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Guam Publications, Inc.

**RECEIVED**  
OFFICE OF THE PUBLIC AUDITOR  
PROCUREMENT APPEALS

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FILE No. OPA-PA 007 08-007

OFFICE OF THE PUBLIC AUDITOR

GUAM

IN THE APPEAL OF  
GUAM PUBLICATIONS, INC.

Appellant.

APPEAL NO. OPA-PA- 08-007

**PROCUREMENT APPEAL; EXHIBITS  
A-H; VERIFICATION**

Guam Publications, Inc., the publisher of the Pacific Daily News (hereinafter referred to as "PDN") hereby appeals the decision rendered by the General Services Agency on May 1, 2008, denying PDN's protest of the award of Invitation for Bids for GSA-012-08.

1. PDN's address is P.O. Box DN, Hagatna, Guam 96932. However, for the purposes of this appeal, please direct correspondence to PDN's counsel Elyze McDonald, Esq., Carlsmith Ball LLP, Bank of Hawaii Bldg., Suite 401, 134 West Soledad Avenue, P.O. Box BF, Hagåtña, Guam 96932-5027.

2. This appeal pertains to General Services Agency Invitation for Bids No. GSA-012-08. The Bid was recommended for award to Marianas Variety. Ex. A. As of the date of this appeal, PDN does not know whether a contract has been issued to Marianas Variety.

### 3. Background.

The Invitation for Bids for GSA-012-08 pertains to advertisement notices for "Election Notices Pursuant to Title 3 GCA & Publication of Board Meeting Pursuant to the Open Government Law." The Invitation for Bids specifies the following notices and advertisements: 2 x 4 Notices of Board Meetings and Other Election Information; 2 x 5 Election Notices regarding Early Voting/Absentee & other election information; 3 x 6 Election Notices regarding polling sites; 4 x 5 Election Notices regarding Candidates; 4 x 13 Sample Ballots; 5 x 7 Precinct Official Seminar Schedules; and a 5 x 15 List of Precinct Officials. Ex. B.

Upon receipt of the Invitation for Bids, PDN was curious as to the 5 x 15 format for the List of Precinct Officials, as that format is used not by PDN, but primarily by the Marianas Variety, another community newspaper. PDN asked GSA whether it was mandatory that the advertisement be 5 x 15, or whether a 5 x 14 ad, a format utilized by PDN, would be acceptable. Ex. C. GSA amended the Invitation for Bids to include, in addition to the 5 x 15 ad, a 5 x 14 ad for the List of Precinct Officials. Ex. D. PDN later inquired as to the justification for the specification sizes, and received the response that "The size of the advertisement is the specification that is required." Ex. E.

In addition, in order to determine a unit cost for the solicited advertising space, PDN needed to know the breadth of the intended distribution. PDN therefore submitted the following question: "In order for a unit cost to be determined, what is the distribution/circulation amount requested? (Number of newspapers your wanting your ad to be in)." Ex. C. GSA responded "General Circulation." Ex. E. As this response did not address the question posed, PDN again posed the following question: "What is the distribution requirement for the advertising notices? To price the advertising notices fairly the distribution amount is needed." Ex. F. GSA again responded "General Circulation." Ex. F.

On March 12, 2008, PDN submitted its bid.<sup>1</sup> GSA also received a bid from the Variety. When GSA opened the Variety's bid, it was noted that the Variety did not submit a Statement of Qualification. However, GSA continued with the bid opening. GSA recommended that the bid be awarded to the Variety, and deemed the Variety's failure to submit a statement of qualification to be minor. Ex. A.

4. Grounds for Appeal.

a. **As Marianas Variety is not a daily newspaper of general circulation, it cannot be awarded the bid.** The Invitation for Bids specified that the notices would be published pursuant to Title 3. Of the items that bidders were to publish included sample ballots and the listing of precinct officials. Under Title 3, such notices may only be published in a *daily* newspaper of general circulation. 3 G.C.A. §§ 4108, 7104. Marianas Variety is not a daily newspaper of general circulation, as it is published only five days a week; PDN, on the other hand, is published every day of the week and therefore meets the definition of a daily newspaper of general circulation. Should any of the sample ballots or listing of precinct officials be published in the Marianas Variety, such notices would be published in violation of Guam law.

b. **The bid process, and resulting bid award, is defective because GSA did not properly disclose the specifications for distribution of the procured notices.** The definition of "General Circulation" is rather fundamental. PDN is able to circulate advertisements to its entire readership, or a fraction thereof, and it offers differing price structures for, for example, distribution to 1,000 subscribers versus a distribution to 10,000 subscribers. This has been the point of the twice-posed question of how many newspapers it

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<sup>1</sup> On March 7, 2008, prior to submitting its bid, PDN filed a protest of the Invitation for Bids. GSA denied the first protest on March 10, 2008.

wants its advertisements to run. Does the Guam Election Commission wish to distribute to PDN's full readership of 26,000, and should PDN submit a bid based on that figure? Or does it want the notices to be distributed to a more limited number of readers, a service PDN also offers and can submit a bid for?

PDN suffered prejudice due to GSA's failure to specify what it meant by "General Circulation." After not receiving clarification on this point, PDN submitted prices on the basis of distribution to both 10,000 readers and 26,000 readers, and the difference in the quotes shows why clarification was necessary. For example, the Variety's bid did not state what circulation its bid was based upon (i.e., 1000, 2000, 10,000, or 26,000). Thus, it is impossible for GSA to properly assess whether the Variety was truly the lowest bidder and whether the Variety's bid is in the best interest of the government of Guam. If the pricing of the Variety was based on anything less than 10,000 newspapers, it is not comparable to any of the bids submitted by the PDN and is likely a higher bid per paper. This disparate and preferential treatment is just the type of activity Guam's procurement laws and sealed bidding is meant to prevent.

c. **The bid process, and resulting bid award, is defective because the formats of the notices have appeared to be geared towards formats utilized by the Variety, inferring that the Invitation for Bids is unfairly skewed in favor of the Variety.** It is well-known that PDN is Guam's only daily newspaper and that the Variety, which runs only on weekdays, is another community newspaper. The 5 x 15 format for the List of Precinct Officials is a format that is specifically and solely used by the Variety, whereas the 5 x 14 format is more regularly used by the PDN. PDN protests the specification of the 5 x 15 format as it appears that it is specifically intended to fit the format of the Variety newspaper. It is unlawful for the Invitation for Bids and the bid selection process to favor one bidder over another. Rather, in all fairness, the Invitation for Bids should be rectified to specify a full page ad, whether in a 5

x 14 format or a 5 x 15 format. GSA's answer to the PDN's question regarding justification for the specified size requested was "The size of the advertisement is the specification that is required." This answer is completely unresponsive as it does not list any justifications such as a cited statutory requirement or some other reason for the specification, but instead basically asserts that GSA is requiring a certain size with no further explanation. PDN understood the specification requirement from the IFB, but asked an appropriate question for clarification purposes because of the differing formats of community newspapers; however, the response received failed to clarify the matter in the least but simply reasserted the specification without explanation. PDN was prejudiced by this non-responsiveness, as it was required to bid on a format used only by the Variety. Thus, the Invitation for Bids and the award of the bid to the Variety is also defective in this regard.

d. **The bid award is defective because the Variety failed to be a responsive and responsible bidder as it did not fulfill the bid requirements by submitting a statement of qualification.** The Invitation for Bids specifically required submittal of a statement of qualification for each bidder. In competitive sealed bidding, the contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements set forth in the invitation for bids. 5 GCA §5211(g) and 2 GAR Div. 4, Chap. 3, §3109(n)(1). The Variety failed to submit a statement of qualification as required and was therefore not a responsive and responsible bidder. A "responsive bidder" is one who has submitted a bid which conforms in all material respects to the invitation for bids. 5 GCA § 5201(g) and 2 GAR Div. 4, Chap. 3, §3109(n)(2). The IFB clearly required a statement of qualification from all bidders, yet the Variety failed to submit this required document, thus not complying in all material respects with the IFB. PDN, on the other hand, complied precisely with all requirements and was both a responsive and responsible bidder.

