY OF PROCUREMENT**

To: All Participating Bidders

Reference: DESIGN BUILD FIRE ALARM SYSTEM UPGRADE/REPLACEMENT AND FIRE SUPPRESSION/SPRINKLER SYSTEM REPAIR FOR SOUTHERN HIGH SCHOOL  
**Formal Bid: GDOE IFB 032-2013**

This notice serves as a notification that the Guam Department of Education ("GDOE") hereby **Lifts the Stay of Procurement** for GDOE IFB 032-2013 that was put into place on September 18, 2013, due to a protest that was lodged on September 16, 2013. GDOE has responded to the protest and no appeal has been filed. Subsequently, GDOE will proceed with the Procurement of GDOE IFB 032-2013 DESIGN BUILD FIRE ALARM SYSTEM UPGRADE/REPLACEMENT AND FIRE SUPPRESSION/SPRINKLER SYSTEM REPAIR FOR SOUTHERN HIGH SCHOOL.

Sincerely,

MARCUS Y. PIDO  
Supply Management Administrator

**Acknowledge Receipt:**

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Representative Name (Print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date Time

cc: Procurement File: GDOE IFB 032-2013

# **Exhibit 16**

09.23.13 B.

**AGREEMENT FOR CONSTRUCTION SERVICES BETWEEN**

**GUAM DEPARTMENT OF EDUCATION**

**AND**

**ORION CONSTRUCTION CORPORATION (GUAM)**

**FOR SERVICES PURSUANT TO GDOE IFB 032-2013**

THIS AGREEMENT is entered into by and between the **GUAM DEPARTMENT OF EDUCATION** ("GDOE"), an agency of the government of Guam, whose address is P.O. Box DE, Hagåtña, Guam 96932 and **ORION CONSTRUCTION CORPORATION (GUAM)** ("Contractor"), whose address is **P.O. Box 24348, GMF, Barrigada, Guam 96921**. GDOE and the Contractor may be collectively referred to herein as the "Parties."

**WHEREAS**, GDOE issued an Invitation to Bid ("IFB") **GDOE IFB 032-2013** soliciting **Design Build Fire Alarm System Upgrade / Replacement and Fire Suppression / Sprinkler System Repair for Southern High School**;

**WHEREAS**, GDOE has determined it does not have adequate personnel or resources to perform the services contemplated in this agreement and it is in the best interests of GDOE to have such services performed under contract;

**WHEREAS**, GDOE may designate a third party to act as GDOE's Project Manager for the purpose of monitoring or reviewing Contractor's work as described herein;

**WHEREAS**, Contractor responded to the IFB by submitting a bid ("Bid") to provide services in accordance with the IFB, and was selected as the most qualified offeror;

**WHEREAS**, by submitting its Bid, Contractor warrants and represents that it possesses the necessary knowledge, resources and experience to perform the work and services herein described professionally, skillfully and diligently; and

**WHEREAS**, GDOE desires to retain Contractor for specific services on the terms and conditions set forth in this Agreement and Contractor has agreed to accept such terms and conditions;

**WITNESSETH**, in consideration of the mutual covenants hereinafter set forth, the Parties agree as follows:

ATTORNEY  
SEP 23 2013  
11:52 AM  
OFFICE OF THE ATTORNEY GENERAL

CFD0913- 3869

**I. Statement of Services to be Performed.**

A. Scope of Work. The Contractor shall provide construction services as such services are described in the following documents that are incorporated herein and included as Exhibits to this Agreement:

(1) **GDOE IFB 032-2013**, including its Plans and Specifications and all attachments and amendments thereto **Exhibit 1**

(2) **Contractor's Bid** **Exhibit 2**

The services to be performed hereunder are also referred to herein as "the work."

B. Contractor Provisions of Resources. Contractor agrees to furnish all qualified personnel, facilities, tools, equipment, materials and transportation to perform the services and work provided for in this Agreement. Contractor represents that it and its employees possess the professional and technical expertise necessary to perform the services called for in this Agreement in a competent, professional manner, in line with the services of a typical Contractor engaged in the same and similar field as Contractor herein. GDOE may, in its sole discretion and based upon availability, provide staff assistance to Contractor in furtherance of this Agreement. The Contractor shall insure that its employees engaged in work hereunder are informed of all relevant provisions of this Agreement.

C. Other Work. GDOE acknowledges and agrees that Contractor may provide services to other clients, persons or companies apart from the services performed in this Agreement, as long as the performance of such other services does not in any way conflict with or hinder the performance of services herein. In the event GDOE discovers or determines that the Contractor is providing services to a third party which conflicts with or hinders the performance of services under this Agreement, Contractor must immediately cease performing those third party services upon being provided written notice by GDOE and GDOE may invoke any further available remedies under the terms of this Agreement.

D. Location of Services. Contractor will perform the services under this Agreement at GDOE schools and buildings unless otherwise approved by GDOE.

**II. Term of Agreement.** This agreement shall be effective upon its full execution by all necessary parties and shall remain in effect until **Two Hundred Seventy (270) calendar** days after the issuance of a Notice to Proceed by GDOE unless otherwise agreed to in writing by the parties hereto. Work to be performed by the Contractor under this Agreement shall commence upon issuance of a Notice to Proceed issued by GDOE.

### III. Compensation.

A. Compensation. Upon final completion, Contractor shall be compensated not exceeding the amount of **Four Hundred Ninety-Nine Thousand Nine Hundred Eighty Dollars (\$499,980.00)**, unless otherwise agreed to pursuant to the terms of the Agreement.

B. Expenses. Contractor shall be solely responsible for all expenses incurred in the performance of services under this Agreement unless otherwise expressly provided for herein.

C. No Compensation Prior to Approval of Agreement. GDOE shall not be liable to Contractor for any services performed by Contractor prior to full execution of this Agreement by all parties, and Contractor expressly waives any and all claims for services performed in expectation of this Agreement prior to its full execution.

D. Final Payment. Final payment shall be made upon satisfactory performance of all services required to be performed by Contractor under this Agreement. Prior to the final payment due Contractor, and as a condition precedent thereto, Contractor shall execute and deliver to GDOE a release in form approved by GDOE of claims against GDOE arising under this Agreement. Contractor expressly waives the provision of Section 82602 of Title 18, Guam Code Annotated, which states:

*A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.*

E. Payment. All rates and prices and payments to the Contractor shall be in the currency of the United States.

IV. **Termination/Modification for Lack of Funds.** GDOE may terminate or modify this Agreement based upon a lack of funding. In such an event, GDOE shall promptly provide notice to Contractor and within twenty (20) days of the notice, the Parties shall renegotiate the terms of this Agreement in good faith. If the parties are unable to reach an agreement on the renegotiation, then either Party may terminate this Agreement pursuant to the terms herein.

V. **Contact Person.** The Contractor agrees that, during the term of this Agreement, it shall identify a primary contact person who is familiar with the services being performed hereunder and who shall be responsible to the questions and direction of GDOE. The contact person must be identified in writing within fifteen (15) days after full execution of this Agreement by all parties. GDOE reserves the right to request replacement of the contact person designated by the Contractor under this Agreement.

## **VI. Confidentiality.**

A. Information. The Contractor hereby warrants that it shall not disclose any documents, materials or information, whether verbal, written, recorded magnetic media or otherwise (collectively, the "Information"), made available or acquired for the purpose of carrying out this Agreement. Only authorized persons shall use and have access to the Information, and then only for the period such access is required to perform services under this Agreement. All necessary steps shall be taken by the Contractor to safeguard the confidentiality of the Information in conformance with any applicable United States and Guam laws, statutes and regulations.

The Contractor shall keep copies of the Information and the provisions of this Section shall remain in effect as long as determined by GDOE. All of the Information shall be returned promptly after use to GDOE and all copies or derivations of the Information shall be physically and/or electronically destroyed. Contractor shall include a letter attesting to the complete return of Information and documenting the destruction of copies and derivations with the returned Information.

The Contractor shall not enter into any Agreements or discussions with a third party concerning such Information without the prior written consent of GDOE, and then only if the Contractor requires the third party(ies) to agree to the terms of the confidentiality set forth herein and the Information is provided to such third party(ies) only for purposes of enabling the Contractor to discharge its responsibilities under this Agreement.

It is specifically provided that the limitations contained in this paragraph A shall not apply (i) to the extent required by applicable law, (ii) to the extent that any Information is now or hereafter becomes part of the public domain, but only to the limited extent that such Information, or any portion thereof, is in the public domain not as a result of any breach or violation of this Agreement, or (iii) to the extent that a party is directed otherwise under the terms of a valid and effective order, issued by a court of competent jurisdiction.

B. Liability. Failure to comply with the provisions of Paragraph A shall subject the Contractor to liability, including all damages and injunctive relief.

## **VII. Conflicts of Interests/Ethics**

A. The Contractor warrants and covenants that it has not violated and will not violate Guam's procurement law or regulations pertaining to ethics in public contracting.

B. It is expressly understood that breach of any of the covenants or warranties in this Section on the part of the Contractor is a material breach of this Agreement and shall entitle GDOE to immediately terminate this Agreement. Contractor agrees that in the event of a breach or violation of this Section, GDOE shall have the right to terminate this or any other Agreement with the Contractor without liability.



C. Notwithstanding the provisions contained in this Agreement with regard to the assignment or subcontracting of any work under this Agreement, Contractor agrees that with respect to any subcontractor it engages to perform any work contemplated by this Agreement that any Agreements it enters into with such subcontractor(s) will include provisions which parallel this Section VII and shall require any subcontractor to execute a statement of no conflict of interests to GDOE and provide such statement to GDOE.

**VIII. Waiver.** No waiver by any party of any right on any occasion shall be construed as a bar to or waiver of any right or remedy on any future occasion.

**IX. Severability.** If any provision of this Agreement shall be held or deemed by a court of competent jurisdiction to be invalid, inoperative or unenforceable, the remaining provisions herein contained shall nonetheless continue to be valid, operative and enforceable as though the invalid, inoperative or unenforceable provision had not been included in the Agreement.

**X. Survival of Warranties.** All representations, warranties, agreements, covenants and obligations in this Agreement shall be deemed to have been relied upon by the other party, and shall survive the completion of this Agreement and shall not merge in the performance of any obligation by any party hereto.

**XI. Fees and Expenses.** Each of the Parties shall bear its own expenses in connection with the negotiation and consummation of the transactions contemplated by this Agreement.

**XII. Notices.** All invoices, reports, correspondence, notices, requests, demands and other communications hereunder shall be in the English Language, in writing. All notices required to be given under this Agreement by either party to the other may be effected by personal delivery, or by mail (registered or certified, postage, prepaid with return receipt requested). Notices delivered personally shall be deemed communicated as of actual receipt. Mailed notices shall be deemed communicated as of the day of receipt or the fifth day after mailing, whichever occurs first. Notices shall be addressed and delivered to the parties as follows, provided that each party may change the address by giving the other party written notice in accordance with this section:

TO GDOE: GUAM DEPARTMENT OF EDUCATION  
Attention: ADMINISTRATOR  
Office of Supply Management  
P.O. Box DE  
Hagåtña, Guam 96932

With a copy to GDOE's Legal Counsel of Record.

TO CONTRACTOR: ORION CONSTRUCTION CORPORATION (GUAM)  
P.O. Box 24348  
GMF, Barrigada, Guam 96921

**XIII. Assignment/Subcontractors.** It is expressly acknowledged that Contractor is solely responsible for the fulfillment of its duties and obligations under this Agreement, regardless of whether or not Contractor utilizes one or more subcontractors for such purpose. The right and interest of Contractor under this Agreement (including, but not limited to, Contractor's right to or interest in any part of or all payments under this Agreement) may not be assigned, transferred or subcontracted to any other person, firm, corporation or other entity, whether by agreement, merger, operation of law or otherwise, without the prior, express written consent of GDOE. In the event of a permissive subcontract or assignment of this Agreement by Contractor, Contractor agrees that any subcontractors retained by Contractor or assignees shall be subject to all provisions of this Agreement.

**XIV. Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of the Parties hereto and their respective successors, assigns and transferees, except as otherwise provided for under the terms of this Agreement.

**XV. Scope of Agreement.** This Agreement and its attachments, the IFB, and Bid collectively: (i) supersede any and all other Agreements, either oral or in writing, between the Parties hereto with respect to the subject matter hereof, and (ii) contain all of the covenants and Agreements between the Parties with respect to such subject matter in any manner whatsoever. The Contractor and GDOE each acknowledge that no representations, inducements, promises or agreement, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in the Agreement shall be valid or binding.

**XVI. Captions.** All Section and paragraph titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the content of the Agreement.

**XVII. Counterparts.** This Agreement may be executed in counterparts, all of which taken together shall be deemed one original.

**XVIII. Governing Law and Forum Selection.** Except to the extent U.S. federal law is applicable, the laws and regulations of Guam shall govern the interpretation, effect, and validity of this Agreement. Any court action shall be exclusively in Guam.

**XIX. Compliance with Laws.**

A. In General. The Contractor shall comply with all U.S. and Guam laws, statutes, regulations and ordinances applicable to this Agreement. The Contractor represents and warrants that it is fully licensed to do business in Guam to render the services to be provided herein.

