



**GOVERNMENT OF THE  
FEDERATED STATES OF MICRONESIA**  
Department of Transportation, Communications & Infrastructure  
P.O. Box PS-2 Palikir, Pohnpei FM 96941  
Tel.: (691) 320-2865 fax: (691) 320-5853

## **REQUEST FOR QUALIFICATIONS (RFQ)**

### **“Construction Management Services for the Design-Build of Three (3) School Buildings Project” in Pohnpei State, Federated States of Micronesia**

#### **NOTICE**

The Department of Transportation, Communications & Infrastructure of Federated States of Micronesia (FSMDTC&I), through its Program Management Unit (PMU), is hereby soliciting Statements of Professional Qualifications from interested entities for the purpose of implementing the “Construction Management Services for the Design-Build of Three (3) School Buildings Project” in Pohnpei State, FSM. This Work will be performed with funding under the FSM Infrastructure Compact grants.

The consulting services comprise a sequence of tasks which may include but not limited to:

- a. Provide a full-time supervisory staff, two full-time resident engineers, one clerk and as-needed inspectors at the job site to coordinate and provide general direction of the Work and monitor the progress of the contractor;
- b. Schedule and conduct progress meetings on a weekly or as needed basis;
- c. Verify the quality of the Work in accordance with the Contract Documents;
- d. Provide daily log, weekly and monthly construction reports;
- e. Review and approve shop drawings, material, and test samples submitted by contractor;
- f. Review and approve contractor’s invoices;
- g. Perform substantial and final completion inspections;
- h. Prepare substantial and final construction reports.

The duration of the services is nineteen (19) calendar months starting from the date of Notice to Proceed issued to the selected consultant.

Further details of this RFQ may be obtained by sending a written interest via email to [pohnpei.3schoolsproject@gmail.com](mailto:pohnpei.3schoolsproject@gmail.com) with the subject heading, Statement of Qualifications for the “Construction Management Services for the Design-Build of Three (3) School Buildings Project in Pohnpei State”.

In order to be considered, Statements of Professional Qualifications must be submitted no later than 4:00P.M. Pohnpei, FSM time, September 16, 2016.

FSMDTC&I reserves the right to reject any and all Statements of Professional Qualifications submitted for any reason, if in FSMDTC&I’s sole opinion to do so would be in FSMDTC&I’s best interest.



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## **NOTICE TO PROVIDERS OF PROFESSIONAL SERVICES**

The Department of Transportation, Communications & Infrastructure of Federated States of Micronesia (FSMDTC&I) is hereby soliciting Statements of Professional Qualifications from interested entities for the purpose of implementing the “**Construction Management Services for the Design-Build of Three (3) School Buildings Project**” in Pohnpei State, FSM. This work will be performed with funding under the FSM Infrastructure Compact grants.

The consulting service is anticipated to be immediately required, and will have a contract completion time of approximately **nineteen (19) calendar months** from the date of Notice to Proceed issued to the selected contractor.

### **Section 1: Introduction**

Due to the increase of student population and current conditions of existing classroom buildings, the construction of new 2-storey school buildings have been prioritized for implementation at three locations in Pohnpei State under the State’s Infrastructure Development Plan. The buildings, along with other school facilities, will be in Lukop Elementary School, Sokehs Powe Elementary School and Ohmine Elementary School. Consultations with the State representatives and school administrators have been carried out to finalize the scopes for these projects. As agreed by the Pohnpei State representatives, the three projects will be bid out altogether under one package by design/build method of procurement.

The building at Lukop Elementary School shall consist of 9 classrooms with a seating capacity of 30 students each, an Early Childhood Education (ECE) room, a science laboratory, a computer room, a library and a room partitioned for the principal’s office, teachers and administrative staff. Both floors shall have comfort rooms. Improvement works on the existing basketball court and a canopy for a proposed multi-purpose area within the school compound shall be included in the project.

The building at Sokehs Powe Elementary School shall consist of 8 classrooms with a seating capacity of 30 students each, an ECE room, a computer room, a library and a room for the principal’s office, teachers and administrative staff. Both floors shall have comfort rooms. A basketball court within the school compound shall be included in the project.

The building at Ohmine Elementary School shall consist of 10 classrooms with a seating capacity of 30 students each, an ECE room, a computer room, a library and a room partitioned for the principal’s office, teachers and administrative staff. Both floors shall have comfort rooms. A concrete pavement adjacent to the building shall be included in the project.

