

INVITATION FOR BID

PSS RFP 25-001

Replacement of Roof Top Package Cooling Unit at
KAGMAN ELEMENTARY SCHOOL CAFETERIA Building

PROJECT SPECIFICATIONS

PSS IFB 25-001

**Replacement of Roof Top Package Cooling Unit
at Kagman Elementary School Cafeteria Building**

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

SAIPAN, MARIANA ISLANDS 96950

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PROJECT SPECIFICATIONS

**Replacement of Roof Top Package Cooling
Unit at
Kagman Elementary School Cafeteria
Building**

Project No: PSS-IFB-25-001

The Commonwealth of the Northern Mariana Islands
Public School System
Saipan, Mariana Islands 96950

**Prepared By:
PSS / FDM Central Office
P.O. Box 501370
Capitol Hill Rd., Saipan MP 96950**

LEGAL PROVISION



PUBLIC SCHOOL SYSTEM

PO BOX 501370, SAIPAN, MP. 96950 • TEL (670) 237-3061 • FAX (670) 664-3845

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INVITATION FOR BID PSS IFB 25-001

REPLACEMENT OF ROOF TOP PACKAGE COOLING UNIT at KAGMAN ELEMENTARY SCHOOL CAFETERIA BUILDING

The CNMI Public School System and the State Board of Education are soliciting competitive sealed bids from interested parties for the **Replacement of Roof Top Package Cooling Unit at Kagman Elementary School Cafeteria Building**.

Specifications are available beginning **July 25, 2025** at the PSS Procurement & Supply Office located at the PSS Central Office, Capitol Hill, Building 1206. Requests may be sent via email to Mrs. Magiline Rena at magiline.rena@cnmipss.org and to Mrs. Melba Vilaga at melba.vilaga@cnmipss.org.

A **Mandatory on-site Pre-Bid Meeting** will be conducted on **Wednesday, August 13, 2025, at 10:00 am at Kagman Elementary School, Cafeteria**. Bids will not be accepted from any bidder who does not attend this mandatory meeting. Questions must be in writing and addressed to Mr. Michael Jason A. Babauta, PSS Procurement & Supply Officer, or via e-mail to michael.jason.babauta@cnmipss.org, no later than **August 19, 2025, at 4:30 p.m.** Response to questions will be no later than **August 25, 2025, at 4:30 p.m.**

Bids must be placed in a sealed envelope marked **“IFB 25-001 Replacement of Roof Top Package Cooling Unit at Kagman Elementary School Cafeteria Building”** containing one (1) original with three (3) copies and submitted to the PSS Procurement & Supply Office, located at PSS Central Headquarters in Capitol Hill Bldg. 1206, no later than **August 29, 2025 at 10:00 a.m.**, at which time, bids will be publicly opened. The selected bidder will be subject to a Responsibility Determination pursuant to PSS Procurement Regulation Section § 60-40-240. Any bids received after the aforementioned date and time will not be accepted under any circumstances.

The Public School System reserves the right to reject or cancel any and all bids when such action is determined to be in the best interest of the Public School System.

/s/ Lawrence F. Camacho, Ed. D
Commissioner of Education

/s/ Michael Jason A. Babauta
Chief Procurement & Supply Officer

STUDENTS FIRST • EDUCATORS ALWAYS

All CNMI Public Schools are accredited by the North Central Association on Accreditation and School Improvement, an accreditation division of Cognia.

**REPLACEMENT OF ROOF TOP PACKAGE COOLING UNIT AT
KAGMAN ELEMENTARY SCHOOL CAFETERIA BUILDING
PROJECT NO. PSS IFB 25-001**

Scope of Work and Specification:

BUILDING C (Cafeteria)

1. Bidders shall provide all the necessary labor, materials, transportation, supervision, equipment and other incidental work required for this project.
2. Remove existing 1 each Package Cooling Unit and turn over to Child Nutrition Program Office.
3. Dismantle and disposed of existing exterior ducting with 1 each supply duct and 2 each return air duct combined. Dimension and size shall be verified by contractor on site. These are for 2 Existing Package Cooling Unit.
4. Dismantle and disposed of existing interior supply ducting. 2 each.
5. Remove and dispose the bottom portion of the plenum box approximate of 495 square feet.
6. Cleaning and vacuuming of interior wall and ceiling of the plenum box. Do not remove the insulation on ceiling.
7. Exterior ducting shall be made of G.I. sheet gauge 22 with 2 inches insulation duct wrap (Type 100) and aluminum cladding gauge 22.
8. Provide and install new interior supply and return ducting including mounting bracket for the existing PCU and the new Package Cooling Unit.
9. Interior and exterior ducting shall be made of G.I. sheet gauge 22 with 2" duct wrap (Type 100). Sizes of the new ducting shall be design by registered Mechanical Engineer license in the CNMI.
10. Provide and install new heavy duty disconnect switch, 100A, 3Pole, 600V, 60Hz. Including mounting bracket
11. Contractor to inspect existing power supply (wire) if still usable, if not replace with new wires.
12. The participating bidders shall verify the size of existing concrete pad if sufficient for their proposed package cooling unit, if not, additional concrete pad is required.
13. Provide and install new 1 each 25 Ton High Efficiency Roof Top Package Cooling Unit with factory roof curb. Install Package Cooling Unit in accordance with manufacturer's instruction.
14. Cooling Performance: Gross Cooling Capacity of 281,000 (Btuh) Net Cooling Capacity 270,000 (Btuh). Integrated Energy Efficiency Ratio (at ARI) 14.5and Energy Efficiency Ratio (at ARI) minimum of 10.8
15. The new equipment shall utilize refrigerant type of R-454B.
16. Condenser Coil- All Aluminum Microchannel
 - a. Evaporator Coil – Copper and Aluminum fin.
 - b. Condenser and Evaporator Coils - factory coating with epoxy polymer coating.
17. Blower Type – Multi-Stage Air Volume, Belt Drive.
18. Compressor Type – Scroll (4)
19. Thermal expansion valve, removable element head.
20. Outdoor fan motor –1/3 (2 ECM) Electrically Commuted Motor, (4 PSC) Permanent Split Capacitor.

21. Indoor Blower motor HP - 10 hp
22. Provide factory or field installed High Efficiency Air Filter - disposable MERV 8
23. Provide factory or field installed UVC Germicidal Light Kit.
24. Electrical Characteristics: 460V-3PH-60HZ, Bidder shall be responsible to verify existing power supply for units.
25. Package Cooling Units shall be ASHRAE 90.1 Compliant, AHRI Performance Certified, UL Tested,
26. Air-conditioning unit shall have a 4 stage cooling thermostat control, 7-day programmable with a tamper-proof cover.
27. Equipment Mounting: Install package cooling unit on existing concrete pad.
28. Install flexible duct connector 6".
29. Provide and Install smoke detector to supply and return duct.
30. Provide and install outdoor air hood with manual damper package for the new PCU.
31. Install new stainless tie-down and turn buckles.
32. Furnish extra materials for PCUs. One (1) set for each V-belt and one (1) set of disposable air filters.
33. The awarded bidder shall submit materials submittal, brochure and product data including specifications of the PCUs for approval prior to purchasing or conducting any work.
34. The air-conditioning equipment supplier representative be located in the CNMI or Guam and carry spare parts for the equipment and provide service when a system breaks down.
35. The contractor to submit as-built drawings of the air-conditioning work.
36. Warranty Period for Compressor: Manufacturer's standard, but not less than five (5) years from the date of Substantial Completion.
37. Warranty Period for Control Boards: Manufacturer's standard, but not less than three (3) years from the date of Substantial Completion.
38. All Factory installed VFDs come with a 5-year drive manufacturer warranty.
39. All other covered components and labor, one (1) year from the date of substantial completion.
40. The bidder to include, provide a three (3)-year preventive maintenance of the PCU. The awarded bidder will submit to PSS/FDM a list and schedule of what to do and inspect for approval.
41. Engage a factory-authorized service representative to perform the startup service. Complete installation and startup check according to the manufacturer's written instructions.
42. Installation of the new PCUs shall be supervised by a licensed or certified HVAC personnel.
43. Test and inspections:
 - a. Leak Test: After installation, charge system and test for leaks. Repair leaks and retest until no leaks exist.
 - b. Operational Test: After electrical circuitry has been energized, start unit to confirm proper motor rotation and unit operation.
 - c. Test and adjust controls and safeties. Replace damaged and malfunctioning controls and equipment.
 - d. Prepare test and inspection report.
44. Connection for the existing Duct Sox to remain.
45. Cleaning of existing interior fabric dispersion system (duct sox). 4 each.
46. Cleaning of Interior Return Air Grills. 4 each.

47. Provide and install ½" thick fire rated gypsum board to cover the bottom portion of the existing plenum box with paint finish. Color to match the existing.
48. Install back the existing return air grills to the new location.
49. Engage a factory-authorized service representative to training PSS maintenance personnel to adjust, operate and maintain PCUs.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
PUBLIC SCHOOL SYSTEM
Saipan, MP 96950

CONTRACT No. _____

AGREEMENT and CONTRACT
for CONSTRUCTION

THIS AGREEMENT AND CONTRACT IS ENTERED INTO BETWEEN THE PUBLIC SCHOOL SYSTEM (PSS), REPRESENTED BY THE CONTRACTING OFFICER (“COMMISSIONER”), AND _____, (THE “CONTRACTOR”) FOR THE REPLACEMENT OF ROOF TOP PACKAGE COOLING UNIT AT KAGMAN ELEMENTARY SCHOOL CAFETERIA BUILDING, (THE “PROJECT”). THE COMMONWEALTH AND THE CONTRACTOR AGREE AS FOLLOWS—

ARTICLE 1. THE CONTRACTOR SHALL furnish all materials, labor, equipment, tools and services necessary to perform in a workmanlike manner all work required for the completion of the Project, as described in the Scope of Work and in strict compliance with the Contract Documents, for the firm fixed price of _____.

(a) Payments to Contractor. PSS shall make progress payments to the Contractor in accordance with the General Conditions. No other payments will be made.

(b) Contract Time. The Contractor shall commence work on the date stated in the written Notice to Proceed issued by the Contracting Officer, and shall complete the Project ready for use within **160 Calendar Days** of commencement, exclusive of any review time or suspension time imposed by PSS that delays the orderly prosecution of the work.

(c) Subcontractors. The Contractor shall 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 PSS.

ARTICLE 2. LIQUIDATED DAMAGES. The Contractor shall pay to PSS the sum of **(Two Hundred Dollars Only, U.S. \$200.00 per day), or 2% of the total contract price divided by the number of calendar days, whichever is greater** not as a penalty but as reasonable liquidated damages for breach of this Contract by the Contractor, by failing, neglecting or refusing to complete the work within the time herein specified, and said sums shall be paid for each consecutive calendar day that the Contractor shall be in default beyond the time stipulated in the Contract for completing the work.

ARTICLE 3. RECORDS. The Contractor and subcontractors at all levels shall provide the Public Auditor of the Commonwealth of the Northern Mariana Islands access to examine and copy any records, data, or papers relevant to the Contract until three (3) years have passed since the final payment under the Contract. (Reference 1 CMC §7845.)

ARTICLE 4. DEBARMENT AND SUSPENSION. In addition to other causes set forth in the PSS Procurement Regulations 6-212(2), a breach of ethical standards under any of the following sections of the PSS Procurement Regulations shall be cause for (i) debarment or suspension of the Contractor and/or (ii) termination of the Contractor for default.

Section 6-205 Gratuities and Kickbacks.

(1) *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.

(2) *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.

Section 6-206 Prohibition Against Contingent Fees.

(1) *Contingent fees.* It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure the PSS contracts 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.

(2) *Representation of contractor.* Every person, before being awarded a PSS contract, shall represent, in writing that such person has not retained anyone in violation of this section. Failure to do so constitutes a breach of ethical standards.

ARTICLE 5. CONTRACT DOCUMENTS. The following instruments (if checked) constitute the Contract Documents, and collectively evidence and constitute the Contract. (“Future Documents” will become Contract Documents by operation of the Contract at a later date.)

Existing Documents	Future Documents
<input checked="" type="checkbox"/> Agreement and Contract	<input type="checkbox"/> Notice to Proceed
<input checked="" type="checkbox"/> Scope of Work	<input type="checkbox"/> Performance and Payment Bonds
<input checked="" type="checkbox"/> General Conditions	<input type="checkbox"/> Permits
<input checked="" type="checkbox"/> Technical Specifications	<input type="checkbox"/> Current/Updated Documents – Business License
<input checked="" type="checkbox"/> Contractor’s Bid Proposal	
<input checked="" type="checkbox"/> Labor Standards Provisions	
<input checked="" type="checkbox"/> Invitation for Bid, IFB <u>25-001</u>	
<input checked="" type="checkbox"/> Minutes of Pre-award meetings	

ARTICLE 6. SEVERABILITY. If any contractual provision, clause, duty or obligation is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions, clauses, duties and/or obligations of the Contract Documents where such can be given effect without the invalid provision, clause, duty or obligation. To this end such provisions, clauses, duties or obligations are agreed by the parties to be severable. Severability of Procurement actions are governed by the applicable procurement regulations.

ARTICLE 7. SIGNATURE REQUIREMENTS. No contract can be formed prior to the approval of all required signatories, as evidenced by the signature affixed below of each of them, made in the order listed. The Contract shall become effective upon certification of contract completion by the Procurement and Supply Officer.

1. PSS Procurement and Supply

I hereby certify that to the best of my information and belief this contract is in compliance with the PSS Procurement Regulations.

_____ Date: _____
Michael Babauta
Procurement & Supply Officer

2. PSS Department of Finance

I hereby certify that there are sufficient funds available in the Account Number _____ in the amount of _____ for the execution of this contract.

_____ Date: _____
Arlene Lizama
Director of Finance

3. Legal Counsel

I hereby certify that this contract has been numbered, reviewed and approved as to form and legal capacity.

_____ Date: _____
Michael Ernest

4. Expenditure Authority

I declare that I have complied with the construction procedures of the PSS Procurement Regulations in the procurement of this contract, that this contract is for a public purpose, and that the contract does not waste or abuse public funds. I declare that I, personally, have the authority to obligate the expenditure of funds for this contract. I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this day on Saipan, Commonwealth of the Northern Mariana Islands.

_____ Date: _____
Dr. Lawrence F. Camacho
Commissioner of Education

5. Contracting Officer for Public School System, CNMI

_____ Date: _____
Dr. Lawrence F. Camacho
Commissioner of Education

6. Chairperson, State Board of Education

_____ Date: _____
Gregory P. Borja

7. Contractor:

On behalf of the Contractor, I represent that I am authorized to bind the Contractor to the terms of this Contract, and by my signature I do so hereby accept for the Contractor, and bind the Contractor to, the terms of this Contract. I further represent for the Contractor that no person associated with the Contractor has retained any person in violation of Section 6-206 of the PSS Procurement Regulations.

_____ Date: _____
Name:
Title:

8. CERTIFICATION OF CONTRACT COMPLETION

I hereby certify that this contract bears all signatures and is therefore complete.