B. Non-Discrimination in Employment. The Contractor agrees: (i) not to unlawfully discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap; (ii) to include a provision similar to that contained in subsection (i) above in

any subcontract or assignment agreement except a subcontract for standard commercial supplies or raw materials; and (iii) to post and to cause subcontractors and/or assignees to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

**XX. Retention and Access to Records and Other Review.** The Contractor, including subcontractors, if any, shall maintain all books, documents, papers, accounting records and other evidence pertaining to the services performed and costs incurred, and to make such materials available at its respective offices at all reasonable times during the Agreement period and for six (6) years from the date of the final payment under the Agreement, for inspection by GDOE. GDOE agrees to comply with reasonable requests of Contractor to provide access to all documents and GDOE property reasonably necessary to the performance of Contractor's services under this Agreement. The conditions of this section shall be placed in any subcontract or assignment arising under this Agreement.

**XXI. Liability.**

A. **Indemnification.** Contractor shall indemnify and hold harmless GDOE and its officers, agents, Board members and employees from or on account of any claims, losses, expenses, injuries, damages, actions, lawsuits, judgments, or liability resulting or arising from (but only to the extent caused or contributed to by) the negligent or wrongful act or omission or the Contractor or its employees, officers, directors, contractors, agents, representatives, successors, or assigns, in the performance or nonperformance of services under this Agreement.

B. **GDOE not Liable.** GDOE assumes no liability for any accident, loss, claim, judgment, action or injury that may occur to the Contractor and/or the Contractor's officers, directors, agents, servants, subcontractors and/or employees, and/or to the personal property of any such person or entity, arising out of the performance of services under this Agreement except to the extent caused or contributed to by the negligent act or omission of GDOE. In addition, no Board member, officer, agent, or employee of GDOE shall be liable personally under or by reason of this Agreement or any of its provisions. In addition, GDOE assumes no liability for any accident or injury that may occur to Contractor's officers, directors, employees, agents, or dependents while traveling to and from Guam in furtherance of this Agreement.

**XXII. Modifications including those Due to Public Welfare, Change in Law or Change in Marketing Conditions.** GDOE shall have the unilateral power to modify the Agreement at any time subject to the written agreement of Contractor. GDOE shall have the power to make changes in the Agreement and to impose new rules and regulations on the Contractor under the Agreement relative to the scope and methods of providing services as shall from time-to-time be necessary and desirable for the public welfare or due to a change in law. GDOE shall give the Contractor notice of any proposed change in the Agreement and an opportunity to be heard concerning those matters. The scope and method of providing services as referenced herein shall also be liberally construed to include, but is not limited to, the manner,

procedures, operations and obligations, financial or otherwise, of the Contractor. In the event GDOE materially alters the obligations of the Contractor, or the benefits to GDOE, then the Agreement shall be amended consistent therewith. Should these amendments materially alter the obligations of the Contractor, then the Contractor or GDOE shall be entitled to an adjustment in the rates and charges established under the Agreement. Contractor shall be entitled to terminate this Agreement rather than accept modified terms. Nothing contained in the Agreement shall require any party to perform any act or function contrary to law. GDOE and the Contractor agree to enter into good faith negotiations regarding modifications to the Agreement, which may be required in order to implement changes in the interest of the public welfare or due to changes in law. When such modifications are made to the Agreement, GDOE and the Contractor shall negotiate in good faith a reasonable and appropriate adjustment for any changes in services or other obligations required of the Contractor directly and demonstrably due to any modification in the Agreement under this clause.

### **XXIII. Independent Contractor and its Employees.**

A. Status of Contractor. The Contractor and its officers, agents, servants, subcontractors and employees are independent contractors performing professional services for GDOE, and are not employees of GDOE. The Contractor and its officers, agents, servants and employees shall not accrue vacation or sick leave, participate in the Government of Guam retirement system, insurance coverage, bonding, use of government vehicles or any other benefits accorded to Government of Guam employees as a result of this Agreement. Contractor agrees that Contractor and its aforementioned employees, officers, directors, agents, servants, and subcontractors are not and will not become an employee, officer or Board member of GDOE at any time during the duration of this Agreement, and will otherwise comply with the provisions of the Guam Procurement Law regarding ethics in public contracting (Title 5 Guam Code Annotated, Chapter 5, Article 11, and its associated rules and regulations). Nothing in this Agreement or any action taken under this Agreement shall be deemed or construed in any manner or for any purpose to evidence or establish as between Contractor and GDOE a relationship of partnership, agency, association, joint venture or representative, nor does this Agreement authorize any party to undertake or bind any obligation or responsibility on behalf of the other party. In addition, there shall be no withholding of taxes by GDOE for the Contractor.

B. Liability. The Contractor assumes responsibility for its personnel and subcontractors providing services hereunder and will make all deductions and payments for social security and withholding taxes and for contributions to employment compensation funds, or any other payments required by the governments of the U.S. and Guam, if required. Contractor is responsible for paying when due any and all income taxes, gross receipts taxes, or any other taxes or assessments incurred as a result of the services performed by the Contractor and Contractor's employees or agents under this Agreement or the compensation paid to Contractor for services performed under this Agreement. Furthermore, Contractor shall maintain at the Contractor's expense all necessary insurance for its employees including but not limited to Worker's Compensation, Errors and Omissions, and liability insurance for each employee as required under U.S. and Guam Law and the mandates of the underlying IFB to this Agreement. Contractor agrees to hold harmless and indemnify GDOE, its officers, directors, employees, agents, representatives, successors and assigns, for any and all claims, demands,

costs, losses, fees, penalties, interest, or damages, including attorney's fees, which may be brought or asserted due to (i) any injury, death, or property damage arising from the negligence or other wrongful or tortuous acts of Contractor or Contractor's employees, officers, contractors, directors, agents, representatives, successors, or assigns, or (ii) Contractor's failure to comply with terms of this subparagraph B.

C. **Wage and Benefits Compliance.** Contractor warrants it shall comply with all applicable federal and local laws, rules, and regulations regarding the payment of minimum wages and benefits, in particular in accordance with the Wage Determination for Guam issued and promulgated by the U.S. Department of Labor and with Guam Public Law 26-111. Contractor assumes all liability for, and hereby indemnifies GDOE from, any violation of any applicable law, rule, or regulation relating to the payment of wages or benefits.

**XXIV. Disclosure.** The Contractor hereby represents that it has disclosed to GDOE all matters regarding Contractor which if not disclosed to GDOE would materially affect GDOE's decision to enter into this Agreement with Contractor.

**XXV. Disposition of Property and Materials; Intellectual Property Rights.**

A. All plans, outlines, briefs, memoranda, studies, reports, analyses and all other work product and materials incidental or otherwise ("Work Product") which are produced by reason of this Agreement shall be and remain the property of GDOE, regardless of whether Contractor is in possession of such Work Product, and may be used by GDOE without permission from Contractor and without any additional costs to GDOE.

B. All Work Products, including any and all intellectual property rights in said Work Product, arising out of the Agreement shall be the sole and exclusive property of GDOE. Contractor explicitly acknowledges that GDOE possesses exclusive rights to the Work Product arising out of this Agreement. Contractor shall not use or permit others to use in any way or form the Work Product without the express written consent of GDOE.

**XXVI. Mandatory Representations by Contractor:**

A. **Persons Convicted of Sex Offense.** Contractor warrants that 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 Contractor while on government of Guam property, with the exception of public highways. If any employee of Contractor is providing services on government property and is convicted subsequent to an award of a contract, then Contractor warrants that it will notify GDOE of the conviction within twenty-four hours of the conviction, and will immediately remove such convicted person from providing services on government property. If Contractor is found to be in violation of any of the provisions of this paragraph, then GDOE will give notice to Contractor to take corrective action. Contractor shall take corrective action within twenty-four (24) hours of notice from GDOE, and Contractor shall notify GDOE

when action has been taken. If Contractor fails to take corrective steps within twenty-four (24) hours of notice from GDOE, then GDOE in its sole discretion may temporarily suspend this agreement.

B. **Gratuities and Kickbacks.** Contractor warrants it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth in 2 GAR Division 4 §11107.

C. **Contingent Fees.** Contractor warrants it has not retained a person to solicit or secure this 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.

D. **Ethical Standards.** Contractor warrants 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 of the Guam Procurement Act and in Chapter 11 of the Guam Procurement Regulations.

**XXVII. Disputes.** In accordance with Guam procurement law, all controversies between the territory and the Contractor which arise under, or by virtue of, this contract and which are not resolved by mutual agreement, shall be decided by GDOE in writing, within 60 days after written request by the Contractor for a final decision concerning the controversy; provided however that if the GDOE does not issue a written decision within 60 days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the Contractor may proceed as if an adverse decision had been received. The GDOE shall immediately furnish a copy of the decision to the Contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. Any such decision shall be final and conclusive, unless fraudulent, or the Contractor brings an action seeking review of the decision before the Guam Office of Public Accountability. The Contractor shall comply with any decision of the GDOE and proceed diligently with performance of this contract pending final resolution by the Office of Public Accountability or the Superior Court of Guam of any controversy arising under or by virtue of this contract, except where there has been a material breach of the contract by GDOE; provided, however, that in any event the Contractor shall proceed diligently with the performance of the contract where GDOE has made a written determination that continuation of work under the contract is essential to public health and safety.

**XXVIII. Attachments, Exhibits, Schedules, and Entire Agreement.** This Agreement, including its Attachments, Exhibits and Schedules, constitutes the entire Agreement and supersedes all prior written or oral understandings. No Agreement, oral or written, expressed or implied, has been made by any party hereto, except as expressly provided herein. All prior Agreements and negotiations are superseded hereby. This Agreement and any duly executed amendments hereto constitute the entire Agreement between the Parties hereto.

**XXIX. Computation of Time.** Whenever this Agreement provides for a time period of ten (10) days or less days, weekends and Government of Guam holidays are not

included in the computation. When this Agreement provides for a time period of over ten (10) days, weekends and Government of Guam holidays are to be included in the computation.

**XXX. Partial Invalidity.** If any provision of this Agreement shall be deemed by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue to be in full force and effect.

**XXXI. Amendments/Modifications.** Any amendment or modification to this Agreement will be effective only if it is in writing and signed by both parties.

**XXXII. Authorization for Change Orders.** Any modifications to the quantities of services or equipment to be delivered pursuant to this Agreement, and the prices therefore, may be made by a written Change Order signed by an authorized representative of GDOE and Contractor. Change Orders may only be made on the conditions that the work to be performed by a Change Order is not inconsistent with the scope of work under this Agreement, and that where there is an increase in the costs for services, GDOE shall certify in writing that funds are available for the increased cost prior to such Change Order becoming effective.

**XXXIII. Contract Performance and Payment Bonds.**

A. Performance Bonds. Upon execution of this Agreement, Contractor shall deliver to GDOE a performance bond by a surety company authorized to do business in Guam or by such other method as may be approved by GDOE in the amount of one hundred percent (100%) of the price of services under this Agreement. Such Performance Bond shall be in the form attached herewith as **Exhibit 3**.

B. Payment Bonds. Upon execution of this Agreement, Contractor shall deliver to GDOE a payment bond by a surety company authorized to do business in Guam or by such other method as may be approved by GDOE in the amount of one hundred percent (100%) of the price of services under this Agreement. Such payment bond shall be in the form attached herewith as **Exhibit 4**. During performance of services under this Agreement and at its option, GDOE may reduce the required coverage of the payment bond as payments are made by the contractor for labor and material used or reasonably required in the performance of services under this Agreement.

**XXXIV. Change Orders.** GDOE, at any time and without notice to sureties, in a signed writing designated or indicated to be a change order may order (1) changes in the work within the scope of this Agreement; and (2) changes in the time for performance of services under this Agreement that do not alter the scope of the contract.

A. Changes in the Work may be accomplished after execution of the Agreement by a written Change Order signed by GDOE subject to the limitations stated in this Agreement.

B. Change Orders. A Change Order is a written instrument prepared by GDOE and the Contractor stating their agreement upon a change in the work; the amount of the

adjustment, if any, in the price under this Agreement; and the extent of the adjustment, if any, in the time for performance of the work under this Agreement.

C. **Adjustments of Price or Time for Performance.** If any such change order increases or decreases the Contractor's cost of, or the time required for, performance of any part of the work under this Agreement, whether or not changed by the order, an adjustment shall be made and the Agreement modified in writing accordingly. Any adjustment in contract price made pursuant to this section shall be determined in accordance with the Price Adjustment Clause herein. Failure of the parties to agree to an adjustment shall not excuse Contractor from proceeding with the Agreement as changed, provided that the territory promptly and duly makes such provisional adjustments in payments or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation or an extension of time for completion.

D. **Written Certification.** The Contractor shall not perform any change order in excess of Five Thousand Dollars (\$5,000.00) unless it bears, or the Contractor has separately received, a written certification, signed by an appropriate fiscal officer or other responsible official that funds are available therefore. If acting on good faith, the Contractor may rely upon the validity of such certification.

E. **Time Period for Claim.** Within 30 days after receipt of a written change order under this section, unless such period is extended by GDOE the Contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the Contractor's claim unless GDOE is prejudiced by the delay in notification.

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

G. **Claims Not Barred.** In the absence of change order, nothing in this section shall restrict the contractor's right to pursue a claim arising under this Agreement if pursued in accordance with the provision herein regarding claims based on GDOE's actions or omission or for breach of contract.