## **Section 2: Scope of Work**

FSMDTC&I is seeking a qualified firm to assist the government in overseeing and monitoring the implementation of the Construction of Three (3) School Buildings Project in Pohnpei State, FSM. The scope of works may contain the following tasks. Detailed description of duties shall be listed in the contract agreement (*see attached draft contract agreement*).

- a. Provide a full-time supervisory staff, two full-time resident engineers, one clerk and as-needed inspectors at the job site to coordinate and provide general direction of the Work and monitor the progress of the contractor;
- b. Schedule and conduct progress meetings on a weekly or as needed basis;
- c. Verify the quality of the Work in accordance with the Contract Documents;
- d. Provide daily log, weekly and monthly construction reports;
- e. Review and approve shop drawings, material, and test samples submitted by contractor;
- f. Review and approve contractor's invoices;
- g. Perform substantial and final completion inspections;
- h. Prepare substantial and final construction reports.

## **Section 3: Statements of Qualifications**

The FSMDTC&I invites Statements of Qualifications (SOQ) from interested and qualified firms for the implementation of Construction Management Services. Firms must demonstrate the minimum qualifications presented below.

### **Minimum Qualifications:**

- Company's past experience in school building projects.
- Company's past experience in design-build projects
- Company's past experience in construction management of school building projects.
- The qualification and experience of construction supervisory staff to be assigned on site.
- Knowledge and familiarity with Compact-funded projects.
- Company's capability to complete the services on schedule.

## **Section 4: Selection Criteria and Process**

The firm or entity will be selected on its technical experience and expertise. The firm and/or entity must prepare a proposal stating the applicable experience that would support the construction management service of the said project. The evaluation criteria below will be used to score the submittals. All criteria are important and submitters should provide equal attention

to thoroughly respond to each criterion. In responding to the evaluation criteria, submittals should be organized so that the submitter's qualifications are clearly illustrated in each of the categories, using the submittal requirements for each criterion.

The response will be evaluated by the following criteria:

1. The firm's overall experience and professional qualifications relevant to the project. (25%)
2. Past experience on projects of similar scope. (15%)
3. Past experience of the construction management team for this project. (30%)
4. Contents of the Statement of Qualifications. (30%)

### **Section 5: Use of Sub-Consultants**

FSMDTC&I recognizes that the selected responder may desire or need the services of sub-consultants to undertake various elements and items of the project. In the event that such sub-consultants are anticipated, the Statement of Qualifications shall identify the proposed sub-consultants and the specific elements and items for which each will be responsible. The use of any sub-consultant shall not relieve the primary responder of any responsibilities for execution of the project. The primary responder for the project shall identify a single point-of-contact.

### **Section 6: Due Date for Submitting Qualification Statements**

In response to the RFQ, all interested entities must submit their Statement of Qualifications by email to [pohnpei.3schoolsproject@gmail.com](mailto:pohnpei.3schoolsproject@gmail.com) with the subject heading "Construction Management Services for the Design-Build of (3) School Buildings Project in Pohnpei State" no later than 4:00pm Pohnpei, FSM time, Friday, September 16, 2016, in order to be considered. The email shall be addressed to the attention of:

Mao Peng  
Program Manager  
Program Management Unit (PMU)  
FSM Department of Transportation, Communications and Infrastructure  
Palikir, Pohnpei FM 96941

Any pre-submittal inquiries or request for information shall be sent via email to [pohnpei.3schoolsproject@gmail.com](mailto:pohnpei.3schoolsproject@gmail.com) by September 2, 2016. Oral responses to questions and clarifications should not be relied upon.

## **Section 7: Contract Award**

This request for Statements of Qualifications does not commit FSMDTC&I to award a contract, to pay any costs incurred in the preparation of a proposal, or to procure or contract for services. FSMDTC&I reserves the right to reject any and all Statement of Qualifications submitted for any reason, if in FSMDTC&I's sole opinion to do so would be in FSMDTC&I's best interest.

**OWNER-CONSULTANT AGREEMENT BETWEEN  
FSM NATIONAL GOVERNMENT AND \_\_\_\_\_**

**AGREEMENT**

An Agreement made effective this \_\_\_\_ day of \_\_\_\_\_ 2016 between:

As the Owner:

**FSM NATIONAL GOVERNMENT  
DEPARTMENT OF TRANSPORTATION, COMMUNICATIONS &  
INFRASTRUCTURE  
P.O. Box PS-2  
PALIKIR, POHNPEI FM 96941**

and the Consultant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Project:

**CONSTRUCTION MANAGEMENT SERVICES FOR THE DESIGN-BUILD OF  
THREE (3) SCHOOL BUILDINGS PROJECT  
Pohnpei State, Federated States of Micronesia**

The Owner and the Consultant agree as set forth below.