_____ Date: _____
Michael Babauta
Procurement & Supply Officer

END OF CONTRACT and AGREEMENT

PROCUREMENT INFORMATION

For Government Use Only

Method of Procurement (Check one only)

- Competitive Sealed Bids IFB _____
- Competitive Sealed Proposals
- Small Purchase
- Sole Source
- Emergency
- Expedited

Type of Procurement (Check one only)

- Initial Procurement
- Subsequent Procurement—
 - Following Bid Protest
 - Government's Option
 - Replacement for Defaulted Contractor

Government contract numbers of all related contracts with the Vendor:

Insert Contract Numbers, or "NONE"

INSTRUCTIONS TO BIDDERS

This procurement is governed by the PSS Procurement Regulations dated June 15, 1998, and the documents contained in the project package. Bidders must familiarize themselves with the regulations and the project package.

1. RECEIPT AND OPENING OF BIDS

- A. Sealed bids for providing labor, materials and equipment for **PSS IFB 25-001, Replacement of Roof Top Package Cooling Unit at Kagman Elementary School Cafeteria**, Saipan, Commonwealth of the Northern Mariana Islands will be received until **August 29, 2025**. Bids will be publicly opened at the PSS Procurement & Supply Office, Capitol Hill, Building 1206, Capitol Hill, Saipan, at **10:00 a.m.**
- B. One original and three copies of bids shall be submitted on the forms furnished by the Public School System, and shall be sealed and addressed to the Procurement & Supply Officer, PSS, P.O. Box 501370, Northern Mariana Islands, Saipan, MP 96950, and endorsed with the name of the bidder, project number and the project title as follows:

PSS-IFB-25-001
Replacement of Roof Top Package Cooling Unit at
Kagman Elementary School Cafeteria Building

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

2. TIME OF COMPLETION

- A. The Contractor shall complete the work within **One Hundred Sixty (160) calendar days** after the established Notice to Proceed date.
- B. In the event of failure to complete the work within the time specified, liquidated damages will be assessed, at the rate of **Two Hundred Dollars (US\$200.00), or 2% of the total contract price divided by the number of calendar days, whichever is greater** for each and every calendar day that the work is delayed beyond the established completion date.

3. PREPARATION OF BIDS

- A. The bidder shall submit his/her bid proposal on the forms furnished by the Public School System. All blank spaces on the bid proposal forms must be correctly filled in where indicated for each and every item for which a quantity is given, and the bidder must state the prices (both written in ink or typewritten) in words and

numerals for which he/she 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.

B. The bidder shall sign his/her bid proposal in the blank space provided therefore. If the 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 shall be signed by one of the partners; if made by a corporation, it shall be signed by one of the officers thereof.

C. Bid proposals shall include the following documents at a minimum:

- (1) Bid Proposal
- (2) Bid Form
- (3) Bid Bond (if applicable)
- (4) Non-Collusion Affidavit
- (5) Equal Employment Opportunity
- (6) Certification of Non-Segregated Facilities
- (7) Certification of Drug-Free Workplace
- (8) CNMI Business License
- (9) List of Sub-contractors (form included)
- (10) List of Material Suppliers (form included)

4. BID SECURITY

A. Bid security shall be required for all competitive sealed bidding on construction contracts where the price is estimated by the Commissioner of Education to exceed \$25,000.00, or when the Commissioner of Education determines it is in the interest of the Public School System. Bid Security shall be on bid bond, in cash, by certified check or other forms acceptable to the Public School System. A surety company shall hold the certificate of authority from the U.S. Secretary of the Treasury as an acceptable surety or other surety acceptable to the Public School System Legal Counsel.

Bid security shall be an amount equal to at least fifteen percent (15%) of the amount of the bid or other amount specified in the Invitation for Bids depending upon the source of funding. Failure to furnish bid security, when required by the invitation, shall result in rejection of the bid as non-responsive.

(1) The bidder shall not withdraw his/her bid for a period of ninety (90) days after the scheduled closing time for the receipt of bids;

(2) If the bid is accepted, the bidder will enter into a formal contract with the

Commonwealth of the Northern Mariana Islands (CNMI) in accordance with the PSS contract for construction included as part of the contract documents;

- (3) The required Performance Bond and labor/materials Payment Bond will be submitted upon execution of the contract.

B. Contract Performance and Payment Bonds

- (1) When a construction contract is awarded in excess of \$25,000.00, the following bonds or security shall be delivered to the PSS, and shall become binding on the parties upon the execution of the contract:

- (a) A performance bond satisfactory to the Commissioner of Education, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the Commissioner of Education, in an amount equal to one hundred percent (100%) of the price specified in the contract. and

- (b) a payment bond satisfactory to the Commissioner of Education, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the Commissioner of Education, for the protection of all persons that supply labor and materials to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the price specified in the contract.

- C. In the event of the withdrawal of said bid within said period, the bidder shall be liable to the Government for the full amount of the bid guarantee as representing the damage to the Government on account of the default of the bidder in any particular case hereof. The bid guarantee shall be returned to bidders after the Government and the accepted bidder have executed the contract and the government has approved the executed Performance and Payment bonds.

5. NON-COLLUSION AFFIDAVIT

Each person submitting a bid for any portion of the work covered by the bid documents shall execute an affidavit, on the form provided with the bid package, to the effect that he/she has not colluded with any other person, firm or corporation in regard to any bid submitted. Such affidavit shall be attached to the bid.

6. RIGHT TO ACCEPT AND REJECT BIDS

PSS reserves the unqualified right, in its sole and absolute discretion, to reject any and all bids, or to accept that bid or combination of bids, if any, which in its sole and absolute judgment will under all circumstances best serve the Public School's interests. In the event that the successful bidder fails to execute the contract upon his/her part or

furnish satisfactory surety upon the bond, PSS, after declaring forfeited the security deposit of such bidder, reserves the option to accept the bid of the next lowest bidder within ten days from such effect as to such bidder as though he/she were the originally successful bidder.

7. CONTRACT SECURITY

The successful bidder shall be required to furnish 100% each of the contract price for Performance Bond and labor/materials Payment Bond in accordance with Section 60-40-301 (c) of the PSS Procurement Regulations.

8. STATUTORY REQUIREMENTS

A. The Contractor and subcontractors employed in the completion of the project shall comply with all applicable Federal, State, and Local Laws and in particular the following Federal Law, Executive Orders, and regulations issued thereunder:

- (1) The Contract Work Hours Standards Act, as amended (40 USC 327-332);
- (2) The Copeland "Anti-Kickback" Act, as amended (40 USC 276 (c); (18 USC 874);
- (3) Title VI and the Civil Act of 1964, as amended (42 USC 200 d-4) and Executive Orders 11246 and 11375, as amended, and specifically to the following:
 - i. The Contractor will not discriminate against any employee or applicant for employment because of race, color, sex, or national origin. The Contractor will take affirmative action to ensure the applicants are employed, and the employees are treated during employment, without regard to their race, color, sex, or national origin. Such action shall include, but not be limited to the following: 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.
 - ii. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this non-discrimination clause.
 - iii. The Contractor will, in all solicitations or advertisements for employees place by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, sex, religion, or national origin.
 - iv. The Contractor will send to each labor union or representative or workers

with which he has a collective bargaining agreement another contract or understanding, a notice to be provided by the Agency Contracting Officer, advising the labor union or workers representative of the Contractor's commitment under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in the conspicuous places available to employees and applicants for employment.

- v. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, or relevant orders of the Secretary of Labor.
 - vi. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and the rules, regulations, and orders of the Secretary of Labor, and will permit access to his books, records and accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders, each contractor and subcontractor of federally financed construction work is required to file an Equal Employment Opportunity Employer Information Report (EEO - 1 on standard Form 100) annually on March 31.
- (4) In the event of the Contractor's non-compliance with the non-discrimination clauses of this contract or with such rules, regulations or orders, this contract may be canceled, be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (5) The Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Contracting Agency may direct as a means of enforcing such provisions, including sanctions for non-compliance; provided, however, that in the event that the Contractor becomes involved in, or is threatened with litigation with subcontractor or vendor as a result of such direction by the Contracting Agency, the Contractor may request the Government to enter into such litigation to protect the interest of the Government.

9. NON-DISCRIMINATION IN EMPLOYMENT

- A. Contracts for work under this proposal will obligate the contractors and subcontractors not to discriminate in employment practices.
- B. Bidders must submit with their initial bid a signed statement as to whether they have

previously performed work subject to the President's Executive Order No. 11246 (September 24, 1965).

- C. Bidders must, if requested, submit a compliance report concerning their employment practices and policies in order to maintain their eligibility to receive the award of the contract.
- D. Successful bidders must, if requested, submit a list of all subcontractors who will perform work on the project and written signed statements from authorized agents of the labor pools with which they will or may deal from employees on the work together with supporting information to the effect that said labor pool's practices and policies are in compliance are in conformity with Executive Order No. 11246 (September 24, 1965) and that said labor pools will affirmatively cooperate in or offer no hindrance to the recruitment, employment and equal treatment of employees seeking employment and performing work under the contract, or a certification as to what efforts have been made to secure such statements when such agents or labor pools have failed or refused to furnish same prior to the award of the contract.

10. ACCESS TO WORK

The Contractor shall provide access to the work at all times to the PSS Contracting Officer or his/her representative(s) whenever the work is in preparation or in process, and shall provide proper facilities for such access and inspection.

11. CONTRACTOR'S LICENSE

The Contractor is required to submit with his/her bid proposal proof of compliance with the licensing laws of the State, Territory, or County where incorporated or doing business and a copy of a CNMI business license.

12. CONTRACT

- A. An award of the contract will not be made until after necessary investigations to the responsibility of the low bidder in accordance with the PSS Procurement Regulations. Award of the contract will be made by the PSS, upon the recommendation of the technical staff, to the lowest, responsive and responsible bidder meeting the requirements of PSS. The low bidder may be required to furnish PSS a statement covering experience on similar work, a list of machinery, plant, and other equipment on financial resources dated within ten (10) calendar days after the date of the opening of bids, and a statement of the total amount of contractual obligations other than with PSS on or after the date of opening of bids.

- B. Pursuant to Executive Order No. 11246 as amended, on Equal Employment

Opportunity a prime contractor and subcontractor who sign a contract on a federally assisted construction project are required under certain conditions to present written Affirmative Action Programs. At pre-construction conferences, the successful bidder and his/her known principal subcontractors shall be required to present and discuss the approach to be taken by the successful bidder and subcontractors to implement the requirements of affirmative action for equal employment and training in accordance with Executive Order No. 11246, as amended.

- C. After the bids have been opened and declared, no bid shall be withdrawn except with the consent of PSS, but the same shall be subject to acceptance to the PSS for a period of ninety (90) calendar days.

13. DISQUALIFICATION OF BIDDERS

- A. PSS reserves the right to disqualify bidders for any of the following reasons:
 - (1) Lack of competency upon investigation and determination by the Contracting Officer;
 - (2) Uncompleted work which, in the judgment of PSS, might hinder or prevent the prompt completion of additional work if awarded;
 - (3) Failure to pay or satisfactorily settle all bills due for labor and material on former contracts in force at the time of advertisement for bids;
 - (4) Default under previous contracts;
 - (5) More than one bid from a bidder under the same or different name;
 - (6) Evidence of collusion among bidders. Participants in such collusion will receive no recognition as bidder for any future work of PSS until such participant shall have been reinstated as a qualified bidder; and
 - (7) Otherwise not responsible bidder.

14. METHOD OF AWARD

- A. Bidding procedures involving the total bid amount - If the total bid amount is within the amount of funds available to finance the construction contract, then contract award will be made to that responsible and responsive bidder submitting the low bid.

General Conditions — Construction Contract

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General Conditions — Construction Contract

1. ENTIRE AGREEMENT

(a) With respect to the subject matter of the Contract, the Contract, as expressed in the Contract Documents, represents the entire agreement between the Commonwealth and the Contractor, and supersedes all prior agreements and understandings. No revision to the express terms of the contract shall be implied, except as required by law.

2. CONTRACT NOT ASSIGNABLE

(a) The Contract and all of its covenants shall inure to the benefit of and be binding respectively upon the Commonwealth and the Contractor and its partners, successors, assigns and legal representatives. The Contractor may not assign, transfer, encumber, or sublet its interest or obligations under the Contract without written consent of the Commonwealth. No mechanic, subcontractor, supplier, or other person shall be permitted to contract for or in any other manner have or acquire any lien upon the services covered by the Contract, or the construction to which the services pertain, or the land upon which the construction is situated.

3. INDEPENDENT CONTRACTOR

(a) For purposes of the application of Article 6, "Ethics in Public Contracting" of the Public School System (PSS) Procurement Regulations, the Contractor and its employees, agents, subcontractors, and representatives shall be considered employees of the Commonwealth government, as provided by §1-120(8) of the PSS Procurement Regulations.

(b) Except as stated in the PSS Procurement Regulations or authorized in writing by the Contracting Officer and approved by the Expenditure Authority and only under the terms so stated or authorized, neither the Contractor nor its employees or subcontractors shall act for, represent, or bind the Commonwealth in any capacity or manner whatsoever, or be deemed or considered an employee, agent, or representative of the Commonwealth, or be deemed to have any relationship with the Commonwealth other than that of independent contractor.

4. NO WAIVER BY COMMONWEALTH

(a) The failure of the Commonwealth in any one or more instances to insist upon strict performance of any of the items of the Contract, or to exercise any option herein conferred, shall not be construed as a waiver or relinquishment, to any extent, of the right to assert or rely upon any such terms or options on any future occasion.

5. INTERPRETATION AND VALIDITY

(a) This contract shall be interpreted under the laws of the Commonwealth of the Northern Mariana Islands. Where no local law is available to resolve a particular issue, reference shall be had to U.S. federal procurement law and cases similar to the matter in dispute,

including the Federal Acquisition Regulation and decisions interpreting it, as well as scholarly treatises on U.S. federal procurement law.

(b) All provisions of this Contract shall, to the extent practical, be interpreted to be consistent with the PSS Procurement Regulations. In the event of an unresolvable conflict between any provision of the contract and the PSS Procurement Regulations, the PSS Procurement Regulations shall govern the Contract.

(c) In the event of a conflict between any provision of the Contract and Agreement document and these General Conditions, the Contract and Agreement document shall govern the Contract.

(d) If the contract documents include a "Special Conditions" document, that document shall be interpreted to supplement these General Conditions and shall prevail in the event of a conflict.

(e) In the event the contract or the procurement action resulting in the contract is found to be in violation of the PSS Procurement Regulations, then the Contract will not be valid under the laws of the Commonwealth of the Northern Mariana Islands, and may be found to be legally voidable. The Commonwealth will seek to have any liability asserted against it by a contractor which directly results from improper acts of a government employee to be determined judicially to be the individual liability of the employee who committed the wrongful acts.

6. DEFINITIONS

(a) The term "Commonwealth" as used in all Contract Documents shall mean the government of the Commonwealth of the Northern Mariana Islands.

(b) The term "Contracting Officer" as used in all Contract Documents shall mean the person executing the Contract as Contracting Officer and includes a duly appointed successor or authorized representative. If the Secretary of Public Works executes the contract as Contracting Officer, the Secretary may with prior approval from the Expenditure Authority, from time to time, in writing, designate another individual to be Contracting Officer.

(c) The term "Expenditure Authority" means the Commissioner of Education who is the only official, who may extend, obligate, earmark, encumber or otherwise commit the public funds designated for the project.

