



PORT OF GUAM
ATURIDAT I PUETTON GUAHAN
Jose D. Leon Guerrero Commercial Port
1026 Cabras Highway, Suite 201, Piti, Guam 96915
Telephone: 671-477-5931/35 Facsimile: 671-477-2689/4445
Website: www.portguam.com



Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

April 26, 2024

Dr. Jeffrey C. Johnson
Chairman, Guam Public Utilities Commission
Suite 207 GCIC Building
414 West Soledad Avenue
Hagatna, GU 96910



RE: Petition for Contract Review: Purchase of Nine (9) Terminal Yard Tractors

Buenas yan Hafa Adai Chairman Johnson,

On behalf of the Port Authority of Guam (PAG), I am writing to file the Petition requesting the Public Utilities Commission's (PUC) review and approval of the sole source contract to American Material Handling, Inc. (AMH) for nine (9) Terminal Yard Tractors.

The funding for this critical acquisition is made possible through MARAD's American Marine Highway Grant No. 693JF72340007 in the amount of one million seven hundred ninety-one thousand three hundred twenty-seven dollars (\$1,791,327.00). This grant award provides for an 80/20 cost share to PAG.

BACKGROUND: PAG initiated the procurement of terminal yard tractors through initial funding provided as a sub-recipient of the Diesel Emissions Reduction Act (DERA) grant through United States Environmental Protection Agency (USEPA).

The Port's initial effort to procure tractors resulted in the first competitive sealed bid opening for IFB-PAG-006-22 on April 8, 2022. The price submitted by the lone bidder, Far East Equipment, far exceeded the budgeted allocation. Upon rejecting the bid as it was in far excess of available funding, PAG then entered into negotiations with Far East Equipment pursuant to 2GAR Div. 4 § 3102 (c) (1) (C). This was done in an attempt to reach an agreement on a price that was within budget. Unfortunately, PAG and Far East Equipment were unsuccessful at reaching an agreement. As this procurement was funded with federal funds, and pursuant to 48 U.S.C. § 1469e which authorizes the governments of the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the United States Virgin Islands to use Federal General Services Agency (GSA) sources to acquire supplies and services, PAG then determined that there were eligible bidders contracted under the Federal GSA Multiple Award Schedule (MAS) with similar items readily available and most importantly, priced within budget. This critical procurement resulted in the eventual purchase and receipt of four (4) new yard terminal tractors that are currently being added to PAG's fleet. The contract was awarded to American Material Handling.

Consistent with PAG's equipment acquisition strategy, PAG then issued a second bid, IFB-PAG-010-23, for the Re-bid of Terminal Yard Tractors. This time around a stipulation was added in the solicitation packet to also accept Fed-GSA contracted bidders. Three (3) bids were eventually received. As a result, PAG determined that there was only one (1) bidder that qualified and met the requirements of the Build America Buy America Act (BABAA), an act which codifies the spend requirements for equipment sourced with federal funding.

Letter to PUC Chairman

April 26, 2024

Subject: Petition for Contract Review: Purchase of Nine (9) Terminal Yard Tractors

Page 2

The qualifying bid was submitted by American Material Handling (AMH) which again offered just and reasonable cost for tractors and associated delivery which was within PAG's available funding as well as being the only respondent that met the mandated requirements of BABAA.

After successful negotiations with AMH, MARAD granted a condition allowing for the procurement of the nine (9) tractors from the same vendor thus culminating in the potential award and contract approval that is the subject of this request.

To guide in your review of the matter, we hereby attach the following information:

1. Contract by and between PAG and AMH for the critical purchase of Nine (9) new Yard Terminal Tractors;
2. The Resolution in support of the critical acquisition as approved by the Board of Directors during their regularly scheduled meeting held on April 25, 2024; and
3. Other procurement documents in support of this petition request.

In view of the above, and pursuant to PAG Docket 09-01 Contract Review Protocol, your favorable review and approval of the contract award to American Material Handling Inc. would be greatly appreciated.

We look forward to working with you, the ALJ and Commissioners on any questions or information regarding this matter, should it be necessary.

Respectfully,



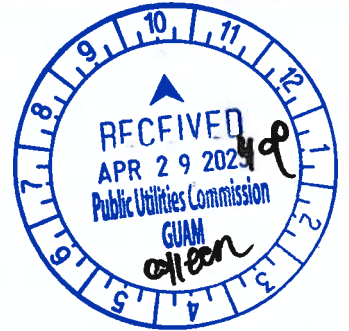
RORY J. RESPICIO

General Manager

Enclosures: PAG Procurement File
Board Resolution

CC: Attorney Jessica L. Toft
Legal Counsel- Guam PUC














COPY



PORT AUTHORITY OF GUAM

**DOCUMENTS FOR THE PURCHASE OF
NINE (9) TERMINAL YARD TRACTORS**

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-  **2. Determination of Need**
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-  **7b. Audio Recording of Negotiations**
-  **8a. e-mail Correspondence with MARAD**
-  **8b. Written Determination of Price and Sole Source**
-  **9a. Unsigned Contract**
-  **9b. Attachment A - for Contract**
-  **10a. Letter to PUC**
-  **10b. Resolution 2024-04**

R43500

Port Authority of Guam
Purchase Order Print

04/05/2024

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Order Company 00050

Order Number 21984 000 ON

Shipped From Port Authority of Guam
1026 Cabras Highway
Piti GU 96925

Ship To Port Authority of Guam
1026 Cabras Hywy, Ste 201
Piti GU

Branch/Plant PAG01

Ordered 02/16/2024 Freight
Requested 02/16/2024 Order Taken By Currency Code
Delivery URGENTLY NEED

Line	Rev	Description /Supplier Item	Ordered	UOM	Unit Price	PU UM	Extended Price	Request Date	Order No	Ty
1.000	0	TERMINAL YARD TRACTORS	9	EA	255,300.0001	EA	2,297,700.00	02/16/2024		

9 EA TERMINAL YARD TRACTORS TO INCLUDE SHIPPING
GRANT NO.693JF72340007

POINT OF CONTACT: MR. RAYMOND B. SANTOS OR MS. JACQUE CRUZ 1-(671)477-5931 EXTENSION 295.

Total Order 2,297,700.00

Total Order

Term Net Due - 30 Days Tax Rate *NA* .00 2,297,700.00



Reqs.Awaiting Approval - Work With Approval Status Summary Personal Form: (No Personalization) Layout: (No Lay

Tools One View

Order Number 21984 ON 00050

Records 1 - 8



<input type="checkbox"/>	Approval Route Code	Person Responsible	Status	Released Date	Released Time
<input checked="" type="radio"/>	PAG10	Budget Approver	Rejected	02/19/2024	84046
<input type="radio"/>	PAG10	Budget Approver	Approved	02/21/2024	134723
<input type="radio"/>	PAG10	SANTOS, RAYMOND B.	Approved	02/21/2024	134817
<input type="radio"/>	PAG10	NELSON, GLENN B.	Approved	02/21/2024	134904
<input type="radio"/>	PAG10	BAMBA, VINCENT C.	Approved	02/21/2024	135452
<input type="radio"/>	PAG10	PAG Buyer Supervisor	Approved	02/26/2024	84056
<input type="radio"/>	PAG10	PAG Buyer Manager	Approved	02/26/2024	91448
<input type="radio"/>	PAG10	RESPICIO, RORY J.	Approved	02/26/2024	132749

PORT AUTHORITY OF GUAM
ARUTIDAT I PUETTON GUAHAN
 Jose D. Leon Guerrero Commercial Port of Guam
GOVERNMENT OF GUAM
 Transportation Division

Rec'd 2/19/24
RECEIVED
 General Manager's Office
 Port Authority of Guam

February 19, 2024

INTER-OFFICE MEMORANDUM

To: General Manager

Via: Deputy General Manager, Operations
 Deputy General Manager, Admin & Finance *[Signature]*
 Operations Manager *[Signature]*

From: Transportation Superintendent *[Signature]*

Subject: Account Creation under MARAD's FY2022 America's Marine Highway (AMH) Program
 Grant No. 693JF72340007

Hafa Adai! The Port has been awarded the FY2022 Maritime Administration (MARAD) AMH Program for the project identified below. As MARAD finalizes the grant agreement, an establishment of account is needed for this award.

Project Title	PAG Cost-March (22%)	Federal Share (78%)	Total Cost
Guam Marine Transportation Enhancement Initiative: Acquisition of Specialized Container Yard Equipment	\$505,494	\$1,792,206.00	\$2,297,700.00

Account#: 50.2010-TRACTOR *16*

In an effort to facilitate the grant process, I recommend the creation of the account. The draft grant agreement is provided to you for file and dissemination. Therefore, I am kindly requesting your approval to purchase these nine (9) Tractors.

Should you have any questions or require additional information, please feel free to contact Jose Javellana or Christopher Aguon at extension 234 or 236.

Concurred: [] Not Concurred:

[Signature]
 JOSE B. GUEVARA, III,
 Chief Financial Officer

Approved [] Disapproved

[Signature] 2/20/24
 RORY J. RESPICIO,
 General Manager

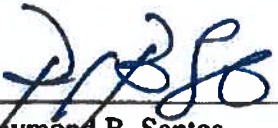
DETERMINATION OF NEED

Terminal Yard Tractor

The Port Authority of Guam (PAG) operates the only commercial seaport in the Territory. As the primary seaport in Micronesia, PAG is the largest U.S. deep-water port, and serves as a transshipment point for the entire Western Pacific Region. PAG currently handles 2 million tons of cargo a year.

The equipment is needed to replace its aging fleet. Replacing the fleet with newer equipment will give the PAG a better response time, and increase productivity than the current fleet, in which downtime is high and is in desperate need of repairs.

It is determined that the new equipment will best serve the PAG to move personnel, various gears, tools, other equipment and cargo needed to satisfy our day-to-day operations.



Raymond B. Santos,
Transportation Superintendent

21 FEB 24
Date



PORT AUTHORITY of GUAM
General Administration Services

COURIER SERVICE REQUEST FORM

Type: ___ Urgent X Regular ___ Other

X Delivery: ___ Pick-up

Sign/Date Receive: [Signature] 3/11/24

Sign/Date Pick-up: _____

Division: PROCUREMENT DIV. Date: 3/11/2024

Requested By: Mark Cabrera

Destination: DAG - Solicitor's Division

Subject Matter: Procurement over \$500k
 (9) Terminal Yard Tractors

Special Instructions: _____
 Please obtain acknowledgment of
receipt.

RECEIVED
 3/11/24 12:52 MT
OFFICE OF THE ATTORNEY GENERAL
CIVIL DIVISION



PORT OF GUAM
ATURIDATI PUEYTON GUAHAN
Jose D. Leon Guerrero Commercial Port
1026 Cabras Highway, Suite 201, Piti, Guam 96915
Telephone: 671-477-5931/35 Facsimile: 671-477-2689/4445
Website: www.portguam.com



Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

March 7, 2024

The Honorable Douglas B. Moylan
Attorney General of Guam
Attn: Civil Division
Office of the Attorney General of Guam
590 S. Marine Corps Dr., Suite 901
Tamuning, Guam 96913

Re: Notification of Procurement Over \$500,000 for Number-### 21984 ON (Acquisition of Nine (9) Terminal Yard Tractors)

Hafa Adai Attorney General Moylan,

This letter is to inform you that the Port of Guam ("PAG") shall procure under Project Number ### under 21984 ON nine (9) Terminal Yard Tractors and have determined that the total cost of acquisition exceeds \$500,000.00. Thus, pursuant to 5 GCA § 5150, the Port hereby makes this formal notification for the above-referenced procurement to the Office of the Attorney General ("OAG").

The purpose of this procurement is to acquire (9) nine terminal yard tractors in response to the aging state of its current fleet of tractors.

The cost of this acquisition is estimated at \$2,297,700 and was funded through MARAD FY2022 America's Marine Highway Program Grant No. 693JF72340007, and therefore, the Uniform Requirements of 2 CFR Part 200 and 5GCA §5004(b) apply to this procurement.

Therefore, the PAG hereby provides this formal notification of the procurement, along with submission of AG Form 014. Should you have any questions, or should you like to request any documents, please contact this office.

Respectfully,


RORY J. RESPICIO
General Manager
Enclosure: AG Form 014

DECLARATION RE COMPLIANCE WITH 5 GCA § 5150

I, RORY J. RESPICIO, make this declaration on February 19, 2024
[print name clearly] [enter today's date]
regarding Procurement No. REQ# 21984-ON, and do hereby certify under penalty of perjury that
[enter procurement no.]

(1) I am the procurement officer (Chief Procurement Officer, Director of Public Works, or head of a purchasing agency) for this procurement.

(2) I have caused an estimate to be made of the cost of the services or supplies being procured, and for which a contract will be entered into or a purchase order will be issued, whichever is appropriate as the case may be;

(3) My estimate of the total cost of the contract or purchase order, whichever is appropriate as the case may be, is *[please check one]*:

less than \$500,000, or

\$500,000 or more;

(4) If the total estimated cost of the procurement is \$500,000 or more, I understand that I must be advised by legal counsel designated by the Attorney General (which may be an Assistant Attorney General or other legal counsel designated as Special Assistant Attorney General ("SAAG") under 5 GCA § 5150) during each and every phase of the procurement process, beginning with the planning stage and before any request for proposal or invitation to bid is issued or notice published or before any sole source procurement or emergency procurement is undertaken;

(5) If the total estimated cost of the procurement is \$500,000 or more, I understand I may not proceed with any phase of the procurement unless I have been advised by an Assistant Attorney General or a SAAG to proceed;

(6) If the total estimated cost of the procurement is less than \$500,000 initially when the procurement is begun, but the total cost increases to \$500,000 or more at some later point in time, I understand I must contact the Attorney General's Office as soon as I become aware that the procurement will actually cost \$500,000 or more, and that I may not proceed further without the assistance of the Attorney General's Office or a SAAG, and

(7) I understand if I do not comply with the requirements of 5 GCA § 5150 and the Attorney General's Office or a SAAG has not acted as legal counsel during all phases of a procurement estimated to cost \$500,000 or more, the Attorney General or SAAG may disapprove the contract, or the procurement may be subject to cancellation, or any award, contract or purchase order made or entered into may be subject to termination.



[Declarant's Signature]



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Jose D. Leon Guerrero Commercial Port
1026 Cabras Highway, Suite 201, Piti, Guam 96915
Telephone: 671-477-5931/5 | Facsimile: 671-477-2689
Website: www.portofguam.com



Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

March 7, 2024

The Honorable Douglas B. Moylan
Attorney General of Guam
Attn: Civil Division
Office of the Attorney General of Guam
590 S. Marine Corps Drive, Suite 901
Tamuning, Guam 96913

Re: Notification of Planning and Drafting for Project Number – Requisition 21984-ON##
(Acquisition of Nine (9) Terminal Yard Tractors)

Hafa Adai Attorney General Moylan,

This letter is to inform you that the Port Authority of Guam (“PAG”) is currently ready to begin planning and drafting for this acquisition. Therefore, the Port hereby provides this formal notification. Should you have any questions, or should you like to request any documents, please contact my office.