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**CONTRACT FOR CONSULTING SERVICES**

**CONTRACT # \_\_\_\_\_**

This contract is made by and between the **NATIONAL GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA** (hereinafter, the **GOVERNMENT**) as represented by the **PROGRAM MANAGEMENT UNIT (PMU)** of the **FSM DEPARTMENT OF TRANSPORTATION, COMMUNICATIONS & INFRASTRUCTURE** (hereinafter, **FSMDTC&I**) and the **Secretary or his assignee** (hereinafter, the **CONTRACTING OFFICER**), and \_\_\_\_\_ (hereinafter, the **CONSULTANT**), and collectively referred to as **“PARTIES”**.

**RECITALS:**

**WHEREAS**, the **GOVERNMENT** desires to retain on a consulting basis, the professional services of an Architectural and/or Engineering firm to provide the **“Construction Management Services for the Design-Build of Three (3) School Buildings Project in Pohnpei State”** funded under the FSM Infrastructure Compact Funds.

**WHEREAS**, the **GOVERNMENT** has determined that the **CONSULTANT** possesses the requisite skills and qualification to provide the services desired by the **FSM NATIONAL GOVERNMENT** and has accordingly been selected by the **GOVERNMENT** to provide such services; and

**WHEREAS**, the parties have met and negotiated the terms and provisions of the Contract.

**WITNESSETH:**

**NOW THEREFORE**, the **CONSULTANT**, in consideration of the sum to be paid by the **GOVERNMENT**, and of the mutual covenants, promises and agreements herein contained, hereby agrees as follows:

**1. DUTIES OF CONSULTANT**

Within the terms provided for herein, the **CONSULTANT** shall faithfully and competently perform the duties necessary to execute the following architectural and/or engineering services:

**A. Scope of Works (SOW)**

In conjunction with contractor (the “Contractor”) who will construct the Work (the “Work”) under the Construction Contract, **CONSTRUCTION MANAGEMENT SERVICES** provided by **CONSULTANT** may include but not limited to:

- (1) Maintain a full-time supervisory staff, two full-time resident engineers, one clerk and as-needed inspectors at the job site to coordinate and provide general direction of the Work and monitor the progress of the Contractor, all to suit the schedule requirements of the Work (the “Work Schedule”). The full time supervisory staff’s qualification shall be submitted to **GOVERNMENT** for approval before the commencement of the “Work”.
- (2) Schedule and conduct progress meetings on a weekly or as needed basis at which the Contractor, **GOVERNMENT** and the Architect/Engineer, can discuss, jointly, such matters as procedures, progress, problems, and scheduling to establish status and accountability for necessary timely action for such matters.
- (3) Monitor the progress and verify the quality of the Work and determine if it is being performed in a manner which when complete, will be in accordance with the Contract Documents.
- (4) Establish on-site organization and lines of authority in order to carry out the overall responsibilities of **GOVERNMENT**, the Contractor and the Architect/Engineer pursuant to the Contract Documents.
- (5) Establish procedures for coordination among **GOVERNMENT**, the Architect/Engineer, and the Contractor with respect to all aspects of the Work and implement such procedures.



- (6) Monitor and comment on the Construction Contractor's Work Schedule for the operations of Contractors, including realistic activity sequences and durations, allocation of labor and materials, processing of shop drawings and samples and delivery of products requiring long-lead procurement; including occupancy requirements, showing portions of the Work having occupancy priority.
- (7) Provide regular monitoring of the Work Schedule as construction progresses; identify potential variances between scheduled and probable completion dates; review schedule for Work not started or incomplete and recommend adjustments in the schedule to meet the probable completion date; and, provide summary reports and document all changes in the Work Schedule.
- (8) In cooperation with the Architect/Engineer, establish and implement procedures to be followed for expediting and processing by the Architect/Engineer of shop drawings, material submissions, and samples etc., submitted by Contractor.
- (9) Review, monitor and report on and to FSM DTC&I and the Construction Contractor's submittals, per the specifications, regarding safety, job site records, scheduling/report, etc. relating to safety, job site records, labor relations, and progress reports.
- (10) In the case of damage to the Works, consult through the Contractor, with the Architect/Engineer and recommend corrective measures of **GOVERNMENT**'s approval.
- (11) Record the progress of the Work; and submit monthly written progress reports to **GOVERNMENT**, including information of the Contractor and suppliers, the percentage of completion and the number and value of changes. The Construction Supervisory Staff shall keep a daily log containing a record of weather, Contractor's Work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as the **GOVERNMENT** may require.
- (12) The Construction Supervisory Staff shall maintain at the Project site for the **GOVERNMENT** one record copy of all Contracts, Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition, approved Shop Drawings, Product Data, Samples and similar required submittals. The Construction Supervisory Staff shall maintain records, in duplicates, of principal Project layout lines and key site elevations certified by a qualified surveyor or professional engineer.