7. AUTHORITIES AND LIMITATIONS

(a) All work under the Contract shall be performed under the general direction of the Contracting Officer, who shall exercise the rights, responsibilities, authorities and functions vested in him by the contract documents, and he shall have the right, subject to prior approval of the Expenditure Authority, to designate authorized representatives to act for him. The authorized representatives are responsible for guiding the technical aspects of the project and for general surveillance of the work performed. The authorized representatives shall not make any commitments or authorize any changes which constitute work not within the general scope of the Contract, change the expressed terms

and conditions hereof or specifications incorporated or included herein, or by any act or omission authorize expressly or otherwise, a basis for any increase in the contract price or time for performance. Whenever any provisions in the Contract specify an individual (such as, but not limited to, Construction Engineer, Inspector, or Custodian) or an organization (whether government or private) to perform any act on behalf of, or in the interest of the Commonwealth, that individual or organization shall be deemed to be the Contracting Officer's authorized representative under the Contract but only to the extent so specified. A copy of each document vesting authority in an authorized representative or designating an additional authorized representative shall be furnished to the Contractor.

(b) The Contractor shall perform the Contract in accordance with any order (including but not limited to instruction, direction, interpretation or determination issued by an authorized representative in accordance with his authority to act for the Contracting Officer; but the Contractor assumes all the risks and consequences of performing the contract in accordance with any order (including but not limited to, instruction, direction, interpretation, or determination) of anyone not authorized to issue such order.

(c) The work of the Contractor is subject to inspection to insure strict compliance with the terms of the Contract. No inspector is authorized to change any provision of the specifications without the written authority of the Contracting Officer and Expenditure Authority, nor shall the presence or absence of an inspector relieve the Contractor from any requirements of the work.

8. PAYMENTS TO CONTRACTOR

(a) The Commonwealth will pay the contract price as provided in this clause.

(b) The Commonwealth will make progress payments monthly as the work proceeds or at more frequent intervals as determined by the Contracting Officer and concurred by the Expenditure Authority on estimates approved by the Contracting Officer and concurred by the Expenditure Authority,

(c) Before the first progress payment under the Contract becomes due, the Contractor shall prepare a breakdown of the contract price acceptable to the Contracting Officer and the Expenditure Authority showing the amount included therein for each principal category of the work, in such detail as requested. The values in the breakdown will be used to provide a basis for determining progress payments. The Contractor's overhead, profit and cost of bonds shall be prorated throughout the life of the contract.

(d) Except as may be otherwise provided in the Contract, the contract price shall include all applicable Federal, Commonwealth of the Northern Mariana Islands, and local taxes and duties.

(e) Estimates on which progress payments are based shall include the value (as determined by the Contracting Officer and concurred by Expenditure Authority) of satisfactory in place work performed pursuant to change orders.

(f) Preparatory work done will not be taken into consideration in preparing estimates upon which progress payments are based.

(g) The Contracting Officer, at his discretion and with the prior approval of the Expenditure Authority, may authorize payments for materials delivered and stored on the work site. The Contractor is fully responsible for the materials delivered and stored by him.

(h) The Contractor, prior to receiving a progress or final payment under the Contract, shall submit to the Contracting Officer a certification that the Contractor has made payments from the proceeds of prior payments, or that he will make timely payment from the proceeds of the progress payments or final payment due him, to his workers, subcontractors, and suppliers in accordance with the Contractor's contractual agreement with them.

(i) In making each progress payment, there shall be retained ten percent (10%) of the estimated amount until final completion and acceptance of the contract work. However, if the Contracting Officer, at any time after fifty percent (50%) of the work has been completed, finds that satisfactory progress is being made, the Contracting Officer may with prior approval of the Expenditure Authority authorize any of the remaining progress payments be made in full with no retainage. Also, whenever the work is substantially complete, the Contracting Officer, if he considers the amount retained to be in excess of the amount adequate for the protection of the Commonwealth, at his discretion with prior approval of the Expenditure Authority, may release to the Contractor all or a portion of such excess amount. Furthermore, upon completion and acceptance of each separate building, public work, or other division of the contract on which the price is stated separately in the contract, payment may be made therefore without retention of a percentage.

(j) All material and work covered by progress payments made shall thereupon become the sole property of the Commonwealth, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all material and work upon which the payments have been made or the restoration of any damaged work, or as waiving the right of the Commonwealth to require the fulfillment of all of the terms of the contract.

(k) Upon completion and acceptance of all work, the amount due the Contractor under the Contract shall be paid upon the presentation of a properly executed voucher and after the Contractor shall have furnished the Commonwealth with a written release of all claims against the Commonwealth arising by virtue of the Contract, other than claims stated in amounts as may be specifically excepted by the Contractor from the operation of the release. If the Contractor's claim to amounts payable under the Contract has been assigned under the "Assignment of Claims" clause, a release may also be required of the assignee.

9. ASSIGNMENT OF CLAIMS

(a) If the Contract provides for payments aggregating One Thousand Dollars (US\$1,000.00) or more, claims for monies due or to become due the Contractor from the Commonwealth under the Contract may be assigned to a bank, trust company or other financing institution, including any U.S. federal lending agency, and may thereafter be further assigned or reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under the Contract and not already paid, and shall not be made to more than one party, except that any such assignment or

reassignment may be made to one party as agent or trustee for two or more parties participating in such financing.

(b) In no event shall copies of the Contract Documents or of any drawings, specifications, or other similar documents relating to work under the Contract, if marked "Secret", "Top Secret" or "Confidential", be furnished to any assignee, nor may any part of all the Contract so marked be disclosed to such assignee without the prior written authorization of the Contracting Officer.

10. STATUS OF ARCHITECTURAL/ENGINEERING DESIGNS AND DATA

(a) **Confidential Information.** All information contained in any architectural/engineering design studies, reports, and drawings and all parts thereof, submitted to the Commonwealth pursuant to the Contract, are to be treated as strictly confidential and for official use of the Commonwealth only. The Contractor shall take all reasonable steps to ensure that no member of its staff or organization shall divulge any information concerning the studies, reports and drawings except to a duly authorized representative of the Commonwealth, without prior written permission of the Commonwealth. This confidential restriction shall apply for five (5) years after completion of the work under the Contract.

(b) The foregoing does not apply to any information falling into any of the following categories:

(i) Information which at the time of disclosure is or thereafter becomes within the public domain other than by reason of Contractor's breach of the Contract.

(ii) Information which prior to disclosure hereunder was already in the Contractor's possession without violation of any secrecy obligation to the Commonwealth either directly or indirectly.

(iii) Information which subsequent to disclosure hereunder is obtained by the Contractor from a third party who is lawfully in possession of such information and which information is not subject to the secrecy obligation to the Commonwealth or to others.

(iv) Information which is developed by the Contractor independently of its work under the Contract.

(c) **Commonwealth Rights.** The Commonwealth shall have unlimited rights, for the benefit of the Commonwealth, to the architectural/engineering work product of the Contractor created pursuant to the Contract, including all drawings, specifications, architectural/engineering designs, notes, and other architectural/engineering work developed in the performance of the Contract, including the right to use some or all of the architectural/engineering work product on any other Commonwealth work without additional cost to the Commonwealth. The Commonwealth shall have and enjoy a royalty-free license to all architectural/engineering work products which the Contractor may cover by copyright and to all engineering and architectural designs as to which the Contractor may assert any rights to or establish any claim under the design patent or copyright laws. The Contractor shall submit to the Commonwealth all original copies of reports, completed drawings, notes, and other documents developed in the performance of the Contract after completion and acceptance of the work.

11. ADDITIONAL REQUIREMENTS FOR “DESIGN-BUILD” PROJECTS

(a) **Applicability of Provisions.** This clause shall apply in design-build projects to the extent the provisions herein are not expressly covered or contradicted by the Contract and Agreement or Scope of Work documents.

(b) **Site Visits and Conference.** The Contractor shall, if necessary, visit the project site and shall hold conferences with representatives of the Commonwealth and take such other action as may be necessary to obtain the data required to accomplish the Project.

(c) **Preliminary Sketches.** Preliminary sketches shall include studies, reports, and plans, elevations and sections developed to the extent as will clearly indicate the proposed planning and a reasonable estimate of the cost. Preliminary sketches, along with an estimate of the cost of the project shown on the sketches, shall be submitted for the approval of the Contracting Officer and Expenditure Authority. The Contractor shall change the preliminary sketches or reports for the Project to the extent necessary to meet the requirements of the Commonwealth, and after review and approval by the Contracting Officer and Expenditure Authority, the Contractor shall furnish necessary prints of the approved preliminary sketches and reports to the Contracting Officer.

(d) **Final Drawings and Specifications.** After preliminary sketches and estimates have been approved, the Contractor shall proceed with the preparation of reports, drawings, and specifications as required by the Contracting Officer in connection with the Project. Reports, drawings, specifications, and estimates shall be delivered to the Contracting Officer in such sequence and at such times as required by the Contracting Officer. Following review by the Contracting Officer, the Contractor shall make such corrections as are required to obtain the Contracting Officer's Officer and Expenditure Authority's approval, and shall submit prints of the final reports, drawings, and specifications.

(e) **Deficiencies in the Work.** The Contractor shall be responsible for the professional quality, technical accuracy and coordination of all services furnished by the Contractor under the Contract. The Contractor shall, without additional compensation, correct or revise any errors or deficiencies in the work, including both the design and the construction of the Project.

(f) **Work to be Continuous.** Unless directed otherwise by the Contracting Officer, work on the Project shall not be suspended during periods of design review by the Contracting Officer and/or Expenditure Authority.

12. CONTRACT AND BONDS

(a) If the Contractor fails to satisfactorily execute the required forms of contract, performance bond, and payment bond, within the time established in the Instruction To Bidders, the Commonwealth may proceed to have the required work performed by contract or otherwise, and the Contractor shall be liable for any excess cost to the Commonwealth and the Contractor's bid guarantee shall be available toward off-setting such excess cost.

13. CONSTRUCTION PROGRESS CHART

(a) Within ten (10) days after receipt of the Notice to Proceed, the Contractor shall prepare and submit to the Contracting Officer and Expenditure Authority for approval six (6) copies of a practicable progress chart. The chart shall show the principal categories of work corresponding with those used in the breakdown on which progress payments are based, the order in which the Contractor proposes to carry on the work, the date on which it will start each of the categories of work, and the contemplated date for completing the same. If the Project includes a design component that is the responsibility of the Contractor, the progress chart shall include provisions for the design and review elements specified in the Scope of Work document and in the "Additional Requirements for Design-Build Projects" clause. The chart shall be in suitable scale to indicate graphically the total percentage of work scheduled to be in place at any time. At the end of each progress payment period, or at such intervals as directed by the Contracting Officer, the Contractor shall: (1) adjust the chart to reflect any changes in the contract work, completion time, or both, as approved by the Contracting Officer and Expenditure Authority; (2) enter on the chart the total percentage of work actually in place; and (3) submit three copies of the adjusted chart to the Contracting Officer.

(b) If, in the opinion of the Contracting Officer or Expenditure Authority, work actually in place falls behind that scheduled, the Contractor shall take such action as necessary to improve his progress. In addition, the Contracting Officer may require the Contractor to submit a revised chart demonstrating his program and proposed plan to make up a lag in schedule progress and to ensure completion of work within the contract time. If the Contracting Officer or Expenditure Authority finds the proposed plan not acceptable, he may require the Contractor to increase the work force, the construction plan or equipment, or the number of work shifts without additional cost to the Commonwealth.

(c) Failure of the Contractor to comply with these requirements shall be considered grounds for determination by the Contracting Officer or Expenditure Authority that the Contractor is failing to prosecute the work with such diligence as will ensure its completion within the time specified.

14. FEES AND CHARGES

(a) The Contractor shall pay all fees and charges pertaining to temporary connection to utilities for construction. The Contractor will apply for permanent utility connections with the assistance of the Commonwealth. The Commonwealth will pay all fees and charges regarding permanent utility connections. The Contractor shall pay all charges for the use of property outside of the work site.

15. CONTRACT TIME

(a) The Contractor shall perform fully, entirely, and in a satisfactory and acceptable manner the work contracted, within the number of calendar days set forth in the contract documents, which number (adjusted by the exclusions and extensions described below, and by any applicable amendments, addenda, or change order to the Contract) shall be the "contract time". Time will be assessed against the Contractor beginning with the date of the Notice to Proceed. All strikes, lockouts, unusual delays in transportation, or any

condition over which the Contractor has no control, and also any suspensions ordered by the Contracting Officer and concurred by the Expenditure Authority for causes not the fault of the Contractor, shall be excluded from the computation of the contract time. If the satisfactory execution and completion of the contract shall require work or materials in greater amounts or quantities than those set forth in the original contract, then the contract time shall be extended in the same proportion as the cost of the additional work bears to the original work contracted for. No allowances will be made for delays or suspensions of the prosecution of the work due to the fault of the Contractor. In order to secure an extension of time for delays beyond his control, the Contractor shall within ten (10) days from the beginning of any such delay, notify the Contracting Officer in writing of the causes of delay, whereupon the Contracting Officer will ascertain the facts and the extent of the delay and extend the contract time when, in his judgment, the findings of fact justify such an extension. Before extending the contract time, the Contracting Officer must obtain the approval of the Expenditure Authority before issuing the findings of fact that shall be final and conclusive.

(b) In design-build projects that require periods of time for government review of design elements submitted by the Contractor, the government review time will not be added to the total time for contract completion unless such review so disrupts the orderly prosecution of the work by the Contractor that normal progress is materially impeded, or the Contracting Officer orders the work suspended pending review. The Contracting Officer with prior approval of the Expenditure Authority shall, by written order, adjust the contract time in an equitable fashion to account, if necessary, for delay resulting from government review time.

16. LIQUIDATED DAMAGES

(a) The amount per day of liquidated damages, as referred to in these General Conditions, is the sum stated as "Liquidated Damages" in the Contract and Agreement document, or, if no amount is stated in the Contract and Agreement, then in any document in the bid package, or, if no amount is stated in these documents, then in the Proposal, if any. In the event no amount for liquidated damages may be determined from the application of the first sentence of this paragraph, then the daily amount of liquidated damages shall be the greater of (i) one hundred dollars (\$100), or (ii) two percent (2%) of the contract price divided by the number of calendar days of the contract time, the contract time and contract price being determined at the time of the assessment of liquidated damages. This amount is considered to be liquidated damages to reimburse the Commonwealth for loss and damages suffered by the Commonwealth and is in no case a penalty.

(b) In the event the Contractor shall fail fully to perform and complete the work in conformity with the Contract within the contract time, the Contractor shall pay to the Commonwealth for each and every day of the additional time in excess of the contract time liquidated damages as specified in paragraph (a) of this clause.

(c) Liquidated damages may also be assessed against the Contractor under other provisions of the Contract, and shall be determined in accordance with paragraph (a) of this clause.

(d) The Commonwealth may recover the amount of liquidated damages by deducting the amount thereof out of any monies which may be due or become due the Contractor under the Contract or under any other existing or future contract between the Commonwealth and the Contractor, or by an action at law against the Contractor or his surety, or by any or all of these methods.

17. DISPUTES AND REMEDIES

(a) Notwithstanding any other provision of the Contract, before the contractor may bring any action law equity relating to any dispute relating to the Contract, including but not limited to claims for wrongful termination or breach, the Contractor must first submit the dispute to administrative resolution and appeal as provided by this clause.

