



EDDIE BAZA CALVO
GOVERNOR

RAY TENORIO
LIEUTENANT GOVERNOR

GOVERNMENT OF GUAM

DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES
DIPATTAMENTON SALUT PUPBLEKO YAN SETBISION SUSIAT



JAMES W. GILLAN
DIRECTOR

LEO G. CASIL
DEPUTY DIRECTOR

Request for Proposal Specifications
RFP/DPHSS-2015-001

Specialized Banking Professional Services: WIC Food Instrument and Coupon Processing
Guam Supplemental Nutrition Program for Women, Infants and Children (WIC)

Amendment # 2

To all prospective offerors:

1. Amendment to RFP:

To amend SECTION ONE, 1.5 RFP SCHEDULE AND SIGNIFICANT DATES, page 6:

- "Due Date to Submit Questions" date, from "12/30/2014" to "1/14/2015";
- "State's Respond to Questions" date from "1/7/2015" to "1/23/2015";
- "Proposals Due Date/Time" from "1/16/2015" to "1/30/2015";
- "Proposal Evaluations" from "1/16/2015 to 3/13/2015" to "1/30/2015 to 3/13/2015";
- "Discussion with Offerors (if necessary)" from "1/16/2015 to 3/13/2015" to "1/30/2015 to 3/13/2015";
- "Best and Final Offer (if necessary)" from "1/16/2015 to 3/13/2015" to "1/30/2015 to 3/13/2015";
- "Notice of Award" from "1/16/2015 to 3/13/2015" to "1/30/2015 to 3/13/2015";
- "Contractor Bank to merge its banking service system with WIC's current HANDS system (if necessary)" from "1/16/2015 to 3/13/2015" to "1/30/2015 to 3/13/2015";

2. Amendment to RFP:

To include the additional pages from 115-134, Appendix E, Sample Contract. The sample contract was amended via Amendment # 1 but was inadvertently excluded when published in the DPHSS website.

All others remain the same.



JAMES W. GILLAN
Procurement Officer/Director, DPHSS

FI	Food Instrument – a voucher, check, draft, electronic benefits transfer card (EBT), coupon or other document which is used by a participant to obtain supplemental foods. A draft is a conditional payment contingent on an editing process.
FMNP	Farmers’ Market Nutrition Program authorized by section 17 of the Child Nutrition Act of 1966 (42 USC 1786), as amended
FNS	Food and Nutrition Service of the U.S. Department of Agriculture
GAR	Guam Administrative Rules
GMT	Greenwich Mean Time
GOVERNMENT	government of Guam (Gov’t of Guam, its departments, and agencies)
GSA	General Services Agency – Procurement authority for the government of Guam line agencies
HANDS	“Health And Nutrition Delivery System” automated information system
OFFEROR	Any individual, partnership, firm, corporation, joint venture, or other entity submitting directly or through a duly authorized representative or agent, contemplated.
PROCUREMENT OFFICER	The contracting officer for the Department of Health and Social Services
PROPOSAL	bid or quotation
RFP	Request for Proposals
SOLICITATION	An Invitation for Bids (“IFB”), a Request for Proposals (“RFP”), or a Request for Quotations (“RFQ”).
SOLICITATION AMENDMENT	A written document that is signed by the Procurement Officer and issued for the purpose of making changes to the Solicitation.
SUBCONTRACT	Any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
USDA	United States Department of Agriculture
WIC	Special Supplemental Nutrition Program for Women, Infants and Children

1.5 RFP SCHEDULE AND SIGNIFICANT DATES

The schedule represents the DPHSS/WIC’s best estimate of the schedule that will be followed. All times indicated is Guam time (GMT + 10 hours). If a component of this schedule, such as "Proposal Due Date/Time" is delayed, the rest of the schedule will likely be shifted by the same number of days. Any change to the RFP Schedule and Significant Dates shall be reflected in and issued in an addendum. The approximate schedule is as follows:

Release of Request for Proposals	12/4/2014
Due Date to Submit Questions	1/14/2015
State's Response to Questions	1/23/2015
Proposals Due Date/Time	1/30/2015
Proposal Evaluations	1/30/2015 to 3/13/2015
Discussion with Offerors (if necessary)	1/30/2015 to 3/13/2015
Best and Final Offer (if necessary)	1/30/2015 to 3/13/2015
Notice of Award	1/30/2015 to 3/13/2015
Contractor Bank to merge its banking service system with WIC's current HANDS system (if necessary)	1/30/2015 to 3/13/2015