#### **XXXV. Variations in Estimated Quantities.**

A. **Variations Requiring Adjustments.** Where the quantity of a pay item in this contract is an estimated quantity and where the actual quantity of such pay item varies more than 15% above or below the estimated quantity stated in this contract, an adjustment in the contract price shall be made upon demand of either party. The adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115% or below 85% of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, GDOE shall, upon receipt of a timely written request for an extension of time, prior to the date of final settlement of the contract, ascertain the facts and make such adjustment for extending the completion date as in the judgment of GDOE is justified.



B. Adjustments of Price. Any adjustment in price made pursuant to this section shall be determined in accordance with the Price Adjustment Clause herein.

**XXXVI. Suspension of Work.**

A. Suspension for Convenience. GDOE may order the contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as GDOE may determine to be appropriate for the convenience of the territory.

B. Adjustment of Cost. If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of GDOE in the administration of this Agreement, or by the failure of GDOE to act within the time specified in this Agreement (or if no time is specified, within reasonable time), an adjustment shall be made for any increase in the cost of performance of this contract necessarily caused by such unreasonable suspension, delay, or interruption and the Agreement modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent:

(1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the contractor; or

(2) for which an adjustment is provided for or excluded under any other provision of this contract.

C. Time Restriction on Claim. No claim under this clause shall be allowed:

(1) for any costs incurred more than twenty (20) days before the contractor shall have notified GDOE in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and

(2) unless the claim is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the contract.

D. Adjustments of Price. Any adjustment in price made pursuant to this section shall be determined in accordance with the Price Adjustment Clause herein.

**XXXVII. Differing Site Conditions.**

A. Notice. The contractor shall promptly, and before such conditions are disturbed, notify GDOE of:

(1) subsurface or latent physical conditions at the site differing materially from those indicated in this contract; or

(2) unknown physical conditions at the site, of an unusual nature.

differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract.

B. **Adjustments of Price or Time for Performance.** After receipt of such notice, GDOE shall promptly investigate the site, and if it is found that such conditions do materially so differ and cause an increase in the contractor's cost of, or the time required for, performance of any part of the work under this Agreement, whether or not changed as a result of such conditions, an adjustment shall be made and the Agreement modified in writing accordingly. Any adjustment in price made pursuant to this section shall be determined in accordance with the Price Adjustment Clause herein.

C. **Timeliness of Claim.** No claim of the contractor under this clause shall be allowed unless the contractor has given the notice required in this clause; provided, however, that the time prescribed therefore may be extended by GDOE in writing.

D. **No Claim After Final Payment.** No claim by the contractor for an adjustment hereunder shall be allowed if asserted after final payment under this contract.

E. **Knowledge.** Nothing contained in this section shall be grounds for an adjustment in compensation if the contractor had actual knowledge of the existence of such conditions prior to the submission of bids.

#### **XXXVIII. Price Adjustment Clause.**

A. **Price Adjustment Methods.** Any adjustment in price pursuant to this Agreement shall be made in one or more of the following ways:

(1) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(2) by unit prices specified in the Agreement or subsequently agreed upon;

(3) by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the Agreement or subsequently agreed upon;

(4) in such other manner as the parties may mutually agree; or

(5) in the absence of an agreement between the parties, by a unilateral determination by GDOE of costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by GDOE in accordance with generally accepted accounting principles and applicable sections under Chapter 7 (Cost Principles) of the Guam Procurement Regulations and subject to the provisions of Article 5, Chapter 5 of 5 GCA (Legal and Contractual Remedies) of the Guam Procurement Act.

B. Submission of Cost or Pricing Data. The contractor shall submit cost or pricing data for any price adjustments subject to the provisions of §3118 (Cost or Pricing Data) of the Guam Procurement Regulations.

**XXXIX. Claims Based on GDOE's Actions or Omissions.**

A. Notice of Claim. If any action or omission on the part of GDOE requiring performance changes within the scope of the contract constitutes the basis for a claim by the contractor for additional compensation, damages, or an extension of time for completion, the contractor shall continue with performance of the contract in compliance with the directions or orders of GDOE, but by so doing, the contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

(1) the contractor shall have given written notice to GDOE:

(a) prior to the commencement of the work involved, if at that time the contractor knows of the occurrence of such action or omission;

(b) within 30 days after the contractor knows of the occurrence of such action or omission, if the contractor did not have such knowledge prior to the commencement of the work; or

(c) within such further time as may be allowed by GDOE in writing.

This notice shall state that the contractor regards the act or omission as a reason which may entitle the contractor to additional compensation, damages, or an extension of time. GDOE, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of GDOE.

(2) the notice required by Subparagraph (a) of this section describes as clearly as practicable at the time the reasons why the contractor believes that additional compensation, damages, or an extension of time may be remedies to which the contractor is entitled; and

(3) the contractor maintains and, upon request, makes available to GDOE within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

B. Limitations of Clause. Nothing herein contained, however, shall excuse the contractor from compliance with any rules of law precluding any territorial officers and any contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.

C. Adjustments of Price. Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause herein.

**XL. TERMINATION FOR DEFAULT FOR NONPERFORMANCE OR DELAY, DAMAGES FOR DELAY, TIME EXTENSIONS**

A. Default. If the contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will assure its completion within the time specified in this Agreement or any extension thereof or fails to complete said work within such time, or commits any other substantial breach of this contract, and further fails within fourteen (14) days after receipt of written notice from GDOE to commence and continue correction of such refusal or failure with diligence and promptness, GDOE may by written notice to the contractor declare the contractor in breach and terminate the contractor's right to proceed with the work or such part of the work as to which there has been delay. In such event the territory may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of, and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefore. Whether or not the contractor's right to proceed with the work is terminated, the contractor and the contractor's sureties shall be liable for any damage to the territory resulting from the contractor's refusal or failure to complete the work within the specified time.

B. Liquidated Damages upon Termination. If fixed and agreed liquidated damages are provided in the Agreement, and if the territory so terminates the contractor's right to proceed, the resulting damage will consist of such liquidated damages for such reasonable time as may be required for final completion of the work.

C. Liquidated Damages in Absence of Termination. If fixed and agreed liquidated damages are provided in the Agreement, and if the territory does not terminate the contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.

D. Time Extension. The contractor's right to proceed shall not be so terminated nor the contractor charged with resulting damage if:

(1) the delay in the completion of the work arises from causes such as: acts of God; acts of the public enemy; acts of the territory, and any other territorial entity in either a sovereign or contractual capacity; acts of another contractor in the performance of a contract with the territory; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; unusually severe weather; delays of subcontractors due to causes similar to those set forth above; or shortage of materials; provided, however, that no extension of time will be granted for a delay caused by a shortage of materials, unless the contractor furnished to GDOE proof that the contractor has diligently made every effort to obtain such materials from all known sources within reasonable reach of the work, and further proof that the inability to obtain such materials when originally planned did in fact cause a delay in final completion of the entire work which could not be compensated for by revising the sequence of the contractor's operations; and

(2) the contractor, within ten days from the beginning of any such

delay (unless GDOE grants a further period of time before the date of final payment under the contract), notifies GDOE in writing of the causes of delay. GDOE shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in the judgment of GDOE, the findings of fact justify such an extension.

E. **Erroneous Termination for Default.** If, after notice of termination of the contractor's right to proceed under the provisions of this section, it is determined for any reason that the contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this section, the rights and obligations of the parties shall, if the Agreement contains a clause providing for termination for convenience of the territory, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstance, this Agreement does not contain a clause providing for termination for convenience of the territory, the contract shall be adjusted to compensate for such termination and the Agreement modified accordingly.

F. **Additional Rights and Remedies.** The rights and remedies of GDOE provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

**XLI. Liquidated Damages.** When the contractor fails to complete the work or any portion of the work within the time or times fixed in the Agreement or any extension thereof, the contractor shall pay to GDOE One Thousand Dollars (\$1,000) for contracts worth less than One Hundred Thousand Dollars (\$100,000) and Two Thousand Dollars (\$2,000) for contracts worth One Hundred Thousand Dollars (\$100,000) or more per calendar day of delay pursuant to the section of this contract entitled, "Termination for Default for Nonperformance or Delay - Damages for Delay - Time Extension."

**XLII. Termination for Convenience.**

A. **Termination.** GDOE may, when the interests of this territory so require, terminate this Agreement in whole or in part, for the convenience of the territory. GDOE shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

B. **Contractor's Obligations.** The 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. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. GDOE may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to GDOE. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as necessary to do so.

C. **Right to Construction and Supplies.** GDOE may require the contractor to transfer title and deliver to GDOE in the manner and to the extent directed by GDOE:

- (1) any completed construction; and
- (2) such partially completed construction, supplies, materials, parts, tools, dies, jigs, fixtures, plans, drawing, information, and contract rights (hereinafter called "construction material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this Agreement. The contractor shall protect and preserve property in the possession of the contractor in which the territory has an interest. If GDOE does not exercise this right, the contractor shall use best efforts to sell such construction, supplies, and construction materials in accordance with the standards of 14 GCA §2706 (UCC). This in no way implies that GDOE has breached the contract by exercise of the Termination for Convenience section herein.

D. Compensation.

(1) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data, submitted to the extent required by Section 3118 (Cost or Pricing Data) of the Guam Procurement Regulations, bearing on such claim. If the contractor fails to file a termination claim within one year from the effective date of termination, GDOE may pay the contractor, if at all, an amount set in accordance with Subparagraph (c) of this section.

(2) GDOE and the contractor may agree to a settlement provided the contractor has filed a termination claim supported by cost or pricing data submitted as required by §3118 (Cost or Pricing Data) of the Guam Procurement Regulations and that the settlement does not exceed the total price under this Agreement plus settlement costs reduced by payments previously made by GDOE, the proceeds of any sales of construction, supplies, and construction materials under Paragraph (3) of this section, and the price of the work not terminated.

(3) Absent complete agreement under Subparagraph (b) of this section, GDOE shall pay the contractor the following amounts, provided payments under Subparagraph (b) shall not duplicate payments under this Paragraph:

(a) with respect to all work performed prior to the effective date of the notice of termination, the total (without duplication of any items) of:

(i) the cost of such work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for completed portions of such work; provided, however, that if it appears that the contractor would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(ii) cost of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph (2) of this clause. These costs must not include costs paid in accordance with Subparagraph (c)(i)(A) of this section.

(iii) the reasonable settlement costs of the contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract. The total sum to be paid the contractor under this Paragraph shall not exceed the total price under this Agreement plus the reasonable settlement costs of the contractor reduced by the amount of any sales of construction, supplies, and construction materials under Paragraph (3) of this clause, and the price of work not terminated.

(4) Cost claimed, agreed to, or established under Subparagraphs (b) and (c) of this section shall be in accordance with Chapter 7 (Cost Principles) of the Guam Procurement Regulations.

**XLIII. Remedies.** Any dispute arising under or out of this Agreement is subject to the provisions of Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations.

**XLIV. Ownership and Use of Drawings, Specifications.** All drawings, specifications, plans or other instruments provided by GDOE or its consultants or Project Manager for the work under this Agreement are the property of GDOE.

**XLV. Transmission of Data in Digital Form.** If the parties intend to transmit any information or documentation in digital form, they shall establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement.

**XLVI. GDOE Representative.** The Superintendent of the Guam Department of Education shall designate in writing a representative who may have express authority to bind GDOE with respect to all matters requiring GDOE's approval or authorization. Except as otherwise provided herein, GDOE's Project Manager does not have authority to bind GDOE without written approval from GDOE.

**XLVII. Review of Contract Documents and Field Conditions By Contractor.** Execution of this Agreement by the Contractor is a representation that the Contractor has visited the site where the work shall be performed, become generally familiar with local conditions under which the work is to be performed and correlated personal observations with requirements of this Agreement.

**XLVIII. Supervision and Construction Procedures.**

A. The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Agreement, unless the Agreement gives other specific

instructions concerning these matters. If the Agreement gives specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to GDOE and the Project Manager and shall not proceed with that portion of the Work without further written instructions from GDOE. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, GDOE shall be solely responsible for any loss or damage arising solely from those GDOE-required means, methods, techniques, sequences or procedures.

B. The Contractor shall be responsible to GDOE for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

C. The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

#### **XLIX. Labor and Materials.**

A. Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

B. The Contractor may make substitutions only with the consent of the GDOE in accordance with a Change Order.

C. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

L. **Warranty.** The Contractor warrants to GDOE that materials and equipment furnished under this Agreement will be of good quality and new unless the Agreement or GDOE permits otherwise. The Contractor further warrants that the Work will conform to the requirements of the Agreement and will be free from defects, except for those inherent in the quality of the Work the Agreement requires or permits. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by GDOE, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.



**LI. Taxes.** The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor.

**LII. Permits, Fees, Notices and Compliance with Laws.**

A. Unless otherwise provided in this Agreement, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work.

B. The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

C. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume responsibility for such Work and shall bear the costs attributable to correction.

D. If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands, the Contractor shall immediately suspend any operations that would affect them and shall notify GDOE. Upon receipt of such notice, GDOE shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by GDOE but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the time or price for completion specified in this Agreement shall be made and addressed in accordance with the terms herein.

