

Date: March 15, 2011

To: Cabot Mantanona LLP
Edge Building., Second Floor
929 South Marine Corps Drive
Tamuning, Guam 96913

Attention: Attorney Rawlen M.T. Mantanona

From: Joleen M. Evangelista, Procurement & Inventory Administrator

Subject: Review of Foundation Building Renovation Contract

Bid No: GCC-FB-11-003

Bid Description: Foundation Building Renovation

Attached are the following documents for your review:

1. Notification of Procurement over \$500,00.00 for AG
2. Procurement Review Checklist for Foundation Building Renovation
3. Checklist for Attorney General Review of Contracts

I hope I have all the documents in order for your review.

Let me know if you have any questions.

Thank you and Regards.

CABOT MANTANONA, LLP

Date: 03/15/2011
Time: 2:01 pm
Initials: Ome

John M. Weisenberger
Attorney General



Phillip J. Tydingco
Chief Deputy Attorney General

OFFICE OF THE ATTORNEY GENERAL

NOTIFICATION OF PROCUREMENT OVER \$500,000

To: Office of the Attorney General
Attention: Deputy Attorney General, Civil Division
From: Guam Community College

Name of Attorney for Agency: Rawlen M.T. Mantanona

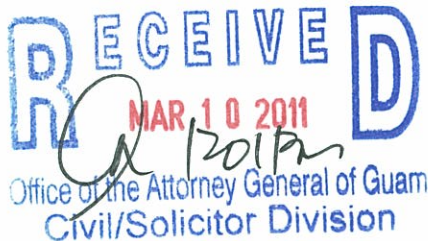
Type of Procurement: Invitation for Bid - Construction services

Description of Procurement: Foundation Building Renovation

Project Number: GCC-FB-11-003

Funding Source: ARRA and local funding

ARRA: ☒ yes ☐ no If yes, federal agency: _____



Joleen m. Evangelista
Procurement Officer (Print)

Joleen m. Evangelista
Procurement Officer (Signature)

Date: 3/8/11

03/20/2010 10:07 AM 4122493 AG. S. RUMBLE
0002/002

CHECKLIST for ATTORNEY GENERAL REVIEW of CONTRACTS
(for use ONLY with construction and professional services contracts)

The Checklist below lists every item that comprises a full and complete procurement record for an invitation to bid (ITB) or request for proposals (RFP). Except where noted, every item is required by law. The Checklist will assist us in our review of the contract's legal sufficiency, and should be prepared by the procurement officer administering the solicitation. The responsible procurement officer should check all items that are forwarded for review and sign the Certification if it is an accurate statement:

Identification of Contract: Foundation Building Renovation

- ☒ 1. Published notice of ITB or RFP
- ☒ 2. ITB or RFP
- ☒ 3. Log of distribution of ITB or RFP
- ☒ 4. Amendments to ITB or RFP, if any were issued
- ☒ 5. Logs of distribution of amendments to ITB or RFP, but only if amendments were issued
- ☒ 6. Minutes or summary of pre-submission conferences, but only if conferences were held
- ☒ 7. Logs of attendees of pre-submission conferences, but only if conferences were held
- ☒ 8. Written questions from bidders or offerors, but only if any questions were received
- ☒ 9. Written answers, but only if any questions were received
- ☒ 10. Proof that written answers were provided to all potential bidders or offerors, but only if any questions were received
- ☒ 11. Log of bids or proposals received
- ☒ 12. Each bid or proposal received
- ☒ 13. Evaluation of proposals or analysis of bids (bids are not required by law to be analyzed, but may be)
- ☒ 14. Tabulation of evaluations or analysis (tabulations are not required by law but recommended)
- ☐ 15. Letters to bidders concerning outcome of bid; for offerors, letters informing them of ranking and letter to best qualified offeror inviting negotiations
- ☒ 16. Memorandum of evaluations and negotiations (only required for RFP's)
- ☒ 17. Notice of intent to award
- ☐ 18. Any and all communications from or to anyone concerning any part of ITB or RFP
- ☒ 19. Contract, including all draft versions
- ☐ 20. Bid protests, if any, and responses thereto
- ☐ 21. Any determination required by law as may fit the circumstances

CERTIFICATION: Pursuant to 5 G.C.A. §5250, I hereby certify under penalty of perjury that I am the procurement officer responsible for administering the solicitation of the attached contract, and that I have caused to be prepared and now maintain a full and complete record of the procurement as required by law.