In the Bid Status notice, GSA stated that it deemed the omission "a minor informality" in light of budget constraints. It should be noted, however, in a very recent opinion by the Office of the Public Auditor that bid requirements relating to a bidder's qualifications are material and omission thereof cannot be waived as a minor informality. *See* OPA-PA-07-007 at 12. This is so even if that bidder is the lowest bidder "because Guam Procurement Laws and Regulations require that a successful bidder be the lowest bidder and be a responsive bidder." *Id.* at 8-9. Indeed it is curious why GSA or GEC would award a bidder without even knowing if they are "qualified." Here, PDN has been prejudiced by being required to comply with a requirement about its qualifications, while GSA's non-compliance has been waived.

The statement of qualification goes to the heart of the bidders' abilities to effectively produce and deliver on the bid requirements. Thus, complete omission of said statement cannot be and should not have been waived as a mere minor informality.

5. Ruling Requested.

PDN asks that the Variety's bid be deemed non-compliant, and that the award be made to PDN, the only responsive and legally compliant bidder. In the alternative, PDN asks that the Invitation for Bids be re-issued to include a disclosure of the extent of the intended circulation of the advertisements. PDN also asks that the Invitation for Bids be modified in order to permit a fair bid to be placed for a full-page ad, rather than to use specifications that favor and fit one prospective bidder's formats.

Finally, PDN asks that the bid award be stayed as required by law until this protest is resolved, 5 G.C.A. § 5425(g), and that it be allowed reimbursement of its costs incurred in preparing this Protest, 5 G.C.A. § 5425(h).

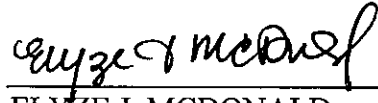
6. Supporting exhibits are attached as Exhibits A-H.

7. GSA's decision denying the protest awarding the bid is attached hereto as Exhibit G. GSA's decision denying PDN's earlier protest is attached hereto as Exhibit H.

8. PDN requests a hearing.

DATED: Hagåtña, Guam, May 14, 2008.

CARLSMITH BALL LLP



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ELYZE J. MCDONALD  
Attorneys for Appellant  
Guam Publications, Inc.

VERIFICATION

GUAM U.S.A,                    )  
  )  
Municipality of Hagåtña,    )


I, Rindraty Limtiaco, am President and Publisher of the Guam Publications, Inc. and am authorized to make this verification.

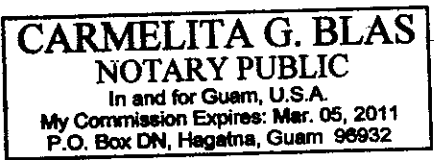
I have read the foregoing Procurement Appeal and, to the best of my knowledge, the information stated therein is true and correct.

I declare under penalty of perjury that the foregoing is true and correct and this verification was executed on this 13 day of May, 2008.

  
\_\_\_\_\_  
RINDRATY LIMTIACO

SUBSCRIBED AND SWORN to before me, a Notary Public, in and for Guam U.S.A., by RINDRATY LIMTIACO, as President and Publisher of Guam Publications, Inc., this 13<sup>th</sup> day of May, 2008.

  
\_\_\_\_\_  
NOTARY PUBLIC





# EXHIBIT A

Accountability • Impartiality • Competence • Openness • Value

## BID STATUS

Date: March 26, 2008

Guam Publications Inc.  
P.O. Box DN  
Hagatna, Guam 96932  
Tel: 479-0219 / Fax: 479-0200

BID INVITATION NO.: GSA-012-08

OPENED: March 12, 2008

DESCRIPTION: "Advertisement Notices"

The following is the result of the above-mentioned bid. Refer to the items checked below.

Cancelled (in its entirety), or partially cancelled due to:

- Insufficient funds;
- Change of specifications; or
- Insufficient number of bidders.

Rejected due to:

- Late submission of bid;
- No bid security or insufficient bid security amount submitted; as required by section 11 of the General Terms and Conditions;
- Not meeting the delivery requirement as stated in the IFB;
- Non-conformance with the specifications
- Inability to provide future maintenance and services to the equipment;
- High price; or
- Others:

Item nos: 1.1 thru 7.1

Bid is recommended for award to:

Marianas Variety in the total amount of \$22,939.20  
The non submittal of the Statement of Qualifications by Marianas Variety was deemed a minor informality and was in the best interest of the government due to budget constraints.

### REMARKS:

Thank you for participating in this bid. Please send your authorized representative to pickup your original bid status and bid bond/cashier check.

  
CLAUDIA S. ACFALLE  
Chief Procurement Officer

# EXHIBIT B

# INVITATION FOR BID

ISSUING OFFICE:

GENERAL SERVICE AGENCY  
GOVERNMENT OF GUAM  
148 ROUTE 1 MARINE DRIVE  
PITI, GUAM 96925

  
CLAUDIA S. ACFALLE, ACPD  
Chief Procurement Officer

DATE ISSUED: 02/05/08

BID INVITATION NO.: GSA-012-08

BID FOR: ADVERTISEMENT NOTICES PURSUANT TO TITLE 3 GCA AND PUBLICATION OF BOARD MEETINGS PURSUANT TO THE OPEN GOV'T LAW.

SPECIFICATION: SEE ATTACHED

DESTINATION: GUAM ELECTION COMMISSION

REQUIRED DELIVERY DATE: 30 Days upon receipt of purchase order for a period of one (1) year (This is an indefinite quantity bid)

### INSTRUCTION TO BIDDERS:

INDICATE WHETHER:  INDIVIDUAL  PARTNERSHIP  CORPORATION

INCORPORATED IN: \_\_\_\_\_

This Bid shall be submitted in duplicate and sealed to the issuing office above no later than (Time) 2:00 P.M., (Date) 02/19/2008, and shall be publicly opened. Bid submitted after the time and date specified above shall be rejected. See attached General Terms and Conditions, and Sealed Bid Solicitation for details.

The undersigned offers and agrees to furnish within the time specified, the articles and services at the price stated opposite the respective items listed on the schedule provided, unless otherwise specified by the bidder. In consideration to the expense of the Government in opening, tabulating, and evaluating this and other bids, and other considerations, the undersigned agrees that this bid remain firm and irrevocable within 60 calendar days from the date opening to supply any or all of the items which prices are quoted.

NAME AND ADDRESS OF BIDDER:

SIGNATURE AND TITLE OF PERSON  
AUTHORIZED TO SIGN THIS BID:

AWARD: CONTRACT NO.:

AMOUNT:

DATE:

ITEM NO(S). AWARDED:

CONTRACTING OFFICER:

CLAUDIA S. ACFALLE  
CHIEF PROCUREMENT OFFICER

NAME AND ADDRESS OF CONTRACTOR:

SIGNATURE AND TITLE OF PERSON  
AUTHORIZED TO SIGN THIS CONTRACT:

Accountability \* Impartiality \* Competence \* Openness \* Value

INVITATION FOR BID (IFB) NO. : GSA-012-08

DESCRIPTION: ADVERTISEMENT NOTICES PURSUANT TO TITLE 3 GCA AND PUBLICATION OF BOARD MEETINGS PURSUANT TO THE OPEN GOV'T LAW

**SPECIFICATION REMINDER TO PROSPECTIVE BIDDERS**

Bidders are reminded to read the Sealed Bid Solicitation and Instructions, and General Terms and conditions attached to the IFB to ascertain that all of the following requirements checked below are submitted in the bid enveloped, in duplicate, at the date and time for bid opening.