1.6 QUESTIONS AND ANSWERS PRIOR TO OPENING OF PROPOSALS

ALL INQUIRIES RELATING TO THIS SOLICITATION SHALL BE IN WRITING TO THE FOLLOWING CONTACTS VIA FAX – 671-477-7945 OR EMAIL AT DPHSS-WIC@DPHSS.GUAM.GOV

All questions shall be in writing and shall be submitted to the following contacts by the due date specified in Section 1.5, RFP Schedule and Significant Dates. DPHSS/WIC will respond in writing to questions as specified in Section 1.5, RFP Schedule and Significant Dates.

CONTACTS				
Name/Title	Organization	Tel. No.	Fax No.	Email Address
Charles Morris, Guam WIC Program Director	Division of Public Health, Bureau of Nutrition Services, Department of Public Health and Social Services	671-475-0287	671-477-7945	dphss-wic@dphss.guam.gov
David Gumataotao, Program Coordinator		671-475-0300		
Rose Castro, Management Analyst		671-475-0299		

BANKING SERVICES AGREEMENT
between the
GUAM DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES BUREAU OF
NUTRITION SERVICES
SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR
WOMEN, INFANTS AND CHILDREN (WIC)
and
_____ **(CONTRACTOR)**

THIS AGREEMENT is made this ____ day of _____, by and between the Guam Department of Public Health and Social Services, Bureau of Nutrition Services, Special Supplemental Nutrition Program for Women, Infants and Children which is inclusive of the Farmer's Market Nutrition Program, (hereinafter called DPHSS/WIC), whose office address is 15-6100 Mariner Avenue, Barrigada, Guam 96913-1601 and _____ (hereinafter called the Contractor), whose address is _____.

WHEREAS, the Department of Public Health and Social Services, Bureau of Nutrition Services Special Supplemental Nutrition Program for Women, Infants and Children which is inclusive of the Farmer's Market Nutrition Program, administers the federally-funded program on Guam; and

WHEREAS, DPHSS/WIC requires specialized banking professional services as part of its United States Department of Agriculture federally funded programs that are fully compliant with the United States Department of Agriculture's Special Supplemental Nutrition Program for Women, Infants, and Children Program 7 CFR Part 246 and its Farmer's Market Nutrition Program 7 CFR Part 248, and DPHSS/DPHSS/WIC's annual notice of grant terms and conditions; and

WHEREAS, DPHSS/WIC has provided adequate public announcement of the need for such services through a request for proposals, RFP/DPHSS-2015-001 Specialized Banking Professional Services: DPHSS/WIC Food Instruments and Coupon Processing Guam Supplemental Nutrition Program for Women, Infants and Children, describing the type of services required and specifying the type of information and data required of each offeror and the relative importance of particular qualifications; and

WHEREAS, DPHSS/WIC has determined in writing that the Contactor is the most qualified responsive and responsible Contractor for the required services; and

WHEREAS, DPHSS/WIC has conducted appropriate negotiations as to price and other terms with the Contactor; now, therefore

WITNESSETH, DPHSS/WIC and the Contractor, in consideration of mutual covenants hereinafter set forth, agree as follows:

SECTION I. DEFINITIONS

- A. "Draft" means the conditionally-redeemable (i.e. DPHSS/WIC specifies conditions for payment) food instrument used by DPHSS/WIC in the operation of its retail purchase food delivery system.
- B. "Draft Account" means a payable-through-draft controlled disbursement account maintained by the Contractor at _____ through which all DPHSS/WIC drafts will be presented.
- C. "Day" means calendar day unless specified otherwise.

SECTION II. CONTRACTOR'S RESPONSIBILITIES

The Contractor agrees to provide professional services and deliverables as set out in the RFP and in full compliance the United States Department of Agriculture's 7 CFR Part 246 and 7 CFR Part 248, and all other applicable federal and Guam law, regulations.

The Contractor shall be responsible for the professional and technical accuracy of all professional services furnished under this contract. The Contractor shall, without additional cost to DPHSS/WIC, correct or revise all errors or deficiencies in its professional services.

