



The Honorable
EDDIE BAZA CALVO
 Governor

The Honorable
RAY TENORIO
 Lt. Governor



GLENN LEON GUERRERO

Director

FELIX C. BENAVENTE

Deputy Director

**DEPARTMENT OF PUBLIC HEALTH & SOCIAL SERVICES NEW BUILDING
 STRUCTURE FOR GROUP HOME FOR FOSTER CARE CHILDREN
 (DESIGN-BUILD)**

PROJECT NO.: 470-5-1070-F-BAR

ADDENDUM NO. 1

This addendum shall form a part of the contract documents. Failure by any bidder to acknowledge receipt of this addendum in his bid shall be grounds for disqualification of his bid.

I. IFB DOCUMENTS;

	DELETE	REPLACE WITH	DESCRIPTION
	TOC-1	TOC- 1 (AD-1)	Revised Notes
	IB -1 to 18	IB -1 to 18 (AD-1)	Revised Notes
	FC-1 to 14	FC-1 to 14 (AD-1)	Revised Notes
	Attachment A-12 in its entirety		
	Attachment A-13	Attachment A-12 (AD-1)	Revised Notes
	Attachment A-14	Attachment A-13 (AD-1)	Revised Notes

II. CLARIFICATIONS;

1. **For additional site visit, please submit your request no later than Monday March 20, 2017 @ 4:00 P.M.**

2. **Question from JB Modern Tech:**

- a. Can you give me the elevation of the closest existing manhole which located downstream on the rough road?

Answer:

The elevation of the existing nearest manhole is 9 feet.

III. The bid opening has been changed to now read the following below;

<u>EVENT</u>	<u>DATE</u>
DPW Issuance of Answers to Written Question	March 17, 2017 @ 5:00 P.M.
2nd Deadline for Receipt of Written Question	March 21, 2017 @ 4:00 P.M.
2nd DPW Issuance of Answers to Written Question	March 24, 2017 @ 5:00 P.M.
Unpriced Technical Offer & Priced Bid Due Date	April 03, 2017 @ 4:00 P.M.

-END OF ADDENDUM-


GLENN LEON GUERRERO

JTC

TABLE OF CONTENTS

Contents	Page
1. Invitation to Bid	ITB-1
2. Instruction to Bidders	IB-1 to-18
3. Bid Form	BF-1 to 3
4. Bid Bond	BB-1 to 2
5. Legal Requirement Forms	A1 to A13
(A1 to A13 shall be submitted together with Priced Bid)	
A1. AFFIDAVIT DISCLOSING OWNERSHIP and COMMISSIONS	
A2. AFFIDAVIT re NON-COLLUSION	
A3. AFFIDAVIT re NO GRATUITIES or KICKBACKS	
A4. AFFIDAVIT re ETHICAL STANDARDS	
A5. AFFIDAVIT re CONTINGENT FEES	
A6. DECLARATION re COMPLIANCE WITH U.S. DOL WAGE DETERMINATION	
A7. FEDERAL CERTIFICATION re DEBARMENT	
A8. FEDERAL CERTIFICATION LOBBYING	
A9. FEDERAL CERTIFICATION NON-SEGREGATED FACILITIES	
A10. FEDERAL CERTIFICATION NON-DISCRIMINATION	
A11. FEDERAL CIVIL RIGHTS	
A12. FEDERAL LIMITED – ENGLISH PROFICIENCY	
A13. FEDERAL CONTRACT CLAUSES	
6. Formal Contract	FC-1 to 14
7. Performance and Payment Bond	PB-1 to 4
8. General Conditions	GC-1 to 42
9. Special Provisions	SP-1 to 2
10. General Statement of Works	GSOW-1 to 7
11. Alien Prevailing Wage Rates	PWR-1
12. USDOL Wage Determination	
13. Davis-Bacon Act Provisions	
14. Acknowledgement of Receipt Form	
15. Plan	

I. GENERAL:

a). Overview.

The Governor of Guam through the Guam Department of Public Works and the Procurement Officer of this project (hereinafter referred to as “DPW”, “Government” and “Owner”) on behalf of the Department of Public Health and Social Services (hereinafter referred to as “DPHSS”) is soliciting Unpriced Technical Offers and Priced Bids (hereinafter collectively referred to as “Bid(s)”) for the design and construction of a New Building Structure for a Group Home For Foster Care Children (hereinafter referred to as “the Project”). The Project is federally funded through a Department of Interior (DOI), Office of Insular Affairs (OIA), Compact Impact-Grant No. Guam CI-2015-1, D15AF00038 to DPHSS.

b) Invitation for Bid.

Multi-Step Procurement. This Invitation for Bid (hereinafter called “IFB”) is a multi-step procurement issued in accordance with 5 GCA §5211(h) and 2 GAR Division 4 §3109(r). Multi-Step sealed bidding is a two-phase process consisting of a technical first phase (hereinafter referred to as “Phase I”) composed of one or more steps in which bidders submit Unpriced Technical Offers to be evaluated, and a second phase (hereinafter referred to as “Phase II”) in which those bidders whose technical offers are deemed to be acceptable during the Phase I have their Price Bids considered. It is designed to obtain the benefits of competitively sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtain the benefits of the competitive sealed proposals procedure through the solicitation of Unpriced Technical Offers and the conduct of discussions to evaluate and determine the acceptability of Unpriced Technical Offers.

(b) (1) Availability.

This IFB is available for download from DPW’s website at www.dpw.guam.gov and public inspection at DPW’s office located at 542 North Marine Corps Drive, Upper Tumon, Guam 96913, Monday through Friday, excluding holidays, between 8:00 a.m. and 5:00 p.m. A copy of the IFB may be picked up at the DPW office or mailed or e-mailed to a prospective bidders by DPW upon receipt of payment of a non-refundable fee of Fifty U.S. Dollars (\$50.00) payable in cash, or by cashier’s or certified check payable to the Treasurer of Guam / DPW. Upon obtaining this IFB, prospective bidders must complete the Acknowledgement of Receipt Form set forth as a single point of contact (see **Attachment -A15**) to this IFB and return the completed form to DPW in order to receive any addenda or other notices related to this IFB (5GCA 5220 (b)). Failure by prospective bidders to submit the Acknowledgement of Receipt Form to DPW may result in the prospective bidder not receiving notices from DPW regarding this IFB, including addenda, point deductions during the proposal evaluation process, or proposals may be deemed non-

responsive.

(b) (2). Bids.

Bids must be in writing and signed in ink.

Unpriced Technical Offer. Bidders must submit their Unpriced Technical Offer clearly marked as such, one (1) as “ORIGINAL” and five (5) copies must be submitted to DPW shall be placed in a separate sealed envelope addressed to the Director of Public Works and clearly labeled with the IFB Project Number, IFB Project Title and Proposal Due Date. The original should be unbound and each hard copy must be separately bound. Erasures or other changes in a proposal must be explained or noted over the signature of the bidders. Bids containing any conditions, omissions, unexplained erasures or alterations or items not called for in the IFB, or irregularities of any kind may be rejected by DPW as being non-compliant.

Priced Bids. Bidders are also at the same time must submit their Price Bid clearly marked as such, one (1) as “Original and one (1) copy, and shall be placed in a separate sealed envelope from the Unpriced Technical Offer. Price Bids shall be made on the forms furnished by DPW and shall be enclosed in a sealed envelope addressed to the Director of Public Works, Government of Guam, 542 North Marine Drive, Tamuning, Guam 96913 and endorsed with the name of the bidders and the title “**Department of Public Health & Social Services New Building Structure for Group Home for Foster Care Children (Design-Build), Project no.: 470-5-1070-F-BAR**”.

Attention is called to the fact that bidders not only bid to assume the obligations and liabilities imposed upon the Contractor in the form of contract, but expressly make certain of the representations and warrants made therein. No effort is made to emphasize any particular provision of the contract, but bidders must familiarize themselves with every provision and its effect.

(b)(3) Amendments to the IFB.