**LIII. Contractor's Superintendent.**

A. The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the work site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

B. The Contractor, as soon as practicable after execution of this Agreement and no later than 15 days after issuance of a Notice to Proceed, shall furnish in writing to GDOE the name and qualifications of a proposed superintendent. GDOE may reply within 14 days to the Contractor in writing stating (1) whether GDOE has reasonable objection to the proposed superintendent or (2) that GDOE requires additional time to review. Failure of GDOE to reply within the 14 day period shall constitute notice of no reasonable objection.

C. The Contractor shall not employ a proposed superintendent to whom GDOE has made reasonable and timely objection. The Contractor shall not change the superintendent without the GDOE's consent, which shall not unreasonably be withheld or

delayed.

**LIV. Contractor's Construction Schedule.**

A. The Contractor, promptly after execution of this Agreement and no later than 7 days after issuance of a Notice to Proceed, shall prepare and submit for GDOE's approval Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under this Agreement, shall be revised at appropriate intervals as required by the conditions of the Work, shall be related to the work to the extent required by this Agreement, and shall provide for expeditious and practicable execution of the Work.

B. The Contractor shall prepare a submittal schedule, promptly after execution of this Agreement and no later than 17 days after issuance of Notice to Proceed, and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for GDOE's approval. GDOE's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow GDOE reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in time or price for performance of the work based on the time required for review of submittals.

C. The Contractor shall perform the Work in general accordance with the most recent schedules approved by GDOE.

**LV. Documents and Samples at the Site.** The Contractor shall maintain at the site for GDOE one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to GDOE and its Project Manager or other consultants or agents as GDOE may designate and shall be delivered to GDOE upon completion of the Work as a record of the Work as constructed.

**LVI. Approval of Drawings by GDOE.** The Contractor shall perform no portion of the Work for which this Agreement requires submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by GDOE or GDOE's consultants or agents as may be required by GDOE.

**LVII. Deviations from Approved Drawings.** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of this Agreement by GDOE's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed GDOE in writing of such deviation at the time of submittal and (1) GDOE has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by GDOE's approval thereof.

**LVIII. Specialized Services.** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by this Agreement for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by this Agreement, GDOE will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to GDOE. GDOE shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided GDOE has specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section, GDOE and its Project Manager or other consultants or agents as GDOE may designate will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in this Agreement.

**LIX. Use of Site.** The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and this Agreement and shall not unreasonably encumber the site with materials or equipment.

**LX. Cutting and Patching.**

A. The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by this Agreement.

B. The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of GDOE or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by GDOE or a separate contractor except with written consent of GDOE and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from GDOE or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

**LXI. Cleaning Up.**

A. The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under this Agreement. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's

tools, construction equipment, machinery and surplus materials from and about the worksite.

B. If the Contractor fails to clean up as provided in this Agreement, GDOE may do so and GDOE shall be entitled to reimbursement from the Contractor.

**LXII. Access to Work.** The Contractor shall provide GDOE and its Project Manager or other consultants or agents as GDOE may designate access to the Work in preparation and progress wherever located.

**LXIII. Indemnification.** To the fullest extent permitted by law the Contractor shall indemnify and hold harmless GDOE, its Project Manager and its Consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person under this Agreement.

**LXIV. The Project Manager.**

A. GDOE's Project Manager will have authority to act on behalf of GDOE only to the extent provided in this Agreement or Amendments thereto, or as otherwise may be provided for in a written notice signed by the Superintendent of the Guam Department of Education. GDOE's Project Manager shall not perform on GDOE's behalf the 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 GDOE. The Project Manager may perform its duties and make recommendations as described in this Agreement in consultation with any other consultant or agent that GDOE may designate.

B. The Project Manager or other consultants or agents as GDOE may designate will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with GDOE, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with this Agreement.

C. On the basis of the site visits and recommendations by other consultants or agents as GDOE may designate, the Project Manager will keep GDOE reasonably informed about the progress and quality of the portion of the Work completed, and report to GDOE (1) known deviations from this Agreement and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

D. **Communications Facilitating Administration of the Work.** Except as otherwise provided in this Agreement or when direct communications have been specially authorized, GDOE and Contractor shall endeavor to communicate with each other through the Project Manager about matters arising out of or relating to the work. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through GDOE

E. Based on the Project Manager's evaluations of the Contractor's Applications for Payment, the Project Manager will review and make recommendations to GDOE regarding the amounts due the Contractor.

F. The Project Manager has authority to reject Work that does not conform to this Agreement. Whenever the Project Manager or other consultants or agents as GDOE may designate considers it necessary or advisable, the Project Manager will have authority to require inspection or testing of the Work, whether or not such Work is 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 Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

G. The Project Manager, in conjunction with GDOE's Project Engineer or other GDOE consultants or agents as may be required by GDOE, will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; make recommendations to GDOE regarding the issuance of Certificates of Substantial Completion; receive and forward to GDOE, for GDOE's review and records, written warranties and related documents required by this Agreement and assembled by the Contractor.

**LXV. Subcontractors.** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site.

**LXVI. Award of Subcontracts and Other Contracts for Portions of the Work.**

A. Unless otherwise stated in this Agreement, the Contractor, as soon as practicable after execution of this Agreement, shall furnish in writing to GDOE through the Project Manager the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. GDOE may reply within 14 days to the Contractor in writing stating (1) whether GDOE or the Project Manager has reasonable objection to any such proposed person or entity or (2) that GDOE requires additional time for review. Failure of GDOE to reply within the 14-day period shall constitute notice of no reasonable objection.

B. The Contractor shall not contract with a proposed person or entity to whom GDOE has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

C. The Contractor shall not substitute a Subcontractor, person or entity

previously selected if GDOE makes reasonable objection to such substitution.

**LXVII. Subcontractual Relations.** By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of this Agreement, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward GDOE. Each subcontract agreement shall preserve and protect the rights of GDOE under this Agreement with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights.

**LXVIII. Construction Schedules.** GDOE shall provide for coordination of the activities of GDOE's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and GDOE in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and GDOE until subsequently revised.

**LXIX. Contractor Delay, Costs.** The Contractor shall reimburse GDOE for costs GDOE incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction.

**LXX. Damage to Construction or Property.** The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of GDOE or separate contractors.

**LXXI. GDOE's Right to Clean Up.** If a dispute arises among the Contractor, separate contractors and GDOE as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, GDOE may clean up allocate the cost among those responsible.

**LXXII. Progress and Completion.**

A. Time limits stated in this Agreement are of the essence of the Contract. By executing this Agreement the Contractor confirms that the time specified herein for performance of the work is a reasonable period for performing the work.

B. The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by this Agreement to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

**LXXIII. Schedule of Values.** Where this Agreement is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to GDOE, before the first application

for payment, a schedule of values allocating the entire price under this Agreement to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as GDOE may require. This schedule, unless objected to by GDOE, shall be used as a basis for reviewing the Contractor's applications for payment.

**LXXIV. Applications for Payment.** At least ten days before the date established for each progress payment, the Contractor shall submit to GDOE an itemized Application for Payment prepared in accordance with the schedule of values, if required, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as GDOE may require, such as copies of requisitions from Subcontractors and material suppliers. Each Application for Payment shall reflect retainage by GDOE of ten percent (10%) of the total amount of the Application. Such retainage shall be remitted to Contractor upon completion of the work as described in Section LXXVIII (E) herein, Substantial Completion.

A. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

B. Unless otherwise provided in this Agreement, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by GDOE, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to GDOE to establish GDOE's title to such materials and equipment or otherwise protect GDOE's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

C. The Contractor warrants that title to all Work covered by an Application for Payment will pass to GDOE no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from GDOE shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

**LXXV. Certificates for Payment:**

A. GDOE's Project Manager will, within seven days after receipt of the Contractor's Application for Payment, either issue to GDOE a Recommendation for Payment, with a copy to the Contractor, for such amount as the Project Manager determines is properly due, or notify the Contractor and GDOE in writing of the Project Manager's reasons for withholding recommendation for payment in whole or in part.

B. The issuance of a Recommendation for Payment will constitute a representation by the Project Manager to GDOE, based on the Project Manager's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Project Manager's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with this Agreement. The foregoing representations are subject to an evaluation of the Work for conformance with the Agreement upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from this Agreement prior to completion and to specific qualifications expressed by the Project Manager.

**LXXVI. Decisions to Withhold Recommendation for Payment.**

A. If GDOE's Project Manager is unable to recommend payment in the amount of the Application, the Project Manager will notify the Contractor and GDOE. If the Contractor and the Project Manager cannot agree on a revised amount, the Project Manager will promptly issue a Recommendation for Payment for the amount for which the Project Manager is able to make such representations to GDOE. The Project Manager may also withhold a Recommendation for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Recommendation for Payment previously issued, to such extent as may be necessary in the Project Manager's opinion to protect GDOE from loss for which the Contractor is responsible, including loss resulting from acts and omissions because of

- (1) defective Work not remedied;
- (2) third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to GDOE is provided by the Contractor;
- (3) failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the price for the work;
- (5) damage to GDOE or a separate contractor;
- (6) reasonable evidence that the Work will not be completed within the time for performance of the work, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- (7) repeated failure to carry out the Work in accordance with this Agreement.

B. When the above reasons for withholding Recommendation are removed, Recommendation will be made for amounts previously withheld.



**LXXVII. Progress Payments.**

A. After the Project Manager has issued a Recommendation for Payment and such recommendation has been approved by GDOE, GDOE shall make payment in the manner and within the time provided in this Agreement, and shall so notify the Project Manager.

B. GDOE has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by GDOE to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, GDOE shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither GDOE nor its Project Manager shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

C. A Recommendation for Payment, a progress payment, or partial or entire use or occupancy of the Project by GDOE shall not constitute acceptance of Work not in accordance with this Agreement.

**LXXVIII. Substantial Completion.**

A. Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with this Agreement so that GDOE can occupy or utilize the Work for its intended use.

B. When the Contractor considers that the Work, or a portion thereof which GDOE agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to GDOE and the Project Manager a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with this Agreement.

C. Upon receipt of the Contractor's list, the Project Manager will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Project Manager's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with this Agreement so that GDOE can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Project Manager. In such case, the Contractor shall then submit a request for another inspection by the Project Manager to determine Substantial Completion.

D. When the Work or designated portion thereof is substantially complete, the Project Manager will prepare a recommendation for the issuance of a Certificate of Substantial Completion that shall establish the date of Substantial Completion.

E. The Certificate of Substantial Completion shall be submitted by GDOE to

Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, GDOE shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of this Agreement.

**LXXIX. Final Completion and Final Payment.**

A. Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Project Manager will promptly make such inspection and, when the Project Manager finds the Work acceptable under this Agreement and the work fully performed, the Project Manager will promptly issue a final Recommendation for Payment stating that to the best of the Project Manager's knowledge, information and belief, and on the basis of the Project Manager's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of this Agreement.

B. Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to GDOE (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which GDOE or GDOE's property might be responsible or encumbered (less amounts withheld by GDOE) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Agreement to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the GDOE, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by this Agreement, (4) consent of surety, if any, to final payment and (5), if required by GDOE, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of this Agreement, to the extent and in such form as may be designated by GDOE. If a Subcontractor refuses to furnish a release or waiver required by GDOE, the Contractor may furnish a bond satisfactory to GDOE to indemnify GDOE against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to GDOE all money that GDOE may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

**LXXX. Protection of Persons and Property.**

A. Safety Precautions and Programs. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the work.

B. Safety of Persons and Property.

(1) The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

(a) employees on the Work and other persons who may be

affected thereby;

(b) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

(c) other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

(2) The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

(3) The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including erecting construction fencing, posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

(4) When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

(5) The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by this Agreement) to property caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible except damage or loss attributable to acts or omissions of GDOE or Project Manager or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor.

(6) The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to GDOE and Project Manager.

(7) The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

(8) Notice of Injury or Damage to Person or Property. If any person is injured by the Work, written notice of such injury or damage, whether or not insured, shall be given to the Project Manager within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

C. Hazardous Materials.

(1) The Contractor is responsible for compliance with any requirements included in this Agreement regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in this Agreement and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to GDOE and the Project Manager in writing.

(2) The Contractor shall indemnify GDOE for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations, except to the extent that the cost and expense are due to GDOE's fault or negligence.

D. Emergencies. In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss.

**LXXXI. Insurance and Bonds.**

A. Contractor's Liability Insurance.

(1) The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in Guam the following insurance:

- a. Commercial General Liability Insurance including coverage for bodily injury and property damage, contractual liability, products and completed operations, and if necessary, Broad Form Property Damage and Explosion, collapse, and Underground coverage. Coverage shall be extended for three years following issuance of a Certificate of Substantial Completion. Limits of liability shall be not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate.
- b. Property or Builders All Risk insurance providing coverage for all risks of direct physical loss or damage, including flood, earthquake, and windstorm, to raw materials, work in progress, components, and completed construction throughout the job site and at temporary storage and prefabrication sites. The amount of coverage shall be not less than the total of the full replacement value of raw materials, components, work in process, and completed

construction.

- c. Commercial Automobile Liability insurance for all owned and non-owned vehicles used in connection with the Work under this Agreement in an amount not less than One Million Dollars (\$1,000,000) combined single limit of liability.
- d. Workers Compensation and Employer's Liability insurance as required by applicable statute or regulation.
- e. Transportation Insurance as necessary providing All Risk, including War Risk, coverage for loss or damage to building materials and components from the point of shipment to the site of Work.