(b) Any dispute between the Commonwealth and the Contractor relating to the performance, interpretation of, or compensation due under the Contract, must be filed in writing with the Commissioner of Education within ten calendar days after the Contractor obtains knowledge of the facts surrounding the dispute.

(c) The Commissioner will attempt to resolve the dispute by mutual agreement. If the dispute cannot be settled and a decision on the dispute is necessary the Commissioner shall review the facts pertinent to the dispute, secure necessary legal assistance and prepare a decision that shall include:

- (i) Description of the dispute;
- (ii) Reference to pertinent contract terms;
- (iii) Statement of the factual areas of disagreement or agreement; and
- (iv) Statement of the decision as to the factual areas of disagreement and conclusion of the dispute with any supporting rationale.

(d) The Commissioner may require a hearing or that information be submitted on the record, in his or her discretion.

(e) Whenever the Contractor has a dispute pending before the Commissioner, the Contractor must continue to perform according to the terms of the contract, and failure to so continue shall be deemed to be a material breach of the contract unless the Contractor obtains a waiver of this provision by the Commissioner.

(f) Paragraphs (b) through (e) are derived from §5-201 of the PSS Procurement Regulations, and shall be interpreted so as not to be in conflict with the PSS Procurement Regulations.

(g) Disputes arising out of the Labor Standards Provisions of this Contract (if any) shall be subject to this clause, except, to the extent such disputes involve classifications or wage rates contained in the CNMI Title and Pay Plan, which questions shall be referred to the Contracting Officer.

(h) Nothing in this clause shall serve to limit any remedies at law or equity available to the Commonwealth.

18. SUSPENSION OF WORK

(a) The Contracting Officer with prior approval from the Expenditure Authority may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the Commonwealth, including, but not limited to suspensions for unfavorable weather or other essential conditions, failure on the part of the Contractor to prosecute properly the work in accordance with the contract, or failure of the Contractor to carry out orders or to remove defective materials or work.

(b) In the event of a suspension of work under paragraph (a), for any reason over which the Contractor has or had no control, the contractor may be reimbursed for actual money expended on the job during the period of suspension. No allowance will be made for anticipated profits. The period of suspension shall be computed from the date set out in written order for work to cease until the date of the order for work to resume. Claims for such compensation shall be filed with the Contracting Officer within 10 days after the date of the order to resume work, or such claim will not be considered. The Contractor shall submit with its claim substantiating papers covering the entire amount shown on the claim. The Contracting Officer shall take the claim under consideration, and may make such investigations as are deemed necessary, and shall determine, after consultation with and approval from the Expenditure Authority, the equitability of such claim. Such decision shall be final.

(c) If the performance of all or any part of the work, for an unreasonable period of time, is suspended, delayed, or interrupted by an act of the Contracting Officer in the administration of the Contract, or by his failure to act within the time specified in the Contract (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the cost of performance of the Contract (excluding anticipated profit) necessarily caused by such unreasonable suspension, delay, or interruption, and the contract shall be modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent: (1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor; or (2) for which an equitable adjustment is provided for or excluded under any other provision of the Contract.

(d) No claim under paragraph (c) shall be allowed: (1) for any costs incurred more than twenty (20) days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the contract.

(e) The Contractor shall not suspend the work without written approval by the Contracting Officer and Expenditure Authority, and prior to resuming work shall give the Contracting Officer forty-eight (48) hours notice to afford opportunity to re-establish inspection.

(f) No provision of this clause shall be construed as entitling the Contractor to compensation for delays due to inclement weather, delays due to failure for surety, for suspensions made at the request of the Contractor, or for any other delay provided for in the contract documents, including all amendments, addenda, and change orders.

19. CHANGES

(a) The Contracting Officer may with prior approval of the Expenditure Authority, at any time and without notice to the sureties, by written order designated or indicated to be a change order, make any change in the work within the general scope of the contract, including but not limited to changes in:

- (i) The specifications (including drawings and designs);
- (ii) The method or manner of performance of the work;
- (iii) The Commonwealth-furnished facilities, equipment, materials, services, or site;
or
- (iv) The directing of acceleration in performance of the work.

(b) Any other written order or an order (which terms as used in this paragraph shall include direction, instruction, interpretation, or determination) from the Contracting Officer, which causes any such change, shall be treated as a change order under this clause, provided that the Contractor gives the Contracting Officer and Expenditure Authority, written notice stating the date, circumstances, and source of the order and that the Contractor regards the order as a change order. All change orders must be approved by the Expenditure Authority,

(c) Except as herein provided, no order, statement, or conduct of the Contracting Officer or Expenditure Authority shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment hereunder.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under the Contract, whether or not changed by any order, an equitable adjustment shall be made and the contract modified in writing accordingly; provided, however, that except for claims based on defective specifications, no claim for any change under (b) above shall be allowed for any costs incurred more than twenty (20) days before the Contractor gives written notice as therein required: and provided further, that in the case of defective specifications for which the Commonwealth is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with such defective specifications.

(e) If the Contractor intends to assert a claim for an equitable adjustment under this clause, he must, within thirty (30) days after receipt of a written change order under paragraph (a) of this clause, or the furnishing of a written notice under paragraph (b) of this clause, submit to the Contracting Officer and Expenditure Authority a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the Contracting Officer with prior approval from the Expenditure Authority. The statement of claim hereunder may be included in the notice under paragraph (b) of this clause.

(f) No claim by the Contractor for an equitable adjustment under this clause shall be allowed if asserted after final payment under this contract. Additional performance and payment bond protection shall be furnished by the Contractor in connection with any modification affecting an increase in the price under the Contract if:

- (i) The modification is for new or additional work which is beyond the scope of the existing contract; or
- (ii) The modification is pursuant to an existing provision of the Contract and increases the contract price by \$5000 or twenty-five percent (25%) of the basic contract price whichever is less.

20. EQUITABLE ADJUSTMENT

(a) The Contractor's written statement of the monetary extent of a claim for equitable adjustment shall be submitted in the form of a lump sum proposal (unless otherwise requested by the Contracting Officer) with an itemized breakdown of all increases or decreases in the cost of the Contractor's and all subcontractors' work, in at least the following detail:

- (i) Material quantities and unit costs,
- (ii) Labor costs (identified with specific item of material to be placed or operation to be performed),
- (iii) Workmen's Compensation and Public Liability Insurance overhead, and
- (iv) Employment taxes under FICA, FUTA, and CNMI Social Security System.

(b) The percentage for overhead, profit, and commission shall be negotiated and may vary according to the nature, extent, and complexity of the work involved, but in no case shall exceed fifteen percent (15%) of the estimated cost of the work, and shall be considered to include, but is not limited to, insurance other than that mentioned in this clause, bonds, use of small tools, incidental job burdens, and general office expense. No percentages for overhead, profit or commission will be allowed on employment taxes under FICA, FUTA, and CNMI Social Security System.

(c) The Contractor shall submit with the proposal, any request for time extension related to the claim for equitable adjustment.

(d) In considering a proposal, the Contracting Officer will make check estimates in detail, utilizing unit prices where specified or agreed upon, with a view to arriving at an equitable adjustment.

(e) After receipt of a proposal with a detailed breakdown, the Contracting Officer shall act promptly thereon. Provided, however, that when the necessity to proceed with a change does not allow sufficient time to properly check a proposal, or in the event of failure to reach an agreement on a proposal, the Contracting Officer may order the Contractor to proceed on the basis of price to be determined at the earliest practicable date but not to be more than the increase or less than the decrease proposed.

(f) Expenditure Authority must approve of all equitable adjustments.

(g) Except in unusual cases where neither the Contractor nor the Commonwealth can ascertain the full extent of the work which will be required pursuant to a change until the work involved therein has been substantially completed, final agreement on a proposal shall be effected no later than the time when the work involved is estimated by the Contracting Officer to be 50% complete; in the event final agreement cannot be reached

by that time, the Contracting Officer shall issue a determination subject to prior approval from the Expenditure Authority as to the equitable adjustment of the contract price and the time required for performance.

21. TERMINATION FOR DEFAULT

(a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will ensure its completion within the contract time, or fails to complete said work within the contract time, the Commonwealth may, by written notice to the Contractor from the Contracting Officer upon approval of the Expenditure Authority terminate the Contractor's right to proceed with the work or such part of the work as to which there has been delay, after providing ten day's written notice and an opportunity to the Contractor to show cause why such action should not be taken. In the event of a termination for default under this clause, the Commonwealth may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plans as may be on the site of the work and necessary therefore. Whether or not the Contractor's right to proceed with the work is terminated, the Contractor and his sureties shall be liable for any damage to the Commonwealth resulting from the Contractor's refusal or failure to complete the work within the contract time.

(b) The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:

(i) The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of nature, acts of the public enemy, acts of the Commonwealth in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the Commonwealth, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers of any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers; and

(ii) The Contractor, within ten (10) days from the beginning of any such delay (unless the Contracting Officer with prior approval of the Expenditure Authority grants a further period of time before the date of final payment under the contract), notify the Contracting Officer in writing of the cause of delay. The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment and with prior approval of the Expenditure Authority, the findings of fact justify such an extension and his findings shall be final, subject only to appeal as provided in the "Disputes and Remedies" clause.

(c) If the Commonwealth terminates the Contractor's right to proceed under paragraph (a), the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work, together with any increased costs occasioned the Commonwealth in completing the work.

(d) If the Contractor is in default under paragraph (a), but the Commonwealth does not terminate the Contractor's right to proceed, the resulting damage will consist of applicable liquidated damages until the work is completed or accepted.

(e) The Contractor shall be in default of the Contract, and the Contracting Officer may, with prior approval of the Expenditure Authority, immediately and without other notice, terminate the Contractor's right to proceed with the Contract through written notice to the Contractor of default termination, upon a determination by the Contracting Officer subject to prior approval of the Expenditure Authority that, related to this particular contract, any of the following has occurred—

(i) The Contractor has committed any breach of ethical standards as defined in the Contract Documents, the PSS Procurement Regulations, or other applicable law.

(ii) The Contractor has participated in any violation of the rules or regulations in the PSS Procurement Regulations to the disadvantage of the Commonwealth.

(iii) The Contractor has colluded with other potential awardees of the Contract or with government employees to the disadvantage of the Commonwealth.

(iv) The Contractor knowingly requests and/or receives payment to which it is not entitled under the specific terms of the Contract.

(v) The Contractor accepts payment with knowledge that government employees or officials authorizing the payment have not complied with the terms of the Contract or applicable law.

(f) If, after notice of termination of the contractor's right to proceed under any of the provisions of this clause, it is subsequently determined by the Contracting Officer with prior approval of the Expenditure Authority (or, upon review of the Contracting Officer's decision, by an authorized administrative or judicial body) that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, then the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the "Termination for the Convenience of the Commonwealth" clause. This paragraph shall provide the exclusive remedy for a wrongful termination for default.

(g) Any disagreement of the Contractor to any action taken by the Commonwealth under this clause shall be a dispute within the meaning of the "Disputes and Remedies" clause.

(h) The rights and remedies of the Commonwealth provided in this clause are in addition to any other rights and remedies provided by law or under the Contract.

22. TERMINATION FOR THE CONVENIENCE OF THE COMMONWEALTH

(a) Termination. The Contracting Officer may, when the interests of the Commonwealth so require and with prior approval of the Expenditure Authority, terminate this contract in whole or in part, for the convenience of the Commonwealth. The Contracting Officer shall give written notice of the termination to the Contractor specifying the part of the contract terminated and when the 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 Contracting Officer may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the Commonwealth. The Contractor must still complete the work not terminated by the notice of termination and incur obligations as are necessary to do so.

(c) Right to Supplies. The Contracting Officer may require the Contractor to transfer title and deliver to the Commonwealth in the manner and to the extent directed by the Director of Procurement and Supply:

- (i) Any completed supplies; and
- (ii) 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 the Contract.

(d) The Contractor shall, upon direction of the Contracting Officer, protect and preserve property in the possession of the Contractor in which the Commonwealth has an interest. If the Contracting Officer does not exercise the right specified in paragraph (c), the Contractor shall use his best efforts to sell such supplies and manufacturing materials in accordance with the standards of the Uniform Commercial Code of the Northern Mariana Islands, 5 CMC § 2706. Utilization of this procedure in no way implies that the Commonwealth has breached the contract by exercise of the "Termination For Convenience of the Commonwealth" clause.

(e) Compensation. The Contractor shall submit to the Contracting Officer a termination claim specifying the amount due because of the Termination for Convenience together with cost and pricing data to the extent required. If the Contractor fails to file a termination claim within one (1) year from the effective date of the termination, the Contracting Officer may, with prior approval of the Expenditure Authority, pay the Contractor, if at all, an amount set in accordance with paragraph (g).

(f) Subject to the prior approval of the Expenditure Authority, the Contracting Officer, and the Contractor may agree to a settlement provided the Contractor has filed a termination claim and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the Commonwealth, the proceeds of any sales and supplies and manufacturing materials under paragraph (d), and the contract price of the work not terminated.

(g) Absent complete agreement under paragraph (f), the Contracting Officer shall pay the Contractor, with prior approval of the Expenditure Authority, the following amounts, provided payments agreed to under paragraph (f) shall not duplicate payments under this paragraph:

- (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 completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss.

(iii) cost of settling and paying claims arising out of termination of subcontracts or orders pursuant to paragraph (b). These costs must not include cost paid in accordance with subparagraph (g)(ii).

(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 the contracts 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 the Contract. The total sum to be paid the Contractor under this subparagraph shall not exceed the total contract price plus reasonable settlement costs of the Contractor reduced by the amount of payments otherwise made from the proceeds of any sales of supplies and manufacturing materials under paragraph (d), and the contract price of work not terminated.

23. LIABILITY TO THIRD PERSONS; INDEMNIFICATION; INSURANCE

(a) The Contractor shall be liable for the torts and wrongful acts of its employees and staff members, and shall carry insurance necessary for the protection of its employees and staff members during the life of the Contract, and shall indemnify and hold harmless the Commonwealth from any and all claims, demands, suits, and causes of action whatsoever involving third parties arising out of or connected with the negligent performance of the Contract.

(b) The Contractor and his subcontractors shall procure and thereafter maintain workmen's compensation, general liability, builder's risk, and comprehensive automobile liability (bodily damage) insurance, with respect to performance under the Contract; provided, that the Contractor may, with approval of the Contracting Officer and the Expenditure Authority maintain a self-insurance program. All insurance required pursuant to the provisions of this paragraph shall be in such form, in such amounts, and for such periods of time, as the Contracting Officer may, from time to time, require or approve, and with insurers approved by the Contracting Officer.

(c) Workmen's Compensation Insurance: The Contractor's employees engaged in any work under the Contract shall be afforded the same coverage as that which is extended to the employees of the Commonwealth of the Northern Mariana Islands.

(d) Comprehensive General Liability Insurance: Coverage shall have the following minimum amounts: Personal injury, \$100,000.00 each person, and \$300,000.00 each occurrence; Property damage, \$50,000.00 each occurrence, and \$100,000.00 aggregate.