Amendments. DPW reserves all rights to revise or amend this IFB prior to the date set for opening. Such revisions and amendments, if any, will be announced by an amendment or amendments to this IFB shall be identified as such. The amendment shall refer the portions of the IFB it amends. Amendments and addenda shall be sent to all prospective bidders who have submitted the Acknowledgement of Receipt Form to DPW and shall also be made available on DPW’s website. All offerors/bidders must acknowledge receipt of amendments or addenda issued.

(b)(4) Cancellation of Solicitations: Rejection of All Bids or Proposals.

DPW reserves all rights to cancel the solicitation and reject all bids and all proposals in

INSTRUCTION TO BIDDERS
Department of Public Health and Social Services
New Building Structure for
Group Home for Foster Care Children (Design-Build)
Project no.: 470-5-1070-F-BAR

whole or in part when in the best interests of the Government as set forth in 2 GAR Division 4 §3115.

(b)(5) Schedule of Events.

SCHEDULE	
<u>EVENT</u>	<u>DATE</u>
IFB Issue Date	March 3, 2017
Pre-Bid Conference & Site Visit	March 10, 2017 @ 10:00 A.M.
Deadline for Receipt of Written Question	March 14, 2017 @ 4:00 P.M.
DPW Issuance of Answers to Written Question	March 17, 2017 @ 5:00 P.M.
Unpriced Technical Offer & Priced Bid Due Date	March 27, 2017 @ 4:00 P.M.

(b)(6) Pre-Bid Conferences.

Pre-Bid conferences & site visit(s) will be permitted prior to the date established herein for submission of Bid(s). The conferences & site visit(s) will be conducted only to explain the procurement requirements for this IFB. The Authority will notify all bidders of any substantive clarification provided in response to any inquiry. The Authority will extend the due date if such information significantly amends the solicitation or makes compliance with the original proposed due date impractical. This Pre-Bid Conference and Site Visit is "**Mandatory**". This means the interested proposers or bidders must have a representative in attendance on the date and time of the Pre-Bid Conference in order to satisfy one (1) of the IFB's requirements in determining 'responsibility' towards being a Qualified Bidder. A Proposer or bidder will be disqualified if they did not attend the *Mandatory Pre-Bid Conference*. It is not necessary to purchase the IFB packet before attending the Mandatory Pre-Bid Conference. Purchase of the IFB packet is necessary only when submitting a Bid (Unpriced Technical Offer and Priced Bid contained within a separately sealed envelope offer) on or before the deadline for bid submissions.

(b)(7) No Late Bids.

Bid(s) must be received at the receptionist's desk of DPW by the Bid Due Date set forth in this IFB. Email or facsimile bids will not be accepted. Regardless of cause, late bids will not be accepted and will automatically be disqualified from further consideration. It shall be the bidder's sole risk to assure delivery at the receptionist's desk at the designated office by the designated time. Late Bids will not be opened and may be returned to the bidder at the expense of the bidders or destroyed if requested.

(b)(8) DPW Not Responsible for Preparation Costs.

The costs for developing and delivering bids in response to this IFB and any subsequent presentations of the proposal as requested by DPW shall be at the sole cost and expense of

INSTRUCTION TO BIDDERS
Department of Public Health and Social Services
New Building Structure for
Group Home for Foster Care Children (Design-Build)
Project no.: 470-5-1070-F-BAR

the bidder. DPW is not liable for any expense incurred by the bidder in the preparation, delivery, and/or presentation of its Bid or any other costs incurred by the bidder.

(b)(9) All Timely Submitted Materials Become the Property of DPW.

All materials submitted in response to this IFB become the property of DPW and shall be appended to any formal documentation, which would further define or expand any contractual/lease relationship between the Government of Guam and the bidder resulting from this IFB process.

(b)(10) Rejection of Bids.

Any Bid submitted in response to this IFB may be rejected in whole or in part when it is in the best interests of DPW or the government of Guam in accordance with Guam Procurement Regulations § 3115(e).

(b)(11) Licensing

Bidders are required to present Business License issued by Department of Revenue and Taxation, and a copy of current Certificate of Authorization (COA) to contract for architectural or engineering services issued by the Guam Board of Registration for Professional Engineers, Architects, and Land Surveyors and or Contractor's License.

(b)(12) Conflicts of Interest.

The Bid shall also indicate any current or historical engagement or relationship with any public or private party that could potentially create a conflict of interest with DPW, the Government of Guam or any of its agencies or instrumentalities.

(b)(13) Primary Point of Contact.

Identify the overall project coordinator or manager who will serve as the single point of contact for this procurement and liaison between the DPW and the bidder for all work under this procurement. For DPW contact information for single point of contact is as follow:

John F. Calanayan
CIP Engineer in Charge
542 North Marine Corps Drive
Tamuning, Guam 96913
Email: john.calanayan@dpw.guam.gov
Phone Number: (671) 646-3189
Fax Number (671) 649-7867

INSTRUCTION TO BIDDERS
Department of Public Health and Social Services
New Building Structure for
Group Home for Foster Care Children (Design-Build)
Project no.: 470-5-1070-F-BAR

All communication shall be hard copy to be submitted to Department of Public Works, Government of Guam, 542 North Marine Drive, Tamuning, Guam 96913, Building "B" CIP Contract Section or Fax or Emailed to DPW single point of contact.

II. TIME OF COMPLETION

The Contractor shall commence work on the date specified in the Notice to Proceed. The project shall be completed within Two Hundred Ten (270) calendar days complete and ready for use. In the event the Contractor does not complete the work within the time specified, liquidated damages will be assessed as stated in Section 5 of the Special Provisions.

III. PLANS AND SPECIFICATIONS

This invitation for bids consists of the following documents:

- a) Bid Invitation Documents
 - 1. Invitation to Bid
 - 2. Instructions to Bidders

- b) Bid Submittal Documents
 - 1. Unpriced Technical Offer
 - 2. Bid Form
 - 3. Bid Bond
 - 4. Major Shareholders Disclosure Affidavit
 - 5. Non-Collusion Affidavit
 - 6. Affidavit Re No Gratuities or Kickbacks
 - 7. Affidavit Re Ethical Standards
 - 8. Affidavit Re Contingent Fees
 - 9. Declaration Re Compliance with U.S. DOL Wage Determination
 - 10. Federal Certification re Debarment,
 - 11. Federal Certification Lobbying,
 - 12. Federal Certification Non-Segregated Facilities,
 - 13. Federal Certification Non-Discrimination,
 - 14. Federal Civil Rights
 - 15. Federal Limited English Proficiency
 - 16. Federal Contract Clauses

- c) Contract Documents
 - 1. Formal Contract

INSTRUCTION TO BIDDERS
Department of Public Health and Social Services
New Building Structure for
Group Home for Foster Care Children (Design-Build)
Project no.: 470-5-1070-F-BAR

2. Special Provisions
3. General Conditions
4. General Statement of Work
5. Prevailing Wage Rates
6. Plans
7. Submit current Contractors License issued by Guam Contractors Licensing Board

IV. MULTI-STEP PROCUREMENT REQUIREMENTS:

Bidders are required to submit at the same time in separate sealed envelopes. The following;

1. **Phase I: Unpriced Technical Offer:** Offers submitted by bidders be evaluated solely in accordance with the criteria set forth in the Invitation for Bids, and be categorized as acceptable, potentially acceptable, that is reasonably susceptible of being acceptable, and unacceptable. 2GAR, Division 4, § 3109(t) (4).
2. **Phase II: Price Bid: to be submitted at the same time with Unpriced Technical Offers:** all bidders whose technical offers are determined to be acceptable during the first phase have their Priced Bids considered, opened and evaluated.

Price Bid associated with the design and construction of DPHSS New Building Structure for Group Home for Foster Care Children as stated in this IFB must be submitted together with the Bid Bond (**ATTACHMENT, Bid Bond Form**) at the same time in a sealed envelope.

Price Bid will not be opened and evaluated during Phase I but will be a part of the evaluation as a whole in determining the responsibility and responsiveness of the Offeror. DPW will pre-qualify all offerors according to the Evaluation Criteria contained in this IFB. Once a determination of the qualified offerors is made, then and only then will the Submitted Sealed Bids be opened and evaluated. **ALL SEALED BIDS** from un-qualified offerors will be **RETURNED, UN-OPENED** to the respective offerors.