Respectfully,


RORY J. RESPICIO
General Manager





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Lourdes A. Leon Guerrero
 Governor of Guam
Joshua F. Tenorio
 Lieutenant Governor

TRANSMITTAL FORM

April 8, 2024

TO: Honorable Douglas B. Moylan
 Attorney General of Guam
 Attn: Civil Division

FROM: Rory J. Respicio
 General Manager

SUBJECT: Notification of Negotiations for Project Number 21984 ON (Acquisition of nine (9) Terminal Yard Tractors)

Transmitted herewith are the following:

- Notification of Negotiations (Original document)

PAG COPY

Acknowledgment Receipt:

NAME: Tillie Takad

DATE: _____

TIME: _____

4/8/24 RECEIVED
 TJS/STW-TT
 OFFICE OF THE ATTORNEY GENERAL
 CIVIL DIVISION

COPY



PORT OF GUAM
ATURIDAT / PUETTUN GUAHAN
Jose D. Leon Guerrero Commercial Port
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Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

April 24, 2024

The Honorable Douglas B. Moylan
Attorney General of Guam
Attn: Civil Division
Office of the Attorney General of Guam
590 S. Marine Corps Dr. Suite 901
Tamuning, GU 96913

Re: Notification of Awarding and Contracting for PAG 21984-ON Nine (9) Terminal Yard Tractors

Hafa Adai Attorney General Moylan,

This letter is to inform you that the Port Authority of Guam (PAG) is currently ready to award and contract for this acquisition. Therefore, the PAG hereby provides this formal notification. Should you have any questions, or should you like to request any documents, please contact this office.

Respectfully,

RORY J. RESPICIO
General Manager



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Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

TRANSMITTAL

April 26, 2024

TO: Honorable Douglas B. Moylan
Attorney General of Guam
Attn: Civil Division

FROM: Rory J. Respicio
General Manager

SUBJECT: Notification of Award and Contracting for PAG 21984-ON Nine (9) Terminal
Yard Tractors

Transmitted herewith is the following:

- Notification of Award and Contracting

PAG COPY

Acknowledgement Receipt:

Name:	<u>Brenda Aguirre</u>
Date:	<u>4/26/24</u>
Time:	<u>12:01 pm</u>

RECEIVED
R:01pm 4/26/24
OFFICE OF THE ATTORNEY GENERAL
CIVIL DIVISION
B. Aguirre

PROCUREMENT DIVISION			FY24 ROUTING # <u>115</u>
Procurement Staff: <u>Mark</u>		Proc. Received Date: _____	
Date Out: <u>4/24/2024</u>	Time: <u>10:00 AM</u>	Initial/Time: _____ / _____	
Division	Initials	Date	Notes
Procurement Division	<i>Mark</i>	4/24/24	
DGM, Admin & Finance	<i>DM</i>	4/24/24	
General Manager -- (signature)	<i>Mark</i>	4/25/24	
SUBJECT: <u>AG Letter Notifying Award of Contract for MME (9)</u>			
<u>Terminal Yard Tractors</u>			
<input type="checkbox"/> URGENT <input checked="" type="checkbox"/> GM SIGNATURE <input type="checkbox"/> PLEASE RETURN TO PROCUREMENT			

TRANSMITTAL OF PLANNING PROCUREMENT RECORD TO GSA

Instructions: After ascertaining the statement's accuracy and truthfulness, the agency's (director or head of agency) must sign the Certification below to indicate that the agency has kept and will keep a complete procurement record of all documents required by law as to its planning of the procurement; and is in fact transmitting a full and complete record of the planning of the procurement to GSA in accompaniment with this transmittal form as of the date this form is signed.

Requesting/Using Agency: Port Authority of Guam

Re: Terminal Yard Tractors

5 GCA §5249 Record of Procurement Actions

Each procurement officer shall maintain a complete record of each procurement. The record shall include the following:

- (a) the date, time, subject matter and names of participants at any meeting including government employees that is in any way related to a particular procurement;
- (b) a log of all communications between government employees and any member of the public, potential bidder, vendor or manufacturer which is in any way related to the procurement;
- (c) sound recordings of all pre-bid conferences; negotiations arising from a request for proposals and discussions with vendors concerning small purchase procurement;
- (d) brochures and submittals of potential vendors, manufacturers or contractors, and all drafts, signed and dated by the draftsman, and other papers or materials used in the development of specifications; and
- (e) the requesting agency's determination of need.

5 GCA §5132. Retention of Electronic Mail Correspondences

All incoming and outgoing electronic mail (email) correspondences pertaining to matters related to the procurement of goods and services as governed by this Chapter shall be retained for a period of not less than five (5) years. Such electronic mail (email) correspondences may be used for evidentiary purposes in the appellate procedures contained in this Chapter.

5 GCA § 10102 (d). Definition of Public Records

Public Records includes any writing containing information relating to the conduct of public business prepared, owned, used, or retained by any state or local agency in any format, including in electronic format.

The specifications for this procurement were prepared by Raymond B. Santos in keeping with the above and all applicable Guam Procurement Laws and Regulations; and, he/she/they have included all records, meeting notes and any other materials in their/its possession in developing the specifications/statement of work/scope of services/technical specification as well as any of the above procurement records items. Additionally included is the written determination of need of the need the agency for this procurement (signed by director or head of the agency) and if applicable the board or commission minutes of the approval of this procurement. Please include research as to the availability of services, market availability. In the event this procurement is funded in whole or in part with federal funds a copy of the notice of grant award and any required federal terms and conditions or forms.

CERTIFICATION: I hereby certify under penalty of perjury that I am responsible for the planning procurement record and I have caused to be prepared and now transmit a full and complete record of the planning procurement records as required by law. I have obtained the signed verification of all individuals involved as the preparation of the specification that this is a true and accurate statement, and that this transmittal to GSA is complete. I acknowledge that there are continuing responsibilities within the requesting/using agency as to public records related to this procurement and will make sure they are maintained as required above.

Signature: 

Print Name: Raymond B. Santos

Date: 27 Feb 2019

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENSION
1.1	Terminal Yard Tractor (Latest Model)	9	EA.	\$ _____	\$ _____

Reference:

Make/Model Equal or Greater:

Kalmar Ottawa T2 4x2 DOT/EPA Certified

GENERALS:

These specifications have been written to describe minimum equipment and performance requirements to be supplied by the equipment manufacture bidding. Reasonable test may be conducted upon delivery before acceptance.

The successful bidder shall furnish all necessary and desirable information and instructions for the proper operation of the equipment.

The government reserves the right to accept and/or reject any and all bids, to waive any defects, irregularities, or specification discrepancies and to award the bid as council deems to be in the best interest of the government.

DELIVERY:

The successful bidder shall deliver NINE (9) each new/unused terminal yard tractors (latest model) fully assemble and ready for operation to the Port Authority of Guam within 180 days. Equipment shall meet all applicable DOT/US EPA and OSHA Requirements for Guam.

Brand Names: Manufacturers' brands and stock/part numbers specified do not denote a preference for that make, but specify the level of quality and/or performance necessary. Alternate brands found to be equal to or greater in quality and/or performance to brand specified may be accepted, however, the burden to prove equality shall rest with the bidder.

The subject specifications were drafted to allow for reasonable bid competition, however, needed to be tailored to meet the needs of the Port Authority of Guam. Through market research the Port Authority of Guam has discovered that the minimum required specifications can be met from local dealerships. The specifications were based on the following make and model, therefore, bid proposals shall meet or exceed reference equipment: Kalmar Ottawa T2 4x2 DOT/EPA Certified.

DISCREPANCIES LISTED:

Should any bidder have deviations from these specifications in his bid and cannot meet every requirement of the specifications, he/she shall submit a letter and attach it to the bid, explaining the deviations, failure to do so will cause the bid to be rejected as being non-responsive.

SPECIFICATIONS:

BIDDING AND OR REMARKS:

Engine:	200 HP minimum, DOT/EPA industrial Turbo Diesel, Engine Tier 4 Ultra Low Sulfur Engine shutdown protection system (Low Oil Pressure, High Engine Temperature, and High Transmission	_____
Fuel:	Diesel (Ultra Low Sulfur)	_____
Fuel Tank:	50 gallons minimum capacity	_____
DEF Tank	5 gallons minimum capacity	_____
Transmission Driveline:	Allison 3000RDS (6 Speed) Automatic Transmission, Push-Button Shifter.	_____
Steering:	The steering shall be power assisted	_____
Rear Axle:	42,000lbs minimum, Industry Standard	_____

Front Axle: 12,000lbs minimum, Industry Standard _____
**Chassis Frame/
 5th Wheel Boom/
 Front Bumper:** Galvanized Dipped _____
Fifth Wheel: 80,000lbs minimum, Industry Standard _____
**Lifting
 Cylinders:** Hydraulic, 63,000lbs minimum _____
Wheel Base: 116" inches Minimum _____
**Wheels/
 Tires:** 11" x 22.5", 16 ply minimum _____
Brakes: FMVSS style split brake system _____
Exhaust: Vertical, must meet current DOT/EPA standards _____
Gauges: Air, Fuel, Hour, Volt, Temp, and Oil _____
Paint: Minimum thickness application:
 Primer, 2-part epoxy polyamide 6 mil _____
 Topcoat, 2-part Polyurethane 3 mil _____
Color: Body-Safety Yellow according to Port Policy #2018-02 _____
Accessories:
 Air conditioning, factory installed heavy duty. _____
 Horns, dual air/electric _____
 Light, Dome, roof mounted _____
 Mirrors, outside L/R side with Stainless steel Frame _____
 and Brackets _____
**Accessories
 Continued:**
 1 set of "Shop Type" repair manuals and complete _____
 illustrated parts manual _____
 Owner/Operator manual for each vehicle _____
 Maintenance and Service manual for each vehicle _____
 Warranty booklet for each vehicle _____
 Recommended Spare Parts list _____
 All fluids to the fullest level _____
 Mud-flaps behind front wheels _____
 Seatbelt _____
 Fire extinguisher mounted inside cab (3lbs) _____
 Amber Strobe light Mounted on cab _____
 Electronic Backup alarm _____
 Insulated firewall covering (engine side) _____
 Cab tilt _____
 Full DOT marker lights on cab _____
 1 each full set tire and rim assemble per tractor _____
 Electric windshield wiper and washer _____
 Rear tire guards and flaps _____
 Sun visor front _____
 Rear license plate bracket on cab _____
 Reflective Conspicuity Tape _____
 Instrument Panel illumination control _____
 Trailer electric cable _____
**Special
 Provision:**
 If parts catalog and maintenance repair comes in CD-ROM, bidder must
 supply to requesting agency. Bidder must still provide hard (book) copy
 to the requesting agency. _____

**Applicable
Federal Laws
And
Regulations**

State Clean Diesel Grant Program and Diesel Emission _____
Reduction Act CFDA 66.039-40
Buy American Act - 41 U.S.C § 8301-8305 _____

Build America Buy America Act Certificate must
be provide by the manufacture. _____

Training:

Provide pre-inspection, post inspection and safe operational procedures
for all operators, leaders, supervisors and dispatchers within
Transportation division. _____

Provide proper preventive maintenance, repair, troubleshooting
and diagnostic training for fleet mechanic personnel. _____

Factory Recalls:

All factory recalls, modification, news bulletins, illustrations, etc. shall be routed to the Port Authority of
Guam Fleet Maintenance Division throughout the life of the equipment.

Yes, offer as requested. _____

No, Offer the following: _____

Warranty: (All guarantee, warranty, and service periods begin on date of acceptance).

Shall guarantee all parts, components and attachments associated with the equipment delivered to be free
from defects in material and workmanship for the period of one (1) year / unlimited hours starting at the
date of acceptance. **Unlimited to include lights, fuses, etc. Unless defect is determined to be caused
by obvious operator negligence.**

Yes, offer as requested. _____

No, Offer the following: _____

Manufacture's Standard Warranty, 1 year / 12,000 miles bumper to bumper limited warranty. Service of one
(1) year/ 12,000 miles or 2,000 hours, all parts, labor and disposal shall be included at "No Cost to the
Government. **Certification of Manufacturer's warranty and its limitations will be provided at time of
delivery.**

Yes, offer as requested. _____

No, Offer the following: _____

When some mileage/hours is put on the equipment during shipping and while at the manufacture, the
successful bidder must record these mile age/hours on the warranty booklet at delivery. This is added to the
mileage/hours limit as specified in the equipment Limited Warranty.

Yes, offer as requested. _____

No, Offer the following: _____

The manufacture Warranty and Brochures shall be specified on items covered and provided in the bid
packet. (Bid submission received without written warranty and Brochures as specified will be rejected).

Yes, offer as requested. _____

No, Offer the following: _____

The successful bidder shall provide technical assistance and warranty administration without any cost to the Government.

Yes, offer as requested. _____

No, Offer the following: _____

Warranty and Service Conditions:

The successful bidder shall provide service, to determine deficiency, such as preventive maintenance, diagnostic, repair or adjustment of the equipment on government premises or transfer the equipment to the shop where the repair should be done, at anytime within the warranty period and at "No cost to the Government". When the equipment is down for warranty repair(s) and remain in shop for a certain period awaiting part(s) and or material(s), the total down-time period shall be extended to the service and warranty period.

Yes, offer as requested. _____

No, Offer the following: _____

The successful bidder shall be responsible for all cost associated with warranty and service. To include but not limited to: Transport, diagnostic, parts, labor, disposal, etc.

Yes, offer as requested. _____

No, Offer the following: _____

During the warranty period, the Port Authority of Guam will not be liable for diagnostic fees not covered by warranty. Exception: Defect determined to be caused by obvious operator negligence.

Yes, offer as requested. _____

No, Offer the following: _____

The manufacture shall have a local authorized dealer who can provide factory trained service technician(s). Bidder shall provide certification of factory trained technician(s) for the above equipment to be purchased during commissioning. Failure to provided will result as "Unacceptable".

Yes, offer as requested. _____

No, Offer the following: _____

Due to the nature of services provided by the Port Authority of Guam all maintenance and warranty repairs shall be subject to priority scheduling and performed expeditiously.

Yes, offer as requested. _____

No, Offer the following: _____

Non-Warranty Services:

Description: Non-warranty services are for items not described in **Warranty Services**, and shall be used for non-warranty service not covered under manufacturer's warranty. The average hourly cost will be considered to reach a total bid cost for consideration of award.

- A. Hourly \$ _____
- B. Holiday per hour \$ _____
- C. Weekend per hour \$ _____
- D. Travel per hour \$ _____

= (A+B+C+D)/4= Average Hourly Cost: \$ _____

NOTE: Rates provided will be used for non-warranty services and will include at actual cost parts used for such service requested. All part(s) cost must be agreed upon prior to order issuance. Bidder agrees to maintain manufacturer's warranty and these rates for the duration of no less than 1 year. This shall not exceed a maximum of \$ \$25,000 per any single year after initial award.

Yes, offer as requested. _____

No, Offer the following: _____

Certification:

Provide Training for two (2) Port Representatives to be Certified on all Mechanical, Electrical and Hydraulic systems on units by manufacturer. All costs associated with training (airfare, lodging and transportation) are to be included at no cost to the Government of Guam.

Yes, offer as requested. _____

No, Offer the following: _____

Inspection:

Two (2) Port Representative will be required to be present during assembly and painting at the manufacturer. All costs associated with inspection (airfare, lodging and transportation) are to be included at no cost to the Government of Guam.

Yes, offer as requested. _____

No, Offer the following: _____

Notes:

Bidder shall identify on their bids, any deviations from the specifications or requirements in the remarks column and state item being offered for evaluation processing. Failure to comply may result in rejection of bid.