DPHSS/WIC's review, approval, acceptance of, and payment of fees for services required under this contract, shall not be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the Contractor's failure to the performance of this contract and the Contractor shall be and remain liable to DPHSS/WIC for all costs of any kind which may be incurred by DPHSS/WIC as a result of Contractor's negligent performance of any of the services performed under this contract.

The Contractor's responsibilities include but are not limited to the following

A. Activity--Provide Banking Services

- 1. The Contractor will maintain a master funding account with two attached zero balance activity accounts separating DPHSS/WIC and Farmer's Market Nutrition Program transactions. These accounts will be owned by DPHSS/WIC.
- 2. The Contractor, in accordance with Banking Regulation CC, shall review all drafts on or before midnight on the day following presentment to determine if the payment conditions have been met, and if not, return the items by that midnight deadline. Drafts will be posted to the account on the same day they are presented. At the completion of the review on the day following presentment, DPHSS/WIC shall receive an immediate credit on all drafts which fail to meet specified criteria in Part B of this Section. For more information see Title 12, Chapter 2, Sub-

Chapter, Part 229—Availability of Funds and Collection of Checks (Regulation CC via website below.

URL website: <http://www.ecfr.gov>

3. The Contractor will apply earnings credits against service fees for the average balance in the account. The Contractor shall calculate the earnings credit by multiplying the average daily balance of DPHSS/WIC's account by the average of the coupon equivalent yield of the ninety (90) day Treasury Bills sold at the Monday auctions for the billing month, less the Federal Reserve Requirement, less the FDIC assessment.
4. The Contractor will fax a status report to DPHSS/WIC, profiling account activity daily. The report will list the total number and dollar debits and credits for the previous day, and the ending balance of that day, for both the DPHSS/WIC and Farmers' Market accounts.
5. The Contractor will monitor the account balance daily and will notify DPHSS/WIC immediately if it appears that the funding schedule will not be adequate to maintain a positive account balance.
6. The Contractor shall manage the placement, pick-up, and processing of all files. The communication mechanism shall be via a Secure File Transfer Protocol (SFTP) site.
7. The Contractor will produce two (2) optical disks of all drafts on a case-by-case basis should the need arise (i.e., unable to access Contractor site) and send both copies to DPHSS/WIC retrievable through Microsoft Windows 7 or compatible software. The Contractor will retain the original drafts for 90 days and then destroy them.
8. The Contractor will provide DPHSS/WIC a monthly detailed statement (i.e., with serial number, paid date, dollar amount) and total credit/debit. The electronically-produced paid and returned data file will reconcile to this statement.
9. The Contractor will provide overdraft protection to DPHSS/WIC's account for twenty-four (24) hours. After this time, DPHSS/WIC shall pay the Contractor prime plus two percent interest on the overdrawn amount (from non-federal sources) until the Contractor receives a deposit, or deposits, sufficient to create a positive account balance.
10. The Contractor will provide copying and stop payment services to DPHSS/WIC as needed.
11. The Contractor will provide a Principal Contact who shall:

- a. Act as the single person responsible for tasks delineated in the Agreement and organize and supervise all activities contained in this Agreement.
 - b. Be knowledgeable of DPHSS/WIC's banking service needs.
 - c. Be reasonably available to DPHSS/WIC during DPHSS/WIC's normal business hours.
12. The Contractor will provide consulting services to DPHSS/WIC during service initiation and will continue to be available to offer consultation to DPHSS/WIC as banking services' issues and needs arise throughout the Agreement period. Additional/optional services not included in the fee schedule will be negotiated and priced separately and will be incorporated, as necessary, as amendments to this Agreement.
 13. The Contractor shall provide Automated Clearing House (ACH) service, provided that DPHSS/WIC obtains a signed agreement from each vendor to allow either ACH credit or debit activity.
 14. The Contractor agrees to save and hold harmless DPHSS/WIC, its officers, agents, representatives, successors and assigns and other government 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 officers, agents, servants or employees under this Agreement.