This process of procurement is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time, obtain the benefits of the solicitation of technical offers and the conduct of discussions to evaluate and determine the acceptability of the technical offers.

INSTRUCTION TO BIDDERS
Department of Public Health and Social Services
New Building Structure for
Group Home for Foster Care Children (Design-Build)
Project no.: 470-5-1070-F-BAR

V. UNPRICED TECHNICAL OFFER REQUIREMENTS:

Bidders submitting bids in response to this IFB shall present satisfactory evidence that bidder or bidder's company has sufficient experience and that bidder or bidder's company is fully prepared with necessary capital, material, machinery and skilled workmen and supervision staff to satisfactorily complete the Project.

Accordingly, the offeror must submit for review the following information. While all information submitted will remain confidential, DPW reserves the right to investigate the information submitted, as is deemed necessary, before a Contract is awarded, and to disqualify any bidder if deemed to be in DPW's best interest.

Bidders must include in their Phase I sealed bid envelope a description of each of the following:

- a. Cover letter (must be on the bidder/offeror's letterhead)
 - i. Point of Contact. The individual executing the letter shall be identified by name and position and shall be authorized to bind the bidder/offeror contractually.
 - ii. Contract Information. Include the bidder/offeror's name, address, telephone, and facsimile numbers, and email address. Also include the bidder/offeror's principal place of business.
 - iii. Designation of Trade Secret and Other Proprietary Information. In the event bidder wishes to designate information in their Unpriced Technical Offer as trade secret or proprietary, in addition to marking in a bold in conspicuous manner with the appropriate words, every page, or portion thereof that bidder requests to be considered a trade secret or proprietary data; the cover letter shall include a list of those sections and page numbers requested to be exempt from public disclosure.

Bidders are cautioned not to mark their entire Unpriced Technical Offer as trade secret or proprietary information on the front cover or the bottom of all pages, or DPW may in its sole discretion determine it to be nonresponsive. If only portions of a page are subject to some protection, do not mark the entire page. The procurement record is a public record and subject to existing laws and regulations. The awarded Bidder's Unpriced Technical Offer will be part of the public record and also incorporated in the final contract.

- b. Confirmation Statement. A point-by-point response to all numbered sections, subsections, and attachments to the IFB is required. If no explanation or clarification

INSTRUCTION TO BIDDERS
Department of Public Health and Social Services
New Building Structure for
Group Home for Foster Care Children (Design-Build)
Project no.: 470-5-1070-F-BAR

is required in the bidder/offeror's response to specific subsection, the bidder/offeror shall so indicate on the point-by-point response or utilize a blanket response for the entire section with the following statement: "*Bidder/offeror's name* understands and will comply."

- c. Key Personnel. Complete list of proposed project team, including design consultant(s) and major subcontractors and suppliers. Provide the name(s), education, qualifications, experience, and the role of each key personnel assigned to perform the services under this IFB. Present an organizational chart identifying the relationships and duties of both the corporate staff and all proposed management and staff to be assigned to assist with the services under this IFB. At a minimum, if the bidder is an individual, the offer should include a complete resume of the individual. If the Offeror is a firm, the offer should include a resume of all the individuals who will be working on any aspect of the project.
- d. Experience of Bidder/offeror. The Project Manager will be the primary point of contact for the services provided under the contract. The proposed Project Manager shall be subject to approval by DPW. The Project Manager shall possess the following qualifications: hands-on management skills, strong leadership skills, great interpersonal skills, demonstrated full-time experience as a project manager on similar projects or on projects of \$500,000 or more; demonstrated technical competency on construction techniques, superb aptitude for teamwork; ability to manage multi-disciplinary teams; outstanding communication skills, oral and written, excellent organizational skills, excellent record keeping ability; demonstrated ability to adhere to project budget, demonstrated ability to adhere to project schedule.
 - i. Identify the proposed Project Manager
 - ii. Provide his/her resume and describe his/her qualifications.
- e. Critical Path Method (CPM) baseline design and construction schedule.
- f. Bidder's past performance in accomplishing projects in agreed time including an explanation of any failure to complete within the specified timeframe.
- g. Availability of plant, machinery and other equipment necessary for work including any machinery or equipment that bidder might have to purchase to complete the Project.
- h. Quality of work presently performed for Government of Guam, federal, and private projects.

INSTRUCTION TO BIDDERS
Department of Public Health and Social Services
New Building Structure for
Group Home for Foster Care Children (Design-Build)
Project no.: 470-5-1070-F-BAR

- i. Bidder's diligence in carrying out responsibility.
- j. Record of good owner-contractor relationship.
- k. Previous record of bid qualifications.
- l. Qualifications of supervisory personnel proposed to work on this Project and identification of their education, skills, and past experiences.
- m. Record of past performance of contracts including record of default and nonpayment of obligations.
- n. Disclosure of financial resources sufficient to demonstrate an ability to complete this Project.

VI. DISCUSSIONS:

The Government to the extent that Director of DPW finds necessary may conduct oral or written discussions with the Unpriced Technical Offers as set forth in 2 GAR Division 4 §3109(t)(1) (e).

VII. TRADE SECRETS OR OTHER PROPRIETARY DATA:

Bidders may designate those portions of the Unpriced Technical Offer which contain trade secrets or other proprietary data which are to remain confidential as set forth in 2 GAR Division 4 §3109 (t)(1)(f).

DPW shall examine written requests of confidentiality for trade secrets and proprietary data in the technical offer of such offeror to determine the validity of such requests. If the parties do not agree as to the disclosure of data, DPW shall inform the offeror in writing what portions of the Unpriced Technical Offer will be disclosed and that unless the offeror protests under Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations, the offer will be so disclosed. Such Unpriced Technical Offer shall be opened to public inspection subject to any continuing prohibition on the disclosure of confidential data and Unpriced Technical Offers of Bidders who are not awarded the contract shall not be opened to public inspection unless DPW determines in writing that public inspection of such offers is essential to assure confidence in the integrity of the procurement process; provided however, that the provisions of Subsection 3109(v)(2)(c) of this § shall apply with respect to possible disclosure of trade secrets and proprietary data.

VIII. DESIGN BUILD CONSTRUCTION SERVICES:

INSTRUCTION TO BIDDERS
Department of Public Health and Social Services
New Building Structure for
Group Home for Foster Care Children (Design-Build)
Project no.: 470-5-1070-F-BAR

The design and construction services including but not limited to Architectural, Civil, Structural, Electrical, Mechanical plus all other disciplines needed in accomplishing the requirements stated in this IFB shall be furnished generally in accordance with bidders Unpriced Technical Offers as set forth in 2 GAR Division 4 §3109(t)(1)(g).

IX. AMENDMENTS AFTER RECEIPT OF UNPRICED TECHNICAL OFFERS:

After receipt of the Unpriced Technical Offers, amendments to the IFB shall be distributed only to bidders who submitted Unpriced Technical Offers, and they shall be permitted to submit new Unpriced Technical Offers or to amend those submitted. If, in the opinion of the Director of DPW, a contemplated amendment will significantly change the nature of the procurement, the IFB, shall be cancelled in accordance with 2 GAR Division 4 §3115, and a new IFB issued.

X. RECEIPT AND HANDLING OF UNPRICED TECHNICAL OFFERS:

Unpriced Technical Offers shall not be opened publicly, but shall be opened in front of two or more procurement officials. Such offers shall not be disclosed to unauthorized persons. Bidders may request nondisclosure of trade secrets and other proprietary data identified in writing in accordance with 2 GAR Division 4 §3109(t)(3).

XI. EVALUATION OF UNPRICED TECHNICAL OFFERS:

The unpriced technical offers submitted by offerors shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bids. The unpriced technical offers shall be categorized as:

- a) Acceptable (700 to 1000 total points);
- b) Potentially acceptable; that is, reasonably susceptible of being made acceptable (500 to 699 total points) ;or
- c) Unacceptable. (499 total points and below). The Procurement Officer shall record in writing the basis for finding an offer unacceptable and make part of the procurement file.