- (13) Respond to all questions relating to design and interpretation of design follow up for timely responses.
- (14) Review Contractor's plant and equipment and repair or replacement.
- (15) Review Contractor's procurement plan, on-site storage and security procedures.
- (16) The Construction Supervisory Staff will review key site personnel provided by Contractor and make recommendations to **GOVERNMENT** as to their acceptability and suitability for the project works.
- (17) Review and approve the invoices submitted by the contractor.
- (18) Perform substantial completion inspection with representative(s) of **GOVERNMENT**.
- (19) Upon substantial completion of the Work or designated portions thereof, prepare, with the Architect/Engineer, a list of incomplete or unsatisfactory items and a schedule for their completion; and, before or concurrently, as the Architect/Engineer certifies the date of substantial completion, monitor the correction and completion of the snag list work by the Contractor.
- (20) Prepare substantial completion report according to the requirement of **GOVERNMENT**.
- (21) Perform final completion inspection with representative(s) of **GOVERNMENT**.
- (22) Prepare final inspection report according to the requirement of **GOVERNMENT**.
- (23) The Construction Supervisory Staff shall secure and transmit to the **GOVERNMENT** all keys, manuals, record drawings and maintenance stocks.
- (24) Monitor approval and receipt of all operations and maintenance manuals, as-built drawings, permits, affidavits, and other required Contract Documents, and monitor receipt of Contractor and equipment supplier warranties and guarantees.

All works hereunder shall be for the **Department of Transportation, Communications & Infrastructure** of the **FSM NATIONAL GOVERNMENT**.

## **2. TERM AND PLACE OF PERFORMANCE**

The **CONSULTANT** shall commence performance of duties upon receipt of Notice to Proceed. Said performance shall commence and be completed within a period stated in Clause 6 of this Contract, unless amended by the **GOVERNMENT** under a change order.

**3. AUTHORITY OF THE CONTRACTING OFFICER**

The Contracting Officer shall decide any and all questions which may arise as to the quality and acceptability of materials furnished, work performed and as to the manner of performance and rate of progress of the Work. He shall decide all questions which may arise as to the interpretation of the specifications or plans relating to the Work, the fulfillment of the contract on the part of the Contractor, and the rights of different Contractors on the project. The Contracting Officer shall determine the amount and quality of the several kinds of work performed and materials furnished which are to be paid for the under contract.

**4. PAYMENT**

Subject to the terms, conditions and the performance of the duties as specified hereof, the **CONSULTANT** shall be entitled to compensation, benefits and reimbursement, subject to additions and deductions by Change Order as follows:

**A. Professional Fees**

As described in Exhibit A to this Agreement, the total sum of the contract shall not exceed \_\_\_\_\_ **Dollars (US\$ \_\_\_\_\_)**.

The travel expenses are reimbursable. The **CONSULTANT** shall provide airline tickets, boarding passes, car rental receipts, and other supporting documents according to the requirements of the FSM National Government travel policy.

All payments to which the **CONSULTANT** is entitled shall be upon monthly invoice and progress report. Certification and approval of the completion of the project shall be by the **GOVERNMENT's** Contracting Officer.

Payment is subject to acceptance in writing by the **GOVERNMENT** of the Consultant's satisfactory completion of specified and assigned duties. Such acceptance may not be unreasonably withheld. The **CONSULTANT** shall not be entitled to any other payment, taxes, duties, compensation, fee, cost, reimbursement or benefit of any nature whatsoever except as specifically set out above, unless otherwise agreed to in writing by an authorized official of the **GOVERNMENT** as provided by the laws of **THE FSM NATIONAL GOVERNMENT**, or applicable federal laws of the United States.