- (X) **BID GUARANTEE (15% of Bid Amount) May be in the form of;**  
**Reference #11 on the General Terms and Conditions**
- a. Cashier's Check or Certified Check
  - b. Letter of Credit
  - c. Surety Bond – Valid only if accompanied by:
    - 1. Current Certificate of Authority issued by the Insurance Commissioner;
    - 2. Power of Attorney issued by the Surety to the Resident General Agent;
    - 3. Power of Attorney issued by two (2) major officers of the Surety to whoever is signing on their behalf.

**STATEMENT OF QUALIFICATIONS:**

( ) SAMPLES;

( ) BROCHURES/DESCRIPTIVE LITERATURE;

**AFFIDAVIT OF DISCLOSURE OF MAJOR SHAREHOLDERS - Must comply with the following requirements:**

- a. The affidavit must be notarized and dated on the ~~same month as~~ picked up and called the bid opening; by GSA on
- b. Date of signature of the person authorized to sign the bid and the notary date must be the same. 2/22/08

( ) **LOCAL PROCUREMENT PREFERENCE APPLICATION (See attached)**  
(Non Completion of this application form is not a basis for rejection)

**OTHER REQUIREMENTS:**  
Non-Collusion Affidate,

This reminder must be signed and returned in the bid envelope together with the bid. Failure to comply with the above requirements will mean a disqualification and rejection of the bid.

On this 29th day of February, 2008 I, Rindraty Lintiac,  
authorized representative of Guam Publications Inc. acknowledge receipt of this special  
reminder to prospective bidders with the above referenced IFB.

\_\_\_\_\_  
Bidder Representative's Signature

**GUAM ELECTION COMMISSION**

**ELECTION NOTICE PURSUANT TO TITLE 3 GCA &  
PUBLICATION OF BOARD MEETING PURSUANT TO  
THE OPEN GOVT LAW**

ITEM	SPECIFICATION	BIDDING ON / REMARKS		
		UOM	Unit Cost	Total Cost
1.1	2 x 4 Notice of Board Meetings & Other Election Information	28 EA	\$ _____	\$ _____
2.1	2 x 5 Election Notices regarding Early Voting/ Absentee & other election information	25 EA	_____	_____
3.1	3 x 6 Election Notices regarding polling sites	10 EA	_____	_____
4.1	4 x 5 Election Notices regarding Candidates	11 EA	_____	_____
5.1	4 x 13 Sample Ballots	10 EA	_____	_____
6.1	5 x 7 Precinct Official Seminar Schedules	8 EA	_____	_____
7.1	5 x 15 List of Precinct Officials	6 EA	_____	_____

**Invitation for Bid No.: GSA-012-08**

For: Advertisement

**SPECIAL PROVISIONS**

This is an "Indefinite Quantity Bid" pursuant to Section 3119(i)(2) of the 2GAR Procurement Regulations. The quantities reflected are annual estimated requirements projected within a twelve (12) month period. These amounts may increase during the term of this bid. However, regardless of the fluctuation of quantities, this bid shall be subject to the availability of funds. Multiple awards will be made from the lowest to the highest responsive and responsible bidder, depending on the availability of goods/services.

Delivery:

Initial delivery of 30 days upon receipt of purchase order. Delivery schedule time and quantity will be coordinated between the successful bidder and the requesting department on an as needed basis.

Contract Period:

The term of this contract is one (1) year upon acknowledgement of purchase order. Prices shall remain the same for a period of one (1) year.

## MAJOR SHAREHOLDERS DISCLOSURE AFFIDAVIT

TERRITORY OF GUAM )  
 )ss:  
 AGANA, GUAM )

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

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

Name	Address	Percentage of Shares Held
_____	_____	_____
_____	_____	_____
_____	_____	_____
Total Number of Shares		_____

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

Name	Address	Amount of Gratuity or Other Compensation
_____	_____	_____

Further, affiant sayeth naught.

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

\_\_\_\_\_  
 Signature or individual if bidder is a sole proprietorship; Partner, if the bidder is a partnership; Officer, if the bidder is a corporation.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

By: \_\_\_\_\_

Notary Public \_\_\_\_\_  
 In and for the Territory of Guam  
 My commission expires \_\_\_\_\_





# GOVERNMENT OF GUAM

GENERAL SERVICES AGENCY

148 Route 1

Marine Drive

Piti, Guam 96925

## BID BOND

NO. \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS that \_\_\_\_\_, as Principal hereinafter called the Principal, and (Bonding Company), \_\_\_\_\_, as a duly admitted insurer under the laws of the Territory of Guam, as Surety, hereinafter called the Surety are held firmly bound unto the Territory of Guam for the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), for payment of which sum will and truly to be made, the said Principal and the said Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for (identify project by number and brief description) \_\_\_\_\_

NOW, THEREFORE, if the Territory of Guam shall accept the bid of the Principal and the Principal shall enter into a Contract with the Territory of Guam in accordance with the terms of such bid, and give such bond or bonds as may be specified in bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Territory of Guam the difference not to exceed the penalty hereof between the amounts specified in said bid and such larger amount for which the Territory of Guam may in good faith contract with another party to perform work covered by said bid or an appropriate liquidated amount as specified in the Invitation for Bids then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_.

\_\_\_\_\_  
(WITNESS)  
\_\_\_\_\_  
(TITLE)  
\_\_\_\_\_  
(MAJOR OFFICER OF SURETY)  
\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(PRINCIPAL) (SEAL)  
\_\_\_\_\_  
(MAJOR OFFICER OF SURETY)  
\_\_\_\_\_  
(TITLE)  
\_\_\_\_\_  
(RESIDENT GENERAL AGENT)

SEE INSTRUCTIONS IN BACK PAGE FOR SUPPORTING DOCUMENTS REQUIRED.

**GOVERNMENT OF GUAM**  
**GENERAL TERMS AND CONDITIONS**

**SEALED BID SOLICITATION AND AWARD**

Only those Boxes checked below are applicable to this bid.

1. **AUTHORITY:** This solicitation is issued subject to all the provision of the Guam Procurement Act (SGCA, Chapter 5) and the Guam Procurement Regulations (copies of both are available at the Office of the Compiler of Laws, Department of Law, copies available for inspection at General Services Agency). It requires all parties involved in the Preparation, negotiation, performance, or administration of contracts to act in good faith.
2. **GENERAL INTENTION:** Unless otherwise specified, it is the declared and acknowledged intention and meaning of these General Terms and Conditions for the bidder to provide the Government of Guam (Government) with specified services or with materials, supplies or equipment completely assembled and ready for use.
3. **TAXES:** Bidders are cautioned that they are subject to Guam Income Taxes as well as all other taxes on Guam Transactions. Specific information on taxes may be obtained from the Director of Revenue and Taxation.
4. **LICENSING:** Bidders are cautioned that the Government will not consider for award any offer submitted by a bidder who has not complied with the Guam Licensing Law. Specific information on licenses may be obtained from the Director of Revenue and Taxation.
5. **LOCAL PROCUREMENT PREFERENCE:** All procurement of supplies and services where possible, will be made from among businesses licensed to do business on Guam in accordance with Section 5008 of the Guam Procurement Act (SGCA, Chapter 5) and Section 1-104 of the Guam Procurement Regulations.
6. **COMPLIANCE WITH SPECIFICATIONS AND OTHER SOLICITATION REQUIREMENTS:** Bidders shall comply with all specifications and other requirements of the Solicitation.
7. **"ALL OR NONE" BIDS:** Unless otherwise allowed under this Solicitation, "all or none" bids may be deemed to be non-responsive. If the bid is so limited, the Government may reject part of such proposal and award on the remainder.