Manufacturer's brochures shall be furnished with this bid proposal.

Certificate of Origin will be provided at time of delivery.

Equipment must be inspected and pass inspection by authorized safety inspection.

Equipment must be delivered to Port Authority of Guam for final inspection and acceptance.

Bidding on: NINE (9) Terminal Yard Tractors

MANUFACTURER: _____

MAKE: _____

MODEL: _____

YEAR: _____

PLACE OF ORIGIN: _____

DATE OF DELIVERY: _____

REVIEWED BY:



Superintendent T.M.D
Department of Public Works

DATE: 2-23-24

PORT AUTHORITY OF GUAM

REQUISITION NUMBER: 21984-ON

REF: 9 EACH TERMINAL YARD TRACTOR

These specifications have been developed by the Port Authority of Guam Equipment Maintenance and Transportation Division.



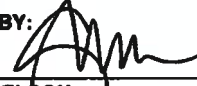
**RAYMOND B. SANTOS,
TRANSPORTATION SUPERINTENDENT**

DATE: 22 FEB 24




**SHINE A. SAN AGUSTIN,
EQUIPMENT SERVICE SUPPORT MANAGER**

DATE: 22 FEB 24

REVIEWED BY: 

**GLENN B. NELSON,
OPERATIONS MANAGER**

DATE: 22 FEB 24



**DOMINIC G. BUNA,
DEPUTY GENERAL MANAGER, OPERATIONS**

DATE: 2/22/24



**PACIFICO MARTIR,
DEPUTY GENERAL MANAGER, FINANCE**

DATE: 2/22/24

CONCURRED BY


**RORY J. RESPICIO,
GENERAL MANAGER**

DATE: 2/21/24



RECEIVED
3:44pm 4/23/24
OFFICE OF THE ATTORNEY GENERAL
CIVIL DIVISION
Agun

PORT AUTHORITY of GUAM

General Administration Services

COURIER SERVICE REQUEST FORM

Type: Urgent Regular Other

Delivery: Pick-up

Sign/Date Receive: _____

Sign/Date Pick-up: _____

Division: Procurement Date: 4/23/24

Requested By: Deise

Destination: Attorney General office

Subject Matter: IFB-PAG-005-24

Special Instructions: kindly acknowledge PAG copy
of courier and return to procurement.
Thank you!



3651 Mars Hill Road Suite 200
 Watkinsville, GA 30677
 770-381-8436
 www.amh-eq.com
 CAGE 0SUS7 | DUNS 782571574
 UEI ZD8VMG7R9VP1 | TIN 58-1963136

PREPARED FOR
Attention: Mark A. Cabrera
 Buyer Supervisor
 PORT AUTHORITY OF GUAM
macabrera@portofguam.com
 (671)477-5931 ext. 276

REFERENCE
Date: 1/4/2024 Quote Valid for 30 Days
Quotation: BD24001
Prepared By: Benjamin DeJarnett
Direct Phone: O: 678-726-0278 / C:770-597-7896
Fax: 770-381-7827
Email: benjamin.dejarnett@amh-eq.com
Source Ref: Email

KALMAR OTTAWA YARD SPOTTER - MODEL T2 4X2 DOT/EPA

GSA Contract: 47QMCA18D000G

SPECIFICATIONS

Description	Costs
Ottawa T2 4x2 DOT/EPA (GSA Base Price)	\$129,977.00
- Options as attached w/ 70 Rear Axle (w/ Galvanized frame/bumper)	\$35,882.00
- Door to Door Shipping (Delivery from factory to Port of Guam)	\$28,840.00
Total Price – Delivered to Port of Guam	\$194,699.00

ADDITIONAL INFORMATION

- a. Complete with accessories as per the attached literature and necessary requirements per your specifications.

<https://www.kalmarottawa.com/en-US/terminal-tractors/ottawa-T2-4x2/>



*Picture may show non quoted options

Quotation Number: BD24001

Page 1 of 2

COST SUMMARY

GSA PRICE - FOB DELIVERED TO PORT OF LA (US PORT OF EXPORT):	\$194,699.00 ONE (1) UNIT
TOTAL (9) UNITS – BEFORE DISCOUNT	\$1,752,291.00 NINE (9) UNITS
2% DISCOUNT (\$3,318.00/ea.: EXCLUDES FREIGHT) – (9) UNITS SAME ORDER	(\$29,862.00)
TOTAL NINE (9) UNITS – AFTER DISCOUNTS:	\$1,722,429.00 NINE (9) UNITS
GOV. OF GUAM WITHOLDING TAX ASSESMENT (4%):	\$68,898.00
TOTAL NINE (9) UNITS – INCLUDING TAX:	\$1,791,327.00 NINE (9) UNITS

SHIPPING TERMS: The nine (9) units will be delivered by AMH to the Port of Guam after 75% payment has been received by AMH.

PAYMENT TERMS: 75% payment is required to be made by the Port of Guam and received by AMH prior to the units leaving the Continental United States (Port of LA). The rest of the 25% payment shall be paid by the Port of Guam and received by AMH no later than 5 business days after arrival to the Port of Guam.

AMH PAYMENT TERMS SHALL BE LISTED ON THE PURCHASE ORDER ISSUED BY THE PORT OF GUAM.

Thank you for considering American Material Handling, Inc. for your material handling needs. This bid is technically acceptable. We are pleased to present this quote for your consideration and look forward to establishing a long-term relationship with your agency.

AMH is a U.S. Small Business that supplies equipment through Federal Supply codes and contracts, including GSA and DLA.

Payment Terms	F.O.B.	Estimated Delivery
See above	Port of Guam	250 Days ARO

Respectfully Submitted By:



Benjamin DeJarnett



American Material Handling, INC – CATALOG PRICING


https://www.gsadvantage.gov/advantage/ws/catalog/product_detail?gsin=11000036628583

An official website of the United States government

GSA Advantage


MY ACCOUNT ▾ NSN ORDERING ▾ eTOOLS ▾ H

Search Products ▾ Enter search keyword(s) Q Advanced Search





4x2
602/100

Click image for expanded view



OTTAWA EPA CERTIFIED YARD SPOTTERS

Mfr Part No.:	4X2DOTEPA	 Disaster Purchasing items
Contractor Part No.:	4X2DOTEPA	 Cooperative Purchasing Items
Manufacturer:	KALMAR	
Contract No.:	47QJCA18D000G (ends: Apr 19, 2028)	
MAS Schedule/SIN:	MAS/333924	
Warranty:	STANDARD WARRANTY	
Country of Origin:	UNITED STATES OF AMERICA	
Order Increment:	1	

[Report incorrect product information \(Login Required\)](#)

Price **\$182,316.78** EA
Shipping not included

Qty: 1

[Select options and accessories](#)

sold and shipped by
AMERICAN MATERIAL HANDLING, INC.
Contract minimum order: \$100.00

VOLUME DISCOUNTS
2 - 9999999 1.0%

FW: AMH 2022- Port of Guam Request Form

From : Chris J. Aguon <cjaguon@portofguam.com>
Subject : FW: AMH 2022- Port of Guam Request Form
To : 'Mark A. Cabrera' <macabrera@portofguam.com>

Wed, Apr 24, 2024 09:28 AM

 3 attachments

From: Joe G. Javellana III [mailto:jjjavellana@portofguam.com]
Sent: Wednesday, October 18, 2023 4:07 PM
To: 'Bonsu, Shadonna (MARAD)' <shadonna.bonsu@dot.gov>
Cc: 'Arevalo, Norman (MARAD)' <norman.arevalo@dot.gov>; 'Christopher Aguon' <cjaguon@portofguam.com>; 'Herdliska, Bryan (MARAD)' <bryan.herdliska@dot.gov>; David.Bohnet@dot.gov; 'Dora C. Perez' <dcperez@portofguam.com>; dlacosta <dlacosta@portofguam.com>
Subject: RE: AMH 2022- Port of Guam Request Form

Hafa Adai Shadonna,

Thank you for providing Chris with the MARAD template and questions for the Noncompetitive Proposal Justification specifically for the Port Authority of Guam's (PAG) container yard tractors. Per your request, we have completed the form and provided the PAG's response in the attached document.

As you are aware, we are in the process of procuring the other equipment in the grant award. Guam procurement law requires for agencies to announce all bids in the media to invite local vendors to submit their proposals for equipment, goods, and services. Like in the case of the Port's two attempts to open the procurement opportunity to local offerors under our DERA program, there will be instances when the local price exceeds a project's budget. When this occurs, agencies have to look at other procurement means to acquire what they need.

For the Port Authority of Guam (PAG), we will always announce all procurement bids via our local media to ensure that Guam offerors have the opportunity to submit their proposals. In the event that a situation occurs like the failed bids of our container tractors, we are requesting MARAD's concurrence for the Port to purchase from the FED GSA Schedule. Through MARAD's approval, the PAG can exercise its fiduciary responsibility of utilizing federal funds in the public's best interest.

Lastly, because there are other equipment on the AMH award that the Port will be purchasing, we would like the same concurrence to purchase from the FED GSA Schedule should local vendors' price proposals exceed the funding amount when the Port puts the other equipment out to bid.

Because of the urgency to purchase these much needed equipment, coupled with the goal of the Port to complete the requirements of the grant agreement within its Period of

Performance, your immediate response would be greatly appreciated. Should you have any questions or require additional information, please let me know.

Respectfully,
Joe

PS...per your request, the BABA certification for tractor manufacturer **KALMAR** is also attached. The FED GSA Schedule Contractor that is the authorized dealer for KALMAR is **American Material Handling Inc.** Lastly, payment for equipment acquisitions are made directly to the FED GSA Schedule Contractor.



Joe G. Javellana III
Chief Planner
Port Authority of Guam
1026 Cabras Highway, Ste. 201
Piti, Guam 96928
Tel: (671) 477-5931
Fax: (671) 477-4445
Email: jgjavellana@portofguam.com
Website: www.portofguam.com

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From: Bonsu, Shadonna (MARAD) <shadonna.bonsu@dot.gov>
Sent: Wednesday, September 20, 2023 3:28 AM
To: Christopher Aguon <cjaguon@portofguam.com>
Cc: jgjavellana@portofguam.com; Arevalo, Norman (MARAD) <norman.arevalo@dot.gov>
Subject: AMH 2022- Port of Guam Request Form

Hello Chris,

My name is Shadonna Bonsu, I'm the MARAD Grants Management Specialist that will be working with you on this project and serve as your point of contact in the post-award phase for matters including reimbursement requests, submission of quarterly reports, modifications and any other items that may arise. I received your request to purchase from Bryan. I wanted to reach out to you as I will be assisting you through this process. In order to move forward there are a few things that we need for you to complete. Please see below:

1. Complete the sole source justification form (attached)

2. Provide the BABA certification from the GSA schedule contractor that you would like to go with
3. If you could, please provide the name of the GSA schedule contractor (We would need this ASAP)

Also, I had a follow up question, in your previous email with Bryan you stated that you make purchases through a FED GSA Schedule contractor. How would you go about making the payment? Would you pay GSA under this authority or would you pay the GSA schedule contractor directly?

Please let me know if you have additional questions. I look forward to working with you.

Best,
Shadonna Bonsu

 **Port Authority of Guam Request To MARAD for Procurement by Noncompetitive Proposals.pdf**

149 KB

 **Kalmar Build America Buy America Act Compliance Letter.pdf**

91 KB

Request for Procurement by Noncompetitive Proposals

The Grant Recipient, PORT AUTHORITY OF GUAM, is proposing to use a procurement method other than full and open competition in its FISCAL YEAR 2022 AMERICA'S MARINE HIGHWAY (AMH) PROGRAM GUAM MARINE TRANSPORTATION ENHANCEMENT INITIATIVE: ACQUISITION OF SPECIALIZED CONTAINER YARD EQUIPMENT. The grant recipient intends to use procurement by noncompetitive proposals in the amount of \$2,297,700.00 for the purchase of NINE (9) EA. CONTAINER YARD TRACTORS.

In accordance with the requirements found in 2 CFR 200.320(c), the grant recipient may use procurement by noncompetitive proposals only if one or more of the following circumstances applies:

- (1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (currently \$10,000);
- (2) The item is available only from a single source;
- (3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
- (4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or
- (5) After solicitation of a number of sources, competition is determined inadequate.

In making this request, please provide to MARAD answers to the following questions:

1. Provide a brief description of the project, the amount to be designated for the noncompetitive procurement, the item or service to be procured, the purpose of the contract, and an itemized budget for the contract amount.

PAG Response:

In its application, the PAG requested \$6,532,092 in AMH Grant funding for the scope of work outlined in the grant agreement (FY 2022 AMH Grant No. 693JF72340007), with the addition of two more container yard tractors (for a total of 11 requested). MARAD awarded the Recipient a reduced award of \$5,703,560 because MARAD believes that the Project will deliver sufficient benefits under a reduced scope. This award reduction resulted in the removal of two container yard tractors from the scope and budget (for an approved total of 9) and a reduction in the proposed administrative funding amount as a future eligible cost.

The equipment to be procured noncompetitively are the 9 container yard tractors at \$255,300.00 per unit, totaling \$2,297,700.00. The purpose of the contract is to bring the PAG's aging fleet of container yard tractors to a state of good repair and increase capacity to accommodate demand growth.

2. Provide an explanation as to why it is necessary to contract in a noncompetitive manner, including which one (or more) of the circumstances in 2 CFR 200.320(c) cited above applies to the procurement transaction.

PAG Response:

The PAG recently purchased four container yard tractors under a U.S. EPA grant award through a Federal (FED) GSA contractor. As the sub-recipient to Grantee Guam EPA, the PAG executed due diligence in attempting to purchase this equipment from local vendors via two (2) Invitation for Bids (IFB). The first, IFB-PAG-006-022, was advertised on March 8, 2022 with one (1) bid received on April 8, 2022. The second, IFB-PAG-010-23,

was advertised on February 1, 2023 with two (2) bids received on February 16, 2023. The sole bid for IFB-PAG-006-022 came in about 86% over the budgeted amount. Accordingly, the bid was rejected and the IFB was cancelled because this bid was too high for the budgeted federal funds. In the second attempt, two bids were submitted for IFB-PAG-010-23; one being 78% over budget and the other more than 100% over budget. Again, these bids were priced well outside the budgeted federal funds and subsequently rejected.

In an attempt to make a financially prudent decision, the PAG looks to leverage all resources available. Through a Request for Information (RFI) market survey, the PAG became aware of FED GSA Schedule contractors that offer container yard tractors that will meet the requirements for this project for a price that is substantially lower than the bids received in the two past IFBs.

The PAG, as an autonomous instrumentality of the Government of Guam, is authorized under local law to make purchases through a FED GSA Schedule contractor.

Therefore, given that: (1) the funding source for the purchase of the tractors is federal MARAD funds; (2) the PAG is authorized under federal and local law to purchase under the federal GSA schedules with federal funds; (3) the PAG has set precedent of purchasing through a FED GSA Schedule contractor when authorized by the federal grantor, and (4) the price offering of the FED GSA Schedule contractor is significantly lower than the local offerings received through the full and open competitive bid process; the PAG respectfully requests your recommendation to move forward with the federally approved option to purchase the container yard tractors through a FED GSA Schedule contractor.