Signature: Joleen M. Evangelista
Print Name: Joleen M. Evangelista Date: 3/9/11

Leonardo M. Rapadas
Attorney General



Phillip J. Tydingco
Chief Deputy Attorney General

OFFICE OF THE ATTORNEY GENERAL

PROCUREMENT REVIEW CHECKLIST FOR INVITATIONS TO BID (IFB)

MAR 11 2011

AG PCF No.: GCC 11-0225 *Guam Community College*
RECEIVED

Assistant Attorney General: Mr. Rawlen Mantanona, Esq.

Agency: Guam Community College

Agency IFB No.: GCC-FB-11-003

MAR 11 2011

PRESIDENT'S OFFICE

Initials: *[Signature]*

Brief Description: Foundation Building Renovation – Construction Services

Instructions: For each question or item below, please answer "yes," "no," or "not applicable" ("n/a") by checking the appropriate box. Each question must be answered, or the checklist will be considered incomplete and returned to you for completion. In some cases, a short answer is required in addition to checking one of the boxes. Please provide an answer in the space provided. Some questions or items below are also accompanied by notes or special instructions. Please read them carefully and respond accordingly. Please note that if an item is required by a law, or based on one, the applicable law is cited. "L" refers to sections from 5 GCA (the Guam Procurement Law); "R" refers to sections from 2 GAR Div. 4 (the Guam Procurement Regulations).

When you have completed the procurement and the checklist, please sign and date the certification, and submit the certified checklist to the Attorney General's Office.

This checklist covers the basic essentials of an IFB type of procurement. However, depending upon the circumstances, other requirements of the Guam Procurement Law and regulations may apply. In addition, federally funded acquisitions may be subject to federal requirements. You are responsible for ensuring that all legal requirements are followed, including any requirements not specifically addressed in this checklist.

The Attorney General's Office will conduct occasional audits of your agency's acquisitions which you are handling as a Special Assistant Attorney General pursuant to 5 GCA § 5150. Please have the procurement record ready for audit at all times. The procurement record should be complete, organized, without multiple numbers of the same documents, and bound in some manner so that there are no loose papers. If we audit a record, and find that it is unorganized, or contains unnecessary duplications, or loose papers, we will return it to you for restructuring into an acceptable form.

cc: Helen Evangelista

yes no n/a

Initial Questions

- ☐ ☐ ☐ 1. Is there a record of planning for this procurement? [L 5010; R 1102.03]
- ☐ ☐ ☐ 2. Is this procurement mandated by statute? If so, cite: _____

Statutory Preferences

- ☐ ☐ ☐ 3. Can matter being procured (MBP) be a product that is biodegradable, reusable, recyclable, made from recycled material, or some combination of the foregoing? [R 1102.02]
- ☐ ☐ ☐ 4. If MBP includes concrete or asphalt paving, construction or repair of highways, does IFB give notice that bids must include use of available recycled glass, and require bidders to identify and certify in writing the percentage of recycled glass contained in the material offered? [L 5218]
- ☐ ☐ ☐ 5. Does IFB give notice about local preference policy? [L 5008; R 1104] If "not applicable" is checked, please state why: _____
- ☐ ☐ ☐ 6. If horticulture products are being procured, does IFB give notice that 75% must be native grown or grown-in-Guam? [L 5008.1]

Requirements for All Solicitations

- ☐ ☐ ☐ 7. Does IFB advise of disclosure of major shareholders? [L 5233; R 3118.1]
- ☐ ☐ ☐ 7.1. Is affidavit form (AG Procurement Form 002) attached to IFB?
- ☐ ☐ ☐ 8. Does IFB advise that submission of bid or offer is a certification by bidder that price or offer was independently arrived at without collusion? [R 3126(b)]
- ☐ ☐ ☐ 8.1. Is affidavit form (AG Procurement Form 003) attached to IFB?
- ☐ ☐ ☐ 9. Does solicitation conspicuously state prohibition against gratuities and kickbacks? [L 5630(c); R 11107(3) and 11107(4)(e)]
- ☐ ☐ ☐ 9.1. Is affidavit form (AG Procurement Form 004) attached to IFB
- ☐ ☐ ☐ 9.2. If proposed form of contract is attached to IFB, then prohibition must be stated in proposed contract. Is the prohibition stated? *[Instructions: Answer "yes" or "no" only if a proposed form of contract is attached to IFB. If a proposed form is not attached, then your answer is "not applicable".]*
- ☐ ☐ ☐ 10. Does solicitation conspicuously state prohibition against contingent fees and retention of persons to secure contract? [L 5631(a); R 11108(a)(3), 11108(f), 11108(h)]
- ☐ ☐ ☐ 10.1. Is affidavit form (AG Procurement Form 007) attached to IFB?