**NOTE:** By checking this item, the Government is requesting all of the bid items to be bid or none at all. The Government will not award on an itemized basis. Reference: Section 3-301.06 of the Guam Procurement Regulations.

8. **INDEPENDENT PRICE DETERMINATION:** The bidder, upon signing the Invitation for Bid, certifies that the prices in his bid were derived at without collusion, and acknowledge that collusion and anti-competitive practices are prohibited by law. Violations will be subject to the provision of Section 5651 of that of the Guam Procurement Act. Other existing civil, criminal or administrative remedies are not impaired and may be in addition to the remedies in Section 5651 of the Government Code.
9. **BIDDER'S PRICES:** The Government will consider not more than two (2) (Basic and Alternate) item prices and the bidder shall explain fully each price if supplies, materials, equipment, and/or specified services offered comply with specifications and the products origin. Where basic or alternate bid meets the minimum required specification, cost and other factors will be considered. Failure to explain this requirement will result in rejection of the bid.
10. **BID ENVELOPE:** Envelope shall be sealed and marked with the bidder's name, Bid number, time, date and place of Bid Opening.
11. **BID GUARANTEE REQUIREMENT:** Bidder is required to submit a Bid Guarantee Bond or standby Irrevocable Letter of Credit or Certified Check or Cashier's Check in the same bid envelope to be held by the Government pending award. The Bid Guarantee Bond, Letter of Credit, Certified Check or Cashier's Check must be issued by any local surety or banking institution licensed to do business on Guam and made payable to the Treasurer of Guam in the amount of ten percent (10%) of his highest total bid offer. The Bid Bond must be submitted on Government Standard Form BB-1 (copy enclosed). Personal Checks will not be accepted as Bid Guarantee. If a successful Bidder (contractor) withdraws from the bid or fails to enter into contract within the prescribed time, such Bid guarantee will be forfeited to the Government of Guam. Bids will be disqualified if not accompanied by Bid Bond, Letter of Credit, Certified Check or Cashier's Check. Bidder must include in his/her bid, valid copies of a Power of Attorney from the Surety and a Certificate of Authority from the Government of Guam to show proof that the surety company named on the bond instrument is authorized by the Government of Guam and qualified to do business on Guam. For detailed information on bonding matters, contact the Department of Revenue and Taxation. Failure to submit a valid Power of Attorney and Certificate of Authority on the surety is cause for rejection of bid (GPR Section 3-202.03.3). PURSUANT OF PUBLIC LAW 27-127, ALL COMPETITIVE SEALED BIDDING FOR PROCUREMENT OF SUPPLIES OR SERVICES, EXCEEDING \$25,000.00, A 15% BID SECURITY OF THE TOTAL BID MUST ACCOMPANY BID.
12. **PERFORMANCE BOND REQUIREMENT:** The Bidder may be required to furnish a Performance Bond on Government Standard Form BB-1 or standby irrevocable Letter of Credit or Certified Check or Cashier's Check payable to the Treasurer of Guam issued by any of the local Banks or Bonding Institution in the amount equal to \_\_\_\_\_ percent ( \_\_\_\_\_ %) of the contract prices as security for the faithful performance and proper fulfillment of the contract. In the event that any of the provisions of this contract are violated by the contractor, the Chief Procurement Officer shall serve written notice upon both the contractor and the Surety of its intention to terminate the contract. Unless satisfactory arrangement or correction is made within ten (10) days of such notice the contract shall cease and terminate upon the expiration of the ten (10) days. In the event of any such termination, the Chief Procurement Officer shall immediately serve notice thereof upon the Surety. The Surety shall have the right to take over and perform the contract, provided, however, that if the Surety does not commence performance thereof within 10 days from the date of the mailing

15%

of notice of termination, the Government may take over and prosecute the same to complete the contract or force account for the account and at the expense of contractor, and the contractor and his Surety shall be liable to the Government for any excess cost occasioned the Government thereby (GPR Section 3-202.03.4).

13. **PERFORMANCE GUARANTEE:** Bidders who are awarded a contract under this solicitation, guarantee that goods will be delivered or required services performed within the time specified. Failure to perform the contract in a satisfactory manner may be cause for suspension or debarment from doing business with the Government and to enforce Section 12 of these General Terms and Conditions. In addition, the Government will hold the Vendor liable and will enforce the requirements as set forth in Section 41 of these General Terms and Conditions.
14. **SURETY BONDS:** Bid and Performance Bonds coverage must be signed or countersigned in Guam by a foreign or alien surety's resident general agent. The Surety must be an Insurance Company, authorized by the Government of Guam and qualified to do business in Guam. Bids will be disqualified if the Surety Company does not have a valid Certificate of Authority from the Government of Guam to conduct business in Guam.
15. **COMPETENCY OF BIDDERS:** Bids will be considered only from the such bidders who, in the opinion of the Government can show evidence of their ability, experience, equipment, and facilities to render satisfactory service.
16. **DETERMINATION OF RESPONSIBILITY OF BIDDERS:** The Chief Procurement Officer reserves the right for securing from bidders information to determine whether or not they are responsible and to inspect plant site, place of business; and supplies and services as necessary to determine their responsibility in accordance with Section 15 of these General Terms and Conditions (GPR Section 3-401).
17. **STANDARD FOR DETERMINATION OF LOWEST RESPONSIBLE BIDDER:** In determining the lowest responsible offer, the Chief Procurement Officer shall be guided by the following:
- a) Price of items offered.
  - b) The ability, capacity, and skill of the Bidder to perform.
  - c) Whether the Bidder can perform promptly or within the specified time.
  - d) The quality of performance of the Bidder with regards to awards previously made to him.
  - e) The previous and existing compliance by the Bidder with laws and regulations relative to procurement.
  - f) The sufficiency of the financial resources and ability of the Bidder to perform.
  - g) The ability of the bidder to provide future maintenance and services for the subject of the award.
  - h) The compliance with all of the conditions to the Solicitation.
18. **TIE BIDS:** If the bids are for the same unit price or total amount in the whole or in part, the Chief Procurement Officer will determine award based on Section 3.202.15.2, or to reject all such bids (GPR Section 3-202.15.2).
19. **BRAND NAMES:** Any reference in the Solicitation to manufacturer's Brand Names and number is due to lack of a satisfactory specification of commodity description. Such preference is intended to be descriptive, but not restrictive and for the sole purpose of indicating prospective bidders a description of the article or services that will be satisfactory. Bid on comparable items will be considered provided the bidder clearly states in his bid the exact articles he is offering and how it differs from the original specification.
20. **DESCRIPTIVE LITERATURE:** Descriptive literature(s) as specified in this solicitation must be furnished as a part of the bid and must be received at the date and time set for opening Bids. The literature furnished must clearly identify the item(s) in the Bid. The descriptive literature is required to establish, for the purpose of evaluation and award, details of the product(s) the bidder proposes to furnish including design, materials, components, performance characteristics, methods of manufacture, construction, assembly or other characteristics which are considered appropriate. Rejection of the Bid will be required if the descriptive literature(s) do not show that the product(s) offered conform(s) to the specifications and other requirements of this solicitation. Failure to furnish the descriptive literature(s) by the time specified in the Solicitation will require rejection of the bid.
21. **SAMPLES:** Sample(s) of item(s) as specified in this solicitation must be furnished as a part of the bid and must be received at the date and time set for opening Bids. The sample(s) should represent exactly what the Bidder proposes to furnish and will be used to determine if the item(s) offered complies with the specifications. Rejection of the Bid will be required if the sample(s) do not show that the product(s) offered conform(s) to the specifications and other requirements of this solicitation. Failure to furnish the sample(s) by the time specified in the Solicitation will require rejection of the Bid.
22. **LABORATORY TEST:** Successful bidder is required to accompany delivery of his goods with a Laboratory Test Report indicating that the product he is furnishing the Government meets with the specifications. This report is on the bidder account and must be from a certified Testing Association.
23. **AWARD, CANCELLATION & REJECTION:** Award shall be made to the lowest responsible and responsive bidder, whose bid is determined to be the most advantageous to the Government, taking into consideration the evaluation factors set for in this solicitation. No other factors or criteria shall be used in the evaluation. The right is reserved as the interest of the Government may require to waive any minor irregularity in bids received. The Chief Procurement Officer shall have the authority to award, cancel, or reject bids, in whole or in part for any one or more items if he determines it is in the public interest. Award issued to the lowest responsible bidder within the specified time for acceptance as indicated in the solicitation, result in a bidding contract without further action by either party. In case of an error in the extension of prices, unit price will govern. It is the policy of the Government to award contracts to qualified local bidders. The Government reserves the right to increase or decrease the quantity of the items for award and make additional awards for the same type items and the vendor agree to such modifications and additional awards based on the bid prices for a period of thirty (30) days after original award. Award shall be made under this solicitation which shall require advance payment or irrevocable letter of credit from the government (GPR Section 3-202.14.1).
24. **MARKING:** Each outside container shall be marked with the Purchase Order number, item number, brief item description and quantity. Letter marking shall not be less than 3/4" in height.