(2) Insurance coverage, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in this Agreement. All policies for coverage required by this Agreement shall contain an endorsement requiring insurers to provide GDOE with sixty days prior written notice of cancellation, non-renewal, or reduction of coverage or limits.

(3) Certificates of insurance acceptable to GDOE shall be filed with GDOE prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to GDOE. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor to GDOE with reasonable promptness.

(4) The Contractor shall cause the commercial and automobile liability and property coverage required to include (1) GDOE and its Directors, officers, agents, and employees and GDOE's Project Manager as additional insureds for claims arising out of the Work or under this Agreement.

(5) Deductibles, if any, for any required insurance coverage shall be approved by GDOE.

**LXXXII. Uncovering and Correction of Work.**

**A. Uncovering of Work.**

(1) If a portion of the Work is covered contrary to GDOE or the Project Manager's request or to requirements specifically expressed in this Agreement, it must, if requested in writing by GDOE, be uncovered for examination by the Project Manager or other consultants or agents as GDOE may designate and be replaced at the Contractor's expense without change in the time for performance of the work.

**B. Correction of Work.**

(1) **Before or After Substantial Completion.** The Contractor shall promptly correct Work rejected by GDOE or failing to conform to the requirements of this Agreement, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the services of the Project Manager or other consultants or agents as GDOE may designate and expenses made necessary thereby, shall be at the Contractor's expense.

(2) **After Substantial Completion.**

(a) If, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties or by terms of an applicable special warranty required by this Agreement, any of the Work is found to be not in accordance with the requirements of this Agreement, the Contractor shall correct it promptly after receipt of written notice from GDOE to do so unless GDOE has previously given the Contractor a written acceptance of such condition. GDOE shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from GDOE, the Owner may correct it in accordance with this Section.

(3) The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of this Agreement and are neither corrected by the Contractor nor accepted by GDOE.

(4) The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of GDOE or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of this Agreement.

(5) Nothing contained in this Section shall be construed to establish a period of limitation with respect to other obligations the Contractor has under this Agreement. Establishment of the one-year period for correction of Work relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with this Agreement may be sought to be enforced, nor to the time



**DEPARTMENT OF EDUCATION:**

  
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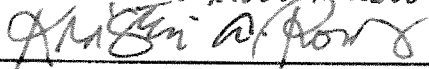
**ANDREW T. PEREZ**  
Legal Counsel

Date: 9/20/13

**CERTIFIED FUNDS AVAILABLE:**

AMOUNT: \$ 499,980.00

180-11-000. 045000-11-2600-12-00360



**CERTIFYING OFFICER**  
Department of Education

Date: 9/20/13

**DEPARTMENT OF EDUCATION:**

  
\_\_\_\_\_

**MARCUS Y. PIDO**  
Supply Management Administrator

Date: 09/20/2013

**APPROVED AS TO FORM  
AND LEGALITY:**

**ATTORNEY GENERAL OF GUAM**

  
\_\_\_\_\_

**LEONARDO M. RAPADAS**

Date: 9/27/13

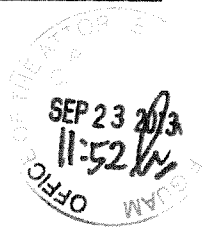
**APPROVED:**

**GOVERNOR OF GUAM**

  
\_\_\_\_\_

**EDWARD J.B. CALVO**

Date: SEP 30 2013





**AGREEMENT FOR CONSTRUCTION SERVICES BETWEEN  
GUAM DEPARTMENT OF EDUCATION  
AND  
ORION CONSTRUCTION CORPORATION (GUAM)  
FOR SERVICES PURSUANT TO GDOE IFB 032-2013**

**EXHIBIT 1**

**GDOE IFB 032-2013, including its Plans and Specifications  
and Amendments Thereto (on CDs)**

**(Referenced on page 2 of 36, Section I. Statement of Services to be Performed)**

IFB 032-2013

**AGREEMENT FOR CONSTRUCTION SERVICES BETWEEN  
GUAM DEPARTMENT OF EDUCATION  
AND  
ORION CONSTRUCTION CORPORATION (GUAM)  
FOR SERVICES PURSUANT TO GDOE IFB 032-2013**

**EXHIBIT 2**

**Contractor's Bid**

**(Referenced on page 2 of 36, Section I. Statement of Services to be Performed)**

BID FORM

Description	Unit	COST
1. Fire Alarm System Up-Grade/Replacement	Lump Sum	\$ 451,700. <sup>00</sup>
2. Fire Suppression/Sprinkler System Repair	Lump Sum	\$ 48,280. <sup>00</sup>
Grand Total:		\$ 499,980. <sup>00</sup>


CHECK BOX IF YOU ARE CLAIMING STATUS AS A SERVICE-DISABLED VETERAN OWNED BUSINESS UNDER 5 G.C.A. § 5012.

**BIDDER REPRESENTATIONS**

By signing below, I represent that I am an authorized representative of

ORION CONSTRUCTION CORPORATION (GUAM)  
 PRINT COMPANY NAME

and that by submission of this bid the company is making an offer to perform the work described in GDOE IFB 032-2013 for the price stated above. I also confirm that the bid price shall remain firm and irrevocable for ninety (90) days from the opening of this bid.

Name of Bidder (Company Name):	ORION CONSTRUCTION CORPORATION (GUAM)		
Signature of Authorized Representative:		Date:	September 16, 2013
Printed Name of Authorized Representative:	Armando T. Acosta	Title:	Vice President

**AGREEMENT FOR CONSTRUCTION SERVICES BETWEEN  
GUAM DEPARTMENT OF EDUCATION  
AND  
ORION CONSTRUCTION CORPORATION (GUAM)  
FOR SERVICES PURSUANT TO GDOE IFB 032-2013**

**EXHIBIT 3**

**Performance Bond Form**

**(Referenced on page 11 of 36, Section XXXIII. Contract Performance and Payment Bonds)**

GOVERNMENT OF GUAM  
 DEPARTMENT OF EDUCATION

PERFORMANCE BOND

BOND NO. 09109828

KNOW ALL MEN BY THESE PRESENTS that (here insert full name and address or legal title of Contractor) ORION CONSTRUCTION CORPORATION (GUAM) as Principal, hereafter called Contractor, and (Bonding Company), FIDELITY AND DEPOSIT COMPANY OF MARYLAND

a corporation duly organized under the laws of the Territory of Guam as Surety, hereinafter called Surety, are held firmly bound unto the Territory of Guam as Obligor. In the amount of (Full Amount) Dollars (\$ 499,980.00 ), for payment of whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents WHEREAS, the Contractor has by written agreement dated \_\_\_\_\_, 20\_\_\_\_, entered into a contract with the Territory of Guam for (describe project and insert project number) \*\* \_\_\_\_\_ (in accordance with drawings and specifications prepared by (here insert full name and address or legal title of architect) which contract is by reference made a part hereof, and is hereinafter referred to as the Contractor.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract then the obligation shall be null and void; otherwise it shall remain in full force and effect. The Surety hereby waives notice of any alteration or extension provided the same is within the scope of the contract. Whenever Contractor shall be and is declared by the Territory of Guam to be in default under the Contract, the Territory of Guam having performed territorial obligations thereunder, the Surety may promptly remedy the default or shall promptly.

1. Complete the Contract in accordance with its terms and conditions; or
2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by the Territory of Guam and the Surety jointly of the lowest responsive, responsible bidder, arrange for a contract between such bidder and the Territory of Guam, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price, but not exceeding, including other cost and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph shall mean the total amount payable by the Territory of Guam to Contractor under the Contract and any amendments thereto, less the amount properly paid by the Territory of Guam to Contractor. No right of action shall accrue on this bond to or for the use of any person or corporation other than the Territory of Guam or successors of the Territory of Guam.

Signed and sealed this 20TH day of SEPTEMBER, 2013

Carlos M. Sinamban  
 Carlos M. Sinamban  
 ORION CONSTRUCTION CORPORATION (GUAM)  
 (PRINCIPAL) (SEAL)

Evelyn B. Pernites  
 Evelyn B. Pernites  
 (WITNESS)

Project Manager  
 (TITLE)  
 FIDELITY AND DEPOSIT COMPANY OF MARYLAND  
 (BONDING COMPANY)  
 BY: Adam T. Baron  
 (ATTORNEY-IN FACT) ADAM T. BARON

Kmilyne  
 (WITNESS) KUIIP B. APIAG, BOND ACCOUNT ASSISTANT  
Adam T. Baron  
 (TITLE) ADAM T. BARON, ATTORNEY-IN-FACT

GDOE Procurement Form 003  
 Government Standard Form PB-1

Countersigned: Adam T. Baron  
 CASSIDY'S ASSOCIATED INSURERS,  
 INC. RESIDENT GENERAL AGENT

CERTIFIED TRUE COPY  
 By: Kmilyne

**AGREEMENT FOR CONSTRUCTION SERVICES BETWEEN  
GUAM DEPARTMENT OF EDUCATION  
AND  
ORION CONSTRUCTION CORPORATION (GUAM)  
FOR SERVICES PURSUANT TO GDOE IFB 032-2013**

**EXHIBIT 4**

**Payment Bond**

**(Referenced on page 11 of 36, Section XXXIII. Contract Performance and Payment Bonds)**

GOVERNMENT OF GUAM  
 DEPARTMENT OF EDUCATION

LABOR AND MATERIAL PAYMENT BOND  
 Bond No. 09109828

KNOW ALL MEN BY THESE PRESENTS that (here insert full name and address or legal title of Contractor) as Principal, hereinafter called Principal, and (Bonding Company), a corporation duly organized under the laws of the Territory of Guam, as Surety, hereinafter called Surety, are held and firmly bound unto the Territory of Guam as Obligor, hereinafter called Territory, for the use and benefit of claimants as herein below defined, in the amount of (Full Amount) Dollars (\$ 499,980.00 ) for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated \_\_\_\_\_, 20\_\_\_\_, entered into a contract with the Territory for (describe project and insert project number) in accordance with drawings and specifications prepared by (here insert full name and address or legal title of Architect) which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental of equipment directly applicable to the Contract
2. The above named Principal and Surety hereby jointly and severally agree with the Territory that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Department shall not be liable for the payment of any costs or expenses of any such suit.
3. No suit action shall be commenced hereunder by any claimant:
  - a) Unless claimant other than having a direct contract with the Principal, shall have given written notice to any two of the following: the Principal, the Territory, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be personally served or served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal at any place the Principal maintains an office or conducts its business.
  - b) After expiration of one (1) year following the date on which the last of the labor was performed or material was supplied by the party bringing suit
  - c) Other than in a court of competent jurisdiction for the county or district in which the construction contract was to be performed.
4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond

Signed and sealed this 20TH day of SEPTEMBER, 2013  
 ORION CONSTRUCTION CORPORATION (GUAM)  
Carlos M. Sinamban  
 (PRINCIPAL) (SEAL)

Evelyn B. Pernites  
 (WITNESS)  
Kimberly  
 (TITLE) KUIIPO B. APIAG, BOND ACCOUNT ASSISTANT

FIDELITY AND DEPOSIT COMPANY OF MARYLAND  
 (BONDING COMPANY) Adam Baron  
 (TITLE) ADAM T. BARON, ATTORNEY-IN-FACT

(MAJOR OFFICER OF SURETY)  
 BY Adam Baron  
 (ATTORNEY IN FACT) ADAM T. BARON

GDOE Procurement Form 005

Countersigned: Adam T. Baron  
 CASSIDY'S ASSOCIATED INSURERS,  
 INC. RESIDENT GENERAL AGENT



# **Exhibit 17**



# Purchase Order

Fiscal Year 2013 Page 1 of 1

**IMPORTANT**  
PURCHASE ORDER NUMBER MUST APPEAR ON ALL  
INVOICES, PACKAGES, AND CORRESPONDENT

Purchase Order # **20135001-00**

**B I L L T O**

BUSINESS OFFICE  
DEPARTMENT OF EDUCATION  
GOVERNMENT OF GUAM  
P.O BOX DE  
HAGÁTÑA, GUAM 96932

Delivery must be made within  
doors of specified destination.