DPW may initiate Phase Two of the procedure if, in the Procurement's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without technical discussions. If DPW finds that such is not the case, DPW shall issue an amendment to the Invitation for Bids or engage in technical discussions as set forth in Subsection 3109(t)(5).

XII. DISCUSSIONS OF UNPRICED TECHNICAL OFFERS

DPW may conduct discussions with any offeror who submits an acceptable or potentially acceptable Unpriced Technical Offer. During the course of such discussions, DPW shall not disclose any information derived from one unpriced technical offer to any other bidder. Once discussions are begun, any offeror who has not been notified that its offer has been finally found potentially acceptable may submit supplemental information amending its technical offer at any time until the closing date established by DPW. Such submission may be made at the request of the DPW or upon the bidder's own initiative. See 2 GAR Division 4 §3109(t) (5).

XIII. NOTICE OF UNACCEPTABLE UNPRICED TECHNICAL OFFER

When the DPW determines a bidder's Unpriced Technical Offer to be unacceptable, such offeror shall not be afforded an additional opportunity to supplement its technical offer. See 2 GAR Division 4 §3109(t) (6).

XIV. MODIFICATION OR WITHDRAWAL OF BIDS.

Mistakes in unpriced technical Bid may be modified or withdrawn during Phase I at any time. During Phase II mistakes in price may be corrected or withdrawn in accordance with 2 GAR Division 4 §3109(m). See 2 GAR Division 4 §3109 (u).

XV. PROCEDURES FOR PHASE II:

INITIATION:

Upon the completion of Phase I, in compliance with 2 GAR Division 4, §3109(v) (1) the Procurement Officer shall either:

- (a) open Priced Bids submitted in Phase One from bidders whose Unpriced Technical Offers were found to be acceptable; or
- (b) If Priced Bids have not been submitted, technical discussions held or amendments to the IFB have issued, invite each acceptable bidder to submit a Price Bid.

CONDUCT OF PHASE II:

Phase II shall be conducted as any other competitive sealed bid procurement except:

- (a) As specifically set forth in 2 GAR Division 4, §3109(r) through (v) (2).

(b) No public notice need be given of this IFB to submit Priced Bids because such notice was previously given;

(c) After award the Unpriced Technical Offer of the successful bidder shall be disclosed as follows: The Procurement Officer shall examine the written requests of confidentiality for trade secrets and proprietary data in the technical offer of such bidder to determine the validity of such requests. If the parties do not agree as to the disclosure of data, the Procurement Officer shall inform the bidder what portions of the Unpriced Technical Offer will be disclosed and that unless the offeror protests under Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations, the offer will be so disclosed. Such Unpriced Technical Offer shall be opened to public inspection subject to any continuing prohibition on the disclosure of confidential data and

(d) Unpriced Technical Offers of Bidders who are not awarded the contract shall not be opened to public inspection unless DPW determines in writing that public inspection of such offers is essential to assure confidence in the integrity of the procurement process; provided however, that the provisions of Subsection 3109(v)(2)(c) of this § shall apply with respect to possible disclosure of trade secrets and proprietary data

XVII. PRICE BID REQUIREMENTS:

The Priced Bid shall include all cost associated with the development of Plans, Specifications & Estimates and Construction of New Building Structure for Group Home For Foster Care Children complete and ready for use, conforms to the latest federal and local building codes. DPW requires that all Offerors include a Bid Bond of not less than 15% of the Total Bid Amount as a requirement of this IFB. The Bid Bond shall be enclosed in the SEALED BID envelope and will be considered as a companion document of the Priced Bid.

PREPARATION OF PRICE BID:

The bidder must submit his Bid on the forms furnished by DPW. All blank spaces in the bid forms must be correctly filled in where indicated and the bidder must state the prices in words and numerals for which he proposes to do each item of the work contemplated or furnish each item of the materials required. In case of conflict between words and numerals, the words, unless obviously incorrect will govern.

The bidder shall sign his Bid in the blank space provided therefore. If this Bid is made by a partnership or corporation, the name and address of the partnership or corporation shall be shown, together with the names and addresses of the partners or officers. If the Bid is made by a partnership, it must be acknowledged by one of the partners, if made by a corporation by one of the authorized officers thereof.

INSTRUCTION TO BIDDERS
Department of Public Health and Social Services
New Building Structure for
Group Home for Foster Care Children (Design-Build)
Project no.: 470-5-1070-F-BAR

BID SECURITY:

Each offer must be accompanied by a deposit in the amount of not less than fifteen percent (15%) of the total Bid price for which award can be made. Such deposit may be in the form of a Bid bond, cashier's check or certified check made payable to the Treasurer of Guam. Should the successful bidder fail or refuse to execute and deliver the contract and performance and payment bonds required within fifteen (15) calendar days after acceptance of his Bid by the Government, he shall forfeit to the Government of Guam as liquidated damages for such failure or refusal the security deposited with his Bid.

XVIII. RIGHT TO ACCEPT AND REJECT BIDS:

The Government of Guam reserves the unqualified right, in its sole and absolute discretion, to reject any and all Bids, or to accept that Bids or combination of Bids, if any, which in its sole and absolute judgment will under all circumstances best serve the Government's interests, or to reject the Bid of a bidder that is not in a position to perform the contract.

XIX. AUTHORITY:

This Invitation for Bid (IFB) solicitation is issued subject to all the provisions of the Guam Procurement Act. The IFB requires all parties involved in the preparation, negotiation, performance, or administration of contracts to act in good faith.

XX. COMPETENCY OF BIDDERS:

The Government may require bidders to present satisfactory evidence that he has sufficient experience and he is fully prepared with necessary capital, material, machinery and skilled workmen and supervision staff to carry out the contract satisfactorily.

Accordingly, the Contractor must submit for review the following statements upon request:

- a) Experience on similar work.
- b) Past performance of firm in accomplishing government projects in agreed time.
- c) Availability of plant, machinery and other equipment necessary for work.
- d) Quality of work presently performed for Government of Guam or other agencies.
- e) Contractor's diligence in carrying out responsibility.
- f) Record of good owner-contractor relationship.
- g) Previous record of bidder's qualification.
- h) Quality of supervisory personnel and areas of their performance.
- i) Record of past performance of government contracts including record of

INSTRUCTION TO BIDDERS
Department of Public Health and Social Services
New Building Structure for
Group Home for Foster Care Children (Design-Build)
Project no.: 470-5-1070-F-BAR

- default and nonpayment of obligations.
- j) Possession of Government of Guam appropriate contractor's license.
- k) Financial resources.

Financial resources report shall be dated not more than six (6) months prior to Bid opening, must be prepared by a certified accountant and shall contain at least the following information:

- 1) Total Assets
- 2) Total Liabilities
- 3) Total Current Assets
- 4) Total Current Liabilities
- 5) Bonding Capability

Any bidder who at the time of bidding is determined liable to pay liquidated damages for delay in completion of the last two works contracted from the Government of Guam will be automatically rejected.

XXI. MODIFICATIONS PRIOR TO DATE SET FOR OPENING BIDS:

The right is reserved, as the interest of the Government may require, to revise the specifications or drawings or both prior to the date set for opening bids. Such revisions, if any, will be announced by an addendum or addenda to this invitation for Bid. If the addenda are of a nature which requires material changes in quantities or prices to be Bid or both, the date set for opening bids may be postponed by such number of days as in the opinion of the issuing officer will enable bidders to revise their Bids. In such cases, the addendum will include an announcement of the new date for opening Bids.

XXII. ACCESS TO RECORDS AND OTHER REVIEW:

The Contractor, including its subcontractors, if any, shall maintain books, documents, papers, accounting records and other evidence pertaining to cost incurred and to make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of the final payment under the contract, for inspection by the Government. Each subcontract by the Contractor made pursuant to this Agreement shall include a provision containing the conditions of this Section.

XXIII. AWARD:

DPW intends to award a contract for the project to the offeror who has submitted the lowest, responsible and responsive offeror whose offer meets the requirements and criteria set forth in this IFB.