25. **SCHEDULE FOR DELIVERY:** Successful bidder shall notify the General Services Agency, Telephone Nos. 477-1726 or 1727, at least twenty-four (24) hours before delivery of any item under this solicitation.
26. **BILL OF SALE:** Successful Supplier shall render Bills of Sale for each item delivered under this contract. Failure to comply with this requirement will result in rejection of delivery. The Bill of Sale must accompany the items delivered but will not be considered as an invoice for payment. Supplier shall bill the Government in accordance with billing instructions as indicated on the Purchase Order.
27. **MANUFACTURER'S CERTIFICATE:** Successful bidder is required, upon delivery of any item under this contract, to furnish a certificate from the manufacturer indicating that the goods meet the specifications. Failure to comply with this request will result in rejection of delivery.
28. **INSPECTION:** All supplies, materials, equipment, or services delivered under this contract shall be subject to the inspection and/or test conducted by the Government at destination. If in any case the supplies, materials, equipment, or services are found to be defective in material, workmanship, performance, or otherwise do not conform with the specifications, the Government shall have the right to reject the items or require that they be corrected. The number of days required for correction will be determined by the Government.
29. **MOTOR VEHICLE SAFETY REQUIREMENTS:** The Government will only consider Bids on motor vehicles which comply with requirements of the National Traffic and Motor Vehicle Safety Act of 1966 (Public Law 89-563) and Clean Air Act as amended (Public Law 88-206), that are applicable to Guam. Bidders shall state if the equipment offered comply with these aforementioned Federal Laws.
30. **SAFETY INSPECTION:** All motor vehicles delivered under this contract must pass the Government of Guam Vehicle Inspection before delivery at destination.
31. **GUARANTEE:**
- a) **Guarantee of Vehicle Type of Equipment:**  
The successful bidder shall guarantee vehicular type of equipment offered against defective parts, workmanship, and performance, for a period of not less than one (1) year after date of receipt of equipment. Bidder shall also provide service to the equipment for at least one (1) year. Service to be provided shall include, but will not be limited to tune-ups (change of spark plugs, contact points and condensers) and lubrication (change of engine and transmission oil). All parts and labor shall be at the expense of the bidder. All parts found defective and not caused by misuse, negligence or accident within the guarantee period shall be repaired, replaced, or adjusted within six (6) working days after notice from the Government and without cost to the Government. Vehicular type of equipment as used in this context shall include equipment used for transportation as differentiated from tractors, backhoes, etc.
  - b) **Guarantee of Other Type of Equipment:**  
The successful bidder shall guarantee all other types of equipment offered, except those mentioned in 31a, above, against defective parts, workmanship, and performance for a period of not less than three (3) months after date of receipt of equipment. Bidder shall also provide service to the equipment for at least three (3) months. All parts found defective within that period shall be repaired or replaced by the Contractor without cost to the Government. Repairs, adjustments or replacements of defective parts shall be completed by the Contractor within six (6) working days after notice from the Government.
  - c) **Compliance with this Section is a condition of this Bid.**
32. **REPRESENTATION REGARDING ETHICS IN PUBLIC PROCUREMENT:** The bidder or contractor represents that it has not knowingly influenced and promises that it will not knowingly influence a Government employee to breach any of the ethical standards and represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth on Chapter 11 (Ethics in Public Contracting) of the Guam Procurement Act and in Chapter 11 of the Guam Procurement Regulations.
33. **REPRESENTATION REGARDING CONTINGENT FEES:** The contractor represents that it has not retained a person to solicit or secure a Government contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business (GPR Section 11-207).
34. **EQUAL EMPLOYMENT OPPORTUNITY:** Contractors shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that employees are treated equally during employment without regards to their race, color, religion, sex, or national origin.
35. **COMPLIANCE WITH LAWS:** Bidders awarded a contract under this Solicitation shall comply with the applicable standard, provisions, and stipulations of all pertinent Federal and/or local laws, rules, and regulations relative to the performance of this contract and the furnishing of goods.
36. **CHANGE ORDER:** Any change order issued relative to awards made under this solicitation will be subject to and in accordance with the provisions of Section 6-101.03.1 of the Guam Procurement Regulations.
37. **STOP WORK ORDER:** Any stop work order issued relative to awards made under this solicitation will be subject to and in accordance with the provisions of Section 6-101.04.3 of the Guam Procurement Regulations.
38. **TERMINATION FOR CONVENIENCE:** Any termination order for the convenience of the Government issued relative to awards made under this solicitation will be subject to and in accordance with the provisions of Section 6-101.10 of the Guam Procurement Regulations.
39. **TIME FOR COMPLETION:** It is hereby understood and mutually agreed by and between the contractor and the Government that the time for delivery to final destination or the timely performance of certain services is an essential condition of this contract. If the contractor refuses or fails to perform any of the provisions of this contract within the time specified in the Purchase Order (from the date Purchase Order is acknowledged by vendor), then the contractor is in default. Defaults will be treated subject to and in accordance with the provisions of Section 6-101-08 of the Guam Procurement Regulations.

40. **JUSTIFICATION OF DELAY:** Bidders who are awarded contracts under this Solicitation, guarantee that the goods will be delivered to their destination or required services rendered within the time specified. If the bidder is not able to meet the specified delivery date, he is required to notify the Chief Procurement Officer of such delay. Notification shall be in writing and shall be received by the Chief Procurement Officer at least twenty-four (24) hours before the specified delivery date. Notification of delay shall include an explanation of the causes and reasons for the delay including statement(s) from supplier or shipping company causing the delay. The Government reserves the right to reject delay justification if, in the opinion of the Chief Procurement Officer, such justification is not adequate.
41. **LIQUIDATED DAMAGES:** When the Contractor is given notice of delay or nonperformance as specified in Paragraph 1 (Default) of the Termination for Default Clause of this contract and fails to cure in the time specified, the contractor shall be liable for damages for delay in the amount of one-fourth of one percent (1%) of outstanding order per calendar day from date set for cure until either the territory reasonably obtains similar supplies or services if the contractor is terminated for default, or until the contractor provides the supplies or services if the contractor is not terminated for default. To the extent that the contractor's delay or nonperformance is excused under Paragraph 40 (Excuse for Nonperformance or Delayed Performance) of the Termination for Default Clause of this contract, liquidated damages shall not be due the territory. The contractor remains liable for damages caused other than by delay (GPR Section 6-101.09.1).
42. **PHYSICAL LIABILITY:** If it becomes necessary for the Vendor, either as principal, agent or employee, to enter upon the premises or property of the Government of Guam in order to construct, erect, inspect, make delivery or remove property hereunder, the Vendor hereby covenants and agrees to take, use, provide and make all proper, necessary and sufficient precautions, safeguards and protections against the occurrence of any accidents, injuries or damages to any person or property during the progress of the work herein covered, and to be responsible for, and to indemnify and save harmless the government of Guam from the payment of all sums of money by reason of all or any such accidents, injuries or damages that may occur upon or about such work, and fines, penalties and loss incurred for or by reason of the violations of any territorial ordinance, regulations, or the laws of Guam or the United States, while the work is in progress. Contractor will carry insurance to indemnify the government of Guam against any claim for loss, damage or injury to property or persons arising out of the performance of the Contractor or his employees and agents of the services covered by the Contract and the use, misuse or failure of any equipment used by the contractor or his employees or agents, and shall provide certificates of such insurance to the Government of Guam when required.
43. **CONTACT FOR CONTRACT ADMINISTRATION:** If your firm receives a contract as a result of this Solicitation, please designate a person whom we may contact for prompt administration.