**V E N D O R**

ORION CONSTRUCTION CORPORATION (GUAM)  
P.O. BOX 24348 GMF  
BARRIGADA GU 96921

**S H I P T O**

SUPERINTENDENT OF EDUCATION  
MANUEL F.L. GUERRERO BLDG.  
312 ASPINALL AVENUE  
HAGATNA GU 96910

Vendor Phone Number	Vendor Fax Number	Requisition Number	Delivery Reference			
(671) 633-2203	(671) 633-2208	20135711	SHS Fire Alarm System			
Date Ordered	Vendor Number	Date Required	Freight Method/Terms		Department/Location	
09/30/2013	80063				SUPERINTENDENT OF EDUCATION	
Item#	Description/Part No.		Qty	UOM	Unit Price	Extended Price
	SECURITY, FIRE, SAFETY AND EME					
	The Above Purchase Order Number Must Appear On All Correspondence - Packing Sheets And Bills Of Lading					
	INSTRUCTION TO VENDOR: 1. DO NOT OVERSHIP OR SUBSTITUTE WITHOUT PRIOR PURCHASING DEPT. APPROVAL. 2. SEND ALL INVOICES, CERTIFIED ORIGINAL, AND ONE (1) COPY ONLY, TO BUSINESS OFFICE, GUAM DEPT. OF EDUCATION P.O. BOX DE HAGATNA					
1	Fire and Safety Services Fire Alarm System Installation -- REFERENCE: GDOE IFB 032-2013 -- THIS PURCHASE ORDER SHALL INCORPORATE BY REFERENCE ALL PROJECT DESCRIPTION, GENERAL INSTRUCTIONS, TERMS AND CONDITIONS AND ALL ITS AMENDMENT(S)/CLARIFICATION(S) AS STIPULATED IN THE ORIGINAL BID DOCUMENTS AND SHALL ALSO INCORPORATE BY REFERENCE ALL THE TERMS STIPULATED IN THE FORMAL AGREEMENT. -- CONTRACTOR SHALL COMMENCE IMMEDIATELY UPON RECEIPT OF A NOTICE TO PROCEED (NTP) NOT TO EXCEED 270 CALENDAR DAYS -- TIME OF COMPLETION FOR THIS PROJECT: 270 CALENDAR DAYS.		1.0	EACH	\$499,980.000	\$499,980.00
	DOE-10 DOEPR 3.9 COMPETITIVE SEALED BIDDING. "ALL LATE DELIVERIES AND ACCEPTANCE ARE SUBJECT TO LIQUIDATED DAMAGES".					
	***** GL SUMMARY *****					
	180.11.000.023000.11.2600.12.00360					499,980.00

**PO Total** **\$499,980.00**

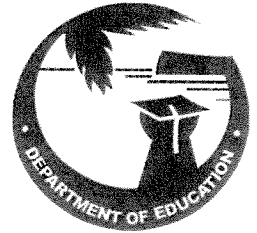
# **Exhibit 18**



**JON J.P. FERNANDEZ**  
Superintendent of Education

## DEPARTMENT OF EDUCATION OFFICE OF SUPPLY MANAGEMENT

www.gdoe.net  
Manuel F.L. Guerrero Administration Building  
2<sup>nd</sup> Floor, Suite B-220  
Hagåtña, Guam 96910  
Telephone: (671) 475-0438 Fax: (671) 472-5001  
Email: [procurement@gdoe.net](mailto:procurement@gdoe.net)



**MARCUS Y. PIDO**  
Supply Management Administrator

September 19, 2013

Silas Kadiasang  
G4S Security Systems (Guam) Inc.  
1851 Army Drive  
Harmon, Guam 96913  
Tel: 646-2307  
Fax: 649-7245

Via Email: [sil.kadiasang@gu.g4s.com](mailto:sil.kadiasang@gu.g4s.com)

**RE: G4S Security Letter dated September 16, 2013 regarding IFB 032-2013**

Dear Mr. Kadiasang,

This is written in response to your letter of dated September 16, 2013 regarding Guam Department of Education (hereafter, "GDOE") Invitation for Bid No. 032-2013 (hereafter, "IFB") for Design Build Fire Alarm System Upgrade/Replacement and Fire Suppression/Sprinkler System Repair for Southern High School. GDOE has reviewed your letter and treats it as a protest of the IFB. For the following reasons below your protest is denied in its entirety.

On Monday, September 9, 2013, GDOE held a Pre-Bid Conference for this IFB at Southern High School. Four representatives from G4S Security Systems (Guam) Inc. (hereafter, "G4S Security") attended the Conference and enlisted themselves on the Sign-In Sheet. See Attachment A. Randy Martin signed himself in as a representative of G4S Security with [randyvmartin@gmail.com](mailto:randyvmartin@gmail.com) as his contact e-mail address.

On Wednesday, September 11, 2013, GDOE sent Amendment 2 to all companies who obtained copies of the IFB. Granted, the subject reference of the e-mail message and the title of the attachment were mislabeled as Amendment No. 1. However, upon opening the attachment, the Acknowledgement Page and the amendment both indicate Amendment No. 2. Amendment No. 2 was delivered as an attachment to an e-mail message sent to Randy Martin's e-mail address, [randyvmartin@gmail.com](mailto:randyvmartin@gmail.com). See Attachment B. On the evening of Tuesday, September 10, 2013, Amendment No. 2 was posted to our website at [www.gdoe.net](http://www.gdoe.net).

On Thursday, September 12, 2013, GDOE issued Clarification No. 2 to all companies who obtained copies of the IFB. Clarification No. 2 was delivered as an attachment to an e-mail message sent to Randy Martin's e-mail address, [randyvmartin@gmail.com](mailto:randyvmartin@gmail.com). See Attachment C. On the morning of Thursday, September 12, 2013, Clarification No. 2 was posted to our website at [www.gdoe.net](http://www.gdoe.net).

On neither of these two occasions of sending attachments via e-mail to [randyvmartin@gmail.com](mailto:randyvmartin@gmail.com) did GDOE receive any message indicating the failure of the e-mail transmission to [randyvmartin@gmail.com](mailto:randyvmartin@gmail.com). See Attachments D & E.

GDOE 00296

GDOE cannot be held responsible for the lack of action of non-GDOE employees. While GDOE cannot prove receipt by G4S Security of the e-mail messages sent, there are no indications of failure of those electronic transmissions. Up to this date, there have been no indications refuting Randy Martin is a representative of G4S Security and randyvmartin@gmail.com is his valid contact e-mail address.

Section 2.8 of the IFB requires: "Signed Acknowledgement Forms for every amendment must also be included with the bid submission. Bidders who fail to properly submit Amendment Acknowledgement Forms may be deemed nonresponsive and disqualified from participating in this solicitation." G4S Security did not comply with the instructions of the bid, therefore your bid submission was rejected.

Therefore, GDOE denies your protest in its entirety. Please be advised that you have the right to appeal this denial pursuant to 5 GCA § 5425(e).

Senseramente,



**MARCUS Y. PIDO**

Supply Management Administrator

**ACKNOWLEDGED RECEIPT**

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

Time: \_\_\_\_\_

# **ATTACHMENT A**

**(Sign-In Sheet of IFB 032-2013 Pre-Bid Conference)**

GDOE IFB 032-2013: Fire Alarm System Upgrade/Replacement and Fire Suppression/Sprinkler System

Sign In Sheet

Company Name	Representative (Pls. Print)	Telephone Number	Fax Number	Mailing Address	E-Mail Address
1 G4S	ERWIN SANDOS	888-8964			g4s@guam.net
2 G4S	ELMER SANDOS	482-3319			elmer.santos@g4s.com
3 KINDEN	ELMER SANDOS	4878340			elmer.santos@g4s.com
4 KINDEN	RUDY EATA	898-4805			rudy.eata@kpeguam.com
5 G4S	RANDY MARTIN	646-2308			randy.martin@gmail.com
6 G4S	Silas Kadiasang	646-2308			Sil.Kadiasang@g4s.com
7 PROPRMATIC BUILDING	RICHARD SISON	477-3109			RJC@guam.net
8					
9					

GDOE IFB 032-2013: Fire Alarm System Upgrade/Replacement and Fire Suppression/Sprinkler System

Sign In Sheet

Company Name	Representative (Pls. Print)	Telephone Number	Fax Number	Mailing Address	E-Mail Address
1 ORION CONST. Corp. (Guam)	RUDY CACIMLIN	633-2203	633-2208	P.O. BOX 24348 GMF, GU 96921	ADMIN@ORIONGUAM.COM
2 ORION CONST. CORP. (GUAM)	ETWIN ANCHETA	633-2203	633-2208	P.O. BOX 24348 GMF GU. 96921	ENGRS@ORIONGUAM.COM
3 EMB ELECTRICAL INC.	EDWIN ALONZ	689-9828	969-9600	P.O. BOX 23605 GMF GUAM 96921	emb@guam.net
4 WSM CONSTRUCTION TWO CORP.	JUAN MENeses	8780138		21874 BAINING APTS GUAM 96921	meneses55@gmail.com
5 WSM Construction Company	Willie Meneses	488288	6534370	119 Ocean 11A Mesa Terrace, yigo, Gu.	wsmservice@gmail.com
6					
7					
8					
9					



# **ATTACHMENT B**

**(E-mail containing Amendment No. 2 sent to all bidders,  
dated September 11, 2013)**



Albert Garcia <aggarcia@gdoe.net>

---

## GDOE IFB 032-2013 Amendment No. 1

---

Albert Garcia <aggarcia@gdoe.net>

Wed, Sep 11, 2013 at 12:06 PM

Bcc: admin@orionguam.com, engr@orionguam.com, emb@guam.net, meneses55@gmail.com, wsmervice@gmail.com, Randy Martin <randymartin@gmail.com>, elmer.santos@kpcguam.com, Ricardo Sison <rgyc@guam.net>


Please acknowledge receipt of the attached documents and return either via fax to (671) 472-5001 or E-Mail to aggarcia@gdoe.net.

For Future reference please confirm your fax number and e-mail address. Please provide with legible print.

Albert G. Garcia  
Buyer Supervisor II  
Office of Supply Management-Procurement  
Tel: (671) 300-1582  
Fax: (671) 472-5001

In the Country of the "Blind", The One-Eyed Man is "King"

---

 **GDOE IFB 032-2013 AMENDMENT NO 1.pdf**  
72K

# **ATTACHMENT C**

**(E-mail containing Clarification No. 2 sent to all bidders,  
dated September 12, 2013)**



Albert Garcia <aggarcia@gdoe.net>

---

## GDOE IFB 032-2013 Clarification #2

---

Albert Garcia <aggarcia@gdoe.net>

Thu, Sep 12, 2013 at 6:19 PM

Bcc: admin@orionguam.com, engr@orionguam.com, edwin alon <emb@guam.net>, "Wilfredo S. Meneses" <wsmservice@gmail.com>, meneses55@gmail.com, Randy Martin <randyvmartin@gmail.com>, elmer.santos@kpcguam.com, Ricardo Sison <rgyc@guam.net>


Please acknowledge receipt of the attached documents and return either via fax to (671) 472-5001 or E-Mail to [aggarcia@gdoe.net](mailto:aggarcia@gdoe.net).

--

Albert G. Garcia  
Buyer Supervisor II  
Office of Supply Management-Procurement  
Tel: (671) 300-1582  
Fax: (671) 472-5001

In the Country of the "Blind", The One-Eyed Man is "King"

---

 **GDOE IFB 032-2013 CLARIFICATION #2.pdf**  
68K

# **ATTACHMENT D**

**(Delivery Failure Notices regarding e-mail containing  
Amendment No. 2 sent to all bidders, dated September 11,  
2013)**



Albert Garcia &lt;aggarcia@gdoe.net&gt;

---

**GDOE IFB 032-2013 Amendment No. 1**


---

Mail Delivery Subsystem &lt;mailer-daemon@googlemail.com&gt;

Wed, Sep 11, 2013 at 12:06 PM

To: aggarcia@gdoe.net

Delivery to the following recipient failed permanently:

meneses55@gmail.com

Technical details of permanent failure:

Google tried to deliver your message, but it was rejected by the server for the recipient domain gmail.com by gmail-smtp-in.l.google.com. [173.194.73.26].

The error that the other server returned was:

550-5.1.1 The email account that you tried to reach does not exist. Please try

550-5.1.1 double-checking the recipient's email address for typos or

550-5.1.1 unnecessary spaces. Learn more at

550 5.1.1 [http://support.google.com/mail/bin/answer.py?answer=6596\\_fw17si5300072vec.66](http://support.google.com/mail/bin/answer.py?answer=6596_fw17si5300072vec.66) - gsmtpt

----- Original message -----

X-Google-DKIM-Signature: v=1; a=rsa-sha256; c=relaxed/relaxed;

d=1e100.net; s=20130820;

h=x-gm-message-state:mime-version:date:message-id:subject:from:to

:content-type;

bh=G5NAOABk/mFYtNtj3BwYQYV+edQVDE4q3ARs5zqPCuU=;

b=icGeGKGnz5YjLvwjTp34055xq72CJUHydgwguEQ6GWiSKcjLTvw59ILCLoiHyu9o4R

INbb8OGpGP8Aq2H23yxliuCkzVv8B8T8H1wW/StLHkyu9UyB8bOQ+wMCuf5ZGT8GMWY

oo5QDSSCou0bq59KB6i8ZBCiNEzgK/krTdfbm3zjyslGINbDYJwVxB7y/PoALGxcfcy

j1m34vGSvBNgDG3OpikniAwUFMH7Rs1zTFxWZtbKROu/u1IMXKZreXrc/7gRuElhqHHO

2HIKX450jAvznmw5DsBFTUJ8/9gZvzqCRRaiTHAB7KCcfgeKhwnTsPVifT4aqLhNI9JRD

sfJw==

X-Gm-Message-State:

ALoCoQk8wxe4iCWcxKRffJ+tSNykXdGn6ptCxnfKONyELoFk848QR7aqihSsZnmhQSg0w2TRpfXg

MIME-Version: 1.0

X-Received: by 10.52.100.202 with SMTP id fa10mr211792vdb.0.1378865212453;

Tue, 10 Sep 2013 19:06:52 -0700 (PDT)

Received: by 10.58.233.136 with HTTP; Tue, 10 Sep 2013 19:06:52 -0700 (PDT)

Date: Wed, 11 Sep 2013 12:06:52 +1000

Message-ID: &lt;CAH5tn+XtXe-2qLJkZg2zZVfpXJQXPP6U4hxhrtH-Js9AqnrRnA@mail.gmail.com&gt;

Subject: GDOE IFB 032-2013 Amendment No. 1

From: Albert Garcia &lt;aggarcia@gdoe.net&gt;

To: undisclosed-recipients;

Content-Type: multipart/mixed; boundary=20cf307f31282e8d1804e612131b

Bcc: meneses55@gmail.com

[Quoted text hidden]



Albert Garcia &lt;aggarcia@gdoe.net&gt;

---

**GDOE IFB 032-2013 Amendment No. 1**


---

Mail Delivery Subsystem &lt;mailer-daemon@googlemail.com&gt;

Wed, Sep 11, 2013 at 12:06 PM

To: aggarcia@gdoe.net

Delivery to the following recipient failed permanently:

engrs@orionguam.com

Technical details of permanent failure:

Google tried to deliver your message, but it was rejected by the server for the recipient domain orionguam.com by inbound.orionguam.com.netsolmail.net. [206.188.198.64].