(e) Builder's Risk (fire and extended coverage): The Contractor shall carry Builder's Risk (fire and extended coverage) Insurance on all work in place and materials stored at the work site, including foundations and building equipment. The Builder's Risk Insurance

shall be for the benefit of the Contractor and the Commonwealth of the Northern Mariana Islands as their interests may appear and each shall be named in the policy or policies as an assured. Builder's Risk insurance need not be carried on excavations, piers, footings, or foundations until such time as work on the super structure is started and it need not be carried on landscape work. Policies shall be in effect at all times for the full cash value of all completed construction work, as well as materials in place and stored at the site, whether or not partial payment has been made by the Commonwealth of the Northern Mariana Islands. The Contractor may terminate this insurance on building(s) taken over for occupancy by the Commonwealth of the Northern Mariana Islands as of the date said building(s) is accepted.

(f) Comprehensive Automobile Liability Insurance: Coverage of this insurance for all owned, non-owned and hired vehicles shall have the following minimum amounts: Personal injury, \$100,000.00 each person, and \$300,000.00 each occurrence; Property damage, \$50,000.00.

(g) The comprehensive general and automobile liability policies shall contain a provision worded as follows:

(i) "The insurance company waives any right of subrogation against the Government of the Commonwealth of the Northern Mariana Islands which may arise by reason of any payment under this policy".

(h) Prior to commencement of work under the Contract, the Contractor shall furnish to the Contracting Officer a certificate or written statement of the above required insurance. The policies evidencing required insurance shall contain an endorsement to the effect that cancellation or any material change in the policies adversely affecting the interests of the Commonwealth in such insurance shall not be effective until 30 days after the Contracting Officer has received written notice from the insurer, as evidenced by return receipt of registered or certified letter.

24. SUPERINTENDENCE BY CONTRACTOR

(a) The Contractor shall give his personal superintendence to the work or have a competent foreman or superintendent, satisfactory to the Contracting Officer and the Expenditure Authority, on the work at all times during progress, with authority to act for him.

(b) The Contractor shall employ such superintendent, foreman and workmen as are careful and competent, and the Contracting Officer or the Expenditure Authority, may demand the dismissal of any person employed by the Contractor in, about, or upon the work who shall engage in misconduct or be incompetent or negligent in the proper performance of duties, or neglects or refuses to comply with the directions given, and such person shall not be employed again thereon without the written consent of the Contracting Officer. Should the Contractor continue to employ, or again employ any person for whom the Contracting Officer or the Expenditure Authority has demanded dismissal under this clause, the Contracting Officer or the Expenditure Authority may withhold all payments, which are or may become due, or the Contracting Officer or the Expenditure Authority may suspend the work until such orders are complied with.

25. RIGHTS-OF-WAY

(a) The Commonwealth will furnish all lands, easements, and rights-of-way required for completion of the work. In acquiring easements or rights-of-way the Government will proceed as expeditiously as possible, but in the event all rights-of-way or easements are not acquired prior to the beginning of construction, the Contractor shall begin work on such lands and rights-of-way as have been acquired. No claim for damage will be allowed by reason of the Commonwealth's delay in obtaining lands, easements, or rights-of-way. In the event of litigation or other delays in acquiring rights-of-way, the time allowed herein for completion of the work will be extended to compensate the Contractor for time actually lost by such delay.

26. APPROPRIATENESS OF EQUIPMENT

(a) The Contractor shall furnish such equipment as is considered necessary for the prosecution of the work in an acceptable manner and at a satisfactory rate of progress. All equipment, tools, and machinery used for handling materials and executing any part of the work shall be subject to the approval of the Contracting Officer and the Expenditure Authority and shall be maintained in a satisfactory working condition. Equipment used on any portion of the work shall be such that no injury to the work, roadways, adjacent property, or other objects will result from its use. The contract may be terminated if the Contractor fails to provide adequate and proper equipment for the work.

27. LAWS TO BE OBSERVED

(a) The Contractor is assumed to be familiar with all federal and local laws, codes, ordinances, and regulations which, in any manner, affect those engaged or employed in the work or the material or equipment used in or upon the site, or in any way affect the conduct of the work. No pleas of misunderstanding or ignorance on the part of the Contractor will, in any way, serve to modify the provisions of the contract.

(b) The Contractor, at all times, shall observe and comply with all Federal and local laws, codes, ordinances, and regulations in any manner affecting the conduct of the work, and the Contractor and his surety shall indemnify and save harmless the Commonwealth and all its officers, agents and servants any claim or liability arising from or based on the violation of any such law, code, ordinance, regulation, order, or decree, whether by himself or his employees.

(c) The Contractor shall be responsible for reporting to the Commonwealth Historical Preservation Office for verification and determination any discovery encountered during execution of this contract bearing archaeological, cultural, or historical content.

28. PERFORMANCE OF WORK BY CONTRACTOR

(a) The Contractor shall perform on the site and with his own organization, work equivalent to at least twelve percent (12%) of the total amount of work to be performed under the contract. If, during the progress of the work hereunder, the Contractor requests a reduction in such percentage and the Contracting Officer determines that it would be to the advantage of the Commonwealth, the percentage of the work required to be performed

by the Contractor may be reduced with the written approval of the Contracting Officer and the Expenditure Authority.

29. CONDITIONS AFFECTING THE WORK

(a) The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the work without additional expense to the Commonwealth. The Commonwealth assumes no responsibility for any understanding or presentations concerning conditions made by any of its officers or agents prior to the execution of the Contract, unless so stated in the contract.

(b) The Contractor shall request assistance from appropriate Commonwealth authorities to indicate the actual locations of existing utilities to preclude damage during construction.

(c) The Contractor shall inquire about construction requirements from the Technical Services Division, Department of Public Works prior to beginning work on the project.

30. SITE INVESTIGATION

(a) The Contractor acknowledges that he has investigated and satisfied himself as to the conditions affecting the work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages, tides, or similar physical conditions at the site, the conformations and conditions of the ground, the character of equipment and facilities needed preliminary to and during prosecution of the work. The Contractor further acknowledges that he has satisfied himself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Commonwealth, as well as from information presented by the drawings and specifications made as part of this contract. Any failure by the Contractor to acquaint himself with the available information will not relieve him from responsibility for estimating properly the difficulty or cost of successfully performing the work. The Commonwealth assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by the Commonwealth.

31. DIFFERING SITE CONDITIONS

(a) The Contractor shall promptly, and before such conditions are disturbed, notify the Contracting Officer in writing of:

(i) Subsurface or latent physical conditions at the site differing materially from those indicated in the Contract, or;

(ii) Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered, and generally recognized as hindering work of the character provided for in the Contract.

(b) The Contracting Officer shall promptly investigate the conditions, and if he finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for performance of, any part of the work under the Contract, whether or not changed as a result of such conditions, an equitable adjustment subject to the prior approval of the Expenditure Authority shall be made and the contract modified in writing accordingly.

(c) No claim by the Contractor under this clause shall be allowed unless the Contractor has given notice required in (a) above; provided, however, the time prescribed therefore may be extended by the Commonwealth.

(d) No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

(e) The contractor shall submit all claims for equitable adjustment in accordance with and subject to the requirements and limitations set out in paragraph (a) of the "Equitable Adjustment" clause.

(f) Upon written request by the Contracting Officer, the Contractor shall submit a proposal, in accordance with the requirements and limitations set out in paragraph (a) of the "Equitable Adjustment" clause, for work involving contemplated changes covered by the request, within the time limit indicated in the request or any extension of such limit as may be subsequently granted. If, within a reasonable time after receipt of such a proposal, the Contracting Officer orders the Contractor to proceed with the performance of the work contemplated, the proposal submitted prior to the order shall constitute the Contractor's statement of the monetary extent of claim for equitable adjustment.

32. AS-BUILT DRAWINGS

(a) Upon completion of the work to be performed under the Contract, and before final payment is made, the Contractor shall furnish the Commonwealth with two complete sets of "as-built" drawings on vellum sheet (24" x 36") and on CD (AutoCAD latest version). These sets shall include "marked up" prints of the contract drawings and such additional drawings as may be necessary to reflect the complete "as-built" work accomplished under the Contract. The "as-built" drawings shall be initiated at the beginning of the work and shall be maintained and kept current by the Contractor on the job site as the work progresses and until final completion and acceptance by the Commonwealth. Markings shall be accomplished in red and shall be complete and legible to assure that the information presented is readily usable. The "as-built" drawings submitted by the Contractor will be subject to review and approval of the Contracting Officer and the Expenditure Authority.

33. SHOP DRAWINGS, COORDINATION DRAWINGS, AND SCHEDULES

(a) The Contractor shall submit shop drawings, coordination drawings, and schedules for approval as required by the specifications or requested by the Contracting Officer as follows:

- (i) Shop drawings shall include fabrication, erection and setting drawings, schedule drawings, manufacturer's scale drawings, wiring and control diagrams, cuts or entire catalogs, pamphlets, descriptive literature, and performance and test data.
 - (ii) Drawings and schedules, other than catalogs, pamphlets and similar printed material, shall be submitted in reproducible form with two prints made by a process approved by the Contracting Officer and the Expenditure Authority. Upon approval, the reproducible form will be returned to the Contractor, who shall then furnish the number of additional prints, not to exceed 10, required by the Contracting Officer or the Expenditure Authority.
- (b) The Contractor shall submit shop drawings in catalog, pamphlet and similar printed form in a minimum of four copies plus as many additional copies as the Contractor may desire or need for his use or use by his subcontractors.
- (c) Before submitting shop drawings on the mechanical and electrical work, the Contractor shall submit and obtain the Contracting Officer's and Expenditure Authority's approval of such lists of mechanical and electrical equipment and materials as may be required by the specifications.
- (d) The Contractor shall check the drawings and schedules, shall coordinate them (by means of coordination drawings wherever required by the Contracting Officer or the Expenditure Authority) with the work of all trades involved before submission and shall indicate thereon his approval. Drawings and schedules submitted without evidence of the Contractor's approval may be returned for resubmission.
- (e) Each shop drawing or coordination drawing shall have a blank area 5" x 5", located adjacent to the title block. The title block shall display the following:
- (i) Number and title of drawing,
 - (ii) Date of drawing or revision,
 - (iii) Name of project building or facility,
 - (iv) Name of Contractor and (if appropriate) name of subcontractor submitting the drawing,
 - (v) Clear identity of contents and location of work, and
 - (vi) Project title and contract number.
- (f) Unless otherwise provided in this contract or otherwise directed by the Contracting Officer, shop drawings, coordination drawings, and schedules shall be submitted to the Contracting Officer sufficiently in advance of construction requirements to permit no less than 10 working days for checking and appropriate action.
- (g) Except as otherwise provided in paragraph (h), approval of drawings and schedules will be general and shall not be construed as:
- (i) Permitting any departure from the contract requirements;
 - (ii) Relieving the Contractor of the responsibility for any errors including details, dimensions, materials, etc.; or
 - (iii) Approving departures from full-size details furnished by the Contracting Officer.

(h) If drawings or schedules show variations from the contract requirements because of standard shop practice or for other reasons, the Contractor shall describe such variations in his letter of transmittal. If acceptable, the Contracting Officer with prior approval of the Expenditure Authority may approve any or all such variations and issue an appropriate change order. If the Contractor fails to describe such variations, he shall not be relieved of the responsibility for executing the work in accordance with the contract, even though such drawings or schedules may have been approved.

34. SAMPLES

(a) After award of the contract, the Contractor shall furnish, for the approval of the Contracting Officer and Expenditure Authority, samples required by the specifications or by the Contracting Officer. Samples shall be delivered to the Contracting Officer or to the Architect/Engineer as specified or directed by the Contracting Officer. The Contractor shall prepay all shipping charges on samples. Materials or equipment for which samples are required shall not be used in the work unless approved in writing by the Contracting Officer and Expenditure Authority.

(b) Each sample shall have a label indicating the following:

- (i) Name of project building or facility,
- (ii) Project title and contract number,
- (iii) Name of Contractor and (if appropriate) the name of the subcontractor,
- (iv) Identification of material or equipment with specification requirement,
- (v) Place of origin,
- (vi) Name of sample producer and brand (if any), and
- (vii) Samples of finished materials shall be identified with the finished schedule requirements.

(c) The Contractor shall mail (under separate cover) a letter submitting each sample shipment and the label information required in paragraph (b). He shall enclose a copy of the letter with the sample shipment and send a copy of the letter to the Commonwealth representative on the project site. Approval of the sample shall be only for the characteristics of use named in such approval and shall not be construed to change or modify any contract requirement. Substitutions will not be permitted unless they are approved in writing by the Contracting Officer and the Expenditure Authority.

(d) Approved samples not destroyed in testing will be sent to the Commonwealth representative at the project site. Approved samples of hardware in good condition will be marked for identification and may be used in the work. Materials and equipment incorporated in the work shall match the approved samples. Other samples not destroyed in testing or not approved will be returned to the Contractor at his expense if so requested at the time of submission.

(e) Failure of any material to pass the specified test will be sufficient cause for refusal to consider, under the Contract, any further samples of the same brand or make of the material. The Commonwealth reserves the right to disapprove any material or equipment which previously has proven unsatisfactory in service.

(f) Samples of various materials or equipment delivered on the site or in place may be taken by the Commonwealth representative for testing. Samples failing to meet contract requirements will automatically void previous approvals of the item tested. The Contractor shall replace such materials or equipment found not to have met contract requirements, or there shall be adjustment of the contract price as determined by the Contracting Officer subject to prior approval of the Expenditure Authority.

(g) Unless otherwise specified, when tests are required, only one test of each sample proposed for use will be made at the expense of the Commonwealth. Samples which do not meet specification requirements will be rejected. Testing of additional samples will be made by the Commonwealth at the expense of the Contractor.

35. INSPECTION AND ACCEPTANCE

(a) Except as otherwise provided in the Contract, inspection and test by the Commonwealth of material and workmanship required by the Contract shall be made at reasonable times and at the site of the work, unless the Contracting Officer with prior approval from the Expenditure Authority determines that such inspection or test of material which is to be incorporated in the work shall be made at the place of production, manufacture, or shipment of such material. To the extent specified by the Contracting Officer, at the time of determining to make off-site inspection or test, such inspection or test shall be conclusive as to whether the material involved conforms to the contract requirements. Such off-site inspection or test shall not relieve the Contractor of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the Commonwealth after acceptance of the completed work under the terms of paragraph (f) of this clause, except as provided in this paragraph.

(b) The Contractor shall, without charge, replace any materials or correct any workmanship found by the Commonwealth not to conform to the contract requirements unless, in the public interest, the Commonwealth consents to accept such material or workmanship with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(c) If the Contractor does not promptly replace such material or correct such workmanship, the Commonwealth may: (1) by contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor; or (2) terminate the Contractor's right to proceed in accordance with the "Disputes and Remedies" clause.

(d) The Contractor shall furnish promptly, without additional charge, all facilities, labor and material reasonably needed for performing the safe and convenient inspection and test as may be required by the Contracting Officer. All inspection and testing by the Commonwealth shall be performed in such manner so as to not delay the work unnecessarily. Special, full size, and performance tests shall be performed as described in the Contract. The Contractor shall be charged with any additional cost of inspection when material and workmanship are not ready at the time specified by the Contractor for its inspection.

(e) Should it be considered necessary or advisable by the Commonwealth, at any time before acceptance of the entire work, to make an examination of work already completed, by removing or tearing out same, the Contractor shall, on request, promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect, due to the fault of the Contractor or his subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, an equitable adjustment shall be made in the contract price to compensate the Contractor for the additional services involved in such examination and reconstruction and, if completion of the work has been delayed thereby, he shall, in addition, be granted a suitable extension of time.