B. Activity--Validate/Reject All Food Instruments Presented for Payment

1. The Contractor will review all drafts presented to DPHSS/WIC's activity account and will pay only on those items which meet the following edit criteria as apply:
 - a. Participant signature is present in the appropriate draft field.
 - b. The date of redemption is within the specified time frame of "First Date to Use" date and "Last Date to Use" date.
 - c. The approved Guam DPHSS/WIC vendor deposits the check within sixty (60) days after "The First Date to Use" date.
 - d. The dollar amount of the draft does not exceed DPHSS/WIC's current established maximum dollar amount (ADP system-generated, based on vendor peer group averages) for the draft type (codified by number) specified.
 - e. There is a legible Guam DPHSS/WIC Vendor and FMNP stamp from Guam's list of approved vendors and FMNP farmers (listing will be provided by DPHSS/WIC).
 - f. The draft has not been altered per DPHSS/WIC's specified criteria.

- g. There is not a stop payment on the serial number of the draft.
 - h. The draft which was previously rejected has a re-authorization stamp to allow resubmission for payment.
2. Pursuant to the edit criteria set forth in Part B.1 of this Section, the Contractor will be given discretionary allowance on a best effort basis in performing edits which are judgmental in nature or edits which are made difficult due to damage, poor handwriting, or poor stamp image.
 3. The Contractor will implement changes to the edit criteria at the discretion of DPHSS/WIC as the need arises during the term of this agreement. If additional programming or processing is required, the services will be provided on a negotiated basis.

SECTION III. DPHSS/WIC RESPONSIBILITIES

- A. DPHSS/WIC will deposit funds into the draft account in amounts sufficient to cover the value of the drafts presented for payment.
- B. DPHSS/WIC will provide sufficient data to the Contractor to enable the Contractor to fulfill each of the activities specified in this Agreement.
- C. DPHSS/WIC, upon receipt of billings from the Contractor, will pay the Contractor pursuant to Section VI of this Agreement.
- D. DPHSS/WIC will provide a uniform DPHSS/WIC vendor and FMNP stamp and assign an identifying number to each vendor and farmer authorized to accept DPHSS/WIC drafts and FMNP coupons (as applicable).

SECTION IV. TERM

The effective date of this contract shall be the date of signature by the Governor of Guam. The initial term of this Agreement shall be from the effective date through September 30, 2015. It shall be renewable for four (4) additional one-year terms subject to the mutual consent of both parties and the availability of funds from fiscal year to fiscal year. Should either party not wish to renew this Contract, for any reason, that fact shall be made known, in writing, to the other party at least 120 days prior to the end of that Guam fiscal year.

In the event of cancellation of this multi-term contract as provided above the Contractor will be reimbursed its unamortized, reasonably incurred, nonrecurring costs.

SECTION V. TERMINATION FOR DEFAULT

(a) **Default.** If the Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract, or any

extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Procurement Officer may notify the Contractor in writing of the delay or non-performance and if not cured in ten days or any longer time specified in writing by the Procurement Officer, such officer may terminate the Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part the Procurement Officer may procure similar supplies or services in a manner and upon terms deemed appropriate by the Procurement Officer. The Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for services.

(b) **Contractor's Duties.** Notwithstanding termination of the contract and subject to any directions from the Procurement Officer, the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Contractor in which DPHSS/WIC has an interest.

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

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

(e) **Erroneous Termination for Default.** If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of DPHSS/WIC, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of DPHSS/WIC, the contract shall be adjusted to compensate for such termination and the contract modified accordingly subject to the contractor's rights under Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations.

(f) **Additional Rights and Remedies.** The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.”

SECTION VI. LIQUIDATED DAMAGES

When the Contractor is given notice of delay or nonperformance as specified in Paragraph (a) (Default) of the Termination for Default Clause of this contract and fails to cure in the time specified, the Contractor shall be liable for damages for delay in the amount of one-fourth of one-percent (1%) of outstanding order per calendar day from date set for cure until either DPHSS/WIC reasonably obtains similar supplies or services if the Contractor is terminated for default, or until the Contractor provides the supplies or services if the Contractor is not terminated for default. To the extent that the Contractor's delay or nonperformance is excused under Paragraph (Excuse for Nonperformance or Delayed Performance) of the Termination for Default Clause of this contract, liquidated damages shall not be due DPHSS/WIC. The Contractor remains liable for damages caused other than by delay.