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_ Telephone: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_

GOVERNMENT OF GUAM

SEALED BID SOLICITATION INSTRUCTIONS

1. **BID FORMS:** Each bidder shall be provided with two (2) sets of Solicitation forms. Additional copies may be provided upon request. Bidders requesting additional copies of said forms will be charged per page in accordance with Section 6114 of the Government Code of Guam. All payments for this purpose shall be by cash, certified check or money order and shall be made payable to the General Services Agency (EO 86-24).
2. **PREPARATIONS OF BIDS:**
  - a) Bidders are required to examine the drawings, specifications, schedule, and all instructions. Failure to do so will be at bidder's risk.
  - b) Each bidder shall furnish the information required by the Solicitation. The bidder shall sign the Solicitation and print or type his name on the Schedule. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent are to be accompanied by evidence of his authority unless such evidence has been previously furnished to the issuing office.
  - c) Unit price for each unit offered shall be shown and such price shall include packing unless otherwise specified. A total shall be entered in the amount column of the Schedule for each item offered. In case of discrepancies between a unit price and extended price, the unit price will be presumed to be correct.
  - d) Bids for supplies or services other than those specified will not be considered.
  - e) Time, if stated as a number of days, means calendar days and will include Saturdays, Sundays, and holidays beginning the day after the issuance of a Notice to Proceed. Time stated ending on a Saturday, Sunday or Government of Guam legal holiday will end at the close of the next business day.
3. **EXPLANATION TO BIDDERS:** Any explanation desired by a bidder regarding the meaning or interpretation of the Solicitation, drawings, specifications, etc., must be submitted in writing and with sufficient time allowed for a written reply to reach all bidders before the submission of their bids. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective bidder concerning a Solicitation will be furnished to all prospective bidders in writing as an amendment to the Solicitation if such information is necessary for bidders in submitting bids on the Solicitation or if the lack of such information would be prejudicial to uninformed bidders.
4. **ACKNOWLEDGEMENT OF AMENDMENTS TO SOLICITATIONS:** Receipt of an amendment to a Solicitation by a bidder must be acknowledged by signing an acknowledgement of receipt of the amendment. Such acknowledgement must be received prior to the hour and date specified for receipt of bids.
5. **SUBMISSION OF BIDS:**
  - a) Bids and modifications thereof shall be enclosed in sealed envelopes and addressed to the office specified in the Solicitation. The bidder shall show the hour and date specified in the Solicitation for receipt, the Solicitation number, and the name and address of the bidder on the face of the envelope.
  - b) Telegraphic bids will not be considered unless authorized by the Solicitation. However, bids may be modified or withdrawn by written or telegraphic notice, provided such notice is received prior to the hour and date specified for receipt (see paragraph 6 of these instructions).
  - c) Samples of items, when required, must be submitted within the time specified, unless otherwise specified by the Government, at no expense to the Government. If not destroyed by testing, samples will be returned at bidder's request and expense, unless otherwise specified by the Solicitation.
  - d) Samples or descriptive literature should not be submitted unless it is required on this Solicitation. Regardless of any attempt by a bidder to condition the bid, unsolicited samples or descriptive literature will not be examined or tested at the bidder's risk, and will not be deemed to vary any of the provisions of this Solicitation.
6. **FAILURE TO SUBMIT BID:** If no bid is to be submitted, do not return the Solicitation unless otherwise specified. A letter or postcard shall be sent to the issuing office advising whether future Solicitations for the type of supplies or services covered by this Solicitation are desired.
7. **LATE BID, LATE WITHDRAWALS, AND LATE MODIFICATIONS:**
  - a) **Definition:** Any bid received after the time and date set for receipt of bids is late. Any withdrawal or modification of a bid received after the time and date set for opening of bids at the place designated for opening is late (*Guam Procurement Regulations Section 3-202.11.1*).
  - b) **Treatment:** No late bid, late modification, or late withdrawal will be considered unless received before contract award, and the bid, modification, or withdrawal would have been timely but for the action or inaction of territorial personnel directly serving the procurement activity (*Guam Procurement Regulations Section 3-202.11.2*).
8. **DISCOUNTS:**
  - a) Notwithstanding the fact that prompt payment discounts may be offered, such offer will not be considered in evaluating bids for award unless otherwise specified in the Solicitation. However, offered discounts will be taken if payment is made within the discount period, even though not considered in the evaluation of bids.
  - b) In connection with any discount offered, time will be computed from date of delivery and acceptance of the supplies to the destination as indicated in the purchase order or contract. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the Government check.
9. **GOVERNMENT FURNISHED PROPERTY:** No material, labor or facilities will be furnished by the Government unless otherwise provided for in the Solicitation.

10. **SELLERS' INVOICES:** Invoices shall be prepared and submitted in quadruplicate (one copy shall be marked "original") unless otherwise specified. Invoices shall be "certified true and correct" and shall contain the following information: Contract and order number (if any), item numbers, description of supplies or services, sizes, quantities, unit prices, and extended total. Bill of lading number and weight of shipment will be shown for shipments made on Government bills of lading.
11. **RECEIPT, OPENING AND RECORDING OF BIDS:** Bids and modifications shall be publicly opened in the presence of one or more witnesses, at the time, date, and place designated in the invitation for Bids. The name of each bidder, the bid price, and such other information as is deemed appropriate by the Procurement Officer, shall be read aloud and recorded, or otherwise made available. The names and addresses of required witnesses shall be recorded at the opening. The opened bids shall be available for public inspection except to the extent the bidder designates trade secrets or other proprietary data to be confidential as set forth in accordance with Section 12, below. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. Prices, makes and models or catalogue numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary (*Guam Procurement Regulations Section 3-202.12.2*).
12. **CONFIDENTIAL DATA:** The Procurement Officer shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. If the parties do not agree as to the disclosure of data, the Procurement Officer shall inform the bidders in writing what portions of the bid will be disclosed and that, unless the bidders protest under Chapter 9 of the Guam Procurement Act (*P.L. 16-124*), the bids will be so disclosed. The bids shall be opened to public inspection subject to any continuing prohibition on the disclosure of confidential data (*Guam Procurement Regulations Section 3-202.12.3*).
13. **MULTI-STEP SEALED BIDDING:**
- a) It is defined as a two-phase process consisting of a technical first-phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the territory, and a second-phase in which those bidders whose technical offers are determined to be acceptable during the first-phase have their priced bids considered. It is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtained the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to evaluate and determine the acceptability of technical offers.
  - b) In addition to the requirements set forth in the General Terms and Conditions and the Special provisions, the following applies:
    - 1) only unpriced technical offers are requested in the first phase;
    - 2) priced bids will be considered only in the second phase and only from bidders whose unpriced technical offers are found acceptable in the first phase;
    - 3) the criteria to be used in the evaluation are those specified in the Special Provisions and the General Terms and Conditions;
    - 4) the territory, to the extent the Procurement Officer finds necessary, may conduct oral or written discussion of the unpriced technical offers;
    - 5) the bidders, may designate those portions of the unpriced technical offers which contain trade secrets or other proprietary data which are to remain confidential; and,
    - 6) the service being procured shall be furnished generally in accordance with the bidder's technical offer as found to be finally acceptable and shall meet the requirements of the invitation for Bids.
  - c) **RECEIPT AND HANDLING OF UNPRICED TECHNICAL OFFERS.**  
Unpriced technical offers shall not be opened publicly, but shall be opened in front of two or more procurement officials. Such offers shall not be disclosed to unauthorized persons. Bidders may request nondisclosure of trade secrets and other proprietary data identified in writing.
  - d) **EVALUATION OF UNPRICED TECHNICAL OFFERS.**  
The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the invitation for Bids. The unpriced technical offers shall be categorized as:
    - 1) acceptable;
    - 2) potentially acceptable, that is, reasonably susceptible of being made acceptable; or
    - 3) unacceptable. The Procurement Officer shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