yes no n/a

☐ ☐ ☐

10.2. If proposed form of contract attached to IFB, then prohibition must be stated in proposed contract. *[Instructions: Answer "yes" or "no" only if a proposed form of contract is attached to IFB. If a proposed form is not attached, then your answer is "not applicable".]*

☐ ☐ ☐

11. Does IFB conspicuously state ethical standards? [R 11103(b)]

☐ ☐ ☐

11.1. Is affidavit form (AG Procurement Form 005) attached to IFB?

☐ ☐ ☐

11.2. If proposed form of contract attached to IFB, then ethical standards must be stated in proposed contract. *[Instructions: Answer "yes" or "no" only if a proposed form of contract is attached to IFB. If a proposed form is not attached, then your answer is "not applicable".]*

☐ ☐ ☐

12. Does IFB advise that solicitation for bids may be cancelled? [L 5225; R 3115(c)]

☐ ☐ ☐

13. Does IFB recite prohibition against employment of sex offenders? [L5253]

☐ ☐ ☐

13.1. If proposed form of contract attached to IFB, then prohibition must be stated in proposed contract. *[Instructions: Answer "yes" or "no" only if a proposed form of contract is attached to IFB. If a proposed form is not attached, then your answer is "not applicable".]*

☐ ☐ ☐

14. If for services, does IFB recite wage and benefits determination requirement? [L 5211(b); 5801 and 5802] *[Instructions: For question 13 and its sub-questions, you may check "not applicable" only if procurement is for something other than services.]*

☐ ☐ ☐

14.1. Is the most recent applicable USDOL wage and benefits determination attached to IFB?

☐ ☐ ☐

14.2. Is declaration form (AG Procurement Form 006) attached to IFB?

☐ ☐ ☐

15. If contract will be for more than one year, does IFB state contract term and conditions of renewal or extension? [L 5337(a); R 3121(d) and 3121(e); for leases, see also R 3119(k)(2)] The following apply only if the contract is for more than one year.

☐ ☐ ☐

15.1. Was written determination made? [R 3121(d)]

☐ ☐ ☐

15.2. Does IFB state amount of MBP needed? [R 3121(e)(1)(A)]

☐ ☐ ☐

15.3. Does IFB state unit price? R 3121(e)(1)(B)]

☐ ☐ ☐

15.4. Does IFB state that contract will be cancelled if funds not appropriated or insufficient, and that government will timely inform contractor? [R 3121(e)(1)(C) and 3121(e)(1)(D)]

☐ ☐ ☐

15.5. Does IFB state whether bidders should submit price for first year only or

yes no n/a

for entire contract term? [R 3121(e)(1)(E)]

☐ ☐ ☐

15.6. Does IFB state how award will be determined, including price comparison if applicable? [R 3121(e)(1)(F)]

☐ ☐ ☐

15.7. Does IFB state that, if cancelled, contractor will be reimbursed unamortized reasonably incurred non-recurring costs? [R 3121(e)(1)(G)]

Specifications

☐ ☐ ☐

16. Does IFB identify person responsible for drafting specifications, as well as for technical literature and manufacturer's brochures? [L 5267; R 4108]

☐ ☐ ☐

17. Were specifications reviewed to confirm that they include only essential physical characteristics and functions to meet government's needs? [L 5268(a); R 4102(a)]

☐ ☐ ☐

18. Is it true that the specifications do not contain features peculiar to product of one manufacturer? [L 5268(b); R 4102(a)(3)]

☐ ☐ ☐

18.1. If answer is "no," is there a written determination that peculiar features are essential and reasons why similar product without features do not meet minimum requirements? [L 5268(b); R 4102(a)(3)]