SECTION VII. TERMINATION FOR CONVENIENCE

(a) **Termination.** The Procurement Officer may, when the interest of DPHSS/WIC so requires terminate this contract in whole or in part, for the convenience of DPHSS/WIC. The Procurement Officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

(b) **Contractor's Obligations.** The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Procurement Officer may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to DPHSS/WIC. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

(c) **Right to Supplies.** The Procurement Officer may require the Contractor to transfer title and deliver to DPHSS/WIC in the manner and to the extent directed by the Procurement Officer: (1) any completed supplies; and (2) such partially completed supplies and materials, parts, tools,

dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the Contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. The Contractor shall, upon direction of the Procurement Officer, protect and preserve property in the possession of the contractor in which DPHSS/WIC has an interest. If the Procurement Officer does not exercise this right, the Contractor shall use best efforts to sell such supplies and manufacturing materials in accordance with the standards of Uniform Commercial Code of Guam, 13 GCA Div. 2 Sales, Chapter 7 Remedies §2706.

(d) Compensation

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

(2) The Procurement Officer and the Contractor may agree to a settlement provided the Contractor has filed a termination claim supported by cost or pricing data to the extent required by §3118 (Cost or Pricing Data) of the Guam Procurement Regulations and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by DPHSS/WIC, the proceeds of any sales of supplies and manufacturing materials under Paragraph (3) of this clause, and the contract price of the work not terminated.

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

(i) contract prices for supplies or services accepted under the contract;

(ii) costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted supplies or services; provided, however, that if it appears that the contractor would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(iii) costs of settling and paying claims arising out of the termination of subcontracts or orders. These costs must not include costs paid in accordance with Subparagraph (3) (ii) of this Paragraph;

(iv) the reasonable settlement costs of the Contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated

portion of this contract. The total sum to be paid the contractor under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the Contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph (b) of this Paragraph, and the contract price of work not terminated.

(4) Cost claimed, agreed to, or established under Subparagraph (b) and (c) of this Paragraph shall be in accordance with 2 GAR Div 4 Chapter 7 (Cost Principles) of the Guam Procurement Regulations.

SECTION VIII. MANDATORY DISPUTE RESOLUTION CLAUSE

In the event of a conflict between this “Mandatory Disputes Resolution Clause” and any other terms in this Agreement, it is the intent of DPHSS/WIC and the Contractor that the terms of this clause are to be given precedence.

A. Disputes - Contractual Controversies

DPHSS/WIC and the Contractor agree to attempt resolution of all controversies which arise under, or are by virtue of, this Agreement through mutual agreement. If the controversy is not resolved by mutual agreement, then the Contractor shall request the Procurement Officer, in writing to issue a final decision within sixty days after receipt of the written request in keeping with 5 GCA § 5427 (c). The Procurement Officer 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.

B. Absence of a Written Decision within Sixty Days

If the Procurement Officer 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 Procurement Officer had issued a decision adverse to the Contractor. Appeals to the Office of Public Accountability. The Procurement Officer’s decision shall be final and conclusive, unless fraudulent or unless the Contractor appeals the decision administratively to the Public Auditor in accordance with 5 GCA § 5706.

C. Disputes – Money Owed To or By the Government of Guam

This subsection applies to appeals of DPHSS/WIC’s decision on a dispute. For money owed by or to DPHSS/WIC under this Agreement, the Contractor shall appeal the decision in accordance with the “Government Claims Act”, 5 GCA § 6101 et. seq., by initially filing a claim with the Guam Office of the Attorney General no later than eighteen months after the decision is rendered by DPHSS/WIC or from the date when a decision should have been rendered. For all other claims by or against DPHSS/WIC under this Agreement, the Office of the Public Auditor has jurisdiction over the appeal from the decision of DPHSS/WIC. Appeals to the Office of the Public Auditor must be made within sixty days of DPHSS/WIC’s decision or from the date the decision should have been made.

D Exhaustion of Administrative Remedies

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

SECTION IX. MISCELLANEOUS

A. DPHSS/WIC's representative for administration of this Agreement is:

Charles H. Morris, MPH, RD, LD
Administrator, Bureau of Nutrition Services
Department of Public Health and Social Services
Guam DPHSS/WIC Program
Building 15-6100, Mariner Avenue
Barrigada, Guam, 96913-1601

The representative for Contractor, for administration of this Agreement is:

In the event that different representatives are designated by either party after execution of this Agreement, notice of the name and address of the new representative will be given in writing to the other party.