In accordance with 2 CFR 200.320(c), the PAG is seeking MARAD's approval based on paragraphs (4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity and (5) After solicitation of a number of sources, competition is determined inadequate.

3. If the item or service is available only from one source, please include the following:
 - a. Uniqueness of items or services to be procured from the proposed contractor or vendor (e.g., compatibility of patent issues);
 - b. How the Recipient determined that the item or service is only available from one source (e.g., market survey results, independent agency research, patented or proprietary system);
 - c. Explanation of need for the contractor's expertise linked to the current project (e.g., knowledge of project management, responsiveness, experience of contractor personnel, and/or prior work on earlier phases of project); and
 - d. Any additional information that would support the request.

PAG Response:

Not applicable.

4. If the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation, please include the following:
 - a. Description of the public exigency or emergency;
 - b. Need for the contract and period of performance;
 - c. Impact on project if deadline/dates are not met;

- d. How long it would take an alternate contractor to reach the same required level of competence (equate to dollar amounts, if desired); and
- e. Any additional information that would support the request.

PAG Response:

Not applicable.

- 5. If the Recipient is requesting that MARAD expressly authorize a noncompetitive procurement, please include the following:
 - a. Rationale for why the Recipient is requesting authorization for a noncompetitive procurement;

PAG Response:

Please see response to Question 2 above.

- b. Provide a description of the marketplace to include distributors, dealers, resellers, etc.;

PAG Response:

Guam's market for equipment is comprised primarily of dealers who source their equipment from off-island distributors and/or manufacturers. The dealers that have participated in the recent bids for container yard tractors include: Far East Equipment Co., and Landscape Management Systems (LMS) Inc.; with Far East Equipment Co. participating in both and LMS participating only in the most recent. Other companies—such as, Fedharmony, J&G Construction, Morrico Equipment, and AMH Inc.—have either participated in RFIs or requested bid packets; however, these companies did not submit official bids.

- c. Describe how the Recipient determined that the item or service must be procured from the proposed source (e.g., market survey results, independent agency research, patented or proprietary system);

PAG Response:

As indicated in the response to Question 2, the PAG has performed its due diligence in soliciting two separate IFBs within the past two years, as well as conducted a market survey via RFI. Based on the results of extensive market research (e.g., market survey, staff research, and multiple IFBs), the PAG has determined the most cost-effective source to be the FED GSA Schedule Contractor.

- d. Uniqueness of items or services to be procured from the proposed contractor or vendor (e.g., compatibility of patent issues);

PAG Response:

While it is not the primary purpose for seeking noncompetitive procurement, the PAG's current fleet of container yard tractors is sourced from a single manufacturer. This practice allows the PAG to efficiently stock spare parts for all its units, as opposed to ordering a small number of parts for multiple models. Although the primary consideration for justifying the purchase through the proposed contractor is cost-effectiveness, maintaining a uniform fleet of equipment is beneficial for efficiency in both inventory management and economies of scale.

- e. Explanation of need for contractor's expertise linked to the current project (e.g., knowledge of project management, responsiveness, experience of contractor personnel, and/or prior work on earlier phases of project); and

PAG Response:

Again, while this is not the primary purpose for seeking noncompetitive procurement, the contractor does have familiarity with the PAG's equipment needs, as it was recently awarded a contract to provide 4 container yard tractors under the U.S. EPA DERA Grant Program.

- f. Any additional information that would support the request.
6. If competition is determined to be inadequate after solicitation of a number of sources, please include the following:
 - a. Results of a market survey to determine competition availability. If no survey is conducted, please explain why not; and

PAG Response:

The results of the market survey conducted by the PAG's Procurement Division indicated three (3) vendors that are able to provide the required equipment. However, out of the 3 respondents, only one participated in the February 2023 IFB for the same equipment. As mentioned in the response to Question 2 above, the two bidders that participated indicated prices substantially above that of the FED GSA Schedule Contractor.

- b. Any additional information that would support the request.
7. Describe whether there are any potential real or apparent conflicts of interest with the proposed vendor. If there may be conflicts of interest, please describe how the Recipient plans to mitigate this risk.

PAG Response:

There are no real or apparent conflicts of interest with the proposed vendor.

8. Will the proposed contract otherwise comply with the Recipient's procurement policies and the procurement standards outlined in 2 CFR Part 200, including the required contract provisions?

PAG Response:

The proposed contract complies with Title 5 of the Guam Code Annotated (5 GCA) Chapter 5: Guam Procurement Law, as well as 2 CFR 200. Pursuant to 2 CFR 200.319, the PAG believes it has satisfied the requirement for full and open competition and performed its due diligence in surveying the market through an RFI and two separate IFBs.

9. Will the proposed contract comply with the grant project's applicable domestic content procurement preference ("Buy America") requirements? If possible, provide a certification from the manufacturer/vendor confirming Buy America compliance.

PAG Response:

The proposed contract complies with the grant project's applicable domestic content procurement preference. Please see the certification letter from the manufacturer/vendor confirming Build America, Buy America compliance.


10. Provide any other information MARAD requests or the Recipient deems relevant, as applicable.

PAG Response:

The name of the FED GSA Schedule vendor is American Material Handling, Inc. (AMH), providing Kalmar USA, Inc. manufactured container yard tractors.

CERTIFICATION

I hereby certify that this justification is accurate and complete to the best of my knowledge and belief, and that this action is in the best interest of the Federally-funded project.



RORY J. RESPICIO
General Manager
Port Authority of Guam

10/18/23
Date



October 9, 2023.

Mr. Rory J. Respicio.
Port Authority of Guam, General Manager.
1026 Cabras Highway, Suite 201 Piti, 96915
Guam

Via Electronic Mail: rjrespicio@portofguam.com

Build American, Buy American Act. Compliance

Dear Mr. Respicio:

This letter is in reference to the terminal tractor model T24X2DOTDIST. This model has been manufactured in the United States according to the requirements established by the Build American, Buy American Act (BABA). In effect, as a manufactured product, the above-referenced terminal tractor exceeds the minimum 55% threshold required by BABA.

DocuSigned by:
Tracey P. Rice
B3F804483DC14C9

Yours sincerely,
Tracey P. Rice
Kalmar USA, Inc.
Legal Head - Americas, Secretary



PORT OF GUAM
ATURIDAT I PUETTON GUAHAN
Jose D. Leon Guerrero Commercial Port
1026 Cabras Highway, Suite 201, Piti, Guam 96915
Telephone: 671-477-5931/35 Facsimile: 671-477-2689/4445
Website: www.portguam.com



Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

WRITTEN DETERMINATION OF PRICE FOR SOLE SOURCE

MEMORANDUM

TO: Procurement Record
FROM: Procurement Officer
DATE: April 2, 2024
RE: Sole Source Procurement of Nine (9) Tractors
SUBJECT: Determination of Price for Sole Source

This Written Determination of Price for Sole Source is made pursuant to 5 GCA § 5214(d). Guam's Procurement Law provides that prior to awarding a sole source contract, the Port Authority of Guam ("PAG") must prepare a written determination finding that the contract price is fair and reasonable and consistent with applicable regulations, and include therein the relevant cost and price information from the sole source and comparable or substitute supplies, services, or construction items.


FINDINGS:

The PAG hereby finds that contract price negotiated for its Terminal Yard Tractor(s) is fair and reasonable and consistent with applicable regulations.

RELEVANT COST AND PRICE INFORMATION:

I have obtained the following cost and price information from the sole source and comparable or substitute equipment:

Catalog pricing for this Procurement is available through GSA Advantage and is attached to this determination. The price offered to include shipping to Guam was much lower than any of the other two bidders for the Port's re-bid of its Terminal Yard Tractors, procurement # IFB-PAG-010-23. Far East Equipment provided a price of \$219,000 and Landscape Management Systems provided a unit for \$249,000 in its previous bid prior to this Sole Source Procurement, and both prices were unacceptable based on the budget constraint. American Material Handling provided a quote since its GSA Advantage price did not include shipment. To include all discounts and taxes the final price in which I have determined as fair and reasonable is \$1,791,327.00 for nine (9) units.



Rory J. Respicio
General Manager/Procurement Officer
Port Authority of Guam



PORT OF GUAM
ATURIDAT I PUETTON GUAHAN
Jose D. Leon Guerrero Commercial Port
1026 Cabras Highway, Suite 201, Piti, Guam 96915
Telephone: 671-477-5931/35 Facsimile: 671-477-2689/4445
Website: www.portguam.com



Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

WRITTEN DETERMINATION OF PRICE FOR SOLE SOURCE

MEMORANDUM

TO: Procurement Record
FROM: Procurement Officer
DATE: April 2, 2024
RE: Sole Source Procurement of Nine (9) Tractors
SUBJECT: Determination of Price for Sole Source

This Written Determination of Price for Sole Source is made pursuant to 5 GCA § 5214(d). Guam's Procurement Law provides that prior to awarding a sole source contract, the Port Authority of Guam ("PAG") must prepare a written determination finding that the contract price is fair and reasonable and consistent with applicable regulations, and include therein the relevant cost and price information from the sole source and comparable or substitute supplies, services, or construction items.


FINDINGS:

The PAG hereby finds that contract price negotiated for its Terminal Yard Tractor(s) is fair and reasonable and consistent with applicable regulations.

RELEVANT COST AND PRICE INFORMATION:

I have obtained the following cost and price information from the sole source and comparable or substitute equipment:

Catalog pricing for this Procurement is available through GSA Advantage and is attached to this determination. The price offered to include shipping to Guam was much lower than any of the other two bidders for the Port's re-bid of its Terminal Yard Tractors, procurement # IFB-PAG-010-23. Far East Equipment provided a price of \$219,000 and Landscape Management Systems provided a unit for \$249,000 in its previous bid prior to this Sole Source Procurement, and both prices were unacceptable based on the budget constraint. American Material Handling provided a quote since its GSA Advantage price did not include shipment. To include all discounts and taxes the final price in which I have determined as fair and reasonable is \$1,791,327.00 for nine (9) units.



Rory J. Respicio
General Manager/Procurement Officer
Port Authority of Guam

AGREEMENT FOR PURCHASE OF TERMINAL YARD TRACTORS

BETWEEN

Port Authority of Guam

AND

American Material Handling, Inc.

Contract for:	Purchase of Nine (9) Terminal Yard Tractors
Project No:	<u>21984-ON</u>
Total Amount:	<u>\$ 1,791,327.00</u>
Place:	Guam

THIS AGREEMENT FOR PURCHASE OF TERMINAL YARD TRACTORS is entered into by and between the Port Authority of Guam (PAG), an autonomous agency of the Government of Guam, whose mailing address is P.O. Box 1026 Cabras Hwy, St. 201, and American Material Handling (“Contractor”), whose address is 3651 Mars Hill Road Suite 200 Watkinsville, GA 30677

WHEREAS, PAG received funds through U.S. Department of Maritime Administration under Federal Award 693JF72340007 to purchase new equipment; Terminal Yard Tractors. The objective of the Project is to replace PAG’s current, outdated equipment.

WHEREAS, PAG determined it does not have adequate personnel or resources to build a Terminal Yard Tractor contemplated in this agreement and it is in the best interests of PAG to have such purchase of Terminal Yard Tractors under a contract;

WHEREAS, PAG determined to award a firm fixed-price contract for the required purchase of Terminal Yard Tractors, and thereupon, PAG processed a solicitation, PAG solicitation purchase of Terminal Yard Tractors that will replace PAG’s current, outdated equipment.

WHEREAS, Contractor responded to the Port by submitting a quote that included shipping cost to Guam in addition to their Fed GSA Multiple Award Schedule to provide the Terminal Yard Tractors, and an agreement was successfully negotiated;

WHEREAS, by submitting its offer, Contractor warrants and represents that it possesses the necessary knowledge, resources and experience to deliver the Terminal Yard Tractors; and

WHEREAS, the award of this contract has been made pursuant to the PAG’s Procurement rules and regulations, the laws of Guam, and a finding by the Procurement Officer that Contractor is the best qualified responsive and responsible Offeror based upon meeting the specifications set forth and the compensation negotiated with Contractor has been determined to be fair and reasonable;

NOW THEREFORE, PAG and the Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

SECTION 1 CONTRACT DOCUMENTS

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

- a. The Sole Source Purchase, all notices, conditions, attachments, and instructions for PAG which includes the required specifications;
- b. Any addendum to, or PAG responses to any questions submitted for this procurement PAG
- c. Contractor’s Offer submitted in response to, PAG solicitation;
- d. This Agreement and any Amendment or Change Order thereto;
- e. All General or Special Terms and Conditions of MARAD Grant No. 693JF72340007; and
- f. All Exhibits or Attachments incorporated into the Agreement by reference.

SECTION 2 PARTIES

The Parties to this Agreement are PAG, an autonomous agency of the government of Guam, and American Material Handling, Inc. ("Contractor"), who may be hereinafter together referred to as "the Parties."

SECTION 3 SCOPE OF AGREEMENT

This Agreement supersedes any and all prior agreements, either oral or in writing, if any, between the Parties hereto with respect to the retainer of Contractor by PAG and contains all of the covenants and agreements between the parties with respect to the subject matter of this Agreement. Each party to this Agreement acknowledges that no representation, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein, and that any other agreement, statement, or promise not contained in this Agreement shall not be valid or binding on the Parties with respect to the subject matter of this Agreement. This Agreement, and any modification hereto, is not binding until approved by Port's Legal Counsel and executed by the Port's General Manager. Any modification of this Agreement will be effective only if it is in writing, approved by Port's Legal Counsel and executed by the General Manager.

SECTION 4 CONTRACT TYPE AND PRICE

This is a multi-term Firm Fixed-Price Contract. The total payment to Contractor under this Agreement will be *One million, seven hundred ninety-one thousand, three hundred twenty-seven dollars (\$1,791,327.00). All prices under this Agreement shall be in the currency of United States dollars. This price is not subject to adjustment or increase because of variations in the Contractor's actual cost of delivering the Terminal Yard Tractors. Any price adjustments to this Agreement may only be made in accordance with valid, approved Change Orders pursuant to the Change Orders Clause of this Agreement and the Price Adjustment Clause of this Agreement.

SECTION 5 CONTRACT TERM

A. This Agreement shall be valid upon its full execution by all necessary parties. The Effective Date of the Agreement shall be the date upon which the General Manager signs the Agreement. The term of this Agreement is two hundred and fifty (250) days at receipt of order.

B. All Services to be performed by Contractor on the Project under this Agreement shall commence upon issuance of a Notice to Proceed ("NTP") by PAG and continue pursuant to the scope of work of this Agreement, and in accordance with the Specifications and the Contractor's Offer, and until the expiration, cancellation, or termination of this Agreement or any extension or renewal thereof. There is no right or expectation of renewal or extension and any renewal or extension will be exercised solely at the discretion of PAG.

C. Initial Term. The initial term of the contract shall be for 250 days and shall begin upon the date that the General Manager executes the Agreement. After the General Manager has executed the Agreement, the PAG will issue an NTP to notify the Contractor that performance of the delivery of the equipment may commence. The Port may allow a time extension but not a renewal.

All Extension Terms are subject to the availability of funds. In no case shall any extension or renewal extend the total of the terms of the contract beyond 500 days. Unless cancelled for lack of funds, terminated, renewed,

or extended prior to expiration, this Agreement shall expire at the end of the Initial term or at the end of any subsequent Renewal Term exercised by the PAG.