☐ ☐ ☐

19. Do specifications describe salient technical requirements or desired performance without restrictions which do not affect requirements or performance? [L 5368(c); R 4102(a)(2)]

☐ ☐ ☐

20. Do specifications permit maximum practicable competition? [R 4102(a)(1)]

IFB Document Requirements

21 - 36. The following items are mandatory, except where noted, as required by L 5211 and/or R 3109, unless another citation is given:

☐ ☐ ☐

21. Instructions to bidders

☐ ☐ ☐

22. Time and date set for receipt of bids

☐ ☐ ☐

23. Address to deliver bids

☐ ☐ ☐

24. Maximum time for bid acceptance

☐ ☐ ☐

25. Bids are due at least 15 days after date of distribution of IFB

☐ ☐ ☐

26. Advise that bid must acknowledge receipt of amendments to IFB

☐ ☐ ☐

27. Purchase description

yes no n/a

- ☐ ☐ ☐ 28. Delivery and performance schedule
- ☐ ☐ ☐ 29. Inspection and acceptance requirements
- ☐ ☐ ☐ 30. Evaluation factors for product acceptability
- ☐ ☐ ☐ 31. Advise of contract terms and conditions
- ☐ ☐ ☐ 32. Bid bond requirements, applicable only if contract will be greater than \$25,000 [L 5212; L 5303 for construction]
- ☐ ☐ ☐ 33. Performance bond or payment bond requirements, applicable only if for construction and if contract will be greater than \$25,000 [L 5304]
- ☐ ☐ ☐ 34. If anticipated that Certificate of Current Cost or Pricing Data may be required of winning bidder, then notice thereof must be included in IFB [R 3118(e)(3)]
- ☐ ☐ ☐ 35. If payments will be made in installments, then IFB must so advise [R 3106]
- ☐ ☐ ☐ 36. Include bid form, with space for bid amount and signature

Public Notice and Distribution of IFB

- ☐ ☐ ☐ 37. Was notice of IFB published at least fifteen days before due date? This requirement is only applicable if the procurement is greater than \$25,000. [L 5211(c) and R 3109]
- ☐ ☐ ☐ 38. Was bid invitation made publicly available?
- ☐ ☐ ☐ 39. Was register or log of distribution of IFB kept?

Pre-Bid Conference

- ☐ ☐ ☐ 40. Was pre-bid conference conducted? [R 3109(g)(4)]
- ☐ ☐ ☐ 41. Was time, date and place announced to all prospective bidders?
- ☐ ☐ ☐ 42. Was summary or minutes of conference prepared?
- ☐ ☐ ☐ 43. Was summary or minutes distributed to all prospective bidders?

Amendments to IFB

yes no n/a

- ☐ ☐ ☐ 44. Were any amendments to the IFB issued? [R 3109(i)]
- ☐ ☐ ☐ 45. How many amendments were issued? _____
- ☐ ☐ ☐ 46. Was each amendment distributed to or served on all prospective bidders who received an IFB and was proof of distribution or service maintained for the record?
- ☐ ☐ ☐ 47. Was proof of distribution kept in the form of a register or log of distribution?
- ☐ ☐ ☐ 48. Was proof of service kept in the form of some other documentation? [R 3109(i)(2)].
If "yes," please identify form of documentation: _____

Bids Received and Bid Opening

- ☐ ☐ ☐ 49. Was register of bids received kept?
- ☐ ☐ ☐ 50. Was each bid time-stamped and dated? [R 3109(l)(1)]
- ☐ ☐ ☐ 51. Were late bidders notified that their late bid will not be considered? [R 3109(k)(3)]
- ☐ ☐ ☐ 52. Was a record of the late bids kept? [R 3109(k)(4)]
- ☐ ☐ ☐ 53. Was a record of bids and an abstract of bids prepared at time of opening? [L 5211(d); R 3109(l)(2)]
- ☐ ☐ ☐ 54. Was a public opening conducted at the time, date and place indicated in IFB? [L 5211(d); R 3109(l)(2)]
- ☐ ☐ ☐ 55. Were there any bid mistakes, corrections, or withdrawals after the time of opening?
- ☐ ☐ ☐ 56. If the answer to # 55 is "yes," is there a record of each in accordance with R 3109(m)(4)?
- ☐ ☐ ☐ 57. Have all proprietary data in bids been designated and have bidders been informed in writing? [R 3109(l)(3)]