XXIV. "PROHIBITION AGAINST SEX OFFENDERS"

Pursuant to 5 G.C.A. § 5253,

- (a) No person convicted of a sex offense under the provisions of Chapter 25 of Title 9 Guam Code Annotated, or an offense as defined in Article 2 of Chapter 28, Title 9 GCA in Guam, or an offense in any jurisdiction which includes, at a minimum, all of the elements of said offenses, or who is listed on the Sex Offender Registry, and who is employed by a business contracted to perform services for an agency or instrumentality of the government of Guam, shall work for his employer on the property of the government of Guam other than a public highway.
- (b) All contracts for services to agencies listed herein shall include the following provisions:
 - (1) warranties that no person providing services on behalf of the contractor has been 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; and
 - (2) that if any person providing services on behalf of the 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, that such person will be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.

XXV. IFB LEGAL REQUIREMENTS:

Each bidder is required to submit the affidavits and assurances that are part of this IFB. Failure to include said affidavits and assurances shall render a bid non-responsive and will be a ground for disqualification.

1. **Affidavit Disclosing Ownership and Commissions per 5 G.C.A. § 5233** As a condition of this RFP, any partnership, sole proprietorship, joint venture, association or corporation doing business with the government of Guam shall submit an affidavit executed under oath that lists the name and address of any persons, companies, partners, or joint ventures who have held more than ten percent (10%) of the outstanding interest or shares in said partnership, sole proprietorship joint venture, association or corporation at any time during the 365 days immediately preceding the submission date of a proposal. The affidavit shall contain the number of shares or the percentage of all assets of such partnership, sole proprietorship joint venture, association or corporation which have been held by each such person during the 365 day period. In addition, the affidavit shall contain the name and address of any person who has received or is entitled to receive a commission, gratuity or other compensation for procuring or assisting in

INSTRUCTION TO BIDDERS
Department of Public Health and Social Services
New Building Structure for
Group Home for Foster Care Children (Design-Build)
Project no.: 470-5-1070-F-BAR

obtaining business related to this RFP for the Offeror and shall also contain the amounts of any such commission, gratuity or other compensation. The affidavit shall be open and available to the public for inspection and copying. **Affidavit re Disclosing Ownership (Major Shareholders) & Commissions; AG Procurement Form 001.**

2. **Affidavit re Non-Collusion per 2 GAR Division 4 § 3126(b)** By submitting an offer, the Offeror certifies that the price submitted was independently arrived at without collusion. **Affidavit re Non-Collusion; AG Procurement Form 002.**
3. **Affidavit Re No Gratuities or Kickbacks per 2 GAR Division 4 § 11107(e)**. The bidder, Offeror, or contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth in §11206 (Gratuities and Kickbacks) of the Guam Procurement Regulations. **Gratuities.** It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract; or to any solicitation or proposal therefor. **Kickbacks.** It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order. **Affidavit Re No Gratuities or Kickbacks; AG Procurement Form 003.**
4. **Affidavit Re Contingent Fees per 2 GAR § 11108** 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 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. **Affidavit Re Contingent Fees; AG Procurement Form 004.**
5. **Affidavit Re Ethical Standards per 2 GAR § 11103**. The bidder, Offeror, or contractor represents that it has not knowingly influenced and promises that it will not knowingly influence a government employee to breach any of the ethical standards set forth in 5 GCA Chapter 5 Article 11 (Ethics in Public Contracting) of the Guam Procurement Act and in Chapter 11 of the Guam Procurement Regulations. **Re Ethical Standards; AG Procurement Form 005.**

6. Declaration Re Compliance with U.S. DOL Wage Determination per 5 GCA § 5801 & 5802.

(a) Contractor with regard to all person its employs whose purpose in whole or in part in the direct delivery of services contracted for with the Government in this contract, shall pay such employees in accordance with the Wage Determination for Guam and the Northern Marianas Islands issued and promulgated by the U.S. Department of Labor for such labor as is employed in the direct deliverance of deliverables to the government of Guam. 5 GCA § 5801. The Contractor shall be responsible for flowing down this obligation to its subcontractors.

(b) The Wage Determination most recently issued by the U.S. Department of Labor at the time this contract is awarded to Contractor shall be used to determine wages and benefits which shall be paid to employees pursuant to this clause. 5 GCA § 5801

(c) Should any contract contain a renewal clause, then at the time of renewal adjustments there shall be stipulations contained in that contract for applying the Wage Determination, so that the Wage Determination promulgated by the U.S Department of Labor on a date most recent to the renewal date shall apply. 5 GCA § 5801

(d) In addition to the Wage Determination detailed above, health and similar benefits for employees having a minimum value as detailed in the Wage Determination issued and promulgated by the U.S. Department of Labor shall apply. Contractor shall pay a minimum of ten (10) paid holidays per annum per employee. 5 GCA § 5802

(e) Any violation of Contractor's or its subcontractors obligations of this section shall be investigated by the Guam Department of Labor and may include a monetary penalty assessment by the Guam Department of Labor of no less than One Hundred Dollars (\$100.00) per day, and no more than One Thousand Dollars (\$1,000.00) per day, until such time as a violation has been corrected, as well as the payment of all back wages and benefits due. 5 GCA § 5803

(f) In addition to any and all other breach of contract actions DPW may have under this procurement, in the event there is a violation in the process set forth above, Contractor may be placed on probationary status by the Chief Procurement Officer of the General Service Agency, or its successor, for a period of one (1) year. During the probationary status, a Contractor shall not be awarded any contract by any instrumentality of the government. A Contractor who has been placed on probationary status, or has been assessed a monetary penalty pursuant to 5 G.C.A. Article 13 Title 5 may appeal such penalty or probationary status to the Superior Court of Guam. 5 GCA § 5804

(g) Contractor's Declaration of Compliance with Wage Determination Laws AG Procurement Form 006 with the most recent Wage Determination for Guam and the

Northern Marianas Islands issued and promulgated by the U.S. Department of Labor is part of this procurement. Contractor agrees to provide upon written request by written certification of its compliance with its obligations as part of each invoice, along with the names of any employees, their positions, and detailed wage and benefits paid in keeping with this section. Additionally upon request by DPW Contractor shall submit source documents as to those individuals providing direct services in part or whole under the contract, and Contractor's payments to them of such wages and benefits.

Failure to submit the Legal Requirement affidavits and assurances shall be deemed non-responsive and cause for rejection of the bid upon opening.

XXVI. FEDERAL FUNDS -ADDITIONAL LEGAL REQUIREMENTS:

Bidders are advised that this Project is federally funded by the Department of Interior, Office of Insular Affairs, Compact Impact-Grant No. Guam-CI-2015-1, D15AF00038 and Federal laws, regulations and Executive Orders are applicable to this agreement, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200, as adopted and supplemented by the United States Department of Interior (DOI) 2 C.F.R. Part 200, Subtitle B Chapter XIV.

Federal Forms, Representations and Certifications as follows:

- A7. Federal Certification re Debarment
- A8. Federal Certification Lobbying
- A9. Federal Certification Non-Segregated Facilities
- A10. Federal Certification Non-Discrimination
- A11. Federal Civil Rights
- A12. Federal Limited English Proficiency
- A13. Federal Contract Clauses

Failure to submit the Legal Requirement affidavits and assurances shall be deemed non-responsive and cause for rejection of the Price Bid upon opening.

CONTRACT NO. _____

CONTRACT

(Contractor)

Public Works
(Department)

2017

Contract for: **Department of Public Health & Social Services New Building Structure for Group Home for Foster Care Children (Design-Build)**

Project no.: **470-5-1070-F-BAR**

Funded By: **DOI OIA Compact-Impact-Grant No. Guam-CI-20151-1, D15AF00038**

Amount: \$

FORMAL CONTRACT
Department of Public Health and Social Services
New Building Structure for
Group Home for Foster Care Children (Design-Build)
Project no.: 470-5-1070-F-BAR

FORMAL CONTRACT

THIS AGREEMENT AND FORMAL CONTRACT, made and entered into this _____ day of _____ 2017, by and between the Government of Guam, hereinafter called the "Government", represented by the Contracting Officer executing this contract, party of the first part, and _____, a sole proprietor/partnership/corporation of Guam, hereinafter called the "Contractor", party of the second part.