SECTION 6 CONTRACTOR'S SCHEDULE OF SERVICES.

A. The Contractor shall perform delivery of the Terminal Yard Tractor Units in accordance with the most recent schedule approved by PAG.

SECTION 7 SPECIFICATIONS

Contract shall comply with Specifications under this Agreement shall be complied to by Contractor in accordance with all applicable federal and local codes, standards, and guidelines, including current or updated standards for equipment as those updates become effective, and any applicable Guam codes. The Specifications includes the following:

1. Terminal Yard Tractor Build Sheet
 - a. Contractor shall provide a build sheet approved for use as a check-off list by PAG at time after production and before delivery.
 - b. Each Terminal Yard Tractor shall have a set of photos to capture each unit at 360 degrees for inspection out of factory and before delivery in transit from Port of L.A. to Guam, or any other alternate delivery to Guam.
2. Guarantee/Warranty of Equipment
 - a. Except as otherwise specified, all deliverables, equipment, or systems shall be guaranteed by the Contractor against defects resulting from the use of inferior materials, equipment, or workmanship during the tenure of the contract and any extensions, and for one (1) year after the exercise of any option to purchase the system by PAG ("System/Equipment Warranty"); this one (1) year term shall commence upon the Contractor's turnover of the equipment to PAG.
 - b. If within any guarantee/warranty period, repairs or changes are required in connection with guaranteed equipment or systems which, in the opinion of the PAG Procurement Officer, is rendered necessary as the result of the use of materials, equipment or workmanship which were inferior, defective or not in accordance with the terms of the Agreement, the Contractor shall promptly comply upon receipt of notice from PAG and without expense to PAG:
 - i. Place in satisfactory condition in every particular all of such guaranteed equipment and systems and correct all defects therein; and
 - ii. Make good all damages to the equipment, systems or contents thereof which, in the opinion of the PAG Procurement Officer, are the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the Agreement.
 - c. If the Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee, PAG may have the defects corrected and the Contractor and its surety shall be liable for all expense incurred.

- d. All special guarantees applicable to definite parts of the services, equipment, or systems shall be stipulated in the specifications or other papers forming a part of the Agreement and shall be subject to the terms of this paragraph during the first year of the life of such special guarantee.

SECTION 8 PAYMENTS

- A. PAG shall make payment in the manner and within the time provided in this Agreement.
- B. Seventy-Five Percent (75%) Payment for the Equipment shall be made to the Contractor when the delivery is made to the Port of Los Angeles and Twenty-One Percent (21%) when it arrives to Guam. Four percent (4%) of the total amount shall be applied for the required withholding assessment fee once delivery is completed and accepted by PAG. The total amount of the payments shall be the amount of the Agreement plus the value of all changes as reflected in approved contract change orders. The final payment shall consist of the entire balance found to be due the Contractor after all previous payments, but excepting such sums as may be lawfully retained by PAG; which shall be paid to the Contractor only if PAG exercises the option to purchase the final system(s). Final payment for the Services shall be conditioned upon the submission by the Contractor of evidence satisfactory to PAG that all claims for labor, materials, and any other outstanding indebtedness in connection with this Agreement have been paid. friendship

SECTION 9 AVAILABILITY OF FUNDS

Multi-Term Provision: (A) the amount of supplies or services required for the proposed contract period; (B) that a unit price shall be given for each supply or service, and that such unit prices shall be the same throughout the contract (except to the extent price adjustments may be provided in the solicitation and resulting contract); (C) that the multi-term contract will be cancelled only if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the first; however, this does not affect either the territory's rights or the contractor's rights under any termination clause in the contract; (D) that the Procurement Officer must notify the contractor on a timely basis that the funds are, or are not, available for the continuation of the contract for each succeeding fiscal period; (E) whether bidders or offerors may submit prices for: (i) the first fiscal period only; (ii) the entire time of performance only; or (iii) both the first fiscal period and the entire time of performance; (F) that a multi-term contract may be awarded and how award will be determined including, if prices for the first fiscal period and entire time of performance are submitted, how such prices will be compared; and in the event that funds are not available for any succeeding fiscal period, the remainder of such contract shall be cancelled and the contractor shall be reimbursed the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies delivered or services performed under the contract.

SECTION 10 STANDARD PRICE ADJUSTMENT CLAUSE

- A. **Price Adjustment Methods.** Any adjustment in contract price pursuant to clauses in this Agreement shall be made in one or more of the following ways:
- 1) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - 2) by unit prices specified in the Offer, Agreement, or subsequently agreed upon;

- 3) by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the Agreement or subsequently agreed upon;
- 4) in such other manner as the parties may mutually agree; or
- 5) in the absence of an agreement between the parties, by a unilateral determination by the Procurement Officer of costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the Procurement Officer in accordance with generally accepted accounting principles and applicable sections under Chapter 7 (Cost Principles) of the Guam Procurement Regulations and subject to the provisions of Article 5, Chapter 5 of 5 GCA (Legal and Contractual Remedies) of the Guam Procurement Law.

B. Submission of Cost or Pricing Data. The Contractor shall submit cost or pricing data for any price adjustments subject to the provision of Section 3118 (Cost or Pricing Data) of the Guam Procurement Regulations. PAG may require the Contractor to provide invoices, paid bills, or any other proof it deems appropriate to determine compliance with this provision.

C. Price Adjustment for Inaccurate Cost or Pricing Data. Any Change Order, Amendment, or modification to this Agreement which increases the price of the contract shall be adjusted to exclude any significant sums by which the PAG finds that such price was increased because the contractor- furnished cost or pricing data was inaccurate, incomplete or not current as of the date agreed upon between the Parties. The price shall also be adjusted to reflect the nonpayment by the Contractor of any taxes which would have been paid by the Contractor were it not for the exclusion provided by 11 GCA § 26203(k)(14) (Business Privilege Tax). Adjustments shall conform to the Defective Cost or Pricing Data Clause of the Guam Procurement Rules and Regulations.

SECTION 11 CHANGES

A. Change Order. The Procurement Officer, at any time, and without notice to the sureties, in a signed writing designated or indicated to be a change order, may order:

- (1) changes in the services within the scope of the Agreement; and
- (2) changes in the time for performance of the Agreement that do not alter the scope of the Agreement.

All contract change orders must be approved in writing by the PAG on a form approved by PAG to record change orders.

B. Adjustments of Price or Time for Performance. PAG reserves the right to increase or decrease the number of any unit priced quantity as may be deemed reasonable or necessary in order to complete the Services contemplated under this Agreement. If any such change order increases or decreases the Contractor's cost of, or the time required for, performance of any part of the services under this Agreement, whether or not changed by the order, an adjustment shall be made and the Agreement modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Standard Price Adjustment Clause of this Agreement. Failure of the parties to agree to an adjustment shall not excuse a Contractor from proceeding with the Agreement as changed, provided that the government of Guam promptly and duly make such provisional adjustments in payments or time for performance as may be reasonable. By proceeding with the services, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion. All changes must be recorded on a contract change order before they can be included in an application for payment/invoice.

C. Time Period for Claim. Within 30 days after receipt of a written change order under Paragraph (1) (Change Order) of this clause, unless such period is extended by the Procurement Officer in writing, the

Contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the Contractor's claim unless the government of Guam is prejudiced by the delay in notification.

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

E. **Claims Not Barred.** In the absence of such a change order, nothing in this clause shall restrict the Contractor's right to pursue a claim arising under the Agreement, if pursued in accordance with the clause entitled Claims Based Upon PAG's Actions or Omissions or for breach of contract.

F. **Project Modification Clause.** This Agreement may only be amended, modified, or extended in accordance with the applicable federal law, the terms and conditions of the federal award that is funding this Agreement, and the policies and procedures of the Federal Awarding Agency. Deviations from budget, project scope, objective, and/or time of performance require notification to the Federal Awarding Agency, and may require prior approval of the Federal Awarding Agency.

SECTION 12 PAG CONTRACT REPRESENTATIVE

The Procurement Officer is the individual who has express authority to bind PAG with respect to all matters requiring PAG's approval or authorization under this Agreement, excepting written modifications of this Agreement. The Procurement Officer may designate in writing a representative who may also have express authority to bind PAG under the terms of this Agreement. Except as otherwise provided herein, PAG's Project Manager does not have authority to bind PAG without written approval from the Procurement Officer or his designee, as authorized in writing.

SECTION 13 SUBCONTRACTORS

A. **Subcontractor.** A subcontractor is a person or entity who has a direct contract with the Contractor or a higher tier subcontractor to perform a portion of the Services set forth in this Agreement.

B. **Award of Subcontracts and Other Contracts for Portions of the Services.**

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

2. The Contractor shall not contract with a proposed person or entity to whom *THE PORT AUTHORITY OF GUAM* has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

3. The Contractor shall not substitute a subcontractor, person or entity previously selected if *THE PORT AUTHORITY OF GUAM* makes reasonable objection to such substitution.

C. **Subcontractor Relations.** By appropriate written agreement the Contractor shall require each subcontractor, to the extent of the Services to be performed by the subcontractor, to be bound to the Contractor by terms of this Agreement, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the subcontractor's Services, which the Contractor, by these Documents, assumes toward *THE PORT AUTHORITY OF GUAM*. Each subcontract agreement shall preserve and protect the rights of *THE PORT AUTHORITY OF GUAM* under this Agreement with respect to the Services to be performed by the subcontractor so that subcontracting thereof will not prejudice such rights. Contractor shall have full responsibility under this Agreement, the Proposal Documents, conditions, Plans, and Specifications for any subcontracts which the Contractor may let.

D. **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this Agreement, to include a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

SECTION 14 ACCESS TO RECORDS AND AUDIT REVIEW

The PAG, the Maritime Administration (MARAD)*, Inspectors General, the Comptroller General of the United States, and any of their authorized representatives must have the right of access to any documents, papers, or other records of the Contractor which are pertinent to the contract, in order to make audits, examinations, excerpts, and transcripts, and to inspect supplies and services and audit records at any Contractor or proposed subcontractor's facility or place of business and perform tests both: prior to award of a contract, to determine responsibility and capability of performing any contract to be awarded under a solicitation, and to determine whether the Contractor's or subcontractor's facilities, supplies, or services conform to solicitation requirements; or after award, to determine whether the awarded contractor is conforming to contract requirements, and its performance is therefore acceptable. This right also includes timely and reasonable access to the Contractor's personnel for the purpose of interview and discussion related to such documents. The Contractor agrees to abide by the following access, audit, and inspection terms:

A. **Access to Records and Retention.** The Contractor, including its subcontractors, if any, agrees that it shall maintain and retain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and relative to its cost or pricing data, and shall make such materials available at all reasonable times after submission of its Offer, during any awarded contract term, and for three (3) years from the date of final payment under any awarded contract or for three (3) years from the date that all other pending matters are closed, whichever is later, for inspection in Guam or at any reasonable location designated by the PAG, MARAD, the Comptroller General of the United States, or any of their duly authorized representatives, unless the Offeror is notified in writing by the *MARAD*, the cognizant PAG for audit, the oversight PAG for audit, the cognizant PAG for indirect costs, or the PAG to extend the retention period. If any litigation, claim, or audit is started before the expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. Records for real property and equipment acquired with the funds from the awarded contract must be retained for three (3) years after final disposition of the real property and equipment. The rights of access in this section are not limited to the required retention period but last as long as the records are retained. Each subcontract by the Offeror shall include a provision containing the conditions of this Section for any contract awarded under this solicitation.

Only under extraordinary and rare circumstances would such access include review of the true name of victims of a crime. Routine monitoring cannot be considered extraordinary and rare circumstances that would necessitate access to this information. When access to the true name of victims of a crime is necessary,

appropriate steps to protect this sensitive information must be taken by both the PAG and the *Maritime Administration*. Any such access, other than under a court order or subpoena pursuant to a bona fide confidential investigation, must be approved by the head of the *Maritime Administration* or delegate.

B. Right to Audit. Contractor shall establish and maintain a reasonable accounting system that enables the PAG or the Maritime Administration to readily identify Offeror's assets, expenses, costs of goods, and use of funds. The PAG, the Maritime Administration, the Comptroller General of the United States and any of their authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to its Offer, the solicitation, or this Agreement, which are kept by or under the control of the Contractor, including, but not limited to those kept by the Contractor, its employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files (including bids of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back-charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Contractor shall, at all times during the term of any awarded contract and for a period of three (3) years after the date of final payment under any awarded contract, maintain such records, together with such supporting or underlying documents and materials. The Contractor shall at any time requested by PAG, the MARAD, the Comptroller General of the United States and any of their authorized representatives, whether before, during, or after completion of an awarded contract, and at Contractor's own expense make such records available for inspection and audit (including copies and extracts of records as required) by PAG, the MARAD, the Comptroller General of the United States and any of their authorized representatives. Such records shall be made available to PAG, the MARAD, the Comptroller General of the United States and any of their authorized representatives during normal business hours at the Contractor's office or place of business without prior notice. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for PAG, the MARAD, the Comptroller General of the United States and any of their authorized representatives. Contractor shall ensure PAG, MARAD, the Comptroller General of the United States and any of their authorized representatives has these rights with Contractor's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Contractor and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Contractor's obligations to PAG, MARAD, the Comptroller General of the United States and any of their authorized representatives. Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by PAG, MARAD, the Comptroller General of the United States and any of their authorized representatives unless certain exemption criteria are met. If the audit identifies overpricing or overcharges (of any nature) by the Contractor to PAG, MARAD, the Comptroller General of the United States and any of their authorized representatives in excess of one-half of one percent (.5%) of the total contract billings, the Contractor shall reimburse the PAG or the entity that conducted the audit for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, the PAG may recoup the costs of the audit work from the Contractor. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of PAG, MARAD, the Comptroller General of the United States and any of their authorized representatives' findings to Contractor.

C. Right to Enter and Inspect. PAG, MARAD, the Comptroller General of the United States and any of their authorized representatives may, at any time, without notice, enter and inspect the Contractor's or subcontractor's facilities, place(s) of business, or any place(s) of performance of this Agreement. The PAG, MARAD, the Comptroller General of the United States and any of their authorized representatives may enter and inspect any plans, supplies, services, equipment, work and records at these locations which are related to

the performance of this Agreement, and may conduct any testing deemed necessary to determine whether the Contractor's or subcontractor's compliance or conformity to the solicitation or contract requirements. Guam may enter and audit the cost or pricing data, books, and records of the Contractor or any subcontractor, and/or investigate in connection with an action to debar or suspend a person from consideration for award of contracts pursuant to § 9102 (Authority to Debar or Suspend) of the Guam Procurement Rules and Regulations.

SECTION 15 EMPLOYEE BENEFITS, TAXES, AND INSURANCE

Contractor agrees there shall be no government of Guam employee benefits accruing to Contractor under this Agreement, including, but not limited to:

- (a) Insurance coverage provided by the PAG;
- (b) Participation in the government of Guam retirement system
- (c) Accumulation of vacation leave or sick leave; and
- (d) Workers Compensation coverage.