(f) Unless otherwise provided in the Contract, acceptance by the Commonwealth shall be made as promptly as practicable after completion and inspection of all work required by the Contract. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the Commonwealth's right under any warranty or guarantee. Acceptance shall only be final and conclusive after the Expenditure Authority's acceptance on behalf of the Commonwealth.

(g) The Contractor shall give the Contracting Officer at least 10 days advance written notice of the date the work will be fully complete and ready for final inspection and tests will be started within 10 days from the date specified in the aforesaid notice unless the Contracting Officer determines that the work is not ready for final inspection and so informs the Contractor.

(h) The Contractor shall submit to the Contracting Officer, in writing, a letter request for a pre-final inspection not less than 72 hours (3 days) prior to the date of the requested inspection. The Contractor should provide a copy of this letter to the Director, Technical Services Division, with a date stamp mark affixed by the Contracting Officer's office and to the office of the Expenditure Authority.

36. MATERIAL AND WORKMANSHIP

(a) Unless otherwise specifically provided in the Contract, all equipment, material, and articles incorporated in the work covered by the Contract are to be new and of the most suitable grade for the purpose intended. Unless otherwise specially provided in the Contract, reference to any equipment, material, article, or patented process, by trade name, make or catalog number, shall not be construed as limiting competition, and the Contractor may, at his option, use any equipment, material, article or process which, in the judgment of the Contracting Officer subject to prior approval of the Expenditure Authority, is equal to that named. The Contractor shall furnish to the Contracting Officer for his and the Expenditure Authority's approval the name of the manufacturer, the model number, and other identifying data and information respecting the performance, capacity, nature, and rating of the machinery and mechanical and other equipment which the Contractor contemplates incorporating in the work. When so directed, samples shall be submitted for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles installed or used without required approval shall be at the risk of subsequent rejection.

(b) All work under the Contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may, in writing, require the Contractor to remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

37. OTHER CONTRACTS

(a) The Commonwealth may undertake or award other contracts for additional work, and the Contractor shall fully cooperate with such other contractors and Commonwealth employees and carefully fit his own work to such additional work as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other Contractor, or with the performance of work by any Commonwealth employee.

38. SUBCONTRACTS

(a) Nothing contained in this contract shall be construed as creating any contractual relationship between any subcontractor and the Commonwealth. The divisions or sections of the specifications are not intended to direct the Contractor in dividing the work among subcontractors, or to limit the work performed by any trade.

(b) Within ten (10) days after award of any subcontract by either the Contractor or any of his subcontractors, the Contractor shall deliver to the Contracting Officer a statement setting forth the name and address of the subcontractor and a summary description of the work subcontracted.

(c) The Contractor shall be responsible to the Commonwealth for acts and omissions of his own employees and of subcontractors and their employees. He shall also be responsible for the coordination of the work of the trades, subcontractors, and suppliers.

(d) The Commonwealth will not undertake to settle any differences between or among the contractor, subcontractors, and suppliers.

39. COMMONWEALTH OCCUPANCY

(a) The Commonwealth reserves the right of partial occupancy or use of facilities, services, and utilities, prior to final acceptance, without implying compliance or acceptance of any part of the project by the Commonwealth. Prior to such occupancy or use, the Contracting Officer shall furnish the Contractor with an itemized list of work remaining to be performed or corrected.

(b) Costs incurred as a result of such partial occupancy or use of facilities, services and utilities are subject to equitable adjustment under the provisions of the "Changes" and the "Equitable Adjustment" clauses.

(c) Necessary restoration and repair of damage resulting from partial occupancy or use shall not be at the expense of the Contractor.

40. GUARANTEES

- (a) Unless otherwise provided in the specifications, the Contractor guarantees all mechanical and electrical work to be in accordance with the contract requirements and free from defective and inferior materials, equipment, and workmanship for one year after the final acceptance date the equipment or work was placed in use by the Commonwealth.
- (b) If, within any guarantee period, the Contracting Officer finds that guarantee work needs to be repaired or changed because of the use of materials, equipment, or workmanship which, in his opinion, are inferior, defective, or not in accordance with the terms of the contract, he shall so inform the Contractor in writing and the Contractor shall promptly and without additional expense to the Commonwealth:
- (i) Place in satisfactory condition all of such guaranteed work;
 - (ii) Satisfactorily correct all damage to equipment, the site, the building or contents therein, which is the result of unsatisfactory guaranteed work; and
 - (iii) Satisfactorily correct any work, material, or equipment that is disturbed in fulfilling the guarantee, including any disturbed work, materials and equipment that may have been guaranteed under another contract.
- (c) Should the Contractor fail to proceed promptly in accordance with the guarantee, the Commonwealth may have such work performed at the expense of the Contractor.
- (d) Any special guarantees that may be required under the contract shall be subject to the stipulations set forth above, insofar as they do not conflict with the provisions of such special guarantees.
- (e) The Contractor shall obtain each transferable guarantee or warranty of equipment, material, and installation thereof which is furnished by any manufacturer, supplier or installer in the ordinary course of the manufacturer's, supplier's, or installer's business or trade. In addition, the Contractor shall obtain and furnish to the Commonwealth all information which is required in order to make any such guarantee or warranty to the Commonwealth in sufficient time to permit the Commonwealth to meet any time limit requirement specified in the guarantee or warranty or, if no time limit is specified, prior to completion and acceptance of all work under the Contract.
- (f) This clause is not intended to limit any rights that the Commonwealth may have as provided elsewhere in the Contract, or by law.

41. MAINTENANCE OF TRAFFIC

- (a) Unless the contract specifically provides for the closing of any local road or highway to traffic while construction is in progress, all roads or highways shall be kept open to all traffic by the Contractor. The Contractor shall also provide and maintain in a safe condition, temporary approaches, crossings, and intersections with roads and highways. The Contractor shall bear all expenses for maintaining traffic over the section of road affected by work to be done under the Contract, and for constructing and maintaining such approaches, crossings, intersections and any accessory features without additional compensation, except as otherwise provided in the Contract.

42. PERMITS AND RESPONSIBILITIES

Unless otherwise agreed, the Contractor shall, without additional expense to the Commonwealth, be responsible for obtaining all necessary licenses and permits (outside of those provided by PSS) and for complying with all applicable Federal, Commonwealth of the Northern Mariana Islands, and municipal codes and regulations in connection with prosecution of the work. The Contractor shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall be responsible for all materials delivered and work performed until completion and acceptance of the entire construction work, except for any completed unit of construction thereof which therefore has been accepted.

43. PROJECT SIGNS

(a) The Contractor shall provide, place, and maintain a project sign at each site where construction operations are underway. Each sign shall be placed as directed by the Contracting Officer. Each sign shall be 4'-0" by 8'-0" in size, be made of 3/4" marine plywood (or approved equal). The signs shall state thereon the name of the owner, job number, job title, Contractor, Contracting Agency, and Design Consultant. All wording and type, and size of lettering shall be approved by the Contracting Officer. Upon completion of the work the signs shall become the property of the Contractor and shall be removed from the sites.

44. SPECIFICATIONS AND DRAWINGS

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy either in the figures, on the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing subject to prior approval of the Expenditure Authority. Any adjustment by the Contractor without such determination shall be at his own risk and expense. The Contracting Officer shall furnish from time to time such detail drawings and other information, as he may consider necessary, unless otherwise provided.

(b) In case of difference between small and large scale drawings, the large scale drawings shall govern. Schedules on any contract drawing shall take precedence over conflicting information on that or any other contract drawing. On any of the drawings where a portion of the work is detailed or drawn out and the remainder is shown in outline, the parts detailed or drawn out shall apply also to all other like portions of the work.

(c) Where the word "similar" occurs on the drawings, it shall have a general meaning and not be interpreted as being identical, and all details shall be worked out in relation to their location and their connection with other parts of the work.

45. STANDARD REFERENCES

(a) All documents and publications (such as, but not limited to, handbooks, codes, standards, and specifications) which are cited in the Contract for the purpose of establishing requirements applicable to equipment, materials, or workmanship under the Contract, shall be deemed to be incorporated herein as fully as if printed and bound with the specifications of the Contract, in accordance with the following:

(b) Wherever reference is made to Interim Federal Specifications, Interim Amendments to Federal Specifications, Interim Federal Standards, the Contractor shall comply with the requirement set out in the issue or edition identified in the Contract except as modified or as otherwise provided in the specifications of the Contract.

(c) Wherever reference is made to any document other than those specified in paragraph 45(b) above, the Contractor shall comply with the requirements set out in the edition specified in the Contract, or, if not specified, the latest edition or revision thereof, as well as the latest amendment or supplement thereto, in effect on the date of the Invitation for Bids on this project, except as modified by, as otherwise provided in, or as limited to type, class or grade by the specifications of the Contract.

(d) Federal Specifications and Federal Standards may be obtained from the Commonwealth Printing Office, Washington, D.C. 20420. Inquiries regarding "Commercial Standards", "Products Standards", and "Simplified Practice Recommendations" should be addressed to the Office of Product Standards, National Bureau of Standards, Washington, D.C. 20234. Publications of associations referred to in the specifications may be obtained directly from the associations.

(e) Upon request, the Contractor shall make available at the job site within a reasonable time, a copy of each trade manual and standard which is incorporated by reference in the Contract and which governs quality and workmanship.

46. STANDARD DETAILS

(a) Standard Details are applicable when listed, bound with the specifications, noted on the drawings or referenced elsewhere in the specifications. Where the notes on the drawings indicate modifications, such modifications shall govern.

47. MEASUREMENTS

(a) All dimensions shown on existing work and all dimensions required for work that is to connect with work now in place shall be verified by the Contractor by actual measurement of the existing work. Any discrepancies between the contract requirements and the existing conditions shall be referred to the Contracting Officer before any work affected thereby has been performed.

48. SURVEY MONUMENTS AND BENCH MARKS

(a) The Commonwealth has established, or will establish, such general reference points as will enable the Contractor to proceed with work under the Contract. The Contractor will provide new monuments, where shown or specified. If the Contractor finds that any

previously established reference points have been destroyed or displaced, or that none have been established, he shall promptly notify the Contracting Officer.

(b) The Contractor shall protect and preserve established bench marks and monuments and shall make no changes in locations without written approval of the Contracting Officer and the Expenditure Authority. Established reference points which may be lost, covered, destroyed, or disturbed in the course of performance of the work under the Contract or which require shifting because of necessary changes in grades or locations shall, subject to prior approval of the Contracting Officer and the Expenditure Authority, be replaced and accurately located (as appropriate) at the Contractor's expense by a CNMI licensed land surveyor.

(c) The Contractor shall verify the figures shown on the survey and site plan before undertaking any construction work and shall be responsible for the accuracy of the finished work.

49. PATENT INDEMNITY

(a) Except as otherwise provided, the Contractor agrees to indemnify the Commonwealth and its offices, agents, and employees against liability, including costs and expenses, for infringement upon any Letters Patent of the United States and /or foreign country (except Letters Patent issued upon an application which is now or may hereinafter be, for reasons of national security, ordered by the Commonwealth to be kept secret or otherwise withheld from issue) arising out of the performance of the Contract or out of the use or disposal by or for the account of the Commonwealth of supplies furnished or construction work performed hereunder.

50. CONVICT LABOR

(a) In connection with the performance of work under the Contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor.

51. EQUAL OPPORTUNITY

(a) During the performance of the Contract--

(i) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(ii) The Contractor will in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

- (iii) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement for the Contract, a notice, to be provided by the Contracting Officer, advising the labor union or worker's representative of the Contractor's commitments under this clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (iv) The Contractor will comply with all provisions of Executive Order No. 11246 of September 28, 1965, as amended, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.
- (v) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 28, 1965, as amended, and by the rules, regulations and orders of the said President's Committee, or pursuant thereto, and will permit access to his books, records, and accounts by the Contracting Officer and the Committee for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (b) In the event of the Contractor's noncompliance with paragraph (a), the Contract may be summarily cancelled, terminated for default, or indefinitely suspended in whole or in part, and the Contractor may be declared ineligible for further Commonwealth contracts, in accordance with the applicable procedures in the Contract and the PSS Procurement Regulations
- (c) The Contractor will include the provisions of paragraph (a) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to Section 303 of Executive Order No. 11246 of September 28, 1965, as amended, so that such action with respect to any subcontractor purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the Commonwealth to enter into such litigation to protect the interests of the Commonwealth.

52. UTILIZATION OF SMALL BUSINESS CONCERNS

- (a) It is the policy of the Commonwealth as declared by the U.S. Congress that a fair proportion of the purchase and contracts for supplies and services for the Commonwealth be placed with small business concerns.
- (b) The Contractor shall accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of the Contract.

53. WORKING HOURS

- (a) It is contemplated that all work will be performed during the regular working hours of the trades involved unless otherwise specified in the Contract. "Regular working hours" shall mean from 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays.

(b) If the Contractor desires to carry on work outside regular working hours, he shall submit an application to the Contracting Officer, and shall allow ample time to enable satisfactory arrangements to be made by the Contracting Officer for inspecting the work in progress. The cost of inspection outside of regular working hours shall be borne by the Contractor. Work performed by the Contractor at his own volition outside of regular working hours shall be at no additional expense to the Commonwealth.

(c) If the Contractor chooses and the Contracting Officer approves work at night, the Contractor shall light the different parts of the work in an approved manner.

54. SOCIAL SECURITY

(a) All employees of the Contractor and his subcontractors shall be covered under the laws of the United States Social Security System. Additional information can be obtained from the United States Social Security Office, Commonwealth of the Northern Mariana Islands, Saipan.

55. ACCIDENT PREVENTION - PUBLIC SAFETY

(a) In the performance of the contract, the Contractor shall comply with the applicable provisions of the "Commonwealth of the Northern Mariana Islands Safety Manual", and the provisions of the U.S. Occupational Safety and Health Act (OSHA), and shall take all precautions necessary to protect persons and property; including, but not limited to, providing, erecting, and maintaining all necessary barricades, suitable and sufficient red lights, danger signals, and signs. Roads subject to interference by the work shall be kept open or suitable detours shall be provided and maintained by the Contractor. If directed, the Contractor shall erect such additional warning and directional signs in connection with the work as may be furnished by the Commonwealth. Roads closed to traffic shall be protected by effective barricades on which shall be placed acceptable warning and detour signs. All barricades and obstructions shall be illuminated at night, and all lights shall be kept burning from sunset until sunrise. The cost of compliance with this clause shall be borne by the Contractor.

56. DEBRIS AND CLEANING

(a) The Contractor shall, during the progress of the work, remove and dispose of the resultant dirt and debris and keep the job site clean.

(b) Upon completion of the work, the Contractor shall remove from the vicinity of the work all plant, buildings, rubbish, unused materials, concrete forms and other like material and construction equipment belonging to him or used under his direction during construction, except as otherwise directed, and in the event of his failure to do so to the satisfaction of the Commonwealth, the same may be removed by the Commonwealth or otherwise, at the expense of the Contractor, and his surety or sureties shall be liable therefore.

57. SANITATION

(a) Adequate sanitary conveniences of an approved type for the use of persons employed on the work, and properly secluded from public observation, shall be provided and

maintained by the Contractor in such a manner and at such points as shall be required or approved by the Contracting Officer. These conveniences shall be maintained at all times without nuisance, and this shall be strictly enforced. Upon completion of the work, they shall be removed from the premises, leaving the premises clean and free from nuisance.