Determination of Bid Responsiveness and Responsibility

- ☐ ☐ ☐ 58. Were bids evaluated to determine product acceptability? [R 3109(n)(3)]

yes no n/a

- ☐ ☐ ☐ 59. If for services, are the bid amounts sufficient to comply with the wage and benefit requirements of 5 GCA §§5801 and 5802? [L 5211(g)]
- ☐ ☐ ☐ 60. Were acceptable bids evaluated to determine lowest bidder? [R 3109(n)(4)]
- ☐ ☐ ☐ 61. Does the record show a basis for determining successful bidder? [R 3109(p)]
- ☐ ☐ ☐ 62. Were any bids rejected for any reason? [R 3115(e)]
- ☐ ☐ ☐ 63. If the answer to #62 was "yes," were the unsuccessful bidders notified and was a written determination prepared? [R 3115(e)(4), 3116(a) and 3116(b)(5)]
- ☐ ☐ ☐ 64. For construction contracts, if all bids exceeded available funds but lowest bid did not exceed available funds by 5%, was a contract negotiated? [L 5211(g)]
- ☐ ☐ ☐ 65. If there were not at least two responsible bidders, and the contract amount will be over \$100,000, was the lowest bidder to whom a contract will be awarded, asked to submit cost or pricing data, and did bidder submit data? [R 3118]
- ☐ ☐ ☐ 66. If the answer to #65 was "yes," did the proposed contractor submit the proposed data as a certified statement? [R 3118(d)(3) and 3118(e)(1)]

Award and Notice of Award

- ☐ ☐ ☐ 67. Was written notice sent to successful bidder? [R 3109(q)]
- ☐ ☐ ☐ 68. For procurement over \$25,000, was written notice sent to all unsuccessful bidders? [R 3109(q)]

Mandatory Requirements for All Contracts

- ☐ ☐ ☐ 69. Did the procurement officer certify in writing and under penalty of perjury that a complete record exists before award was made? [L 5250; R 3130] The certification should be in the following form or in substantially similar language:

"CERTIFICATION: Pursuant to 5 G.C.A. §5250, I hereby certify under penalty of perjury that I am the procurement officer responsible for administering the solicitation of the attached contract, and that I have caused to be prepared and now maintain a full and complete record of the procurement as required by law."

70. Identify contract type by checking one [R 3119]:
_____ fixed price contract - firm fixed price

yes no n/a

_____ fixed price contract - with price adjustment
_____ cost-reimbursement - cost contract
_____ cost reimbursement - cost-plus-fixed fee contract
_____ cost incentive contract - fixed-price cost incentive
_____ cost incentive contract - cost-reimbursement contract with cost incentive fee
_____ performance incentive contract
_____ time and materials contract - time and materials contract
_____ time and materials contract - labor hour contract
_____ lease
_____ other: _____

- ☐ ☐ ☐ 71. For contracts which are not firm fixed price, has a written determination been made that the contractor's accounting system is adequate to allocate costs and will permit timely development of all cost data? [L 5236; R 3119]
- ☐ ☐ ☐ 72. Can an assurance be made that contract is not a "cost-plus-a-percentage-of-cost" contract? [L 5235; R 3119]
- ☐ ☐ ☐ 73. If this is a cost-reimbursement contract, then has a written determination been made that the contract is likely to be less costly than other types of contracts? [L 5235; R 3119]
- ☐ ☐ ☐ 74. Does the contract conspicuously state the prohibition against gratuities and kickbacks? [L5630(c); R 11107(3)]
- ☐ ☐ ☐ 75. Does the contract conspicuously state contractor's representation that contractor has not retained a person to solicit or secure contract, or paid a contingent fees, commissions, or brokerage fees? [L 5631(a); R 11108(a)(2)]
- ☐ ☐ ☐ 76. Does contract conspicuously state ethical standard? [R 11103(b)]
- ☐ ☐ ☐ 77. Does contract recite prohibition against employment of sex offenders? [L 5253]
- ☐ ☐ ☐ 78. If contract is for multiple years, does contract state exactly the same term provision and renewal provision that were stated in the IFB? [L 5337(a); R 3121(e)]
- ☐ ☐ ☐ 79. For multi-year contracts, are funds available for the first year at time of contracting?
- ☐ ☐ ☐ 80. If the contract is not a firm fixed price contract, does the contract state that the contractor shall maintain its books and records for three years from the date of final payment, and that this provision must be included in subcontracts? [L 5241; R 3124]
- ☐ ☐ ☐ 81. If cost or pricing data was required, then does contract include provision that government may, at reasonable times and places, audit books and records relative to cost

yes no n/a

or pricing data, and that contractor shall maintain such records and books for three years from date of final payment? [L 5241; R 3124]