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

B. Tax and Withholding Liability. The Contractor assumes responsibility for its personnel and subcontractors providing services hereunder and will make all deductions and payments for social security and withholding taxes and for contributions to employment compensation funds, employee benefits, or any other payments or tax payments required by the governments of the United States and Guam. Contractor is responsible for paying when due any and all income taxes, gross receipts taxes or business privilege taxes, or any other taxes or assessments incurred as a result of the services performed by the Contractor and Contractor's employees or agents under this Agreement or the compensation paid to Contractor for services performed under this Agreement, unless Contractor is a non-resident person or entity without a valid Guam Business License, in which case a withholding fee equal to five percent (5%) of the total dollar value of this Agreement will be withheld for the payment of Guam's Business Privilege Tax in accordance with 11 GCA § 71114 (PL 33-166).

C. Insurance. Contractor shall maintain at the Contractor's expense all necessary insurance for its employees including but not limited to Workman's Compensation, Errors and Omissions, and liability insurance for each employee as required under U.S. and Guam Law and the mandates of the underlying RFP to this Agreement. Contractor agrees to hold harmless and indemnify PAG, its officers, directors, employees, agents, representatives, successors and assigns, for any and all claims, demands, costs, losses, fees, penalties, interest, or damages, including attorney's fees, which may be brought or asserted due to: (i) any injury, death, or property damage arising from the negligence or other wrongful or tortuous acts of Contractor or Contractor's

employees, officers, contractors, directors, agents, representatives, successors, or assigns; or (ii) Contractor's failure to comply with terms of this Agreement.

D. Wage and Benefits Compliance. Contractor warrants it shall comply with all applicable federal and local laws, rules, and regulations regarding the payment of minimum wages and benefits, in particular in accordance with the Wage Determination for Guam issued and promulgated by the U.S. Department of Labor and with Guam Public Law 26-111. Contractor guarantees health and similar benefits for its employees, such benefits having a minimum value as detailed in the Wage Determination issued and promulgated by the U.S. Department of Labor, as required by any applicable law. Contractor further guarantees a minimum of ten (10) paid holidays per annum per employee, as required by any applicable law. Contractor assumes all liability for, and hereby indemnifies PAG from, any violation of any applicable law, rule, or regulation relating to the payment of wages or benefits. In addition, this Agreement contains extension and/or renewal clauses. Therefore, at the time of any extension or renewal adjustments, there shall be a stipulation contained in the extension or renewal document stating that the Wage Determination promulgated by the U.S. Department of Labor on a date most recent to the extension or renewal date shall apply, as required by any applicable law. Any renewal or extension to which this provision applies shall also contain provisions mandating health and similar benefits for employees, such benefits having a minimum value as detailed in the Wage Determination issued and promulgated by the U.S. Department of Labor and shall contain provisions guaranteeing a minimum of ten (10) paid holidays per annum per employee, as required by any applicable law.

SECTION 16 EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

The Contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633. The Contractor and all subcontractors must also comply with the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b).

A. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the Contractor's project activities under this Agreement. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this Agreement. In the execution of this Agreement, the Contractor agrees to comply with the following minimum specific requirement activities of EEO:

1. The Contractor will work with PAG and the Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the Agreement.

2. The Contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

B. **EEO Officer:** The Contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

C. **Dissemination of Policy:** All members of the Contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the Contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

1. Periodic meetings of supervisory and personnel office employees will be conducted before the start of services and then periodically, at which times the Contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
2. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the Contractor's EEO obligations within thirty days following their reporting for duty with the Contractor.
3. All personnel who are engaged in direct recruitment for the Project will be instructed by the EEO Officer in the Contractor's procedures for locating and hiring minorities and women.
4. Notices and posters setting forth the Contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
5. The Contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

D. **Recruitment:** When advertising for employees, the Contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project workforce would normally be derived.

1. The Contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the Contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the Contractor for employment consideration.
2. In the event the Contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the Contractor is expected to observe the provisions of that agreement to the extent that the system meets the Contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the Contractor to do the same, such implementation violates Federal nondiscrimination provisions.
3. The Contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

E. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or

disability. The following procedures shall be followed:

1. The Contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project personnel.
2. The Contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
3. The Contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the Contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
4. The Contractor will promptly investigate all complaints of alleged discrimination made to the Contractor in connection with its obligations under this Agreement, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the Contractor will inform every complainant of all of their avenues of appeal.

F. Training and Promotion:

1. The Contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.
2. Consistent with the Contractor's workforce requirements and as permissible under Federal and State regulations, the Contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this Agreement, this subparagraph will be superseded as indicated in the special provision. PAG may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).
3. The Contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
4. The Contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

G. Unions: If the Contractor relies in whole or in part upon unions as a source of employees, the Contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the Contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

1. The Contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.
2. The Contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

3. The Contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the Contractor, the Contractor shall so certify to PAG and shall set forth what efforts have been made to obtain such information.

4. In the event the union is unable to provide the Contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the Contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the Contractor from the requirements of this paragraph. In the event the union referral practice prevents the Contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, the Contractor shall immediately notify PAG.

H. Reasonable Accommodation for Applicants/Employees with Disabilities: The Contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

I. Selection of Subcontractors, Procurement of Materials and Leasing of System/Equipment: The Contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this Agreement.

1. The Contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this Agreement.
2. The Contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

J. Records and Reports: The Contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the Contractor for all the Services under this Agreement and shall be available at reasonable times and places for inspection by authorized representatives of PAG.

1. The records kept by the Contractor shall document the following:
 - a. The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
 - b. The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
 - c. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;
2. If required, the Contractor and any subcontractors will submit an annual report to PAG each July for the duration of the Project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the Services under this

Agreement. The staffing data should represent the project workforce on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the Contractor will be required to collect and report training data. The employment data should reflect the workforce on board during all or any part of the last payroll period preceding the end of July.

SECTION 17 NONSEGREGATED FACILITIES

The Contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The Contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The Contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the Contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The Contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

SECTION 18 SAFETY: ACCIDENT PREVENTION

A. In the performance of this Agreement the Contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation, including all pertinent regulations of the Occupational Safety and Health Administration (OSHA). The Contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the Agreement. Contractor alone shall be responsible for the safety, efficiency, and adequacy of its worksite, appliances, and methods, and for any damage which may result from their failure or their improper installation, maintenance, or operation.

B. It is a condition of this Agreement, and shall be made a condition of each subcontract, which the Contractor enters into pursuant to this Agreement, that the Contractor and any subcontractor shall not permit any employee, in performance of the Agreement, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Services Hours and Safety Standards Act (40 U.S.C. 3704).

C. It is a condition of this Agreement that PAG, the Project Manager or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with safety and health standards.

D. Hazardous Materials.

1. The Contractor is responsible for compliance with any applicable Federal, State, and local laws or requirements regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in this Agreement and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon

recognizing the condition, immediately stop Services in the affected area and report the condition to PAG and the Project Manager in writing.

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

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

SECTION 19 DRUG FREE WORKPLACE

Contractor agrees to comply with Title V of the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F (Pub. L. No. 100-690, Title V, Sec. 5153, as amended by Pub. L. No. 105-85, Div. A, Title VIII, Sec. 809, as codified at 41 U.S.C. § 8102); and the implementing regulations published at 2 CFR Part 182, "Government-wide Requirements for Drug-free Workplace (Financial Assistance)"; and the laws and regulations promulgated by the Federal Government and to maintain a drug-free workplace.

A. The Contractor shall, within 30 days after award:

1. Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

2. Establish an ongoing drug-free awareness program to inform such employees about –
(i) The dangers of drug abuse in the workplace;
(ii) The Contractor's policy of maintaining a drug-free workplace;
(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

3. Provide all employees engaged in performance of the Agreement with a copy of the statement required by paragraph (1) of this clause;

4. Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this Agreement, the employee will:

(i) Abide by the terms of the statement; and
(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction.

5. Notify the Procurement Officer in writing within 10 days after receiving notice under subdivision (4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

6. Within 30 days after receiving notice under subdivision (4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate PAG; and

7. Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs (1) through (6) of this clause.

B. The Contractor, if an individual, agrees by award of this Agreement not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this Agreement.

C. In addition to other remedies available to PAG, the Contractor's failure to comply with the requirements of paragraph (B) or (C) of this clause may render the Contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

SECTION 20 GUAM AND FEDERAL DEBARMENT

A. Guam Debarment and Suspension. Contractor warrants that it will comply with the provisions of 5 GCA Chapter 5 Articles 9 and 11, subject to debarment or suspension, and that it will not employ any subcontractors who have been federally debarred or debarred by the Government of Guam.

B. Federal Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110. The Contractor certifies that it and its principals: 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency; 2) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; 3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated above; and 4) Have not within a three-year period preceding this application had one or more public transactions (federal, state, or local) terminated for cause or default. Contractor further warrants that it is not a party listed on the government wide exclusions in the System for Award Management (SAM), and will comply with the provisions of Subpart C of 2 CFR Part 1326, "Non-procurement Debarment and Suspension," (published in the Federal Register on December 21, 2006, 71 FR 76573) which generally prohibits entities that have been debarred, suspended, or voluntarily excluded from participating in non-procurement transactions either through primary or lower tier covered transactions, and which sets forth the responsibilities of recipients of federal financial assistance regarding transactions with other persons, including sub recipients and contractors. Contractor will provide a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion, Lower Tier Covered Transaction (Sub-Recipient), which is a material representation of fact. Submission of this certification is a pre-requisite for entering into this Agreement, imposed by Executive Order 12549, 28 CFR Part 67, Section 67.510.

SECTION 21 TERMINATION

A. **Termination for Default, Nonperformance or Delay, Damages for Delay, Time Extensions.**

1. **Default.** If Contractor refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement, or any extension thereof, otherwise fails to timely satisfy the Agreement provisions, or commits any other substantial breach of this Agreement, PAG may notify Contractor in writing of the delay or non-performance and if not cured in ten days or any longer time specified in writing by PAG, *MARAD* may terminate Contractor's right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part PAG may procure similar supplies or services in a manner and upon terms deemed appropriate by PAG. Contractor shall continue performance of the Agreement to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

2. **Contractor's Duties.** Notwithstanding termination of the Agreement and subject to any directions from the PAG, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which PAG and the government of Guam has an interest.

3. **Compensation.** Payment for completed supplies delivered and accepted by PAG shall be at the contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by Contractor and the PAG; if the parties fail to agree, PAG shall set an amount subject to Contractor's rights under Article 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations. PAG may withhold from amounts due Contractor such sums as the PAG deems to be necessary to protect PAG against loss because of outstanding liens or claims of former lien holders and to reimburse PAG for the excess costs incurred in procuring similar goods and services.

4. **Excuse for Nonperformance or Delayed Performance.** Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this Agreement in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified PAG within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the government of Guam and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the supplies or services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the Agreement requirements. Upon request of Contractor, PAG shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the Agreement, the delivery schedule shall be revised accordingly, subject to the rights of the government of Guam under the clause entitled (in fixed-price contracts, "Termination" for Convenience in cost-reimbursement contracts) "Termination". (As used in this Paragraph of this clause the term "subcontractor" means subcontractor at any tier.)

5. **Erroneous Termination for Default.** If, after notice of termination of Contractor's right to proceed under the provisions of this clause, it is determined for any reason that Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, be the same as if the notice of termination had been issued pursuant to the clause providing for termination for convenience.

6. Additional Rights and Remedies. The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

B. Termination for Convenience

1. PAG may, when the interest of PAG so require, terminate this Agreement in whole or in part, for the convenience of PAG or the government of Guam. PAG shall give written notice of the termination to Contractor specifying the part of the Agreement terminated and when termination becomes effective.

2. Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work.

C. Compensation.

1. Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data to the extent required by 2 GAR, Div. 4, § 3118 (Cost or Pricing Data) of the Guam Procurement Regulations bearing on such claim. If Contractor fails to file a termination claim within one year from the effective date of termination, the PAG may pay Contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.

2. The PAG and Contractor may agree to a settlement provided the Contractor has filed a termination claim supported by cost or pricing data to the extent required by 2 GAR, Div. 4, § 3118 (Cost or Pricing Data) of the Guam Procurement Regulations and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the PAG, and the contract price of the work not terminated.

3. Absent complete agreement under Subparagraph (2) of this Paragraph, the PAG shall pay Contractor the following amounts, provided payments agreed to under Subparagraph (b) shall not duplicate payments under this Subparagraph:

- (i) contract prices for services accepted under the Agreement;
- (ii) costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) that shall be no less than the fees due for the portion of the term calculated up-through the date of termination calculated on a pro-rata basis, less amounts paid or to be paid for accepted services; provided, however, that if it appears that Contractor would have sustained a loss if the entire Agreement would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
- (iii) costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph (b) of this clause. These costs must not include costs paid in accordance with Subparagraph (3)(b) of this Paragraph;
- (iv) the reasonable settlement costs of Contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Agreement for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Agreement.

The total sum to be paid Contractor under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of Contractor reduced by the amount of payments otherwise made and the contract price of work not terminated.

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

SECTION 22 SUSPENSION OF SERVICES

A. Suspension for Convenience. The Procurement Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the services for such period of time as may be appropriate for the convenience of PAG.

B. Adjustment of Cost. If the performance of all or any part of the services is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Procurement Officer in the administration of this Agreement, or by the failure of the Procurement Officer to act within the time specified in this Agreement (or if no time is specified, within reasonable time), an adjustment shall be made for any increase in the cost of performance of this Agreement necessarily caused by such unreasonable suspension, delay, or interruption and the Agreement modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent: (a) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor; or (b) for which an adjustment is provided for or excluded under any other provision of this Agreement.

C. Time Restriction on Claim. No claim under this clause shall be allowed: (a) for any costs incurred more than twenty (20) days before the Contractor shall have notified the Procurement Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and (b) Unless the claim is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the Agreement.

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

SECTION 23 DISPUTES

A. PAG and the Contractor agree to attempt resolution of all controversies which arise under, or are by virtue of, this procurement and any resulting contract through mutual agreement. If the controversy is not resolved by mutual agreement, then the Contractor shall request the government in writing to issue a final decision within sixty days after receipt of the written request. If the government does not issue a written decision within sixty days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the Contractor may proceed as though the government had issued a decision averse to the Contractor.

B. PAG shall immediately furnish a copy of the decision to the Contractor, by certified mail with a return receipt requested, or by any other method that provides evidence of receipt.

C. PAG's decision shall be final and conclusive, unless fraudulent or unless the Contractor appeals the decision.

D. This subsection applies to appeals of PAG's decision on a dispute. For money owed by or to PAG under this Agreement, the Contractor shall appeal the decision in accordance with the Government Claims Act by initially filing a claim with the Office of the Attorney General no later than eighteen months after the decision is rendered by PAG or from the date when a decision should have been rendered. For all other claims by or

against PAG arising under this Agreement, the Office of the Public auditor has jurisdiction over the appeal from the decision of PAG. Appeals to the Office of the Public Auditor must be made within sixty days of PAG's decision or from the date the decision should have been made.

E. The Contractor shall exhaust all administrative remedies before filing an action in the Superior Court of Guam in accordance with applicable laws.

F. The Contractor shall comply with PAG's decision and proceed diligently with performance of the Agreement pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, the Agreement, except where the Contractor claims a material breach of the Agreement by PAG. However, if PAG determines in writing that continuation of services under the Agreement is essential to the public's health or safety, then the Contractor shall proceed diligently with performance of the Agreement notwithstanding any claim of material breach by PAG.