## **B. Progress Billings**

Invoices shall be submitted monthly, and they shall be reviewed within ten (10) calendar days by the **GOVERNMENT**. The invoices shall be approved in their entirety, partially approved or not approved.

Invoices that are either entirely or partially approved shall be paid within thirty (30) calendar days of the approval and no later than forty (40) days after submittal.

The **GOVERNMENT** and **CONSULTANT** shall confer and attempt to resolve any disputed invoices, or invoice items before the next billing period, following the submittal of the disputed invoice or invoice items.

The **GOVERNMENT** shall identify in writing the specific cause of the disagreement and the amount in dispute in accordance with other payment terms of this Agreement. Any dispute over invoiced amount due which cannot be resolved by direct negotiation shall be resolved within sixty (60) calendar days in accordance with the Dispute Resolution provision of this agreement.

## **5. ASSIGNMENT**

The **CONSULTANT** shall neither assign nor subcontract any portion of this Contract and furthermore, no assignment of any monies due hereunder to the **CONSULTANT**, either voluntarily or by operation of law, shall be valid without the prior written consent of the **GOVERNMENT**. It is expressly understood and agreed that such consent will be wholly within the discretion of the **GOVERNMENT** and will be granted only in exceptional cases.

## **6. CONTRACT TIME**

Work shall commence on the date of the Notice to Proceed (NTP) and shall be completed within **nineteen (19) calendar months** thereafter. Extension beyond the **nineteen (19) calendar months** requires approval in writing from the **GOVERNMENT**. Extension will depend on satisfactory performance, funding availability and the amount of consulting work needed by the FSM Department of Transportation, Communications and Infrastructure.

**7. AMENDMENTS IN WRITING**

This Contract may be amended at any time during the term hereof, with or without additional considerations provided, however, no amendments or other variation of the Contract shall be valid unless in writing and signed by the **CONSULTANT** and the **GOVERNMENT**.

**8. RELATIONSHIP OF PARTIES**

The relationship of the parties hereto shall in no event be deemed or construed to be that of employer and employee or of principal and agent, or of any other relationship other than the **CONSULTANT** as an independent contractor to provide the services specifies in this Contract.

**9. PERMITS & LICENSES**

It is the responsibility of the **CONSULTANT** to acquire all necessary permits and licenses to the extent required by the FSM law and laws of Pohnpei State. Prior to commencing work on the project, the **CONSULTANT** must submit a written statement that it has obtained all necessary permits and licenses along with copies of the permits and licenses obtained (including a Foreign Investment Permit under Title 32, Section 204 of the FSM Code).

**10. TERMINATION OR TERMINATION OF SERVICES**

**A. Suspension Because of Force Majeure**

- a. The duties and obligations of each of the parties hereunder shall be suspended, in whole or in part, during such times as performance by either party is prevented or impeded by labor strikes, lockouts, or other industrial disturbances, riots, fire, explosions, governmental action, act of the public enemy, war, insurrection, civil disturbances, acts of God, epidemic, or any other cause beyond the control of either party thereto.
- b. In the event of Force Majeure, the parties will use their best efforts to achieve within thirty (30) calendar days, the normal pursuit of the Agreement and to regain the time lost. The final completion date of the work shall be extended by mutual agreement for any delay, which cannot be absorbed within the completion schedule. The obligations of the parties hereunder shall otherwise be unaffected.
- c. No such suspension, however, shall suspend, alter, or affect **CONSULTANT**'s right to receive payments or costs for actual work already performed or for all costs resulting from such suspension. The **GOVERNMENT** may issue a written determination of its

assessment of reasonable costs resulting from such suspension which shall be binding assessment.

- d. Any party claiming Force Majeure as a cause for delay or nonperformance shall be given written notice thereof to the other party, providing evidence of the instance within thirty (30) days of the event causing the delay or nonperformance.
- e. In the event of suspension for a cause herein described for more than thirty (30) days, either party shall have the right to terminate this Agreement by giving written notice to the other party.