58. PROTECTION OF EXISTING VEGETATION, STRUCTURES, UTILITIES, AND IMPROVEMENTS

(a) The Contractor shall preserve and protect all existing vegetation such as trees, shrubs and grass on, or adjacent to, the site of work which is not to be removed and which does not reasonably interfere with the construction work. Care shall be taken in removing trees authorized for removal to avoid damage to vegetation deemed to be in place. Any limbs or branches of trees broken during such operations or by the careless operation of equipment, or by workmen, shall be trimmed with a clean cut and painted with an approved tree pruning compound as directed by the Contracting Officer.

(b) The Contractor shall protect from damage all existing improvements and utilities at or near the site of the work, the location of which is made known to him, and will repair or restore any damage to such facilities resulting from failure to comply with requirements of the Contract or the failure to exercise reasonable care in the performance of the work. If the Contractor fails or refuses to repair any such damage promptly, the Contracting Officer may have the necessary work performed and charge the cost thereof to the Contractor.

59. STORM PROTECTION

(a) The Contractor, at no additional cost to the Commonwealth, shall be responsible for the security and safety of the construction work and the site, including the Contractor's campsite, when warnings of winds of gale force are issued. Gale winds are defined as having a sustained velocity of 34 knots (39 MPH) or greater and include winds of tropical storms and typhoon intensity.

(b) Satisfactory job site clean-up is the initial, basic, day-to-day minimal preparation the Contractor can make for winds of destructive force. When warnings of winds of gale force are issued, the Contractor shall carry out, without delay, all directives concerning securing action to be taken which may be issued to him by the Contracting Officer or his designated representative. This preparation is in accordance with the contract terms and every practicable precaution shall be taken to minimize the danger to persons; to prevent damage to work in place, materials, supplies, equipment, adjacent structures, and property of others; and in the public interest.

60. FAILURE TO FURNISH INFORMATION AND RECORDS

(a) If the Contractor or any subcontractor or the officers or agents of the Contractor or any subcontractor shall refuse or have refused, except as provided otherwise by the terms Contract, to furnish to any Commonwealth agency, or any establishment in the legislative or judicial branch of the Commonwealth, information or records reasonably pertinent to the Contract or any other Commonwealth contract in connection with which the Contractor or

any such subcontractors has or shall have performed work or furnished materials or supplies or undertaken so to do, the following action may be taken:

(b) In the case of a refusal by the Contractor, its officers or agents, the Commonwealth may, after affording an opportunity to explain or justify such refusal, terminate the Contractor's right to proceed with the work under the Contract and thereupon the Commonwealth may avail itself of the rights and remedies provided in the "Termination for Default" clause, in addition to any other rights and remedies provided by law or under the Contract.

(c) In the case of a refusal by a subcontractor, its officers or agents, the Commonwealth may, after affording an opportunity to explain or justify such refusal, require the Contractor to terminate the subcontract without cost to the Commonwealth, or if the Contractor fails or refuses to effect such termination, the Commonwealth may terminate the Contractor's right to proceed with the work under the Contract and thereupon the Commonwealth may avail itself of the rights and remedies referred to in the "Termination for Default" clause.

61. PERMISSION TO ENTER THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

(a) Permission to enter the Commonwealth of the Northern Mariana Islands must be secured from the CNMI Department of Commerce and the CNMI Department of Labor and Immigration, by filling out the requisite CNMI standard forms.

62. TRANSPORTATION AND LODGING EXPENSE

(a) If the Contractor utilized nonresident labor as defined in Title 49 of the CNMI Code, and if the Contractor provides either transportation, lodging or lodging expense, or room or board expenses to any such employee, then such Contractor shall provide the same benefits to resident employees, as defined in Title 49; provided, however, that transportation, lodging, or lodging expenses; or room or board expenses need not be provided when a resident employee maintains his principal place of residence within normal commuting distance, as defined by regulations implementing Public Law No. 4C-49, from his place of employment with such Contractor.

63. OFFICIALS NOT TO BENEFIT

(a) No member of Congress of the United States, member of the Commonwealth of the Northern Mariana Islands Legislature or the Governor of the Commonwealth of the Northern Mariana Islands shall be admitted to any share of the Contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to the Contract if made with a corporation for its general benefit.

BID PROPOSAL

Date: _____

To: Contracting Officer for the Public School System
Commonwealth of the Northern Mariana Islands, Saipan MP 96950

The undersigned (hereinafter "Bidder"), a _____
(Corporation, Partnership or Sole Proprietor) organized and/or doing business under the laws of the Commonwealth of the Northern Mariana Islands, hereby proposes and agrees to furnish all the necessary labor, materials, equipment, tools, and services necessary for the **Replacement of Roof Top Package Cooling Unit at Kagman Elementary School Cafeteria Building, PSS-IFB 25-001** all in accordance with the Scope of Work, and other Contract Documents prepared by the Public School System for the prices stated in the Bid Form attached hereto, plus any and all sums to be added and/or deducted resulting from all extra and/or omitted work in accordance with the unit and/or lump sum prices stated in the attached itemized proposal form.

The bid guarantee attached, in the sum of not less than fifteen percent (15%) of the amount of the bid, is furnished to PSS as a guarantee that the agreement will be executed. In the event that this bid is accepted, and the undersigned bidder fails to execute the contract under the conditions and within the time specified in this bid, the bid guarantee shall be forfeited as liquidated damages for the delay and additional work and costs caused thereby in obtaining another bidder, the amount determined beforehand as reasonable and containing no penalties.

If written notice of the acceptance of this bid is mailed, e-mailed, or delivered to the undersigned within ninety (90) days after the opening, the undersigned agrees to execute the forms of agreement included as one of the Contract Documents, and to furnish a Performance and Payment Bond, each in an amount equal to one hundred percent (100%) of the contract amount.

The undersigned hereby acknowledges receipt of the following Addenda (if any):

Addendum No.:

Dated:

If awarded the contract, the undersigned agrees to complete the work within **One Hundred Sixty (160)** calendar days of the commencement of the Contract Time as defined in the General Terms and Conditions of the Contract and Agreement.

The undersigned understands that PSS reserves the right to reject any or all bids or to waive any formality or technicality in any bid in the interest of the Public School System.

Attached hereto is an affidavit in proof that the undersigned has not entered into any collusion with any person in respect to this proposal or any other proposal or submitting of proposals for the Contract for which proposal is submitted:

SUBMITTED BY:

Representative: _____
(Print Name) (Signature)

Title: _____

Company Name: _____

Company Address: _____

Telephone: _____ Fax: _____

BID FORM

TO: Contracting Officer for the Public School System
Commonwealth of the Northern Mariana Islands
Saipan, MP 96950

PROJECT: **PSS-IFB 25-001; Replacement of Roof Top Package Cooling Unit at Kagman Elementary School Cafeteria Building, Commonwealth of the Northern Mariana Islands**

A. The undersigned bidder, having examined all pertinent documents relating to the Invitation for Bids, proposes to provide all labor, materials, equipment, tools, appliances, transportation, storage, and items incidental to completing all work for the following total lump price:

1. **Base Bid Amount** _____
(\$ _____)

B. The bidder hereby further agrees to commence work under this contract on the date in the written "Notice to Proceed" as established by PSS and to fully complete the project within **(160)** calendar days thereafter, as stipulated in the Contract Documents. The bidder further agrees to pay as liquidated damages the sum of **Two Hundred Dollars (US\$200.00)**, or **2% of the total contract price divided by the number of calendar days, whichever is greater**, for each and every calendar day that the project is delayed beyond the established time.

C. By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, and to the best of his knowledge and belief that:

1. The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor.
2. Unless otherwise required by law, the prices that have been quoted in this bid have not been knowingly disclosed by the bidder or with any competitor.
3. No attempt has been made or will be made by the bidder to induce any other person, partnership, or corporation to submit or not to submit a bid for the purpose of restricting competition.

D. This bid may be withdrawn at any time prior to the scheduled time for the opening of the bids or any authorized postponement thereof.

IFB 25-001 Replacement of Roof Top Package Cooling Unit
at Kagman Elementary School Cafeteria Building

Representative: _____
(Print Name) (Signature)

Title: _____

Company:

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, _____
_____ as PRINCIPAL, and
_____ as SURETY, are held
and firmly bound unto the Commonwealth of the Northern Mariana Islands, hereinafter
called the "Public School System (PSS)", in the penal sum of _____
_____ Dollars (US\$ _____)
for the payment of which sum will and truly to be made, we bind ourselves, our heirs,
executors, administrators and successors, jointly and severally, firmly by these
presents.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that whereas the
Principal has submitted the accompanying bid dated _____, 2025
for _____.

NOW, THEREFORE, if the Principal shall not withdraw bid within the period
specified after the opening of the bid, or if no period is specified, within ten (10) days
after the prescribed forms are presented to him/her for signature, enter into a written
contract with PSS, in accordance with the bid as accepted, and give bond with good
and sufficient surety or sureties, as may be required, for the faithful performance and
proper fulfillment of the contract, or in the event of the withdrawal of bid within the period
specified, or the failure to enter into contract and give bond within the time specified, if
the Principal shall pay the PSS the differences between the amount specified in bid and
the amount for which PSS may procure the required work and/or supplies, if the latter
amount is in excess of the former, then the above obligation shall be void and of no
effect, otherwise to remain in full force.

IN WITNESS WHEREOF, the above-bound parties have executed this
instrument under their several seals, this _____ day of _____ 2025,
the name and corporate seal of each corporate party shall be affixed and signed by its
undersigned representative, pursuant to authority of its governing body.

The rate of premium on this bond is _____ per thousand.

The amount of premium charges is _____

(The above must be filled in by Corporate Surety).

IN PRESENCE OF:

(Individual Principal) _____ (SEAL)

(Address) _____ (Business Address)

(Individual Principal) _____ (SEAL)

(Address) _____ (Business Address)

Attest: _____ (SEAL)
(Corporate Principal)

(Business Address)

AFFIX CORPORATE SEAL

By:

Attest: _____ (SEAL)
(Corporate Principal)

(Business Address)

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the Secretary of the Corporation named as principal in the within bond; that _____ who signed the said bond on behalf of the principal was then _____ of said corporation; that I know his signature, and his signature thereon is genuine; and that said bond was duly signed, sealed and attested for and behalf of said corporation by authority of its governing body.

(Corporate Seal)

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that we, _____

_____ as Principal, and
_____ as SURETY are held
and firmly bound unto the Commonwealth of the Northern Mariana Islands, hereinafter
called the Public School System, in the penal sum of
_____ dollars (\$_____), for the payment of
which sum will and truly be made, we bind ourselves, our heirs, executors, administrators
and successors, jointly and severally, firmly by these present.

THE CONDITIONS OF THIS OBLIGATION IS SUCH, that whereas the Principal entered
into a certain contract, hereto attached, with PSS dated _____, 2025 for
_____.

NOW THEREFORE, if the Principal shall promptly make payment to all persons, supply
labor, and material in the prosecution of the work provided for in said contract, and any all
duly authorized modifications of said contract that may hereafter be made, notice of which
modifications to the surety being hereby waived, then this obligation to be void; otherwise to
remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounded parties have executed this instrument under
their several seals this _____ day of _____,
2025 the name and corporate seal of each corporate party being hereto affixed and these
present duly signed by its undersigned representative, pursuant to authority of its governing
body.

The rate of premium on this bond is _____ per thousand.

Total amount of premium charged, \$_____.

(The above must be filled in by corporate surety)

IN PRESENCE OF:

(Individual Principal) _____ (SEAL)

(Address) _____ (Business Address)

(Individual Principal) _____ (SEAL)

(Address) _____ (Business Address)

Attest: _____ (SEAL)
(Corporate Principal)

(Business Address)

AFFIX CORPORATE SEAL

By:

Attest: _____ (SEAL)
(Corporate Principal)

(Business Address)

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____ certify that I am the Secretary of the Corporation named as principal in the within bond; that _____ who signed the said bond on behalf of the principal was then _____ of said corporation; that I know his signature, and his signature thereon is genuine; and that said bond was duly signed, sealed and attested for and behalf of said corporation by authority of its governing body.

(Corporate Seal)

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that we, _____

_____ as Principal, and

_____ as **SURETY** are held and firmly bound unto the Commonwealth of the Northern Mariana Islands, hereinafter called the Public School System, in the penal sum of _____ dollars (\$_____), for the payment of which sum will and truly be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these present.

THE CONDITIONS OF THIS OBLIGATION IS SUCH, that whereas the Principal entered into a certain contract, hereto attached, with PSS dated _____, 2025 for the _____.

NOW THEREFORE, if the Principal shall promptly make payment to all persons, supply labor, and material in the prosecution of the work provided for in said contract, and any all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounded parties have executed this instrument under their several seals this _____ day of _____, 2025, the name and corporate seal of each corporate party being hereto affixed and these present duly signed by its undersigned representative, pursuant to authority of its governing body.

The rate of premium on this bond is _____ per thousand.

Total amount of premium charged, \$_____.

(The above must be filled in by corporate surety)

IN PRESENCE OF:

(Individual Principal) _____ (SEAL)

(Address) _____ (Business Address)

(Individual Principal) _____ (SEAL)

(Address) _____ (Business Address)

Attest: _____ (SEAL)
(Corporate Principal)

(Business Address)

AFFIX CORPORATE SEAL

By:

Attest: _____ (SEAL)
(Corporate Principal)

(Business Address)

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____ certify that I am the Secretary of the Corporation named as principal in the within bond; that _____ who signed the said bond on behalf of the principal was then _____ of said corporation; that I know his signature, and his signature thereon is genuine; and that said bond was duly signed, sealed and attested for and behalf of said corporation by authority of its governing body.

(Corporate Seal)

EQUAL EMPLOYMENT OPPORTUNITY

Date: _____

**PROJECT: Replacement of Roof Top Package Cooling Unit
at Kagman Elementary School Cafeteria Building**

The bidder represents that he/she [] has, [] has not, participated in a previous contract or subcontract subject to the equal opportunity clause prescribed by Executive Orders 10925, 11114, or the Secretary of Labor; that he/she [] has, [] has not, filed all required compliance reports, and that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained prior to subcontractor awards.

Representative: _____
(Print Name) (Signature)

Title: _____

Company: _____

(The above representation need not be submitted in connection with contracts or subcontracts that are exempt from the clause).

CERTIFICATION OF NON-SEGREGATED FACILITIES

**PROJECT: Replacement of Roof Top Package Cooling Unit
at Kagman Elementary School Cafeteria Building**

(Applicable to federally assisted construction contracts and related subcontracts exceeding \$10,000 which are not exempt from the Equal Opportunity Clause).

The Federally assisted construction contractor certifies that he/she does not maintain or provide for his/her employees any segregated facilities at any of his establishments, and that he/she does not permit his/her employees to perform their services at any location, under his/her control, where segregated facilities are maintained. The federally assisted construction contractor certifies further that he will not maintain or provide for his/her employees any segregated facilities at any of his/her establishments, and that he/she will not permit his/her employees to perform their services at any location, under his/her control, where segregated facilities are maintained. The federally assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term segregated facilities means "any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker room and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. The federally assisted construction contractor agrees that (except where he has obtained identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that he/she will retain such certifications in his/her files.