SECTION 24 CLAIMS BASED UPON PAG'S ACTIONS OR OMISSIONS

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

- (1) Contractor shall have given written notice to PAG:
 - (a) prior to the commencement of the work involved, if at that time, Contractor knows of the occurrence of such action or omission;
 - (b) within 30 days after Contractor knows of the occurrence of such action or omission, if Contractor did not have such knowledge prior to the commencement of the work; or
 - (c) within such further time as may be allowed by the PAG in writing.

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

- (2) The notice required by Subparagraph (A) of this Paragraph describes as clearly as practicable at the time the reasons why Contractor believes that additional compensation, damages, or an extension of time may be remedies to which Contractor is entitled; and
- (3) Contractor maintains and, upon request, makes available to the PAG within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

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

SECTION 25 REMEDIES

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

SECTION 26 INDEMNIFICATION

To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the government of Guam, PAG, its Project Manager and its Contractors, if any, and the agents and employees of any of them, from and against claims, damages, losses, expenses, actions, recoveries, and judgments of every nature, including but not limited to attorneys' fees, arising out of or resulting from Contractor's performance of the Services. Contractor shall indemnify the government of Guam, PAG, its Project Manager and its Contractors, if any, and the agents and employees of any of them, or any Assignee against, and hold them harmless from, any and all claims, actions, damages, including reasonable attorneys' fees, obligations, liabilities, and liens arising or imposed without the fault or negligence of Contractor, in connection with latent or other defects, or any claim for patent, trademark, copyright, or "trade secret" infringement, or under the doctrine of "strict liability," imposed or incurred by or asserted against the government of Guam, PAG, its Project Manager, or their respective successors or assigns, arising out of the manufacture, purchase, lease, possession, operation, condition, use or return of the System/Equipment, or by operation of law. Contractor shall be liable if any claim, damage, loss or expense attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property (including the System/Equipment itself) is caused by the negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Contractor's indemnification does not extend to liabilities caused solely by the gross negligence or intentional wrongdoing of the government of Guam. Contractor shall give PAG prompt written notice of any matter hereby indemnified against and agrees that upon written notice by PAG of the assertion of such a claim, action, damage, obligation, liability, or lien, Contractor shall assume full responsibility for the defense thereof. The government of Guam shall have an opportunity to participate in the defense at its own expense with respect to attorneys' fees and costs, but not liability; particularly when there are substantial principles of government or public law involved, when litigation might create precedent affecting future governmental operations or liability, or when involvement of the government of Guam is otherwise mandated by law. Such obligations shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person under this Agreement.

SECTION 27 GOVERNING LAW

Except to the extent United States federal law is applicable, the validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of Guam. Contractor expressly recognizes that the Government Claims Act (Title 5 of the Guam Code Annotated, Chapter 6) applies with respect only to claims of money owed by or to the Contractor/Contractor against the Government, if the claim arises out of or in connection with this Agreement. Contractor also expressly recognizes that all other claims by the Contractor/Contractor against the Government are subject to the Guam Procurement Law (Title 5 of the Guam Code Annotated, Chapter 5).

**SECTION 28
COMPLIANCE WITH LAWS**

Each party will comply with all applicable laws and regulations and with all applicable orders issued by courts or other governmental bodies of competent jurisdiction.

**SECTION 29
CONSENT TO JURISDICTION**

Contractor hereby expressly consents to the jurisdiction and venue of Guam with respect to any protest or dispute resolution, and the forum of the courts of Guam with respect to any and all claims which may arise by reason of this Agreement, except as otherwise may be provided by Guam Procurement Law. Contractor waives any and all rights it may otherwise have to contest the same or to proceed with any claims arising by reason of this Agreement in a different jurisdiction, forum, or venue.

**SECTION 30
GOVERNMENT NOT LIABLE**

A. PAG and the government of Guam assume no liability for any accident or injury that may occur to Contractor, its agents, dependents, or personal property while in execution of duties under this Agreement.

B. PAG and the government of Guam shall not be liable to Contractor for any services performed by Contractor prior to the approval of this Agreement by the Procurement Officer and the Contractor hereby expressly waives any and all claims for compensation for acts performed in expectation of this Agreement prior to its approval by the Governor of Guam.

**SECTION 31
ASSIGNMENT OF AGREEMENT**

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

**SECTION 32
SUCCESSORS AND ASSIGNS**

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

**SECTION 33
ATTORNEY'S FEES PROVISION**

If PAG or the government of Guam retains an attorney or attorneys to enforce any of the Provisions of this Agreement, or to protect its interest in any matter arising under this Agreement, or to recover damages for the breach thereof, or PAG commences an action for any of the foregoing reasons or to resolve any dispute relating to this Agreement, and PAG prevails, then PAG shall be entitled to recover from the Contractor PAG's

reasonable attorney's fees, cost and expenses incurred in connection with any such action. If the Contractor retains an attorney or attorneys regarding this Agreement, any recovery of attorney's fees, costs or expenses from PAG by the Contractor is limited by and subject to the Government Claims Act and any other applicable law.

SECTION 34 STATUTORY INTEREST

Interest on amounts ultimately determined to be due to Contractor or the government of Guam or PAG shall be payable at the statutory rate applicable to judgments from the date the claim arose through the date of decision or judgment, whichever is later.

SECTION 35 MANDATORY PROHIBITIONS

A. Prohibition of Gratuities, Kickbacks, and Favors.

Gratuities. It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or Offer therefor.

Kickbacks. It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

Favors to the government of Guam. It shall be a breach of ethical standards for any person who is or may become a contractor, a subcontractor under a contract to the prime contractor or higher tier contractor, or any person associated therewith, to offer, give or agree to give any employee or agent of the government of Guam or for any employee or agent of the government of Guam to solicit or accept from any such person or entity or agent thereof, a favor or gratuity on behalf of the government of Guam whether or not such favor or gratuity may be considered a reimbursable expense of the government of Guam, during the pendency of any matter related to procurement, including contract performance warranty periods.

B. Prohibition of Contingent Fees. It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a government of Guam 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.

SECTION 36 CONTRACTOR'S ETHICAL WARRANTIES

A. Warranty against Employment of Sex Offenders. Contractor warrants that: (1) no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 Guam Code Annotated or of an offense defined in Article 2 of Chapter 28 of Title 9 Guam Code Annotated, or who has been convicted in any other jurisdiction of an offense with the same elements as heretofore defined, or who is listed on the Sex Offender Registry, shall provide services on behalf of Contractor while on government of Guam property, with the exception of public highways; and (2) that if any person providing services on behalf

of Contractor is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry at any time during the performance of the contract, that such person will be immediately removed from working on government property and Contractor warrants that it will notify the Director of the PAG within twenty-four (24) hours of such conviction. If Contractor is found to be in violation of any of the provisions of this paragraph, then PAG will give notice to Contractor to take corrective action. Contractor shall take corrective action within twenty-four (24) hours of notice from PAG, and Contractor shall notify PAG when action has been taken. If Contractor fails to take corrective steps within twenty-four (24) hours of notice from PAG, then PAG in its sole discretion may temporarily suspend this agreement.

B. Covenant against Contingent Fees. Contractor represents that it has not retained a person to solicit or secure a government of Guam 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.

C. Representation Regarding Gratuities, Kickbacks, and Favors. The Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities, kickbacks, and favors set forth in the Guam Procurement Law.

D. Ethical Standard. 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 set forth in 5 GCA Chapter 5 Article 11 (Ethics in Public Contracting) of the Guam Procurement Law and in Article 11 of the government of Guam Procurement Regulations.

SECTION 37 LICENSES

The Contractor shall be required to obtain all permits and comply with all Federal and Guam laws applicable to licensing Government. The Contractor represents and warrants that it is fully licensed to do business in Guam to render the work to be provided herein. The Contractor shall provide a copy of all required permits and its current, appropriate business licenses or a statement of exemption pursuant to Title 11 of the Guam Code Annotated §§ 70126 and 70130 within 30 days of the issuance of the NTP.

SECTION 38 ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties with respect to its subject matter. This Agreement supersedes all other agreements, Offers, representations, statements and understandings, whether written or oral, concerning the Services or the rights and obligations relating to the Services, and the parties disclaim any reliance thereon. This Agreement will not be modified or supplemented by any written or oral statements, Offers, representations, advertisements, service descriptions or purchase order forms not expressly set forth in this Agreement.

SECTION 39 SEVERABILITY

In the event that any provisions of this Agreement shall be held to be invalid and/or unenforceable, the remaining provisions shall be valid and binding upon the Parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

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**SECTION 40
COMPUTATION OF TIME**

Unless specifically stated otherwise, whenever this Agreement, the Contract Documents, or the Offer Documents provide for a time period of ten (10) days or fewer, weekends and government of Guam holidays are not included in the computation. When this Agreement, the Contract Documents, or the Offer Documents provide for a time period of more than ten (10) days, weekends and government of Guam holidays are to be included in the computation.

**SECTION 41
NOTICE**

All notices, requests, demands and other communications (collectively, "Notices") or any other communication required under this Agreement shall be in writing and shall have been deemed to have been duly given if placed in the U.S. mail, certified mail, return receipt requested OR by commercial courier or delivery service which provides a delivery tracking feature, addressed as follows:

Contractor:
American Material Handling, Inc.
ATTN: Mr. Benjamin DeJarnett
3651 Mars Hill Road Suite 200
Watkinsville, GA 30677

PAG
ATTN: Mr. Rory J. Respicio
1026 Cabras Highway Suite 201
Piti, GU 96915

Said Notices shall be deemed given on the earlier of (a) actual receipt; or (b) ten (10) business days following the date such notices are deposited in the U.S. Mail, properly addressed and sent via certified mail or placed with a commercial courier or delivery service. If the last day of any notice period falls on a Saturday, Sunday, or federal holiday, such notice period shall be extended to the next regular business day. Either party may change the address or designated person for receiving Notices by providing notice to the other party in accordance with this Section.

Contractor shall be responsible for giving all notices to PAG, the Project Manager, or any third parties required by law, in accordance with the Contract Documents, Offer Documents and/or the Agreement. If the Contractor observes that the Agreement is at variation with any laws, ordinances, rules, or regulations, the Contractor must promptly notify PAG in writing as set forth in this section, and any necessary changes shall be adjusted by change order in accordance with the terms of this Agreement.

**SECTION 42
PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) and Title 5 GCA Chapter 37, the False Claims and Whistleblower Act applies to this Agreement and to all Contractor's actions pertaining to this Agreement. The False Claims and Whistleblower Act was passed as Public Law 34-116, Chapter III, Section 20 (lapsed into law August 24, 2018) and codified at Title 5 GCA Chapter 37.

**SECTION 43
TRANSMISSION OF DATA IN DIGITAL FORM**

If the parties intend to transmit any information or documentation in digital form, they shall establish necessary protocols governing such transmissions, unless otherwise already provided in this Agreement.

**SECTION 44
CONFIDENTIAL INFORMATION**

A. Confidential Information. Confidential Information means: (a) information the parties or their affiliates share with each other in connection with this Agreement or in anticipation of providing Services under this Agreement (including pricing or other Offers), but only to the extent identified as Confidential Information in writing; and (b) except as may be required by applicable law or regulation, and the terms of this Agreement.

B. Obligations. A disclosing party's Confidential Information will, for a period of 3 years following its disclosure to the other party (except in the case of HIPAA information, for which the period is indefinite): (a) not be disclosed, except to the receiving party's employees, agents and contractors having a need-to-know (but only if such agents and contractors are not direct competitors of the other party and agree in writing to use and disclosure restrictions as restrictive as this Section) or to the extent authorized to be revealed by law, governmental authority or legal process (but only if such disclosure is limited to that which is so authorized and prompt notice is provided to the disclosing party to the extent practicable and not prohibited by law, governmental authority or legal process); (b) be held in confidence; and (c) be used only for purposes of using the Services, evaluating Offers for new services or performing this Agreement (including in the case of the parties to detect fraud, to check quality and to operate, maintain and enhance the Services).

C. Exceptions. The restrictions in this Section will not apply to any information that: (a) is independently developed by the receiving party without use of the disclosing party's Confidential Information; (b) is lawfully received by the receiving party free of any obligation to keep it confidential; or (c) becomes generally available to the public other than by breach of this Agreement.

D. Privacy. Each party is responsible for complying with the privacy laws applicable to the Services. Contractor shall require its personnel, agents and contractors around the world who process Personal Data to protect Personal Data in accordance with the data protection laws and regulations applicable to Contractor's business.

**SECTION 45
DEFECTIVE COST OR PRICING DATA**

A. Overstated Cost or Pricing Data. If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or non-current as of the date stated in the certificate, PAG is entitled to an adjustment of the contract price, including profit or fee or any exclusion of taxes ("Business Privilege Tax," formerly labeled "Gross Receipts Tax") pursuant to 11 GCA § 26203(k)(14) (formerly § 19543.1016) as added by 5 GCA § 5232 of the Guam Procurement Law, to exclude any significant sum by which the price, including profit or fee or any exclusion of taxes ("Business Privilege Tax," formerly labeled "Gross Receipts Tax") pursuant to 11 GCA § 26203(k)(14) (formerly § 19543.1016) as added by 5 GCA § 5232 of the Guam Procurement Law was increased because of the defective data. Judgmental errors made in good faith concerning the estimated portions of future costs or projections do not constitute defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data were not used or relied upon, the price should be reduced by such amount. In establishing that the defective data caused an increase in the contract price, the

Procurement Officer is not expected to reconstruct the negotiation by speculating as to what would have been the mental attitudes of the negotiating parties if the correct data had been submitted at the time of agreement on price.

B. Off-Setting Understated Cost or Pricing Data. In determining the amount of a downward adjustment, the Contractor shall be entitled to an off-setting adjustment for any understated cost or pricing data submitted in support of price negotiations for the same pricing action up to the amount of the PAG's claim for overstated cost or pricing data arising out of the same pricing action.

C. Dispute. If the Contractor and the Procurement Officer cannot agree as to the existence of the defective cost or pricing data or amount of adjustment due to defective cost or pricing data, the Procurement Officer shall set an amount in accordance with Subsections (f)(1) and (f)(2) of this section and the Contractor may appeal this decision as a contract controversy under Article 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations.

SECTION 46 LIQUIDATED DAMAGES

When the Contractor fails to complete the delivery of the equipment within the time or times fixed in the Agreement or any extension thereof, and is given notice of delay or nonperformance as specified in paragraph (1), Default, of the Termination for Default, Non-performance or Delay Clause of this Agreement and fails to cure in the time specified, the Contractor shall pay to PAG one fourth of one-percent of the outstanding order per calendar day from date set to cure. (2GAR DIV.4 §6101 (9) of the delay pursuant to the clause of this Agreement entitled Termination for Default for Non-performance or Delay-Damages for Delay-Time Extension.

SECTION 47 SIGNATURES

This Agreement may be signed by the parties electronically, and in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart by one party to the other may be made by electronic transmission.

SECTION 48 EQUIPMENT ORDERING

Contractor shall be responsible for all packing, rigging, transportation, and installation charges for the Equipment. Contractor shall arrange for delivery of Equipment, unless otherwise specified in the schedule, so that it can be accepted in accordance with the terms of this Agreement. Contractor hereby agrees to indemnify and hold PAG harmless from any claims, liabilities, costs and expenses, including reasonable attorneys' fees, incurred by PAG arising out of any purchase orders or assignments executed by Contractor with respect to any equipment or services relating thereto.