The Procurement Officer may initiate Phase Two of the procedure if, in the Procurement Officer's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without technical discussions. If the Procurement Officer finds such is not the case, the Procurement Officer shall issue an amendment to the invitation for Bids or engage in technical discussions as set forth in Subsection 3-202.20.5 of this Section.
  - e) Upon the completion of Phase One, the Procurement Officer shall invite each acceptable bidder to submit a price bid. Upon submission of prices, the Procurement Officer shall prepare the final evaluation and reconsideration for the Chief Procurement Officer's approval.

# EXHIBIT C



**Pacific Daily News**  
*GUAM'S complete SOURCE*

Claudia Acfalle  
Chief Procurement Officer  
General Services Agency  
Piti, Guam

Received  
Print Name MATT C.  
Signature M.C.  
Date/Time 2-29-08 2:15

Dear Ms. Acfalle,

The Pacific Daily News will be submitting our bid packet for **BID INVITATION NO: GSA-012-08.**

After reviewing the packet, there are two questions needing answers in order for the Pacific Daily News to provide unit cost and total cost for the suggested ad sizes.

On Page 3 of the bid packet under:

“GUAM ELECTION COMMISSION”

“ELECTION NOTICE PURSUANT TO TITLE 3 GCA & PUBLICATION OF BOARD MEETING PURSUANT TO THE OPEN GOVT LAW”

ITEM

- 1.1 2X4 Notice of Board Meeting & Other
- 2.1 2x5 Election Notices regarding Early Voting/Absentee & Other election information.
- 3.1 3x6 Election Notices regarding polling sites
- 4.1 4x5 Election Notices regarding Candidates
- 5.1 4x13 Sample Ballots
- 6.1 5x7 Precinct Official Seminar Schedules
- 7.1 5x15 List of Precient Officials

**GENERAL SERVICES AGENCY**  
148 Route 1  
Marine Drive  
Piti, Guam 96925

FFB 2 8 2008

Question 1: In order for a unit cost to be determined, what is the distribution/circulation amount requested for distribution? (Number of newspapers your wanting your ad to be in).

Question 2: Under 7.1, is 5x15 the ad size for a full page advertisement? Is it a mandatory requirement the ad size be 5x15? Will a 5x14 ad size be acceptable?

I look forward to the answers to the questions above.

Sincerely,

Jae Medina  
Advertising Director  
Tel: 479-0200  
Cell: 483-2000  
Email: [jfmedina@guam.gannett.com](mailto:jfmedina@guam.gannett.com)

# EXHIBIT D

Felix P. Camacho

Governor



Lourdes M. Perez  
Director, Dept. of Administration

GENERAL SERVICES AGENCY

(Ahenlan Setbison Hinirat)

Government of Guam

P.O. Box FG, Agaña, Guam 96910

Michael W. Cruz

I.I. Governor

Joseph C. Manibusan

Deputy Director

February 28, 2008

**Invitation to Bid GSA-012-08  
"Advertisement Notices"**

**Amendment# 2**

1. Amend to change bid opening date from: February 28, 2008 at 2:00 pm to now read: March 04, 2008 at 2:00 pm.
2. And to amend to include line item 8.1 5 x 14 List of Precient Officials  
**See attachment.**

All others remain unchanged.

  
Claudia S. Acfalle  
Chief Procurement Officer

**GUAM ELECTION COMMISSION**

**ELECTION NOTICE PURSUANT TO TITLE 3 GCA &  
PUBLICATION OF BOARD MEETING PURSUANT TO  
THE OPEN GOVT LAW**

ITEM	SPECIFICATION	BIDDING ON / REMARKS		
		UOM	Unit Cost	Total Cost
1.1	2 x 4 Notice of Board Meetings & Other Election Information	28 EA	\$ _____	\$ _____
2.1	2 x 5 Election Notices regarding Early Voting/ Absentee & other election information	25 EA	_____	_____
3.1	3 x 6 Election Notices regarding polling sites	10 EA	_____	_____
4.1	4 x 5 Election Notices regarding Candidates	11 EA	_____	_____
5.1	4 x 13 Sample Ballots	10 EA	_____	_____
6.1	5 x 7 Precinct Official Seminar Schedules	8 EA	_____	_____
7.1	5 x 15 List of Precinct Officials	6 EA	_____	_____
8.1	5 x 14 List of Precinct Officials	6 EA	_____	_____

# EXHIBIT E

Felix P. Camacho

Governor



Lourdes M. Perez  
Director, Dept. of Administration

GENERAL SERVICES AGENCY

(Ahensian Setbision Hinirat)  
Government of Guam

P.O. Box FG, Agana, Guam 96910

Michael W. Cruz

Lt. Governor

Joseph C. Manibusan  
Deputy Director

February 28, 2008

**Invitation for Bid GSA-012-08  
"Advertisement Notices"**

**Question submitted by Pacific Daily News"**

**Question 1:**

In order for a unit cost to be determined, what is the distribution/circulation amount requested? (Number of newspaper your wanting your ad to be in.)

**Answer:**

General Circulation

**Question 2:**

Under 7.1, is 5x15 the ad size for a full page advertisement? Is it a mandatory requirement the ad size be 5x15? Will a 5x14 ad size be acceptable.

**Answer:**

Item 7.1 – 5x15 List of Precinct Officials, the advertisement size is not a requirement set by law. An additional line item no. 8 will be included 5 x 14.

  
Claudia S. Acfalle  
Chief Procurement Officer

# EXHIBIT F



Felix P. Canacho

Governor

Lourdes M. Perez  
Director, Dept. of Administration

## GENERAL SERVICES AGENCY

(Ahasian Setblalon Hlaira)  
Government of Guam

P.O. Box FG, Agaña, Guam 96918

Michael W. Cruz

Lt. Governor

Joseph C. Maibusan  
Deputy Director

March 5, 2008

Invitation for Bid GSA-012-08  
"Advertisement Notices"Questions submitted by Pacific Daily NewsQuestion 1:

What is the distribution requirement for the advertising notices? To price the advertising notices fairly the distribution amount is needed.

Answer:

Distribution: General Circulation

Question 2:

What are the justifications for the advertising notice spec size?

Answer:

The size of the advertisement is the specification that is required.