☐ ☐ ☐ 82. Is MBP from business licensed on Guam, and maintaining an office on Guam? [L 5008; R 1104]

☐ ☐ ☐ 82.1. For manufacturing business, is 25% value added by U. S. workers?

☐ ☐ ☐ 82.2. For business with regular inventory, does it carry 50% of items being procured?

☐ ☐ ☐ 82.3. For bona fide retail or wholesale business, is the value of its inventory at least one-half of items being procured or is the value of its inventory at least \$150,000?

☐ ☐ ☐ 82.4. For a service business, are at least 95% of its workers U.S. citizens, etc.?

☐ ☐ ☐ 82.5. For foreign supplier, are items or services at least 15% less than local business, FOB job-site unloaded?

☐ ☐ ☐ 83. If the answer to item 82 was "no," please state why: _____

Contract Requirements for Construction Contracts Only

☐ ☐ ☐ 84. Is there a written statement setting forth the facts leading to selection of a particular method of construction contract management? [L 5302(c); R 5102(4)(a) and 5102(4)(d)]
If yes, please state the method of contract management: _____

☐ ☐ ☐ 85. If a contract is awarded in excess of \$25,000, does the contract specify the amount of a performance or payment bond to be delivered and that delivery must be 100% of the amount stated? [L 5304(a); R 5104]

Contract Clauses for Construction Contracts Only

☐ ☐ ☐ 86. If contract contains estimated quantity items, then does contract also contain the "variations in estimated quantities" clause? [L 5306(a)(2); R 5106(4)]

87 - 94. The following are mandatory clauses for all construction contracts:

☐ ☐ ☐ 87. "Suspension of work" clause [L 5306(a)(3); R 5106(5)]

☐ ☐ ☐ 88. "Differing site conditions" clause [L 5306(a)(4); R 5106(6)] [Note: R 5106(6) contains two alternative clauses.]

☐ ☐ ☐ 89. "Price adjustment" clause [L 5306(b); R 5106(7)]

yes no n/a

- ☐ ☐ ☐ 90. "Claims based on government's acts or omissions" clause [L 5306(c); R 5106(8)]
- ☐ ☐ ☐ 91. "Termination for default for non-performance or delay; damages for delay; time extension" clause [L 5306(c); R 5106(9)]
- ☐ ☐ ☐ 92. "Liquidated damages" clause [L 5306(c); R 5106(10)]
- ☐ ☐ ☐ 93. "Termination for convenience" clause [L 5306(c); R 5106(11)]
- ☐ ☐ ☐ 94. "Remedies" clause [L 5306(c); R 5106(12)]
- ☐ ☐ ☐ 95. Items 87 through 94 are mandatory provisions for construction contracts, and the procurement regulations contain the provisions which must be used verbatim. The provision for item 86 is also found in the procurement regulations and must be used verbatim if the provision is applicable. Deviations from the provisions as found in the regulations require a written determination to support the modification. Were any deviations made? [L 5306(d); R 5106(1)]
- ☐ ☐ ☐ 96. Regarding item 95, if the answer was "yes," is there a written determination to support each deviation? [L 5306(d); R 5106(2)]
- ☐ ☐ ☐ 97. Is there a change order clause in the contract giving the government the unilateral right to change work or time of performance? [L 5306(a)] *[Note: The regulations do not contain a change order clause to be used verbatim.]*
- ☐ ☐ ☐ 98. If MBP includes concrete or asphalt paving, construction or repair of highways, does contract include provision stating suitable percentage of recycled glass to be used in project as condition of award; and require contractor to identify and certify in writing the percentage of recycled glass contained in the material offered? [L 5218]