Representative: _____
(Print Name) (Signature)

Title: _____

Company: _____

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

Labor Standard Provisions -- Construction Contract

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Labor Standard Provisions – Construction Contract

1. MINIMUM RATE OF WAGES FOR LABORERS

(a) All mechanics and laborers employed or working directly upon the site of the work shall be paid unconditionally and not less than once each two-week period, and without subsequent deduction or rebate on any account (except such payroll deduction which are permitted by law or regulation), the full amounts due at the time of payment, computed at wage rates not less than the aggregate of the basic hourly rates and the rates of payments, contributions, or costs for any fringe benefits contained in these provisions, regardless of any contractual relationship which may be alleged to exist between the Contractor or subcontractor and such laborers and mechanics.

(b) The Contractor and subcontractors shall adhere to the provisions provided herein. The Contractor and subcontractors shall pay any person employed by them wages which are at least equivalent to and no lower than wages set forth herein.

(c) The Contractor shall post at appropriate, conspicuous points at the site of the project, a schedule showing all determined minimum wage rates for the various classes of laborers and mechanics to be engaged in work on the project under this contract and all deductions required by law to be made from wages actually earned by the laborers and mechanics so engaged.

(d) In the event it is found by the Contracting Officer that any laborer or mechanic employed by the Contractor or any subcontractor directly on the site of the work covered by this contract has been, or is being paid at a rate of wage less than the minimum rate of wages required by the contract, the Contracting Officer may (1) by written notice to the Contractor terminate his right to proceed with the work, or such part of the work as to which there has been a failure to pay said required wages, or (2) prosecute the work to completion by contract or otherwise, whereupon such Contractor and his sureties shall be liable to the Government for any excess costs occasioned by the Government thereby.

2. OVERTIME COMPENSATION

(a) The Contractor shall not require or permit any laborer or mechanic in any workweek in which he/she is employed on any work under this contract to work in excess of eight hours in any calendar day or in excess of 40 hours in such workweek unless the laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of eight hours in any calendar day or in excess of 40 hours in such workweek, whichever is the greater number of overtime hours. The "rate of pay", as used in this clause, shall be the amount paid per hour, exclusive of the Contractor's contribution or cost for fringe benefits, and any cash payment in lieu of providing fringe benefits, or the basic hourly rate contained in these provisions.

(b) In the event of any violation of the provisions of paragraph (a), the Contractor

shall be liable to any affected employee for any amounts due, and to the Government for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph (a) in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of 8 hours or in excess of the standard workweek of 40 hours without payment of the overtime wages required by paragraph (a).

3. PAYROLLS AND BASIC RECORDS

(a) With ten (10) days of issuance of the Notice to Proceed, The Contractor shall submit to the Contracting Officer a list of employees to be assigned to this project. The Contractor shall maintain such basic records and payroll records relating thereto during the course of the work and shall preserve them for a period of three years after final payment for all laborers and mechanics working at the site of the work. Such records shall contain the name and address of each such employee, correct classification, rate of pay (including rates for contribution for or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made, and actual wages paid.

(b) The Contractor shall submit biweekly, a copy of all payrolls to the Contracting Officer. The Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The copy shall be accompanied by a statement signed by the Contractor indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined herein, and that the classifications set forth for each laborer or mechanic conform with the work performed.

(c) The Contractor shall make the records required under this clause available for inspection by the Contracting Officer or his duly authorized representatives and shall permit the Contracting Officer or his duly authorized representatives to interview employees during working hours on the site of the work.

4. WITHHOLDING OF FUNDS

(a) The Contracting Officer may withhold or cause to be withheld from the Contractor, so much of the accrued payments or advances as may be considered necessary (1) to pay laborers and mechanics employed by the Contractor or any subcontractor on the work the full amount of wages required by this contract, and (2) to satisfy any liability of any Contractor for liquidated damages under Clause 2, "Overtime Compensation".

(b) If any Contractor fails to pay any laborer or mechanic employed or working on the site of the work, all or part of the wages required by this contract, the Contracting

Officer may, after written notice to the Contractor, take such action as may be necessary to cause suspension of any further payments or advances until such violations have ceased.

5. SUBCONTRACTS

The Contractor agrees to insert the Labor Standard Provisions hereof in all subcontracts let under this contract.

6. CONTRACT TERMINATION--DEBARMENT

A breach of any clause herein specified may be grounds for termination of the contract, and for debarment of the Contractor from PSS contracting.

7. WAGE RATE

(a) The minimum rate of pay that shall apply to this project shall be the current Federal minimum wage for the CNMI or the prevailing wage as determined by the Davis-Bacon Act. In no case shall any worker on this project be paid less than the Federal.

(b) Minimum wage rate shall apply to all workers on this project whether employed by the Contractor or by a subcontractor, regardless of nationality, and where they are assigned on the island.

(c) Progress payment application will be returned to the Contractor for non-compliance to the minimum wage rate. Engineer, Foreman/Supervisor shall be listed on the Contractor's payroll at an hourly wage.

(d) Any deviation from the Federal CNMI minimum wage rate will be grounds for disqualification of the Contractor from bidding on any future PSS projects.

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

**PROJECT: Replacement of Roof Top Package Cooling Unit
at Kagman Elementary School Cafeteria Building**

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988.

In addition, this certification is a material representation of fact upon which reliance is placed when the PSS determines to award the contract. If it is later determined that the contractor knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, PSS, in addition to any other remedies available, may take action authorized under the Drug-Free Workplace Act.

- A. The contractor certifies that it will provide a drug-free workplace by:
- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited at the contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - (b) Establishing a drug-free awareness programs to inform employees about:
 - (1) The dangers of drug abuse in the workplace; and the contractor's policy of maintaining a drug-free workplace;
 - (2) Any available drug counseling, rehabilitation and employee assistance programs; and the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - (c) Making it a requirement that such employee to be engaged in the performance of the work be given a copy of the statement required by paragraph (a);
 - (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the contract, the employee will:
 - (1) Abide by the terms of the statement and notify the employer of any criminal drug statue conviction for a violation occurring in the workplace no later than five days after such conviction;
 - (e) Notifying PSS within ten days after receiving notice under subparagraph (d) (1), with respect to any employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(1), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination; or requiring such employee to participate satisfactorily, complete a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or Local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. Insert in the space provided below, or include as a separate attachment, a list of the site(s) for the performance of work done in connection with the specific contract:

Place of Performance (Street, Road, Village, Island)

Representative: _____

(Print Name) (Signature)

Title: _____

Company: _____

SPECIAL PROVISIONS

1. RIGHTS-OF-WAY

The Government will furnish all lands, easements and rights-of-way required for completion of this contract. In acquiring easements or rights-of-way the Government will proceed as expeditiously as acquired prior to the beginning of construction, the Contractor shall begin work on such lands and rights-of-way as have been acquired. No claim for damage will be allowed by reason of the Government's delay in obtaining lands, easements or rights-of-way. In the event of litigation or other delays in acquiring rights-of-way, the time allowed herein for completion will be extended to compensate for the time actually lost by such delay.

2. MAINTENANCE OF TRAFFIC

Unless the contract specifically provides for the closing to traffic of any local road or highway while construction is in progress, such road or highway shall be kept open to all traffic by the Contractor. The Contractor shall also provide and maintain in a safe condition temporary approaches, crossing or intersections with roads and highways. The Contractor shall bear all expense of maintaining traffic over the section of road affected by the work to be done under this contract, and of constructing and maintaining such approaches, crossings, intersections and any accessory features without direct compensation, except as otherwise provided.

3. AS-BUILT DRAWINGS

Within 10 days after Notice to Proceed the contractor shall be provided with AutoCAD version files of the project drawings to use for as-built drawings. Upon completion of the work to be performed under this contract, and before final payment is made, the Contractor shall furnish the government with two complete sets of "as-built" drawings and modified electronic files in CD (AutoCAD latest version). These sets shall include "marked up" prints of the contract drawings and such additional drawings as may be necessary to reflect the complete "as-built" work accomplished under this contract. The "as-built" drawings shall be initiated at the beginning of the work and shall be maintained and kept current by the Contractor on the job site as the work progresses until final completion and final acceptance. Markings shall be accomplished in red on hard copies and by modified AutoCAD drawing files (DWG) and encapsulating changes in revision clouds and marking revision blocks of said drawings with Date and "As-built Changes" notation. All as-built changes shall be complete and legible to assure that the information presented is readily usable. The "as-built" drawings submitted by the Contractor will be subject to review and approval of the Contracting Officer.

4. WORK OUTSIDE REGULAR HOURS

For the purpose of establishing and defining a normal work schedule for this contract, "Regular Working Hours" means from 7:30 A.M. to 4:30 P.M., Monday to Friday, except holidays. For working hours refer to General Conditions, Page GC-2, Item No. 4, Paragraph 4.1. If the Contractor desires to carry on work outside the regular hours, or on Saturday, Sundays, or holidays, he shall provide ample time to enable satisfactory arrangements to be made by the Government for inspecting the work in progress. At night, the Contractor shall light the different parts of the work in an approved manner. Inspection cost outside of regular working hours will be borne by the contractor.

5. CHARACTERS OF WORKMEN AND APPROPRIATENESS OF EQUIPMENT

The Contractor shall employ such superintendent, foreman and workmen as are careful and competent, and the Contracting Officer may demand the dismissal of any person or persons employed by the Contractor in, about, or upon the work who shall misconduct himself or be incompetent or negligent in the proper performance of his or their duties, or neglects or refuses to comply with the directions given, and such person or persons shall not be employed again thereon without the written consent of the Contracting Officer. Should the Contractor continue to employ, or again employ such person or persons, the Contracting Officer may withhold all person or persons, the Contracting Officer may suspend the work until such orders are complied with.

The Contractor shall furnish such equipment as is considered necessary for the prosecution of the work in an acceptable manner and at a satisfactory rate of progress. All equipment, tools, and machinery used for handling materials and executing any part of the work shall be subject to approval of the Contracting Officer and shall be maintained in a satisfactory working condition. Equipment used on any portion of the work shall be such that no injury to the work, roadways, adjacent property, or other objects will result from its use. The contract may be terminated if the Contractor fails to provide adequate equipment for the work.

6. LAWS TO BE OBSERVED

The Contractor is assumed to be familiar with all Federal and local laws, codes, permits, ordinances, and regulations which, in any manner affect those engaged or employed in the work or the material or equipment used in or upon the site, or in any way affect the conduct of the work. No plea of misunderstanding or ignorance on the part of the Contractor will, in any way, serve to modify the provisions of the contract.

7. FAILURE TO COMPLETE THE WORK ON TIME

In case the Contractor shall fail to fully perform and complete the work in conformity to the provisions and conditions of the contract within the specified time limit for such performance and completion or within such further time as, in accordance with the provisions of this agreement, shall be fixed or allowed for such performance and completion, the contractor shall and will pay the Government for each and every day of the additional time in excess of the Contract Time and in any granted extension thereof, the sum given in the instructions to Bidders, which said sum per day is agreed upon, fixed and determined by the parties hereto. The amount shown is considered to be liquidated damages to reimburse the Government for loss and damages suffered by the Government and in no case a penalty.

The Government shall recover said damages by deducting the amount thereof out of any moneys which may be due or become due the Contractor or by an action at law against the Contractor or his surety, or by either or both of these methods.

8. ADJUSTMENT FOR SUSPENDED WORK

In the event the Contractor is ordered by the Contracting Officer in writing, to suspend work for some unforeseen cause not provided for in the Specifications, General Provisions, General Conditions, Special Provisions, Bid Proposal, Contract, or work order and over which the Contractor has no control, the Contractor may be reimbursed for actual money expended on the job during the period of shutdown. No allowance will be made for anticipated profits. The period of shutdown shall be computed from the date set out in written order for work to cease until the date of the order for work to resume. Claims for such compensation shall be filed with the Contracting Officer within 10 days after date of order to resume work or such claim will not be considered. The Contractor shall submit all supporting documentation, receipts and pertinent information with his claim. The Contracting Officer shall take the claim under consideration, and may make such investigations as are deemed necessary, and shall be the sole judge as to the equitability of such claim and such decision shall be final.

No provision of this article shall be construed as entitling the Contractor to compensation for delays due to inclement weather, delays due to failure for surety, for suspensions made at the request of the Contractor or for any other delay provided for in the Specifications, Special Provisions, General Provisions, General Conditions, Bid Proposal, Contract, or Work Order.

The Contractor, at all times, shall observe and comply with all Federal and local laws, codes, permits, ordinances, and regulations in any manner affecting the conduct of the work, and the contractor and his surety shall indemnify and save harmless the Government of the Commonwealth of the Northern Mariana Islands and all its officers, agents and servants against any claim or liability arising from

or based on the violation of such law ordinance, regulations order, or decree, whether by himself or his employees.

9. TEMPORARY SUSPENSION OF WORK

The Contracting Officer shall have the authority to suspend the work whole or in part because of the failure on the part of the Contractor to prosecute properly the work in accordance with the contract, to carry out orders or to remove defective materials or work. The Contractor shall not suspend the work without written authority and prior to resuming work shall give the Contracting Officer forty-eight (48) hours notice to afford opportunity to re-establish supervision.

10. DETERMINATION AND EXTENSION OF CONTRACT TIME FOR COMPLETION

The Contractor shall perform fully, entirely, and in a satisfactory and acceptable manner the work contracted, within the number of calendar days stipulated in the Bid Proposal and the Contract. Time will be assessed against the Contractor beginning with the date of the Notice to Proceed. In adjusting the contract time for the completion of the project, fires, flood, epidemics, quarantine restrictions, strikes, freight embargoes, typhoons (condition I and II), earthquakes, and other calamities or any condition over which the Contractor has no control, and also any suspension ordered by the Contracting Officer for cause not the fault of the Contractor, shall be excluded from the computation of the contract time for completion of the work. If the satisfactory execution and completion of the contract shall require work or materials in greater amounts or quantities than those set forth in the contract, then the contract time shall automatically be increased in the same proportion as the cost of the additional work bears to the original work contracted for. No allowances shall be made for delays or suspension of the prosecution of the work due to the fault of the Contractor. In order to secure an extension of time for delays beyond his control, the Contractor shall, within ten (10) days from the beginning of any such delay, notify the Contracting Officer in writing of the causes of delay whereupon the Contracting Officer will ascertain the facts and extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension, and his finding of fact thereon shall be final and conclusive.

11. PROJECT SIGN

The Contractor shall provide, place and maintain a project sign at each site where construction operations are underway. Each shall be placed as directed by the Contracting Officer. Each sign shall be 4'-0" by 8'-0" in size, be made of ¾" marine plywood, or approved equal, Lt. tan background with dark brown Pittsburgh Waterspar enamel, or approved equal, borders and letters. The signs shall state thereon the name of the owner, job number, job title, Contractor, Contracting Agency, and Design Engineer. All wording and type and size of

lettering shall be approved by the Contracting Officer. Upon completion of the work the signs shall become the property of the Contractor and removed from the sites.

12. CONTRACTOR RESPONSIBILITY

The Contractor should request the government authority to indicate the actual locations of existing utilities to preclude damage during construction.

The Contractor shall inquire construction requirements from the Department of Public Works prior to the construction of the project.

The Contractor should visit the site prior to bidding.

The Contractor should be responsible in reporting to the state historical preservation office any discovery encountered during execution of this contract bearing ecological, cultural or historical content for verification and determination.