  
Claudia S. Acfalle  
Chief Procurement Officer

3 of 3

# EXHIBIT G

Felix P Camacho  
Governor



**GENERAL SERVICES AGENCY**

(Ahensian Setbision Hinirat)  
Department of Administration  
Government of Guam

Michael W. Cruz,  
Lt. Governor

Lourdes M. Perez  
Director  
Department of Administration

Tel: (671)475-1707 thru 1729/Fax Nos: (671)472-4217/475-1716

Joseph C. Manibusan  
Deputy Director  
Department of Administration

March 10, 2008

CARLSMITH BALL LLP  
A Limited Liability law partnership  
Bank of Hawaii Bldg., Suite 401  
134 West Soledad Avenue  
P.O. Box BF  
Hagatna, Guam 96932  
(T) 472-6813 (F) 477-4375

Re: Protest of Invitation for Bid GSA-012-08

Dear Ms. McDonald,

Buenas yan Hafa Adai! General Service Agency is in receipt of your protest letter dated March 7, 2008 regarding the above subject matter.

You had indicated that the government failed to inform you what type of circulation was requested so that you could then inform GSA of the price. We did inform you that we were looking for an announcement of "General Circulation" (See response of February 28, 2008 and March 5, 2008). There was no limitation indicated in our response therefore, your client should have been well aware that we were looking for the placement of the advertisement for an entire circulation of PDN for the day(s) in question.

Your client has never raised the possibility of segregation of readership availability in the past. If that is to be the position of the PDN in the future, then we will ask the AG's office to re-determine whether the PDN is a newspaper of "General Circulation" that would be qualified for advertisements from the Government of Guam as required by law.

As to your second point, in your memorandum you indicated that the General Services Agency did amend the specification to allow for a 5X14 format to exist as well as a 5X15 format. By such modification, the General Services Agency did address your concern regarding a "full page ad".

Based upon the above facts, your protest is deemed to be without merit. Upon receipt of this letter, you have the right to see any administrative or judicial review that you believe is available to you.

**ACKNOWLEDGEMENT COPY**

RECEIVED BY Davina Sayama

DATE 2-10-08

*C. Acfalle*  
CLAUDIA S. ACFALLE  
Chief Procurement Officer

FAX RECEIVED

COMMITTED TO EXCELLENCE

MAR 10 2008

TIME: 3:37pm

# EXHIBIT H

Felix P. Caniacho  
Governor

Lourdes M. Perez  
Director  
Department of Administration



**GENERAL SERVICES AGENCY**

(Ahensian Setbision Hinirat)  
Department of Administration  
Government of Guam

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Michael W. Cruz,  
Lt. Governor

Joseph C. Manibusan  
Deputy Director  
Department of Administration

May 01, 2008

Elyze J. McDonald  
A Limited Liability Law Partnership  
Carlsmith Ball LLP  
Bank of Hawaii Bldg., Suite 401, 134  
West Soledad Avenue,  
P.O. Box BF  
Hagatna, Guam 96932-5027

RECEIVED  
CARL SMITH BALL *See*  
DATE: 05/02/08 TIME 2:12

Re: **Protest of Award – Invitation for Bid No. GSA-012-08**  
**(Advertisement Notices)**

Dear Mr. McDonald:

Buenas Yan Hafa Adai! This is in response to your protest letter dated April 7, 2008, on the above referenced bid number.

Based on my factual evaluation your protest is without merit based on the following:

**Issue No. 1**

PDN asked GSA (General Services Agency) whether it was mandatory that the advertisement be 5 x 15, or whether a 5 x 14 ad would be acceptable. GSA amended the Invitation for Bid to include in addition to the 5 x 15 ad a 5 x 14. PDN later inquired the justification for the specification sizes, and received the response that “The size of the advertisement is the specification that is required.”

**Response:**

Based on the request from PDN, the GSA contacted the Guam Election Commission (GEC) to inquire if a 15 x 14 would be acceptable. GSA inquired if the 15 x 15 advertisement was based on statute or was it just a size requested by the GEC. The response from the GEC was that it was not based on statute but is what the commission is requiring. However, the GEC decided to include the request made by PDN, to ensure the bid solicitation is of neutral grounds.

## **Issue No. 2**

In order to determine a unit cost for the solicited advertising space, PDN needed to know the breadth of the intended distribution. In order for a unit cost to be determined, what is the distribution/circulation amount requested? "(Number of newspapers your wanting your ad to be in)." What is the distribution requirement for the advertising notices? To price advertising notices fairly the distribution amount is needed."

### **Response:**

Based on previous working relationship with PDN, the GSA issues request for quotation to PDN for bid advertisements and other requirements needed by the various departments and does not raise the concern of what is the distribution requirement for the advertisement, or that they needed the distribution requirement to render a fair pricing to the GSA. Therefore, the response issued by GSA was of general circulation. In other words as long as the company meets the general circulation requirement that the bid will be acceptable.

## **Issue No. 3**

On March 12, 2008, PDN submitted its bid. GSA also received a bid from the Variety. GSA noted that Variety's bid did not submit a Statement of Qualification. However, GSA awarded the bid to the Variety and deemed the non-submittal of the statement of qualification as a minor.

### **Response:**

Please be advised that PDN also failed to submit the cover sheet of the bid document wherein they were required to submit it signed by an authorized person indicating that the "undersigned agrees that the bid remain firm and irrevocable within a number of days from the date of opening". However, GSA indicated on the bid status for Marianas Variety that PDN failed to submit the bid cover sheet but that GSA waived it as a minor informality, due to budget constraints because PDN did submit the lowest bid for item No. 8.1. Therefore, GSA did act fairly to both PDN and Variety during the evaluation and award of Bid No. GSA-012-08.

## **Issue No. 4**

PDN is Guam's only daily newspaper and that the Variety, which runs only on weekdays, is another community newspaper. The 5 x 15 format for the List of Precinct Officials is a format that is specifically and solely used by the Variety, whereas the 5 x 14 format is more regularly used by the PDN. PDN protests the specification of the 5 x 15 format as it appears that it is specifically intended to fit the format of the Variety newspaper.

**Response:**

On 28 February 2008 GSA received a letter from PDN inquiring if a 5 x 14 ad size be acceptable. On the same day 28 February 2008 GSA issued amendment No. 2 indicating that we included the ad size as requested by PDN. The amendment was to include item number 8.1 ad size 5 x 14. GSA used fair judgment based on the request of PDN.

We amended the bid to include the 5 x 14 after confirming with the GEC that the size required was not based on statutory requirements. Therefore, GSA explained to the GEC that we wanted to ensure that this is a fair bid and that GSA will amend to include the 5 x 14 ad which we did on Bid No. GSA-012-08.

Although PDN claimed that the 5 x 15 ad size was solely used by Variety, PDN **submitted** a bid for item number 7.1 which was for 5 x 15 ad size, but was rejected due to high price and Variety did not bid on item 8.1, 5 x 14 ad size which was the size requested by PDN. Therefore, if GSA had deleted item number 7.1 which is the 5 x 15 ad size who would be singled out on the 5 x 14 ad size? It would have been Variety. But instead of singling out any prospective bidder GSA did due diligence in ensuring whether the ad size requirement were based on statutory requirements and included the request of PDN.

**Issue No. 5**

It is curious why GSA or GEC would award a bidder without even knowing if they are qualified.


**Response:**

Please be advised that Variety has been doing business with the government of Guam just as PDN. Therefore, based on previous publication it is known that both PDN and Variety are qualified in doing this type of business for the government. GSA did evaluate this bid with all fairness to both PDN and Variety. The rejection was based on "high price" or "no bid" for both companies on each particular item.

I would like to highlight that based on other request for quotations issued to PDN I have inquired from the GSA buyers if PDN ever raise concerns regarding the number of circulation or distribution, and the response was: No. The response issued by GSA to the question of PDN regarding the number of circulation or distribution was answered in general, "General Circulation".

Therefore, upon receipt of this letter it is our determination that your protest is without merit. You are therefore, notified of our determination and that you have a right to seek administrative.

Sincerely,

  
CLAUDIA S. ACFALLE  
Chief Procurement Officer

cc: Attorney General, Office of the Attorney General