WITNESSETH, That whereas the Government intends to perform the **“Department of Public Health & Social Services New Building Structure for Group Home for Foster Care Children (Design-Build), Project no.:470-5-1070-F-BAR”** hereinafter called the "Project", in accordance with the drawings, specifications and other contract documents prepared by the Department of Public Works.

NOW THEREFORE, the Government and Contractor for the considerations hereinafter set forth, agree as follows:

I. THE CONTRACTOR AGREES to furnish all the necessary labor, materials, equipment, tools and services necessary to perform and complete in a workmanlike manner all the work required for the construction of the Project, in strict compliance with the contract documents herein mentioned, which are hereby made a part of the contract, including the following addenda:

Addendum No.	Dated
_____	_____
_____	_____

(a) Contract Time: The Contractor agrees to commence work under this contract upon written notice to proceed, and **to complete the project ready for use and operation within Two**

FORMAL CONTRACT
Department of Public Health and Social Services
New Building Structure for
Group Home for Foster Care Children (Design-Build)
Project no.: 470-5-1070-F-BAR

Hundred Seventy (270) calendar days of the commencement of the contract time as stated in the Instructions to Bidders of the contract.

(b) Subcontractors: The Contractor agrees to bind every subcontractor by the terms of the contract documents. The contract documents shall not be construed as creating any contractual relation between any subcontractor and the Government.

II. SUBJECT TO AVAILABILITY OF FUNDS, THE GOVERNMENT AGREES to pay, and the Contractor agrees to accept, in full payment for the performance of this contract, *the contract amount of* _____, (\$ _____) *plus* any and all sums to be added and/or deducted resulting from all extra and/or omitted work in connection therewith, as authorized under the terms as stated in the General Conditions of the contract, all in accordance with the terms as stated in the contract documents.

(a) Progress payments will be made as specified in the General Conditions.

III. CONTRACT DOCUMENTS: It is hereby mutually agreed that the following list of instruments, plans, specifications and documents which are attached hereto, bound herewith or incorporated herein by reference shall constitute the contract documents, all of which are made a part hereof, and collectively evidence and constitute the contract 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, and are designated as follows:

- a) Invitation to Bid
- b) Instructions to Bidders
- c) Unpriced Technical Proposal
- d) Bid Form
- e) Federal Contract Clauses
- f) Formal Contract
- g) Special Provisions
- h) General Conditions

FORMAL CONTRACT
Department of Public Health and Social Services
New Building Structure for
Group Home for Foster Care Children (Design-Build)
Project no.: 470-5-1070-F-BAR

- i) Prevailing Wage Rates
- j) Plans
- k) Addendum(s)

IV. LIQUIDATED DAMAGES: The Contractor further agrees to pay to the Government *the amount of \$1,100.00 per calendar day*, not as a penalty, but as a reasonable liquidated damages for breach of this contract by the Contractor by his failing, neglecting or refusing to complete the work within the time herein specified and said sums shall be paid for each consecutive calendar day thereafter that the Contractor shall be in default after the time stipulated in the contract for completing the work ready for use and/or operation.

V. WARRANTY: The Contractor warrants that the design and construction services shall be performed in accordance with contract requirements for a period of one year. Design and Construction works related not conforming to the Contract requirements shall be corrected at no additional cost to the Government.

VI. COVENANT AGAINST CONTINGENT FEES. The Contractor warrants that he has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the Government the right to terminate the contract, or in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage or contingent fee. The warranty shall not apply to commission's payable by Contractors upon contracts or sales secured or made through bonafide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

VII. OTHER CONTRACTS. The Government may award other contracts for additional work, and the Contractor shall fully cooperate with such other contractors and carefully fit his own work to that provided under other contracts as may be directed by the Contracting Officer. The Contractor shall

FORMAL CONTRACT
Department of Public Health and Social Services
New Building Structure for
Group Home for Foster Care Children (Design-Build)
Project no.: 470-5-1070-F-BAR

not commit or permit any act which will interfere with the performance of work by any other contractor.

VIII. DISPUTES.

1. The Government 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 adverse to the Contractor.

2. The Government 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.

3. The Government's decision shall be final and conclusive, unless fraudulent or unless the contractor appeals the decision.

4. This subsection applies to appeals of the government's decision on a dispute. For money owed by or to the Government under this contract, 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 the Government or from the date when a decision should have been rendered. For all other claims by or against the government arising under this contract, the Office of the Public auditor has jurisdiction over the appeal from the decision of the Government. Appeals to the Office of the Public Auditor must be made within sixty days of the Government's decision or from the date the decision should have been made.

FORMAL CONTRACT
Department of Public Health and Social Services
New Building Structure for
Group Home for Foster Care Children (Design-Build)
Project no.: 470-5-1070-F-BAR

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

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

IX. CONTRACT BINDING. It is agreed that this contract and all of the Covenants hereof shall inure to the benefit of and be binding upon the Government and the Contractor respectively and his partners, successors, assignees and legal representatives. Neither the Government nor the Contractor shall have the right to assign, transfer or sublet his interests or obligations hereunder without written consent of the other party. It is hereby mutually agreed by and between the parties hereto that no mechanic, contractor, subcontractor, material man or other person can or will contract for or in any other manner have or acquire any lien upon the building or works covered by this contract, or the land upon which the same is situated.

X. RESTRICTION. The Contractor warrants that no person in its employment who has been convicted of sex offense under the provisions of chapter 25 of Title 9 of the Guam Code Annotated, or of an offense defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated, or who has been convicted of an offense with the same elements as heretofore defined in any other jurisdiction, or who is listed on the Sex Offender Registry shall provide services on behalf of the Contractor while on government of Guam property, with exception of public highways. If any employee of the Contractor is providing services on government property and is convicted

FORMAL CONTRACT
Department of Public Health and Social Services
New Building Structure for
Group Home for Foster Care Children (Design-Build)
Project no.: 470-5-1070-F-BAR

subsequent to an award of a contract, then the Contractor warrants that it will notify the Government of the conviction within twenty-four hours of the conviction, and will remove immediately such convicted person from providing services on government property. If the Contractor is found to be in violation of any of the provisions of this paragraph, then the Government will give notice to the Contractor to take corrective action. The Contractor shall take corrective action within twenty-four hours of notice from the Government, and the Contractor provider shall notify the Government when action has been taken. If the Contractor fails to take corrective steps within twenty-four hours of notice from the Government, then the Government in its sole discretion may suspend temporarily any contract for services until corrective action has been taken.

XI. INDEMNITY. The Contractor agrees to save and hold harmless the Government, its officers, agents, representatives, successors and assigns and other governmental agencies from any and all suits or actions of every nature and kind, which may be brought for or on account of any injury, death, or damage arising or growing out of the acts or omissions of the Contractor, Contractor's officers, agents, servants or employees under this contract.

XII. CLAIMS AGAINST GOVERNMENT. The Contractor expressly recognizes that the Government Claims Act (Title 5 of the Guam Annotated, Chapter 6) applies with respect only to claims of money owed by or to the Contractor against the Government if the claim arises out of or in connection with this agreement. The Contractor also expressly recognizes that all other claims by the Contractor against the Government are subject to the Guam Procurement Law (Title 5 of the Guam Annotated, Chapter 5).

XIII. CONSENT TO JURISDICTION. The Contractor hereby expressly consents to the jurisdiction of 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 the Guam Procurement Law. The Contractor waives any and all rights it may otherwise have to contest the same or to proceed in a different jurisdiction or forum.

FORMAL CONTRACT
Department of Public Health and Social Services
New Building Structure for
Group Home for Foster Care Children (Design-Build)
Project no.: 470-5-1070-F-BAR

XIV. MANDATORY REPRESENTATION BY CONTRACTOR REGARDING GENERAL ETHICAL STANDARDS (2 GAR Div. 4 11103 (b)). With respect to this Agreement and any other contract that the Contractor may have, or wish to enter into, with any Government of Guam agency, the Contractor represents that it has not knowingly influenced, and promises that it will not knowingly influence, any government employee to breach any of the ethical standards set forth in the Guam Procurement Law and in any of the Guam Procurement Regulations.