Contract Clauses for Non-Construction Contracts

99 - 107. The following are contract clauses should be used only if the subject matter is applicable. If applicable, the clause in the regulation must be used verbatim. [L 5350(c); R 6102(2)]:

- ☐ ☐ ☐ 99. "Changes" clause [R 6101(3)(a)]
- ☐ ☐ ☐ 100. "Stop work order" clause [R 6101(4)(c)]
- ☐ ☐ ☐ 101. "Variation in quantity" clause for definite quantity contracts [R 6101(5)(a)]
- ☐ ☐ ☐ 102. "Price adjustment" clause [R 6101(6)]
- ☐ ☐ ☐ 103. "Claims based on government's actions or omissions" clause [R 6101(7); see R 5106(8)]
- ☐ ☐ ☐ 104. "Termination for default" clause [R 6101(8)]

yes no n/a

- ☐ ☐ ☐ 105. "Liquidated damages" clause [R 6101(9)(a); see also R 6101(9)(b)]
- ☐ ☐ ☐ 106. "Termination for convenience" clause [R 6101(10)]
- ☐ ☐ ☐ 107. "Remedies" clause [R 6101(12)]
- ☐ ☐ ☐ 108. With respect to items 99 through 107, if the clauses were applicable, but not quoted in the contract verbatim from the rule, then was a written determination made to justify each deviation? [L 5350(c); R 6101(2)]
- ☐ ☐ ☐ 109. Is the mandatory "disputes" clause in the contract? [R 9103(g)] *[Note: The third paragraph in the disputes clause erroneously states that the contractor shall appeal an agency decision to the Superior Court of Guam. However, the procurement law at 5 GCA § 5427(e) states that appeal shall be taken to the Office of Public Accountancy. Therefore, the third paragraph should be corrected to accurately reflect the statute.]*
- ☐ ☐ ☐ 110. If Certificate of Current Cost or Pricing Data was required of winning bidder, then does contract state the government's right to a reduction in price? [R3118(e)(3) and 3118(f)(1).]

CERTIFICATION

I am the undersigned Special Assistant Attorney General for this procurement, and I certify that I have done due diligence in reviewing this procurement with respect to the foregoing requirements and any other legal requirements not listed, and to the best of my knowledge, all laws and regulations have been followed for this procurement.

Signature

Date:

Attachments:

Form 002 - Affidavit Disclosing Ownership and Commissions
Form 003 - Affidavit re Non-Collusion
Form 004 - Affidavit re No Gratuities or Kickbacks
Form 005 - Affidavit re Ethical Standards
Form 006 - Declaration re Compliance with U.S. DOL Wage Determination
Form 007 - Affidavit re Contingent Fees

AFFIDAVIT DISCLOSING OWNERSHIP and COMMISSIONS

CITY OF _____)
) ss.
ISLAND OF GUAM)

A. I, the undersigned, being first duly sworn, depose and say that I am an authorized representative of the offeror and that *[please check only one]*:

☐ The offeror is an individual or sole proprietor and owns the entire (100%) interest in the offering business.

☐ The offeror is a corporation, partnership, joint venture, or association known as _____ *[please state name of offeror company]*, and the persons, companies, partners, or joint venturers who have held more than 10% of the shares or interest in the offering business during the 365 days immediately preceding the submission date of the proposal are as follows *[if none, please so state]*:

| <u>Name</u> | <u>Address</u> | <u>% of Interest</u> |
|-------------|----------------|----------------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

B. Further, I say that the persons who have received or are entitled to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the bid or proposal for which this affidavit is submitted are as follows *[if none, please so state]*:

| <u>Name</u> | <u>Address</u> | <u>Compensation</u> |
|-------------|----------------|---------------------|
| _____ | _____ | _____ |

C. If the ownership of the offering business should change between the time this affidavit is made and the time an award is made or a contract is entered into, then I promise personally to update the disclosure required by 5 GCA §5233 by delivering another affidavit to the government.

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

Subscribed and sworn to before me
this ____ day of _____, 201__.