**B. Suspension or Termination for Cause or Convenience**

- a. For Breach or Default. In the event **CONSULTANT** or **GOVERNMENT** is in breach or default of this Contract, or any material provision thereof, and does not remedy such breach or default within thirty (30) days after receipt of written notice of breach or default by other party, this Contract may at any time thereafter be suspended or terminated by the other party by its giving to the party guilty of such breach or default a written Notice of Termination or Suspension. In the event of termination, the Notice shall specify an effective date that provides for an orderly shutdown of the work. Any waiver of a similar or a subsequent or default has no effect on a breach or default under this section.
- b. For Convenience. FSM may terminate this agreement for convenience at any time during its validity and for no fault of **CONSULTANT** by giving a written Notice of Termination to **CONSULTANT** in sufficient time for an orderly shutdown of the work.
- c. **CONSULTANT's** Actions on Termination. After issuance of a Notice of Termination, **CONSULTANT** shall stop all its activities under this Contract on or before the date specified in the Notice, except as directed by **GOVERNMENT**.
  - i. Assign to **GOVERNMENT**, in the manner, at the times, and to the extent directed by **GOVERNMENT**, all of the right, title, and interest of **CONSULTANT** in and all existing orders and agreement;
  - ii. Settle all outstanding liabilities and all claims arising out of any terminated orders and subcontracts;
  - iii. Deliver to **GOVERNMENT**, in the manner, at the times, and to the extent directed by **GOVERNMENT**, all documents and materials procured by **CONSULTANT**,

and materials and equipment procured by **CONSULTANT**, if any, as part of or in connection with the work.

**C. Payment Upon Suspension or Force Majeure**

In the case of suspension of the work by either party or resulting from Force Majeure, **GOVERNMENT** shall pay **CONSULTANT**, costs incurred by it as a result of maintaining personnel available in sufficient strength and at the proper locations to permit prompt resumption and efficient prosecution of the work upon the cessation of the suspension, plus actual costs resulting directly from the Force Majeure or the suspension to the extent that they are reasonable and unavoidable, as mutually agreed by **GOVERNMENT** and **CONSULTANT**.

**D. Payment Upon Termination**

- a. Upon termination of the Agreement for convenience of **GOVERNMENT** or Force Majeure, or breach default by **GOVERNMENT**, **GOVERNMENT** shall pay **CONSULTANT** for:
  - i. Work performed by **CONSULTANT** to date of termination in and fully supported actual costs incurred in connection with termination and demobilization by **CONSULTANT**.
  - ii. The cost of settling paying claims arising out of termination of work under subcontracts or orders.
  - iii. An amount to be mutually agreed upon by **GOVERNMENT** and **CONSULTANT** as compensation to **CONSULTANT** for other costs resulting directly from such termination.
- b. Upon termination of the Agreement due to breach or default by **CONSULTANT**, **GOVERNMENT** shall pay **CONSULTANT** for:
  - i. Work performed by **CONSULTANT** to date of termination.
  - ii. The cost of settling and paying claims arising out of termination of work under subcontracts or orders.
  - iii. The **GOVERNMENT** may withhold from accounts due the **CONSULTANT** such amounts as the Contracting Officer deems to be necessary to protect the Government against loss because of outstanding liens or claims of lien holders and to reimburse the **GOVERNMENT** for the excess costs incurred in procuring similar goods and services.

## **11. INDEMNITY**

- A. The **CONSULTANT** shall indemnify, defend and hold harmless the **GOVERNMENT**, its officers, employees and agents from and against any and all claims and demands whatsoever, resulting from **CONSULTANT'S** negligent, reckless or intentional acts or omissions in connection with performance of this Contract or use by the **CONSULTANT** of any patented article, patented process, patented appliance or copyright material provided that:
- a. Any claim brought by the **GOVERNMENT** against the **CONSULTANT** under this clause must be brought by the **GOVERNMENT** within six years after the date of completion by the **CONSULTANT** of the engineering services;
  - b. Neither party shall be liable to the other for consequential damages, including, without limitation, loss of use or loss of profits, incurred by one another; and
  - c. In any event and notwithstanding any other clause, with the exception of paragraph (a) of this section, the **CONSULTANT'S** maximum aggregate liability to the **GOVERNMENT** for any loss or damage suffered by the **GOVERNMENT** (howsoever arising) shall not exceed US\$2,000,000.
  - d. The **CONSULTANT** must provide insurance sufficient to cover claims arising out of negligence, including professional negligence, and unintentional breach of contract. The **CONSULTANT** should also carry sufficient employer's liability insurance, automobile insurance and general liability insurance (see clause 22 to cover the acts and injuries of their employees, agents or subcontractors working in the FSM).