XV. MANDATORY REPRESENTATION BY THE CONTRACTOR REGARDING PROHIBITION AGAINST GRATUITIES AND KICKBACKS (2 GAR Div. 4 11107(e)) With respect to this Agreement and any other contract that the Contractor may have or wish to enter into with any Government of Guam agency, the Contractor represents that he has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth in the Guam Procurement Regulations.

XVI. COMPLIANCE TO PUBLIC LAW 24-100, PRODUCTS MANUFACTURED FROM RECYCLED GLASS. Pursuant to 5 G.C.A. Section 5218, any individual or company submitting a response to this solicitation shall include the purchase of available recycled glass pulverized on Guam or appropriate products manufactured therefrom. The contract awarded under this solicitation shall determine the suitable percentage of recycled glass to be used in the project and, as a condition of the award of the contract, shall require the Contractor to identify and certify in writing the percentage of recycled glass contained in the material offered. The acceptable percentage of recycled glass has been determined to be 0% for this project.

XVII. FEDERAL FUNDS. The Contractor acknowledges that the contract is federally funded by the Department of Interior, Office of Insular Affairs, and Compact Impact-Grant No. Guam-CI-2015-1, D15AF00038 and Federal laws, regulations and Executive Orders are applicable to this agreement, and the Uniform Administrative Requirements, Cost Principles, and Audit

FORMAL CONTRACT
Department of Public Health and Social Services
New Building Structure for
Group Home for Foster Care Children (Design-Build)
Project no.: 470-5-1070-F-BAR

Requirements in 2 C.F.R. Part 200, as adopted and supplemented by the United States Department of Interior (DOI) 2 C.F.R. Part 200, Subtitle B Chapter XIV.

Contractors' Federal Forms, Representations and Certifications as follows:

- A7. FEDERAL CERTIFICATION re DEBARMENT
- A8. FEDERAL CERTIFICATION LOBBYING
- A9. FEDERAL CERTIFICATION NON-SEGREGATED FACILITIES
- A10. FEDERAL CERTIFICATION NON-DISCRIMINATION
- A11. FEDERAL CIVIL RIGHTS
- A12. FEDERAL LIMITED ENGLISH PROFICIENCY
- A13. FEDERAL CONTRACT CLAUSES

are incorporated herein as if fully re-written. The Contractor agrees to flow through where applicable provisions to its subcontractors.

The Contractor agrees as required by 2 CFR 200.326 to comply the clauses set forth in Appendix II of Part 200; and the Contractor agrees to flow through where applicable to the provisions to its subcontractors.

Appendix II to Part 200

Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

- (A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by

FORMAL CONTRACT
Department of Public Health and Social Services
New Building Structure for
Group Home for Foster Care Children (Design-Build)
Project no.: 470-5-1070-F-BAR

the non-Federal entity including the manner by which it will be effected and the basis for settlement.

- (C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- (D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or sub recipient must be prohibited from inducing, by any means, any person employed in the construction,

completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- (E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- (F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or sub recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or sub recipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- (G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all

applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- (H) 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.
- (I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- (J) Procurement of recovered materials. (See §200.322) A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors 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, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during 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.

SIGNATURE PAGE FOLLOWS:

IN WITNESS WHEREOF the parties hereto have executed this contract as of the day and year first written.

FORMAL CONTRACT
Department of Public Health and Social Services
New Building Structure for
Group Home for Foster Care Children (Design-Build)
Project no.: 470-5-1070-F-BAR

CONTRACTOR

GOVERNMENT

GLENN LEON GUERRERO

Director
Department of Public Works

Date: _____

Date: _____

CERTIFIED FUNDS AVAILABLE:

CLEARED AS PER BBMR'S REVIEW:

Certifying Officer
Department of Public Health and Social Services

JOSE A. CALVO

Director
Bureau of Budget Management and
Research

Allotment No.:

Amount:

Date: _____

APPROVED AS TO LEGALITY AND FORM:

ELIZABETH BARRETT ANDERSON

Attorney General

Date: _____

APPROVED:

EDDIE BAZA CALVO

Governor of Guam

Date: _____

FORMAL CONTRACT
Department of Public Health and Social Services
New Building Structure for
Group Home for Foster Care Children (Design-Build)
Project no.: 470-5-1070-F-BAR

ATTACHMENT – A12 (AD-1)

The Government of Guam
Department of Public Works Capital Improvement Program
U.S. Department of Interior, Office of Insular Affairs
Federal Grant Funds

Limited English Proficiency Certification

I certify that Limited English Proficiency persons have meaningful access to any services under any developed (if applicable) program(s). National origin discrimination includes discrimination on the basis of Limited English Proficiency (LEP). Meaningful access may entail providing language assistance services, including oral and written translation when necessary.

SUBMITTED BY:

Signature:	Date:
Name:	Title:
Agency:	

ATTACHMENT – A13 (AD-1)

Department of Public Works Capital Improvement Program
U.S. Department of Interior, Office of Insular Affairs
Federal Grant Funds

Required Federal Construction Contract Clauses

Bidder/Contractor agrees to the following contract clauses.

Access to Records and Other Review.

The Contractor, including its subcontractors, if any, shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of the final payment under the contract, for inspection by DPW, the Public Auditor, and the Inspector General of the Department of Interior or its delegates. Each subcontract by the Contractor pursuant to this contract shall include a provision containing the conditions of this section.

If any litigation, claim, negotiation, audit, or other action involving the records has been started before the end of the three (3) year period, the records must be kept until all issues are resolved, or until the end of the regular three (3) year period, whichever is later.

Records for non-expendable property acquired in whole or in part, with funds from this contract funds must be retained for three (3) years after its final disposition.

The Contractor shall provide access to any project site(s) to DPW, the Public Auditor, and the Inspector General of the Department of Interior or their delegates. The rights of access in this section shall not be limited to the required retention period but shall last as long as the records are kept.

Ownership of Documents.

All briefs, memoranda and incidental to the Contractor's work or materials furnished hereunder shall be and remain the property of DPW including all publication rights and copyright interests, and may be used by DPW without any additional cost to DPW.

The Office of Insular Affairs Seal.

The OIA seal is to be displayed on all construction signage that is intended to identify the project and the funders, as appropriate. The seal must remain intact and unchanged and may only be displayed using either the standard color scheme or a single color that complement the background where it appears.

Prohibition Against the Use of Lead-Based Paint.

1436.570 Prohibition against use of lead-based paint.

ATTACHMENT – A13 (AD-1)

(a) *Definitions.* As used in this section, “residential structure:” means any house, apartment, or structure intended for human habitation including any institutional structure where persons reside such as an orphanage, boarding school dormitory, day care center, or extended care facility.

As prescribed in 1436.570 (b) the follow clause shall apply:

48 CFR 1436.236-70 Prohibition Against Use of Lead-Based Paint – Department of Interior

Paint containing more than .06 percent by weight of lead in paint, or the equivalent measure of lead in the dried film of paint already applied, shall not be used in construction or rehabilitation of residential structures under this contract or any resulting subcontracts.

Contracting with small and minority businesses, women’s business enterprises.

As required by 2 CFR §200.321(6) Contractor agrees as follows:

Contractor agrees to affirmatively takes steps listed in §200.321 (1)-(5) to contract with small and minority businesses, women's business enterprises, and labor surplus area firms in its subcontracting process.

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Conflict of Interest.

In keeping with 2 CFR §200.112 Contract agrees as follows:

During the term of this contract, the Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the Contractor fully performing his/her obligations under this contract.

Additionally, the Contractor acknowledges that, in governmental contracting, even the appearance of a conflict of interest is harmful to the interests of the DPW.

Thus, the Contractor agrees to refrain from any practices, activities or relationships which could reasonably be considered to be in conflict with the Contractor’s fully performing its obligations to the DPW under the terms of this contract, without the prior written approval of the DPW.

ATTACHMENT – A13 (AD-1)

In the event that the Contractor is uncertain whether the appearance of a conflict of interest may reasonably exist, the Contractor shall submit to the DPW a full disclosure statement setting forth the relevant details for the DPW's consideration and direction. Failure to promptly submit a disclosure statement or to follow the DPW's direction in regard to the apparent conflict shall be grounds for termination of the contract.