The error that the other server returned was:

554 5.7.1 The message from (<aggarcia@gdoe.net>) with the subject of (GDOE IFB 032-2013 Amendment No. 1) matches a profile the Internet community may consider spam. Please revise your message before resending.

----- Original message -----

X-Google-DKIM-Signature: v=1; a=rsa-sha256; c=relaxed/relaxed; d=1e100.net; s=20130820; h=x-gm-message-state:mime-version:date:message-id:subject:from:to:content-type; bh=G5NAOABk/mFYtNtj3BwYQYV+edQVDE4q3ARs5zqPCuU=; b=eVs6pjXbau0RDblmx/6FKlAXoF1auMhAITERVAH4LzA3iNGbaSJiwodV31bs1IQxzdWlITMoJtvh9iV0ImJvAf6uhKfuRc8xRDx3QCKVTEuSRlfmz2hF1n/U+um7uyfHLzD4mTLV6DDtttSDLKKWF53iONuVlZKxSoffQ02VsO4yUpt5vCXmnmCs5lh9RJ/7WZfTa9nvOd+QUwR38XFzxr42mS1AvSJnyUJmneNmdX6nRc97DgTnAAg240lnsCQnuFe8hm2uHJ8+SWrW9VAnzhfeH1jbRwXlfGAskVO1q7wV5F9k+4yAr5+ymn5XuCpbVtM3/fToO6FevnOqlvNNQ==

X-Gm-Message-State:

ALoCoQmwLYc1BtfuQkwFAemwXMB5k/y78yIWjpA9fjkPMTY3yGKBt5TAghf/U2GFa8sXpTjUeAgK  
MIME-Version: 1.0

X-Received: by 10.52.100.202 with SMTP id fa10mr211792vdb.0.1378865212453;

Tue, 10 Sep 2013 19:06:52 -0700 (PDT)

Received: by 10.58.233.136 with HTTP; Tue, 10 Sep 2013 19:06:52 -0700 (PDT)

Date: Wed, 11 Sep 2013 12:06:52 +1000

Message-ID: &lt;CAH5tn+Xtxe-2qLJkZg2zZVfpXJQXPP6U4hxhrtH-Js9AqnrRnA@mail.gmail.com&gt;

Subject: GDOE IFB 032-2013 Amendment No. 1

From: Albert Garcia &lt;aggarcia@gdoe.net&gt;

To: undisclosed-recipients;

Content-Type: multipart/mixed; boundary=20cf307f31282e8d1804e612131b

Bcc: engrs@orionguam.com

[Quoted text hidden]



Albert Garcia &lt;aggarcia@gdoe.net&gt;

---

**GDOE IFB 032-2013 Amendment No. 1**

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Mail Delivery Subsystem &lt;mailer-daemon@googlemail.com&gt;

Wed, Sep 11, 2013 at 12:07 PM

To: aggarcia@gdoe.net

Delivery to the following recipient failed permanently:

admin@orionguam.com

Technical details of permanent failure:

Google tried to deliver your message, but it was rejected by the server for the recipient domain orionguam.com by inbound.orionguam.com.netsolmail.net. [206.188.198.64].

The error that the other server returned was:

554 5.7.1 The message from (&lt;aggarcia@gdoe.net&gt;) with the subject of (GDOE IFB 032-2013 Amendment No. 1) matches a profile the Internet community may consider spam. Please revise your message before resending.

----- Original message -----

X-Google-DKIM-Signature: v=1; a=rsa-sha256; c=relaxed/relaxed;  
d=1e100.net; s=20130820;h=x-gm-message-state:mime-version:date:message-id:subject:from:to  
:content-type;

bh=G5NAOABk/mFYtNtj3BwYQYV+edQVDE4q3ARs5zqPCuU=;

b=kYBsUj0QvDLZ8i1p0pjNUj2u5q9DQcsLMkExDWxCZfov8P+Af+FXJclusg9H8hZQYU  
6FaqVKh/OAYJolLQSZxsWPdNmuqb5dv22i8BPUO3K66edeTWVYEM0oxpbSRgMcEmy3Y  
7jWtuJG6Tu0dSTZg2nBd7/RI//P/vnxOe4bXCoh5DUD7Asi3TjXNUkq02oGDeUk+Cq4b  
RTfEosWCuciudc2ZKrsPB7MMXWNN30rF079riqE/R0vpGc6WqJ80FcFE6SWEAaV8V1S4  
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MCTA==

X-Gm-Message-State:

ALoCoQnBTwdTmAtWkRm/snfuQ/dbGGuHaJtDQdvWMyTts6M3t6CW0yxSNypSguF2doznsC1GEekz  
MIME-Version: 1.0

X-Received: by 10.52.100.202 with SMTP id fa10mr211792vdb.0.1378865212453;

Tue, 10 Sep 2013 19:06:52 -0700 (PDT)

Received: by 10.58.233.136 with HTTP; Tue, 10 Sep 2013 19:06:52 -0700 (PDT)

Date: Wed, 11 Sep 2013 12:06:52 +1000

Message-ID: &lt;CAH5tn+Xtxe-2qLJkZg2zZVfpXJQXPP6U4hxhrtH-Js9AqnrRnA@mail.gmail.com&gt;

Subject: GDOE IFB 032-2013 Amendment No. 1

From: Albert Garcia &lt;aggarcia@gdoe.net&gt;

To: undisclosed-recipients.;

Content-Type: multipart/mixed; boundary=20cf307f31282e8d1804e612131b

Bcc: admin@orionguam.com

[Quoted text hidden]



# **ATTACHMENT E**

**(Delivery Failure Notices regarding e-mail containing  
Clarification No. 2 sent to all bidders, dated September 12,  
2013)**



Albert Garcia &lt;aggarcia@gdoe.net&gt;

---

**GDOE IFB 032-2013 Clarification #2**


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**Mail Delivery Subsystem** <mailer-daemon@googlemail.com>  
 To: aggarcia@gdoe.net

Thu, Sep 12, 2013 at 6:19 PM

Delivery to the following recipient failed permanently:

meneses55@gmail.com

Technical details of permanent failure:

Google tried to deliver your message, but it was rejected by the server for the recipient domain gmail.com by gmail-smtp-in.l.google.com. [74.125.143.27].

The error that the other server returned was:

550-5.1.1 The email account that you tried to reach does not exist. Please try

550-5.1.1 double-checking the recipient's email address for typos or

550-5.1.1 unnecessary spaces. Learn more at

550 5.1.1 <http://support.google.com/mail/bin/answer.py?answer=6596> i8si895812laa.33 - gsmtpp

----- Original message -----

X-Google-DKIM-Signature: v=1; a=rsa-sha256; c=relaxed/relaxed;  
 d=1e100.net; s=20130820;

h=x-gm-message-state:mime-version:date:message-id:subject:from:to  
 :content-type;

bh=w40q4VICs06sJ87BGVvR/GdEPX6wEwwgtGXsJL10DeU=;

b=VpISosf2XbTLFNpa/TlpDGR7OPHcIMzLeOexbezwDRA+xSUYujXoD9pnkn2h8ixZqD  
 l+2u9dz/bIH8QHc7HMED6etCWWolot9f2M6+BWFigodqYIZ7O9mpV982k0h4bKCvhtYF  
 fXxSYsHsOgDM92kRq4NYvZ6L7+v6cjlNaSVb+37GK4ZcwwKUsmEjpmi838DkJUKwHjcr  
 x028h9YE7ELbvto58rvPjZS2ZPebiyDhmvH4zv2v1UIFzcNv378YumTAzyBvrGM7iipZ  
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 /FQA==

X-Gm-Message-State:

ALoCoQmw4hEf7H0o1E9u899xemHUxRQU8GokS+pe8EolMCT6oKV1VD28n09RcTjJYwS6tyAdjcF

MIME-Version: 1.0

X-Received: by 10.152.116.7 with SMTP id js7mr5120199lab.11.1378973967935;

Thu, 12 Sep 2013 01:19:27 -0700 (PDT)

Received: by 10.112.235.65 with HTTP; Thu, 12 Sep 2013 01:19:27 -0700 (PDT)

Date: Thu, 12 Sep 2013 18:19:27 +1000

Message-ID: <CAH5tn+XnA78Kft94eH7kzn12JynXVYO2GsT52QrtS9SNeO8=uA@mail.gmail.com>

Subject: GDOE IFB 032-2013 Clarification #2

From: Albert Garcia <aggarcia@gdoe.net>

To: undisclosed-recipients;

Content-Type: multipart/mixed; boundary=001a11c2672a83793004e62b65d4

Bcc: meneses55@gmail.com

[Quoted text hidden]



Albert Garcia &lt;aggarcia@gdoe.net&gt;

---

**GDOE IFB 032-2013 Clarification #2**

---

Mail Delivery Subsystem &lt;mailer-daemon@googlemail.com&gt;

Thu, Sep 12, 2013 at 6:19 PM

To: aggarcia@gdoe.net

Delivery to the following recipient failed permanently:

engrs@orionguam.com

Technical details of permanent failure:

Google tried to deliver your message, but it was rejected by the server for the recipient domain orionguam.com by inbound.orionguam.com.netsolmail.net. [206.188.198.64].

The error that the other server returned was:

554 5.7.1 The message from (&lt;aggarcia@gdoe.net&gt;) with the subject of (GDOE IFB 032-2013 Clarification #2) matches a profile the Internet community may consider spam. Please revise your message before resending.

----- Original message -----

X-Google-DKIM-Signature: v=1; a=rsa-sha256; c=relaxed/relaxed; d=1e100.net; s=20130820; h=x-gm-message-state:mime-version:date:message-id:subject:from:to:content-type; bh=w40q4VICs06sJ87BGVvR/GdEPX6wEwwgtGXsJL10DeU=; b=Kbi4V8TzziHnFIC12RI0YT0j+SQ2xaiQqvpUYgdEKjZoSECMS+ZW7CvBlpJePhj9p0/ww1UPf7zSyM7iHNC9AHmnV7P9y9ld6w5GOW9DwY6eeGzCk2MXKVvtL5SHDUMvr1CZFjvH92RDhHgOxC+gR6IDClg84UAcCsMQYdL8f2QGStK/Kt4aUDJit1ArokHk52NwE7loe26/35dLAYU9bQq+H6oEMEWrf3zdkanD2uf63lnRKGwo8KMdK0z/Rc0cO3hPN907JafrKTFI4WU7psrMS3aGP+wosdL/ntv3L5+XVeOztl/v0Qd/d6J5lgeeRxS8+izMxYfMhZe3Q0iFA==

X-Gm-Message-State: ALoCoQlxg1TAQw6kqKSs0uzqZWkawjQdj7arW/NYHZQd9li48ejIDP0nU9U4mxzmofZoe6YoWrtu  
MIME-Version: 1.0

X-Received: by 10.152.116.7 with SMTP id js7mr5120199lab.11.1378973967935; Thu, 12 Sep 2013 01:19:27 -0700 (PDT)

Received: by 10.112.235.65 with HTTP; Thu, 12 Sep 2013 01:19:27 -0700 (PDT)

Date: Thu, 12 Sep 2013 18:19:27 +1000

Message-ID: <CAH5tn+XnA78Kft94eH7kzn12JynXVYO2GsT52QrtS9SNeO8=uA@mail.gmail.com>

Subject: GDOE IFB 032-2013 Clarification #2

From: Albert Garcia <aggarcia@gdoe.net>

To: undisclosed-recipients;

Content-Type: multipart/mixed; boundary=001a11c2672a83793004e62b65d4

Bcc: engrs@orionguam.com

[Quoted text hidden]



Albert Garcia <aggarcia@gdoe.net>

**GDOE IFB 032-2013 Clarification #2**

**Mail Delivery Subsystem** <mailer-daemon@googlemail.com>  
To: aggarcia@gdoe.net

Thu, Sep 12, 2013 at 6:19 PM

Delivery to the following recipient failed permanently:

admin@orionguam.com

Technical details of permanent failure:

Google tried to deliver your message, but it was rejected by the server for the recipient domain orionguam.com by inbound.orionguam.com.netsolmail.net. [206.188.198.64].

The error that the other server returned was:

554 5.7.1 The message from (<aggarcia@gdoe.net>) with the subject of (GDOE IFB 032-2013 Clarification #2) matches a profile the Internet community may consider spam. Please revise your message before resending.