- B. _____, is designated as a depository for the funds of DPHSS/WIC. The Treasurer of Guam is authorized to open the account in the name of DPHSS/WIC and to withdraw funds on deposit with this financial institution.
- C. The parties may at any time mutually agree to make changes in the services performed hereunder. Any alteration, variations, modifications or waivers of provisions of this Agreement shall be valid only when they have been reduced in writing, duly signed and attached to the original of this Agreement.
- D. The headings used in this Agreement are for convenience only and are not a substantive part of this Agreement.
- E. DPHSS/WIC and the Contractor shall each abide by all Guam and federal laws and regulations governing the Special Supplemental Food Program for Women, Infants and Children, as such are applicable to each, including guidelines developed by the Food and Nutrition Service, United States Department of Agriculture, and definitions as set forth in Title 7, CFR 246, Title 7, CFR 248, as well as DPHSS/WIC's Administrative Rules as such laws and regulations are constituted or amended during the term of this Agreement.
- F. DPHSS/WIC assumes no liability for any accident or injury that may occur to the Contractor, its employees, agents, or personal property.

- G. Except as otherwise set forth in this Agreement, Contractor shall not be liable for any loss suffered by DPHSS/WIC as a result of Contractor's action or non-action, provided that such action or non-action was not negligent and was made in good faith.
- H. All notices or other communications required or permitted under this Agreement shall be considered to have been duly given if sent by certified or registered mail, return receipt requested, to the party at its last known address.
- I. All DPHSS/WIC drafts and FMNP coupons, whether provided by the Contractor or DPHSS/WIC, shall comply with Federal Reserve and American Banking Association standards.

SECTION X. COMPENSATION –INVOICING AND PAYMENTS TO THE CONTRACTOR

- A. The DPHSS/WIC shall compensate the Contractor for services performed pursuant to this Agreement in keeping with the negotiated agreed pricing agreement, labeled as "Attachment A", and incorporated herein as if fully rewritten, in the total amount not to exceed _____(\$, .). The compensation agreed to in this Agreement is subject to funds being appropriated, allocated and available. There may be multiple certifications of funds to this Agreement within the Fiscal Year.
- B. The Contractor shall submit monthly invoices by the 25th day of each subsequent month to DPHSS/WIC's designated Contact Person specified in Section IX.A. of this Agreement.
- C. The Contractor shall be paid according to an itemized fee schedule (Attachment A (DPHSS/WIC draft and FMNP coupon)). Payment will be made within 30 days of receipt of the invoice from the Contractor.
- D. If the Agreement is renewed, amendments are limited as follows: Any change in costs in future years shall be limited to the change in the Consumer Price Index (CPI), at the location of the Bank at its affiliate wherever processing occurs, over the most recent twelve (12) month period, up to a maximum increase of five (5) percent for any single Agreement year.
- E. Reductions in services shall result in a corresponding decrease in costs to DPHSS/WIC.

SECTION XI. COLLATERALIZATION OF DEPOSITS

Deposits or investment certificates insured by the Federal Deposit Insurance Corporation or the do not require further security. To be eligible to receive or retain other active or inactive deposits, the Contractor's bank shall place with, or to the accounts of, DPHSS/WIC, as security for such deposits, securities of a type herein below specified, and approved by the Director of

Administration, in an amount in value at least ten (10) percent in excess of a \$90,000 average daily balance on deposit with the bank:

- a. Treasury notes or bonds of the United States, or those for which the faith and credit of the United States are pledged for the payment of principal and interest;
- b. Any evidence of indebtedness of DPHSS/WIC (Amended by P.L. 3-40, effective July 27, 1955; added by P.L. 2-9, effective February 17, 1953 Further amended by P.L. 13-104:1, 5GCA, Chapter 21; 48 USCA, subsection 1423a].