Further, the Contractor shall maintain a written code of standards governing the performance of its agent(s) engaged in the award and administration of contracts. Neither the Contractor nor its agent(s) shall participate in the selection, or in the award or administration of a contract or subcontract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- The employee, officer or agent;
- Any member of the employee's immediate family;
- The employee's partner; or
- An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

Neither the Contractor nor its agent(s) will solicit nor accept gratuities, favors, or anything of monetary value from Contractor's potential subcontractor's, or parties to sub-agreements.

Termination for Financial Exigency.

DPW shall have the right to terminate this contract for financial exigency by giving the Contractor at least thirty (30) days prior written notice. For the purposes of this provision, a financial exigency shall be a determination made by the Director of DPW based on the Guam legislature failure to fund this contract or in the event the DOI OIA fails to fund DPW for this program. If notice of such termination is so given, this contract shall terminate on the expiration of the time period specified in the notice, and the liability of the parties hereunder for further performance of the terms of this contract shall thereupon cease, but the parties shall not be released from the duty to perform their obligations up to the date of termination. The Contractor may submit a claim in the same manner as is set forth for the termination for convenience claim.

Taxes.

The Contractor shall pay all taxes and other such amounts required by federal, state, and local laws, including but not limited to federal and social security taxes, workers' compensation, unemployment insurance and sales taxes.

Publicity.

Any publicity given to the projects, programs or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and other public notices in whatever form, prepared by the Contractor, will identify, the DOI OIA, and DPW and will not be released without the prior written approval of DPW.

Hatch Act.

The Contractor shall comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

Flood Insurance.

The Contractor shall comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

NEPA and Related Acts.

The Contractor shall comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91- 190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

In the event it becomes applicable to this Project, the Contractor agrees to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

The Contractor will assist DPW in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

Equal Employment Opportunity Compliance.

The Contractor and all subcontractors must also comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

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 contract. The provisions of the

ATTACHMENT – A13 (AD-1)

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 contract. In the execution of this contract, the Contractor agrees to comply with the following minimum specific requirement activities of EEO:

1. The Contractor will work with DPW and the Federal 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 contract.

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 work and then not less often than once every six months, at which time 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.

ATTACHMENT – A13 (AD-1)

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 work force 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 insure that working conditions and employee facilities do not indicate discriminatory treatment of project site 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 work force 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. DPW 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 DPW 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

ATTACHMENT – A13 (AD-1)

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 DPW.

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 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 Work under this Agreement and shall be available at reasonable times and places for inspection by authorized representatives of DPW.

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. The Contractor and any subcontractors will submit an annual report to DPW 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 Work under this Agreement. The staffing data should represent the project work force 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 work force on board during all or any part of the last payroll

period preceding the end of July.

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.

Davis-Bacon Act Compliance.

A. Minimum Wages

1. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

2. The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following

ATTACHMENT – A13 (AD-1)

criteria have been met:

- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (ii) The classification is utilized in the area by the construction industry; and
- (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

3. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

4. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

5. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

6. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

7. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

B. Withholding

The contracting agency shall upon its own action or upon written request of an authorized

ATTACHMENT – A13 (AD-1)

representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract, or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, DPW may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

C. Payrolls and Basic Records

1. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

2. The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to DPW. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to DPW for transmission to the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security

ATTACHMENT – A13 (AD-1)

numbers to the prime contractor for its own records, without weekly submission to DPW.

3. Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

4. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph 3.b.(2) of this section.

5. The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

6. The Contractor or subcontractor shall make the records required under this section available for inspection, copying, or transcription by authorized representatives of the contracting agency or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal granting agency may, after written notice to the Contractor, or the contracting agency, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

D. Apprentices and Trainees

1. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not

ATTACHMENT – A13 (AD-1)

individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

2. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a

ATTACHMENT – A13 (AD-1)

trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

3. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

E. Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

F. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

G. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

H. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

I. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and DPW, the U.S. Department of Labor, or the employees or their representatives.

J. Certification of eligibility.

1) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a

ATTACHMENT – A13 (AD-1)

Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

Contract Work Hours and Safety Standards Act.

As used in these paragraphs, the terms laborers and mechanics include watchmen and guards.

A. Overtime requirements. No contractor or subcontractor contracting for any part of the contract Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of this section, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this section.

C. Withholding for unpaid wages and liquidated damages. DPW shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in this section.

D. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also 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.

Safety: Accident Prevention.

A. In the performance of this contract the Contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation. 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 contract.

ATTACHMENT – A13 (AD-1)

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

C. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

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 Work in the affected area and report the condition to DPW and the Project Manager in writing.

2. The Contractor shall indemnify DPW 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 DPW'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.

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.

ATTACHMENT – A13 (AD-1)

3. Provide all employees engaged in performance of the contract 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 contract, 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 Hospital Administrator 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 agency; 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 the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

C. In addition to other remedies available to DPW, 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.

Debarment (Guam and Federal)

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.

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

ATTACHMENT – A13 (AD-1)

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, "Nonprocurement 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 nonprocurement transactions either through primary or lower tier covered transactions, and which sets forth the responsibilities of recipients of federal financial assistance regarding transactions with other persons, including subrecipients and contractors. 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.

Implementation of Clean Air Act and Federal Water Pollution Control Act.

By executing this contract, and any subcontracts, as appropriate, the Contractor 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 contract 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 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 agency may direct as a means of enforcing such requirements.

Procurement of Recovered Materials.

The Contractor 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, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during 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.

ATTACHMENT – A13 (AD-1)

SUBMITTED BY:

Signature of Authorized Official:	Date:
-----------------------------------	-------

Name of Authorized Official:

Name of Organization:



The Honorable
EDDIE BAZA CALVO
Governor

The Honorable
RAY TENORIO
Lt. Governor



GLENN LEON GUERRERO
Director
FELIX C. BENAVENTE
Deputy Director

PRE-BID CONFERENCE
(Minutes of Meeting)

DEPARTMENT OF PUBLIC HEALTH & SOCIAL SERVICES NEW BUILDING
STRUCTURE FOR GROUP HOME FOR FOSTER CARE CHILDREN
(DESIGN-BUILD)

PROJECT No.: 470-5-1070-F-BAR

Date: March 10, 2016

Time: 10:00 AM

Place: Bldg. "B" @ Conference Room

AGENDA

- I. Opening Remarks by DPW representative
- II. Introduction of each prospective bidders
- III. Open Discussion/Questions/Inquiries/Clarifications regarding the project;

Contractor were reminded that the contract time for this project is 270 calendar days, 60 days for design and 210 for Construction. Familiarize themselves in schedule of events and conference & site visit will be conducted to explain the procurement requirements for this IFB. Submit a separate sealed bid envelopes for Phase I of Unpriced Technical Offer and will be evaluated solely in accordance with criteria set forth in the invitation for bids and will be categorized as acceptable or potentially acceptable. Phase II of Price Bid must be submitted at the same time and with bid bond require and you are also mandated to submit all the attached documents such as; 1). Affidavit Disclosing Ownership; 2). Affidavit Non-Collusion; 3). Affidavit Re-No Gratuities; 4). Affidavit Re-Ethical Standards; 5). Affidavit Re-Contingent Fees; 6). USDOL Wage Determination Affidavit; 7) Federal Certification re Debarment; 8) Federal Certification Lobbying; 9) Federal Certification Non-Segregated Facilities; 10) Federal Certification Non-Discrimination; 11) Federal Civil Rights; 12) Federal Limited – English Proficiency; 13) Federal Contract Clauses.

Prospective bidders were informed to submit the Attachment –A15 to set forth as a single point of contact in order to receive any addenda or other notices related to this IFB.

Bids will be awarded to the lowest responsive and responsible bidder. Responsive bids means you have submitted and comply with all the bid requirements. Responsible means you have financial capability, manpower, and equipment and qualified to do work. Prospective bidders were given time to raised questions or inquiries regarding the project.

IV. Contractor's question is the bidding a close bid.

Answer:

No, the project bidding is an open bid, DPW will schedule a bid open date and will inform the prospective bidders.

V. Adjournment 10:05 a.m.