NOTARY PUBLIC
My commission expires: _____

AFFIDAVIT re NON-COLLUSION

CITY OF _____)
) ss.
ISLAND OF GUAM)

_____[state name of affiant signing below], being first duly sworn, deposes and says that:

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

2. The proposal for the solicitation identified above is genuine and not collusive or a sham. The offeror has not colluded, conspired, connived or agreed, directly or indirectly, with any other offeror or person, to put in a sham proposal or to refrain from making an offer. The offeror has not in any manner, directly or indirectly, sought by an agreement or collusion, or communication or conference, with any person to fix the proposal price of offeror or of any other offeror, or to fix any overhead, profit or cost element of said proposal price, or of that of any other offeror, or to secure any advantage against the government of Guam or any other offeror, or to secure any advantage against the government of Guam or any person interested in the proposed contract. All statements in this affidavit and in the proposal are true to the best of the knowledge of the undersigned. This statement is made pursuant to 2 GAR Division 4 § 3126(b).

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

Signature of one of the following:

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

Subscribed and sworn to before me

this _____ day of _____, 201_____.

NOTARY PUBLIC
My commission expires _____,

AFFIDAVIT re NO GRATUITIES or KICKBACKS

CITY OF _____)
) ss.
ISLAND OF GUAM)

_____ [state name of affiant signing below], being first duly sworn, deposes and says that:

1. The name of the offering firm or individual is [state name of offeror company] _____ Affiant is _____ [state one of the following: the offeror, a partner of the offeror, an officer of the offeror] making the foregoing identified bid or proposal.

2. To the best of affiant's knowledge, neither affiant, nor any of the offeror's officers, representatives, agents, subcontractors, or employees have violated, are violating the prohibition against gratuities and kickbacks set forth in 2 GAR Division 4 § 11107(e). Further, affiant promises, on behalf of offeror, not to violate the prohibition against gratuities and kickbacks as set forth in 2 GAR Division 4 § 11107(e).

3. To the best of affiant's knowledge, neither affiant, nor any of the offeror's officers, representatives, agents, subcontractors, or employees have offered, given or agreed to give, any government of Guam employee or former government employee, any payment, gift, kickback, gratuity or offer of employment in connection with the offeror's proposal.

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

Signature of one of the following:

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

Subscribed and sworn to before me

this _____ day of _____, 200__.

NOTARY PUBLIC

My commission expires _____,

AFFIDAVIT RE ETHICAL STANDARDS

CITY OF _____)
) ss.
ISLAND OF GUAM)

_____ [state name of affiant signing below], being first
duly sworn, deposes and says that:

The affiant is _____ [state one of the following: the offeror,
a partner of the offeror, an officer of the offeror] making the foregoing identified bid or proposal. To the
best of affiant's knowledge, neither affiant nor any officers, representatives, agents, subcontractors or
employees of offeror have knowingly influenced any government of Guam employee to breach any of the
ethical standards set forth in 5 GCA Chapter 5, Article 11. Further, affiant promises that neither he or
she, nor any officer, representative, agent, subcontractor, or employee of offeror will knowingly
influence any government of Guam employee to breach any ethical standards set forth in 5 GCA Chapter
5, Article 11. These statements are made pursuant to 2 GAR Division 4 § 11103(b).

Signature of one of the following:

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

Subscribed and sworn to before me
this _____ day of _____, 201__.

NOTARY PUBLIC

My commission expires _____, _____.

DECLARATION RE COMPLIANCE WITH U.S. DOL WAGE DETERMINATION

Procurement No.: _____

Name of Offeror Company: _____

I, _____ hereby certify under penalty of perjury:

(1) That I am _____ [*please select one: the offeror, a partner of the offeror, an officer of the offeror*] making the bid or proposal in the foregoing identified procurement;

(2) That I have read and understand the provisions of 5 GCA § 5801 and § 5802 which read:

§ 5801. Wage Determination Established.

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

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

§ 5802. Benefits.

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

(3) That the offeror is in full compliance with 5 GCA § 5801 and § 5802, as may be applicable to the procurement referenced herein;

(4) That I have attached the most recent wage determination applicable to Guam issued by the U.S. Department of Labor. [*INSTRUCTIONS - Please attach!*]

Signature

AFFIDAVIT re CONTINGENT FEES

CITY OF _____)
) ss.
ISLAND OF GUAM)

_____[state name of affiant signing below], being first duly sworn, deposes and says that:

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

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

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

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

Signature of one of the following:

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

Subscribed and sworn to before me

this _____ day of _____, 201_____.

NOTARY PUBLIC

My commission expires _____,