SECTION XII. SCOPE OF AGREEMENT

- A. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the retainment of the Contractor by DPHSS/WIC and contains all of the covenants and agreements between the parties with respect to such retainment in any manner whatsoever. Each party to this Agreement acknowledges that no representation, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement will be effective only if it is in writing signed by the party to be charged. For the purposes of this paragraph and of the entire Agreement the signature of the Governor is the only signature that will bind DPHSS/WIC.
- B. The United States Department of Agriculture's regulations at 7 CFR Part 246 and 7 CFR 248, as well as any subsequent federal regulation amendments during the term of this Agreement, are not attached but are incorporated herein as if fully re-written. The Request for Proposal preceding this Agreement is not attached but is incorporated herein as if fully re-written. All negotiated Cost and Fee Schedules are attached to this Agreement and incorporated herein as if fully re-written. The Contractor's proposal, inclusive of all signed federal and local forms is not attached but incorporated herein as if fully re-written. In the event of a contradiction between the provisions of the documents comprising the Agreement, the parties agree the contradiction shall be resolved by giving precedence in the following order:
 - a. Provision of the United States Department of Agriculture Regulations at 7 Part 246 and 7 Part 248;
 - b. Provisions of the any amendment(s) to this Agreement, in reverse chronological order;
 - c. Provisions of this Agreement;
 - d. Provisions of the Contractor's Best and Final Offer(s), in reverse chronological order;
 - e. Provisions of the request for proposal preceding the agreement;
 - f. Provisions of the Contractor's Proposal;

SECTION XIII. 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 Agreement period and for seven (7) years from the date of the final payment under the contract, for inspection by DPHSS/WIC or designated Federal Officials. Each subcontract by Contractor pursuant to this Agreement shall include a provision containing the conditions of this Section.

SECTION XIV. NONDISCRIMINATION

This Agreement shall be performed in accordance with the provisions of Titles VI and VII of the Civil Rights Act of 1964 and Section 504 of Title V of the National Rehabilitation Act of 1973. No person shall, on the grounds of race, color, age, national origin, sex or handicap, be subject to discrimination under the Program.

SECTION XV. JUSTIFICATION OF DELAY

The Contractor who is awarded the proposal guarantees that the service will be completed within the agreed upon completion date. If, however, the Contractor cannot comply to the completion requirement, it is the Contractor's responsibility to advise DPHSS/WIC in writing explaining the cause and reasons of the delay.

SECTION XVI. EQUAL EMPLOYMENT OPPORTUNITY

Section 3.01 of the Executive Order 10935 dated March 7, 1965 requires the Contractor not to discriminate against any employee or applicant for employment because of race, creed, color or national origin. The Contractor will take affirmative action to secure that applications are employed and that employees are treated equally during employment without regard to their race, creed, color or national origin.

SECTION XVII. RESTRICTION AGAINST CONTRACTORS EMPLOYING CONVICTED SEX OFFENDERS FROM WORKING AT GOVERNMENT OF GUAM VENUES

(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.

(c) Duties of the General Services Agency or Procurement Administrators. All contracts, bids, or Requests for Proposals shall state all the conditions in § 5253(b).

(d) Any contractor found in violation of § 5253(b), after notice from the contracting authority of such violation, shall, within twenty-four (24) hours, take corrective action and shall report such action to the contracting authority. Failure to take corrective action within the stipulated period may result in the temporary suspension of the contract at the discretion of the contracting authority.

SECTION XVIII. REPRESENTATION REGARDING ETHICAL STANDARDS FOR GOVERNMENT EMPLOYEES AND FORMER GOVERNMENT EMPLOYEES

The 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.

SECTION XIX. REPRESENTATION REGARDING GRATUITIES AND KICKBACKS

The 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.

SECTION XX. WAGE DETERMINATION ESTABLISHED

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

The Wage Determination most recently issued by the U.S. Department of Labor at the time a contract is awarded to a contractor by the government of Guam shall be used to determine wages, which shall be paid to employees pursuant to this Article (5GCA 5801). Should any contract contain a renewal clause, then at the time of renewal adjustments, there shall be made

stipulations contained in that contract for applying the Wage Determination, as required by this Article, so that the Wage Determination promulgated by the U.S. Department of Labor on a date most recent to the renewal date shall apply.

In addition to the Wage Determination detailed in this Article, any contract to which this Article (5GCA 5802) applies shall also contain provisions mandating health and similar benefits for employees covered by this Article, such benefits having a minimum value as detailed in the Wage Determination issued and promulgated by the U.S. Department of Labor, and shall contain provisions guaranteeing a minimum of ten (10) paid holidays per annum per employee.

SECTION XXI. REPRESENTATION REGARDING CONTINGENT FEES

The Contractor represents that it has not retained a person to solicit or secure a territorial contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

SECTION XXII. CHANGES

(1) **Change Order.** By a written order, at any time, and without notice to surety, the Chief Procurement Officer or the head of a Purchasing Agency may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:

(A) Drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the territory in accordance therewith;

(B) method of shipment or packing; or

(C) place of delivery.