## **12. TAX CLEARANCE**

The final payment on this agreement, unless otherwise agreed to in writing by the Contracting Officer, shall not be made until the **CONSULTANT** obtains written confirmation from the FSM Secretary of the Department of Finance, the FSM Social Security Administrator and the Kosrae, Chuuk, Pohnpei and Yap States Chiefs of Revenue that all delinquent taxes levied or accrued against the **CONSULTANT** under the FSM and Kosrae, Chuuk, Pohnpei and Yap States laws have been paid.

The **GOVERNMENT** does not waive all costs associated with the Excise Tax and Duty on all materials and equipment to be used on this project. The **CONSULTANT** agrees that the Contract Sum allows for complying with the **FSM NATIONAL GOVERNMENT** laws and regulations regarding the Excise Tax and Duty on Materials and Equipment.



**13. APPLICABLE LAWS, JURISDICTIONS**

This Contract shall be construed according to the laws of the **FSM NATIONAL GOVERNMENT**. All judicial proceeding shall be in the **FSM SUPREME COURT** and the trial division of the **FSM SUPREME COURT** has the jurisdiction over all disputes. The **CONSULTANT** shall appoint a local representative, as agent for service within the jurisdiction, and provide the name(s) of its representative(s) to the **FSM NATIONAL GOVERNMENT** when the contract is fully executed.

**14. NOTICES**

All notices and correspondence required to be sent to either party hereunder shall be sent to the parties at the address stated in this paragraph, either by mail or delivered personally. Service or any notice or demand by mail shall be deemed complete ten (10) days after mailing or the date actually received, whichever is first.

**FOR THE GOVERNMENT:**

**NAME:** Mao Peng  
Program Manager  
Program Management Unit (PMU)  
Dept. of Transportation, Communications and Infrastructure  
P.O. Box PS-4  
Palikir, Pohnpei State 96941 FM  
**Tel: 320-2080**

**FOR THE CONSULTANT:**

**NAME:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**ADDRESS:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**TEL:** \_\_\_\_\_

Either party may change its designated address by servicing notice in writing on the other party as provided above.

**15. DISPUTES**

- A. In the event of a dispute arising out of or related to this Agreement or the services to be rendered hereunder, the **GOVERNMENT** and the **CONSULTANT** agree to attempt to resolve such disputes in the following manner:
  - a. First, the parties agree to attempt to resolve such dispute through direct negotiations between the appropriate representatives of each party.
- B. This “Disputes” clause does not preclude consideration of questions of law in connection with decisions provided for in paragraph (A) above.

**16. COVENANT AGAINST COLLUSION**

The **CONSULTANT** warrants that neither he nor any of his employees have directly or indirectly entered into any secret or non-secret agreement, participated in any collusion, or otherwise taken any action in restraint of competition in connection with the bid or proposal submitted. For breach or violation of the warranty, the **GOVERNMENT** shall have the right to annul this Contract without liability or in its discretion to pursue the same remedies against the **CONSULTANT** that the **GOVERNMENT** could pursue in the event of breach of contract by the **CONSULTANT**, and a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages not to exceed ten percent (10%) of the Contract price.

**17. EXAMINATION OF RECORDS**

The **CONSULTANT** agrees that the Contracting Officer, or any of his duly authorized agents or representatives, shall, until the expiration of three (3) years after final payment under this Contract, have the right to examine any directly pertinent books, documents, papers, and records of the **CONSULTANT** involving transactions related to this Contract; and further that **CONSULTANT** retain all required records for three (3) years after final payment and all other pending matters are closed.

The **CONSULTANT** further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Contracting Officer or any of his duly authorized agents or representatives, shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers and records of such subcontractor involving transactions related to this Contract; and

further that the subcontractor shall retain all required records for three (3) years after final payment and all other pending matters are closed.

**18. PROHIBITION AGAINST GRATUITIES, KICKBACKS & CONTINGENT FEES**

The parties expressly acknowledge that this Contract is subject to prohibitions against Gratuities, Kickbacks and Contingent Fees which provide as follows:

**A. Gratuities.**

It shall be a breach of ethical standards for any person to offer, give or agree to give any FSM National or State employee to solicit, demands, 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 therefore.

**B. 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 contract to the prime contractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontractor or order.

**C. 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 Authority's contracts upon agreement or understanding for a commission, percentage, brokerage or contingent fees, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

By signing this agreement, **CONSULTANT** represents and warrants that he is not in violation of the above provisions.