SECTION 49 EQUIPMENT ACCEPTANCE

In order to accept the Equipment, PAG shall return to Contractor the signed and dated Equipment Acceptance Receiving Report attached hereto as Exhibit "B":

- (a) acknowledging that the Equipment has been received, and is ready for use; and
- (b) accepting it as satisfactory in all respects for the purposes of the Agreement.

**SECTION 50
MAINTENANCE OF SYSTEM/EQUIPMENT**

Contractor shall enter into, and will maintain in effect, where applicable and if available, manufacturer's standard maintenance contract or any other service agreement reasonably satisfactory to PAG for all System/Equipment and components of the System/Equipment. Contractor may comply with the requirements of this section through a program of self-maintenance. Any maintenance arrangement entered into by Contractor pursuant to this section shall provide for the maintenance of the System/Equipment in good condition and working order and repairs and replacement of parts thereof.

**SECTION 51
EQUIPMENT INSURANCE**

A. Contractor will insure for the following risks with insurers of recognized responsibility (in each case subject to deductibles customarily carried by PAG): (i) all risk of loss and physical damage to the Equipment in amounts not less than the greater of the fair market replacement value or the aggregate Casualty Value of all of the Equipment from time to time; and (ii) comprehensive public liability and property damage insurance with respect to the condition, possession, maintenance, operation and use of the Equipment, in an amount not less than the total value of all equipment being purchased.

B. Contractor shall deliver to PAG and any Assignee(s) a valid certificate of insurance for each such insurance policy upon the execution thereof, and a certificate of insurance for each renewal policy not less than 30 days prior to the expiration of the original policy or any renewal policy. Such insurance shall: (i) include as additional parties insured and loss payees the government of Guam, or any Assignee(s) of whom Contractor has notice; (ii) provide that such insurance shall not be materially changed or cancelled without at least 30 days' notice to PAG or such Assignees; and (iii) provide that such policy shall not be invalidated by any negligence of, or breach of warranty by, Contractor. Upon the request of PAG, Contractor shall provide any additional data related to the insurance as PAG reasonably requests. Failure to have in force a policy of insurance as required shall be deemed an immediate Event of Default.

**SECTION 52
PROCUREMENT OF RECOVERED MATERIALS**

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

**SECTION 53
DOMESTIC PRODUCTS PREFERENCE**

As appropriate and to the extent consistent with law, there is a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subcontracts, including all purchase orders for work or products under this Agreement. For purposes of this

Section: "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

SECTION 54
PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE
SERVICES AND EQUIPMENT

For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, Contractor and all subcontractors are prohibited from procuring, obtaining, or purchasing: 1) equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system for this procurement. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); 2) video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); 3) telecommunications or video surveillance services provided by such entities or using such equipment; and 4) telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. Contractor is required to include this provision in all subcontracts under this Agreement.

SECTION 55
FEDERAL LOBBYING

Contractor agrees to comply with the requirements set forth under the Certification Regarding Lobbying and Disclosure Form and the implementing regulations published at 15 CFR Part 28, "New Restrictions on Lobbying." These provisions prohibit the use of Federal funds for lobbying the Executive or Legislative branches of the Federal Government in connection with an award and require the disclosure of the use of non-Federal funds for lobbying. Contractor agrees to the following Certification Regarding Lobbying as a material representation of fact. Submission of this certification is a pre-requisite for entering into the agreement offered under this RFP, imposed by Section 1352, as amended, Title 31, U.S. Code:

"The Contractor certifies, to the best of his or her knowledge and belief, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an PAG, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of this Agreement, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of this Agreement or any Federal grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any PAG, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, or any Federal grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]

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

D. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement. The Contractor certifies or affirms the truthfulness and accuracy of each statement of this certification and disclosure. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure.”

All Contractors and subcontractors who receive more than \$100,000 in federal funds must also submit a Certification Regarding Lobbying on the form “Form LLL, Disclosure of Lobbying Activities,” also known as Form SF-LLL. This form assures, generally, that recipients will not lobby federal entities with federal funds, and that, as is required, they will disclose other lobbying on the form. Submission of this certification is a prerequisite for entering into any contract funded with federal award funds, imposed by Executive Order 12549, 28 CFR Part 67, Section 67.510. Form SF-LLL must be submitted to PAG with this Agreement, by any Contractor or subcontractor receiving more than \$100,000 in federal funds, to disclose any lobbying of federal entities: (a) with profits from federal contracts; or (b) funded with nonfederal funds. This form and instructions are attached to this Agreement, as Attachment A.

SECTION 56 IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

By executing this Agreement, and any subcontracts, as appropriate, the Contractor agrees and any subcontractors will be deemed to have stipulated as follows:

A. That any person who is or will be utilized in the performance of this Agreement is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

B. That Contractor and all subcontractors shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and 4 CFR Part 15.4(c). Contractor shall report all violations to Rural Development and to the U.S. Environmental Protection PAG, Assistant Administrator for Enforcement.

C. That Contractor and all subcontractors shall recognize and comply with all mandatory standards and policies relating to energy efficiency which are contained in any applicable State energy conservation plan issued in compliance with the Energy Policy and Conservation Act, P.L. 94-163.

D. That the Contractor agrees to include or cause to be included the requirements of paragraph (A) of this Section in every subcontract, and further agrees to take such action as the contracting PAG may direct as a means of enforcing such requirements.

SECTION 57 MANDATORY DISCLOSURES OF CONFLICTS OF INTEREST

Pursuant to 2 CFR § 1402.112, Contractor and its employees must take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to federal award funds. In the procurement of supplies, equipment, construction, and services, the conflict-of-interest provisions of 2 CFR § 200.318 apply. Contractor

must disclose in writing any conflict of interest to the PAG in accordance with 2 CFR § 200.112. Contractor must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. Contractor is responsible for notifying the PAG in writing of any conflicts of interest that may arise during the life of this Agreement. Failure to resolve conflicts of interest in a manner that satisfies the PAG and MARAD may be cause for termination of the Agreement. Failure to make any of the required disclosures may result in any of the remedies for noncompliance described in 2 CFR Part 200, including debarment (see also 2 CFR Part 180).

SECTION 58 NO OBLIGATION BY THE FEDERAL GOVERNMENT

PAG and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to PAG, Contractor, or any other party (whether or not a party to the contract) pertaining to any matter resulting from the underlying contract. Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal funds under this Agreement. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

SECTION 59 UNALLOWABLE COSTS/RESTRICTIONS ON USE OF FEDERAL FUNDS

Costs or prices based on estimated costs for contracts under a Federal Award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for a non-Federal entity under Subpart E—Cost Principles of 2 CFR Part 200. Contractor agrees to comply with all applicable laws, regulations, policies, and guidance (including specific cost limits, prior approval and reporting requirements, where applicable) governing the use of federal funds. All costs incurred under this Agreement must be allowable under 2 CFR Part 200 Subpart E. In accordance with applicable law, regulation, and policy, any recipient of funding must agree to comply with restrictions on using assistance funds for unauthorized lobbying, fund-raising, or political activities (i.e., lobbying members of Congress or lobbying for other federal grants, cooperative agreements, or contracts). See e.g. 2 CFR 200.450. Funds generally cannot be used to pay for travel by Port Authority of Guam staff. Proposed project activities must also comply with all state and federal regulations applicable to the project area. The Contractor must also review the federal award conditions for any other programmatic funding restrictions applicable to this Agreement and project. Contractor must refer to the terms and conditions of the federal award for other funding restrictions applicable. It is the responsibility of the Contractor to ensure compliance with these requirements. Costs that are expressly unallowable under federal funding laws, or costs which specifically become designated as unallowable as a result of a written decision furnished by a contracting officer pursuant to contract dispute procedures, or costs which are mutually agreed to be unallowable, including mutually agreed to be unallowable directly associated costs, shall be identified and excluded from any invoice, billing, claim, or offer applicable to this Agreement. A directly associated cost is any cost which is generated solely as a result of incurring another cost, and which would not have been incurred had the other cost not been incurred. When an unallowable cost is incurred, its directly associated costs are also unallowable. Contractor agrees to pay any penalties associated with any unallowable costs incurred by Contractor.

SECTION 60 FEDERAL WHISTLEBLOWER PROTECTIONS

This Agreement is subject to the whistleblower protections afforded by 41 U.S.C. § 4712 (Enhancement of contractor protection from reprisal for disclosure of certain information), which generally provide that an employee or contractor (including subcontractors and personal services contractors) of a non-Federal entity

may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body information that the employee reasonably believes is evidence of gross mismanagement of a Federal award, subaward, or a contract under a Federal award or subaward, a gross waste of Federal funds, an abuse of authority relating to a Federal award or subaward or contract under a Federal award or subaward, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal award, subaward, or contract under a Federal award or subaward. These persons or bodies include:

- a. A Member of Congress or a representative of a committee of Congress.
- b. An Inspector General.
- c. The Government Accountability Office.
- d. A Federal employee responsible for contract or grant oversight or management at the relevant PAG.
- e. An authorized official of the Department of Justice or other law enforcement PAG.
- f. A court or grand jury.
- g. A management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct.

Non-Federal entities and contractors under Federal awards and subawards must inform their employees in writing of the rights and remedies provided under 41 U.S.C. § 4712, in the predominant native language of the workforce.

SECTION 61
FEDERAL EMPLOYEE EXPENSES AND SUBAWARDS OR CONTRACTS ISSUED TO FEDERAL EMPLOYEES OR AGENCIES

A. Use of any funds (Federal or non-Federal) or the provision of in-kind goods or services for the purposes of transportation, travel, or any other expenses for any Federal employee under this Agreement may raise appropriation augmentation issues. In addition, PAG policy may prohibit the acceptance of gifts, including travel payments for federal employees, from non-Federal entities regardless of the source. Therefore, before any funds under this Agreement may be used by Federal employees, the Contractor must submit requests for approval of such action to the Federal Program Officer who must review and make a recommendation to the Grants Officer. The Grants Officer will notify the PAG or Contractor in writing (generally through the PAG) of the final determination.

B. Contractor may not issue a subaward, contract or subcontract of any part of a PAG award to any PAG or employee of PAG or to other Federal employee, department, PAG, or instrumentality, without the advance prior written approval of the PAG Grants Officer.

IN WITNESS HEREOF, the parties hereto have executed this Agreement.

AMERICAN MATERIAL HANDLING, INC.

PORT AUTHORITY OF GUAM

BENJAMIN DEJARNETT

RORY J. RESPICIO
Procurement Officer/General Manager

Date: _____

Date: _____

CERTIFIED FUNDS AVAILABLE

Contract Amount: \$ _____

JOSE B. GUEVARA III
Chief Financial Officer

Port Authority of GUAM

Cost Center: G/L – Account #: _____

Date: _____

APPROVED AS TO LEGALITY AND

FORM:

JESSICA L. TOFT.
PAG STAFF ATTORNEY

Date: _____

Attachment A

Agreement for Purchase of Terminal Yard Tractors

Between The Port of Guam and American Material Handling, Inc.

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

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

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the sub-awardee, e.g., the first sub-awardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Sub-awardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Port Authority of Guam making the award or loan commitment. Include at least one organizational level below the Port Authority of Guam name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal Port Authority of Guam). Included prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Port Authority of Guam, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
 10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
 11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.
-

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

Approved by OMB

0348-0046

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

(See reverse for public burden disclosure)

<p>1. Type of Federal Action: a. contract _____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance</p>	<p>2. Status of Federal Action: a. bid/offer/application _____ b. initial award c. post-award</p>	<p>3. Report Type: a. initial filing _____ b. material change For material change only: Year _____ quarter _____ Date of last report _____</p>
<p>4. Name and Address of Reporting Entity: _____ Prime _____ Sub-awardee Tier _____, if Known: Congressional District, if known:</p>		<p>5. If Reporting Entity in No. 4 is Sub-awardee, Enter Name and Address of Prime: Congressional District, if known:</p>
<p>6. Federal Department/Port Authority of Guam:</p>	<p>7. Federal Program Name/Description: CFDA Number, if applicable: _____</p>	
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount, if known: \$</p>	

<p>10. a. Name and Address of Lobbying Registrant <i>(if individual, last name, first name, MI):</i></p>	<p>b. Individuals Performing Services <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i></p>
<p>11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>	<p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No.: _____ Date: _____</p>
<p>Federal Use Only</p>	<p>Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)</p>

BOARD OF DIRECTORS

*Dorothy P. Harris, Chairperson
Conchita S.N. Taitano, Vice Chairperson
Fe R. Valencia-Ovalles, Board Secretary*



Resolution No. 2024-04

RELATIVE TO PETITIONING THE PUBLIC UTILITIES COMMISSION (PUC) FOR THE APPROVAL OF THE AWARD TO AMERICAN MATERIAL HANDLING FOR THE PURCHASE OF NINE (9) TERMINAL YARD TRACTORS.

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE PORT AUTHORITY OF GUAM:

WHEREAS, the Port Authority of Guam (PAG) previously awarded a contract to American Material Handling for an initial four (4) Terminal Yard Tractors under a Diesel Emissions Reduction Act (DERA) grant through U.S. Environmental Protection Agency (U.S. EPA), because American Material Handling, whose manufactured item meets the requirements set forth for these Terminal Yard Tractors under the Build America, Buy America Act (BABAA) and the terms and conditions of the federal funding; and

WHEREAS, on February 19, 2024, the Port Authority determined the need for an additional nine (9) Terminal Yard Tractors, and a grant award with funding share of 80/20 was provided by the Maritime Administration (MARAD) under Grant Number: 693JF72340007; and

WHEREAS, the Build America, Buy America Act is applicable to all purchases made with federal award funds granted to all non-federal entities, including the Port Authority of Guam; and

WHEREAS, the Maritime Administration granted a special condition allowing for procurement of the additional nine (9) tractors from the same vendor under the Federal GSA Multiple Award Schedule (MAS). This purchase has been determined by MARAD to be compliant with the "Buy American Act as required"; and

WHEREAS, the U.S. EPA, MARAD, and the PAG have determined that there is only one vendor, American Material Handling, whose manufactured item meets the requirements set forth for these Terminal Yard Tractors under BABAA; and

WHEREAS, it was determined that the only qualifying responsible and responsive bidder for the Terminal Yard Tractors was American Material Handling with a price of One-Million, Seven Hundred Ninety-One Thousand, Three Hundred Twenty-Seven Dollars and Zero Cents (\$ 1,791,327.00); and

WHEREAS, the Port Authority Board of Directors at its regular meeting of April 25, 2024 approved the contract award to American Material Handling; now therefore, be it

RESOLVED, that the Port Authority Board of Directors authorizes Management to petition the Public Utilities Commission (PUC) to review and approve the contract award to American Material Handling in accordance with PAG Docket 09-01 Contract Review Protocol for the Port Authority of Guam; and be it further

RESOLVED, that the Chairperson certify, and the Secretary attest to, the adoption hereof, and that a copy of this resolution be sent to the Public Utilities Commission.

PASSED AND ADOPTED UNANIMOUSLY BY THE BOARD OF DIRECTORS THIS 25th DAY OF APRIL, 2024.

**DOROTHY P. HARRIS
CHAIRPERSON, BOARD OF DIRECTORS
PORT AUTHORITY OF GUAM**

**FE R. VALENCIA-OVALLES
SECRETARY, BOARD OF DIRECTORS
PORT AUTHORITY OF GUAM**