----- Original message -----

X-Google-DKIM-Signature: v=1; a=rsa-sha256; c=relaxed/relaxed;  
d=1e100.net; s=20130820;  
h=x-gm-message-state:mime-version:date:message-id:subject:from:to  
:content-type;  
bh=w40q4VICs06sJ87BGVvR/GdEPX6wEwwgtGXsJL10DeU=;  
b=fP26Q4YBzIzO5z9iw2uvNYCpSWIKgPcXeqZus2Fveb8B50bARjOocG/bFNFXuQTxze  
jSSsdNX2mmqmlzjSaFYZ/CuDICHnVQUNbE4b0IW9IH4B3JH4kc3yWKNRp97iLvmJG00V  
UEkeGkRzff6Lzntxr09zaBjXIK//HrimbMQTII4vc5Vx1IX95m9Sn1JTYPottMT73EuP  
DM7hkv0LWtm2YnwBUbyMoq+Odr15YtDtRrWgjm9jEPitptlg6PoENniJY4UUXYPhQtc  
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KDmg==  
X-Gm-Message-State:  
ALoCoQmS3Bj5fQKp2KWhzjGtDachE3leAa7hPF0j+nBTCdLwbYQ/p/KgimSJ5KxT1sido/nkU/PZ  
MIME-Version: 1.0  
X-Received: by 10.152.116.7 with SMTP id js7mr5120199lab.11.1378973967935;  
Thu, 12 Sep 2013 01:19:27 -0700 (PDT)  
Received: by 10.112.235.65 with HTTP; Thu, 12 Sep 2013 01:19:27 -0700 (PDT)  
Date: Thu, 12 Sep 2013 18:19:27 +1000  
Message-ID: <CAH5tn+XnA78Kft94eH7kzn12JynXVYO2GsT52QrtS9SNeO8=uA@mail.gmail.com>  
Subject: GDOE IFB 032-2013 Clarification #2  
From: Albert Garcia <aggarcia@gdoe.net>  
To: undisclosed-recipients:;  
Content-Type: multipart/mixed; boundary=001a11c2672a83793004e62b65d4  
Bcc: admin@orionguam.com

[Quoted text hidden]

# **Exhibit 19**

1 **GUAM DEPARTMENT OF EDUCATION**

Andrew T. Perez, Legal Counsel

2 P.O. Box DE

Hagåtña, Guam 96910

3 Telephone (671) 300-1537

Email: legal-admin@gdoe.net

4 *Attorney for Guam Department of Education*

5 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**

6  
7 IN THE APPEAL OF

APPEAL NO. OPA-PA-13-013

8  
9 G4S SECURITY SYSTEMS (GUAM) INC.,

**AGENCY STATEMENT**

10 Appellant.

11  
12  
13 Comes now the Guam Department of Education (“GDOE”) by and through its counsel and  
14 files its Agency Statement pursuant to 2 G.A.R. § 12105(g).

15 **BACKGROUND**

16 GDOE issued GDOE Invitation for Bid 032-2013 (“IFB”) on September 6, 2013, for the  
17 Design Build Fire Alarm System Upgrade/Replacement and Fire Suppression/Sprinkler System  
18 Repair for Southern High School. GDOE Procurement Record, Exhibit 6, Bates Stamp No.  
19 GDOE0086-00197.

20 On September 9, 2013, GDOE held a Pre-Bid Conference for the IFB at Southern High  
21 School. Representatives from G4S Security Systems (Guam) Inc. (“G4S”) attended the Conference  
22 and signed the sign-in sheet. GDOE Procurement Record, Exhibit 1, Bates Stamp No. GDOE002.  
23 Randy Martin signed-in as a representative of G4S, and included [randyvmartin@gmail.com](mailto:randyvmartin@gmail.com) as his  
24 contact information. *Id.*

25 On September 10, 2013, G4S submitted questions pertaining to the IFB. Amended GDOE  
26 Procurement Record, Exhibit 10, Bates Stamp No. GDOE00319-00320. These questions included  
27 a request for the floor plans of Southern High School; the disposal of old wiring; about the altering  
28

1 of the structure to comply with the fire code; and work required by the Authority Having  
2 Jurisdiction outside of the approved plans after inspection. *Id.*

3 On September 11, 2013, GDOE sent out Amendment 2 to all companies who obtained  
4 copies of the IFB. GDOE Procurement Record, Exhibit 6, Bates Stamp No. GDOE00163-00197  
5 and GDOE Procurement Record, Exhibit 10, Bates Stamp No. GDOE00221-00223. Amendment  
6 2 included all the drawings and floor plans of the entire Southern High School campus. *Id.* It was  
7 G4S who submitted the question requesting the floor plans. *Id.* at Bates Stamp No. GDOE00164.  
8 G4S stated that the floor plans are “essential in producing accurate estimates and designs.” *Id.*  
9 Amendment 2 was sent September 11, 2013, by email, however, was mislabeled the attachment as  
10 Amendment 1.

11 On September 16, 2013, bid submissions for the IFB were due at 10:00 a.m., and a bid  
12 opening was conducted at that time. G4S submitted a bid in the amount of \$477,279.65. GDOE  
13 Exhibit 4, Bates Stamp No. GDOE035. Orion Construction Corporation (Guam) Inc. (“Orion”)  
14 submitted a bid in the amount of \$499,980. GDOE Exhibit 5, Bates Stamp No. GDOE067. G4S’  
15 bid did not include an acknowledgement of Amendment 2. GDOE Exhibit 5, Bates Stamp No.  
16 GDOE0066. Orion’s Bid included an acknowledgment of Amendment 2. GDOE Exhibit 5, Bates  
17 Stamp No. GDOE081. All bids submitted were opened and logged onto an Abstract of Bids.  
18 GDOE Procurement Record, Exhibit 7, Bates Stamp No. GDOE00198-00200.

19 On September 16, 2013, GDOE issued a Bid Status and Intent to Award indicating that  
20 GDOE intended to enter into a contract with Orion. GDOE Procurement Record, Exhibit 8, Bates  
21 Stamp No. GDOE00201-00210. In addition, the Bid Status and Intent to Award indicated that G4S  
22 was considered non-responsive because G4S failed include an Acknowledgement of Amendments  
23 to IFB with their bid documents as required by Section 2.8 of the IFB. *Id.* An Analysis and  
24 Recommendation was issued indicating that Orion was the lowest responsible bidder. GDOE  
25 Procurement Record, Exhibit 9, Bates Stamp No. GDOE00211-00212.

1 On September 16, 2013, G4S submitted a protest regarding the IFB. GDOE Exhibit 12,  
2 Bates Stamp No. GDOE00247. In its protest, G4S argued that G4S never received any Amendment  
3 2 and proof that G4S received Amendment 2 be tendered. *Id.* On September 18, 2013, A Notice  
4 of Stay of the Procurement was issued after the receipt of the Protest. GDOE Exhibit 14, Bates  
5 Stamp No. GDOE00249.

6 On September 19, 2013, GDOE issued a Written Response to G4S' protest. GDOE Exhibit  
7 18, Bates Stamp No. GDOE00296-00312. GDOE denied the protest in its entirety on the basis that  
8 G4S failed to comply with the requirements of the IFB when it failed to include Amendment 2  
9 pursuant to Section 2.8 of the IFB. A Notice to Lift the Stay of Procurement was issued on  
10 September 19, 2013. GDOE Exhibit 14, Bates Stamp No. GDOE00249. On September 30, 2013,  
11 a contract was fully executed between GDOE and G4S, and a purchase order was issued the same  
12 day. GDOE Exhibit 16, Bates Stamp No. GDOE00251-00294 and GDOE Exhibit 17, Bates Stamp  
13 No. GDOE00295.

14 On October 3, 2013, G4S filed this appeal with the OPA. In its appeal, G4S asked the OPA  
15 to reverse GDOE's denial of its protest, to rule that a statutory automatic stay is in effect and that  
16 G4S' bid in response to the IFB must be considered.

### 17 ARGUMENT

18 Guam Law defines a responsive bidder as a "person who submitted a bid which conforms  
19 in all material respects to the Invitation for Bids." 5 G.C.A. § 5102(g); 2 GAR Div. 4 § 3109(n)(2).  
20 The Guam procurement Regulations mandates that all Invitation for Bids shall require the  
21 acknowledgment the receipt of all amendments issued. 2 GAR Div. 4 § 3109(c)(6). In addition,  
22 Section 2.8 requires that bidders must acknowledge in writing the receipt of any amendments to  
23 the IFB, and a failure to do so may result in a bidder being deemed responsive bid. GDOE Exhibit  
24 6, Bates Stamp No. GDOE0092.

25 The Regulations allow for a procurement official to waive or allow for correction minor  
26 informalities and insignificant mistakes discovered after the opening of a bid. 2 GAR Div. 4 §  
27



1 3109(m)(4)(B). However, in order to be considered a minor informality or insignificant mistake  
2 there must be no prejudice to other bidders. *Id.* The Regulations lays out that prejudice is present  
3 when the waiver or correction of a mistake would have a non-negligible or material “effect on price,  
4 quantity, quality, delivery, or contractual conditions.” *Id.*

5 G4S argues that its failure to include an acknowledgement of Amendment 2 was a minor  
6 informality and that GDOE should have waived the requirement or allow the bidder to correct, the  
7 minor informality that are matters of form, rather than substance, or are insignificant mistakes, and  
8 can be waived or corrected without prejudice to the bidders because there is no effect on price,  
9 quantity, quality, delivery, or contractual conditions. GDOE disagrees.

10 By its own admission, G4S has stated that the information contained in Amendment 2 is  
11 material in respect to the IFB. In its submission of questions, G4S requested the floor plans for  
12 Southern High School on September 10, 2013. G4S acknowledged in this request that it required  
13 the floor plans for Southern High School in order to produce “accurate estimates and designs” in  
14 response to the IFB. See GDOE Procurement Record, Exhibit 6, Bates Stamp No. GDOE00164.  
15 Amendment 2 included the floor plans of Southern High School. See GDOE Procurement Record,  
16 Exhibit 6, Bates Stamp No. GDOE00163-00197. Evidenced by its own question, G4S admitted  
17 that the floor plans were needed to produce an accurate bid. See GDOE Procurement Record,  
18 Exhibit 6, Bates Stamp No. GDOE00164. Amendment 2 also included a questions submitted by  
19 G4S which asked about the disposal of existing wiring; the possibility of altering structures to meet  
20 the fire code; and the possibility of additional work outside of the approved plans during inspection  
21 which would additional cost outside the original bid. *Id.* Hence, G4S’ failure to include and  
22 acknowledgement of Amendment 2 was neither a minor informality nor an insignificant mistake  
23 and prejudicial to other bidders because Amendment 2 had an effect on price or quality. *Id.*  
24 Therefore, GDOE was right in not considering G4S for the IFB.

25 The IFB clearly states that any amendments to the IFB were to be acknowledged in writing.  
26 See GDOE Exhibit 6, Bates Stamp No. GDOE0092. G4S failed to acknowledge Amendment 2 in  
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their bid as required by the Regulations and Section 2.8 of the IFB. See GDOE Exhibit 5, Bates Stamp No. GDOE009-0061. In addition, there is no evidence that G4S' representative, Randy Martin did not receive the Amendment 2. GDOE Procurement Record, Exhibit 10, Bates Stamp No. GDOE00221-00223. There is no merit in G4S' appeal, and therefore, GDOE asks the OPA uphold its denial of G4S' protest and to dismiss G4S' appeal in its entirety.

G4S' also argues that an automatic stay is in effect. GDOE addresses this issue in its Opposition to Motion to Declare Automatic Stay in Effect.

Dated this 21<sup>th</sup> day of October, 2013.

Respectfully submitted,

**GUAM DEPARTMENT OF EDUCATION**

By:   
\_\_\_\_\_  
**ANDREW T. PEREZ, ESQ.**  
*Legal Counsel*

# **Exhibit 20**

1 **GUAM DEPARTMENT OF EDUCATION**  
Andrew T. Perez, Legal Counsel  
2 P.O. Box DE  
Hagåtña, Guam 96910  
3 Telephone (671) 300-1537  
Email: legal-admin@gdoe.net

4 *Attorney for Guam Department of Education*

5  
6 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**

7  
8 IN THE APPEAL OF  
9 G4S SECURITY SYSTEMS (GUAM) INC.,  
10 Appellant.

APPEAL NO.: OPA-PA-13-013

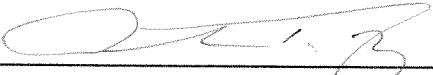
**DECLARATION REGARDING  
COURT ACTION**

11  
12 The undersigned party does hereby confirm that to the best of his knowledge, no case or  
13 other action concerning the subject of this Appeal has been commenced in any court of Guam.  
14 All parties are required to and the undersigned party agrees to notify the Office of the Public  
15 Auditor within twenty-four (24) hours of being informed of the commencement of a court action  
16 regarding this Appeal or the underlying procurement action.

17 Dated this 21<sup>st</sup> day of October, 2013.

18 Respectfully submitted,

19 **GUAM DEPARTMENT OF EDUCATION**

20  
21 By:   
22 **ANDREW T. PEREZ, ESQ.**  
23 *Legal Counsel*