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

(3) **Time Period for Claim.** Within 30 days after receipt of a written change order under Paragraph (1) (Change Order) of this clause, unless such period is extended by the Procurement Officer in writing, the Contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the contractor's claim unless the territory is prejudiced by the delay in notification.

(4) **Claims Barred After Final Payment.** No claim by the Contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract.

(5) **Other Claims not Barred.** In the absence of such a change order, nothing in this clause shall be deemed to restrict the contractor's right to pursue a claim arising under the contract if pursued in accordance with the clause entitled, "Claims Based on a Procurement Officer's Actions or Omissions, Notice of Claim Clause", or for breach of contract.

SECTION XXIII. STOP WORK ORDER

(1) **Order to Stop Work.** The Procurement Officer may, by written order to the contractor, at any time, and without notice to any surety, require the contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to the Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Procurement Officer shall either:

(i) cancel the stop work order; or

(ii) terminate the work covered by such order as provided in the "Termination for Default Clause" or the "Termination for Convenience Clause" of this contract.

(2) **Cancellation or Expiration of the Order.** If a stop work order issued under this clause is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contract price shall be modified in writing accordingly, if:

(i) the stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(ii) the Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

(3) **Termination of Stopped Work.** If a stop work order is not cancelled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

(4) **Adjustments of Price.** Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract."

SECTION XXIV. VARIATIONS IN QUANTITY

Upon the agreement of the parties, the quantity of supplies or services or both specified in this contract may be increased by a maximum of ten percent (10%) provided:

- (i) the unit prices will remain the same (except for any price adjustments otherwise applicable); and
- (ii) the Procurement Officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.”

SECTION XXV. CLAIMS BASED ON THE DIRECTOR OF PUBLIC WORK'S OR THE HEAD OF A PURCHASING AGENCY'S ACTIONS OR OMISSIONS

(1) **Notice of Claim.** If any action or omission on the part of the Director of Public Works or the head of the Purchasing Agency, or designee of such officer, requiring performance changes within the scope of the contract constitutes the basis for a claim by the contractor for additional compensation, damages, or an extension of time for completion, the Contractor shall continue with performance of the contract in compliance with the directions or orders of such officials, but by so doing, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

(a) the Contractor shall have given written notice to the Director of Public Works, the head of the Purchasing Agency, or designee of such officer:

- (i) prior to the commencement of the work involved, if at that time the contractor knows of the occurrence of such action or omission;
- (ii) within 30 days after the contractor knows of the occurrence of such action or omission, if the contractor did not have such knowledge prior to the commencement of the work; or
- (iii) within such further time as may be allowed by the Procurement Officer in writing. This notice shall state that the contractor regards the act or omission as a reason which may entitle the contractor to additional compensation, damages, or an extension of time. The Procurement Officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Procurement Officer or designee of such officer.

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

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

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

(3) **Adjustments of Price.** Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

SECTION XXVI. GOVERNING LAW

The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of Guam.

SECTION XXVII. SEVERABLE PROVISIONS

If any provision of this Agreement shall be deemed by a court of competent jurisdiction to be invalid, then such provision shall be deemed stricken from the Agreement and the Agreement shall be enforced according to its valid and subsisting terms and provisions.

SECTION XXVIII. ASSIGNMENT OF AGREEMENT

The Contractor may not assign this Agreement, or any sum becoming due the Contractor under the provisions of this Agreement, without the prior written consent of DPHSS/WIC.

SECTION XXIX. LACK OF APPROPRIATION

This Agreement is conditional upon funds made available to DPHSS/WIC from the United States Department of Agriculture. Should such funding be discontinued, DPHSS/WIC shall give no less than twenty-four (24) hours notice to the Bank. Upon such notification, DPHSS/WIC shall stop Title 7, CFR 246, Title 7, CFR 248, as well as DPHSS/WIC's Administrative Rules as such laws and regulations are constituted or amended during the term of this Agreement.

Title 7, CFR 246, Title 7, CFR 248, as well as DPHSS/WIC's Administrative Rules as such laws and regulations are constituted or amended during the term of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated by their respective names.

SIGNATURE PAGE

ATTACHMENT A
(NEGOTIATED AGREED PRICING)