**19. PROHIBITION AGAINST INTEREST IN CONTRACT**

No member of the **Congress of the FEDERATED STATES OF MICRONESIA** or **FSM Legislature** shall be admitted to any share or part of this Contract or to any benefit to arise from

the same, provided that the foregoing provision of this section shall not be construed to extend to this Contract if made with a corporation for its general benefit.

No employee of the **FSM NATIONAL GOVERNMENT** who exercises any functions or responsibilities in connection with the carrying out of the project to which this Contract pertains shall have any private interest, direct or indirect, in this Contract.

## **20. BREACH OF CONTRACT TERMS**

Any violation or breach of terms of this contract on the part of the **CONSULTANT** or their subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

## **21. EQUIPMENT PURCHASED UNDER THIS CONTRACT**

All equipment purchased under this contract is the property of the **GOVERNMENT** and shall be returned to the **GOVERNMENT** at the termination of this contract.

## **22. INSURANCE**

The **CONSULTANT** shall place and maintain with responsible insurance carriers the following insurance as described below. The **CONSULTANT** shall deliver to FSMDTC&I certificates of insurance, which shall provide thirty (30) days' notice to be given to FSMDTC&I in the event of cancellation. The **CONSULTANT** shall purchase and maintain the following insurance:

### **A. Workmen's Compensation and Employer's Liability Insurance**

- a. Workmen's compensation in compliance with applicable laws;
- b. Employer's Liability Insurance: No less than \$100,000

### **B. Comprehensive Bodily Injury, Personal Injury, and Property Damage Liability Insurance**

Including owned, non-owned, leased, or hired automobiles, and others:

- a. Bodily Injury Liability: \$500,000 each person; \$1,000,000 each occurrence.
- b. Property Damage Liability: \$250,000 each occurrence; \$1,000,000 aggregate.

- c. A single limit for Bodily Injury Liability and Property Damage Liability combined of: \$1,000,000 for each occurrence; \$2,000,000 aggregate.

The bodily injury portion shall include coverage for injury, sickness or disease, and death, arising directly or indirectly out of, or in connection with, the performance of work under this Contract.

**C. Professional Liability Insurance:**

Per single claim limit: \$1,000,000 and \$2,000,000 aggregate.

**23. CHECK CLEARANCE REQUIREMENT**

In accordance with FSM DTC&I's efforts to comply a three-day check clearance period, all consultants are encouraged to use banks that process payments to meet said requirement, without any exception.

The CONSULTANT shall open an account with the Bank of FSM which is the FSM Treasury's check issuing bank, to where the CONSULTANT'S checks will be deposited. Another option is to open an account with the Bank of Guam, Pohnpei Branch only. Failure to comply this requirement may be subject to the termination of the contract for convenience.

The contact details for the banks are as follows:

Bank of FSM  
P.O. Box 98  
Kolonias, Pohnpei FSM 96941  
Tel: 691-320-2661  
Fax: 691-320-5415  
email: bofsm@bofsm.fm

Bank of Guam, Pohnpei Branch  
P.O. Box 367  
Kolonias, Pohnpei FSM 96941  
Tel: 691-320-2550  
Fax: 691-320-2562  
email: pohnpei@bankofguam.com

**24. MISCELLANEOUS PROVISIONS**

In the event any part or portion of this Contract shall be found to be unenforceable, then such part or portion shall be severed from the remainder hereof as if never a part hereof, and the remainder of this Contract shall remain in full force and effect, unaffected thereby.

This instrument contains the entire agreement by the parties relating to the subject matter hereof, and any other agreement of understanding relating hereto, whether oral or written, is suspended hereby.

In connection with this Contract, the **CONSULTANT** shall comply with all laws, rules and regulations, as applicable, of the **FSM NATIONAL GOVERNMENT** and under local environmental laws.

A waiver by either party of any breach of this Contract shall not operate as a waiver of any subsequent breach hereof.

DRAFT

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE CAUSED THIS CONTRACT TO BE SIGNED IN THEIR RESPECTIVE NAMES AS OF THE DAY AND YEAR FIRST ABOVE WRITTEN.

GOVERNMENT:

\_\_\_\_\_  
Date

CONSULTANT:

\_\_\_\_\_  
Date

Internal Use Only		
<b><i>A. Legal Sufficiency Determination</i></b>		
_____ Attorney General		_____ Date
<b><i>B. Funding Availability</i></b>		
	<u>Account No.</u>	<u>Amount</u>
	<b>Total</b>	= _____
_____ Secretary of Finance		_____ Date