



# **INDEPENDENT PROSECUTOR (SPECIAL ASSISTANT ATTORNEY GENERAL)**

## **PROFESSIONAL SERVICES**

### **REQUEST FOR PROPOSAL**

#### **NO. 001-2016**

**Office of the Attorney General**  
590 S. Marine Corps Drive  
ITC Building, Suite 706, 7<sup>th</sup> Floor  
Tamuning, Guam 96913  
Telephone No. +1(671) 475-3324  
Fax No. +1(671) 477-4703

**JACQUELINE CRUZ**

Chief of Staff

## Section 1 – Request for Proposal (RFP) Timeline

### 1.1 – TABLE TIMELINE

<u>DATE</u>	<u>ACTIVITY</u>	<u>TIME</u>
February 19, 2016 (Friday)	RFP Issuance	8:00 AM Chamorro Standard Time (ChST)
February 25, 2016 (Thursday)	Pre-Proposal Conference, 9 <sup>th</sup> Floor Conference Room, ITC (Attorney must attend to pick up confidential packet at this time), or alternatively contact Chief Prosecutor, Phillip Tydingco @ 488-1956 or email <a href="mailto:ptydingco@guamag.org">ptydingco@guamag.org</a> to make arrangements to pick up packet. This must be done by no later than Friday, February 25, 2016, close of business. Failure to pick up packet will deem proposals non-responsive (see 2.3.1).	2:00 PM Chamorro Standard Time (ChST)
March 10, 2016 (Thursday)	Deadline for Submission of Written Questions	5:00 PM Chamorro Standard Time (ChST)
March 22, 2016 (Tuesday)	Deadline for Response to Written Questions	5:00 PM Chamorro Standard Time (ChST)
March 31, 2016 (Thursday)	Deadline for Submission of RFP Proposal	3:00 PM Chamorro Standard Time (ChST)

## **Section 2 – General Information, General Instructions & Project Scope**

### **2.1 – PROJECT TITLE AND SCOPE**

#### **OAG RFP NO. 001-2016, INDEPENDENT PROSECUTOR (SPECIAL ASSISTANT ATTORNEY GENERAL), PROFESSIONAL SERVICES**

##### **2.1.1 – PURPOSE**

The Office of the Attorney General (OAG) is soliciting to contract Legal Services from a qualified Attorney or Law Firm to perform the duties of an Independent Prosecutor (Special Assistant Attorney General).

The purpose of this RFP is to provide interested Offerors with sufficient information to enable them to develop and submit a proposal to serve as an independent prosecutor who reviews evidence and investigates if necessary, as well as determine if criminal charges and further prosecution are warranted in connection with acts or omissions by officials and or employees of the Government of Guam that resulted in retroactive payments made to unclassified Government of Guam employees in December 2014 or thereafter in violation of Guam law, and retroactive pay reimbursements.

##### **2.1.2 – PERSONS RESPONSIBLE FOR DRAFTING OF REQUEST FOR PROPSAL ARE:**

Phillip J. Tydingco, Chief Prosecutor and Fred Nishihira, Deputy Attorney General

##### **2.1.3 – DESCRIPTION OF SERVICES AND WORK INVOLVED**

The Services of Attorney or Law Firm shall include but not be limited to the following:

1. Review and collect evidence of allegations of unauthorized or illegal retroactive payments made to unclassified employees of the Government of Guam in December 2014 or thereafter, and retroactive pay reimbursements.
2. Provide legal consultation to his or her investigators or law enforcement authorities other than the OAG in any further investigations of allegations of unauthorized or illegal retroactive payments made to unclassified employees of the Government of Guam in December 2014 or thereafter, and retroactive pay reimbursements.
3. Determine if criminal charges are warranted and file formal charges by complaint and or indictment against Government of Guam officials and or employees or other non-Government individuals who committed crimes in connection with unauthorized or illegal retroactive payments made to unclassified employees of the Government of Guam in December 2014 or thereafter, and retroactive pay reimbursements.
4. Prosecute any criminal cases filed in the Superior Courts of Guam in connection with unauthorized or illegal retroactive payments made to unclassified employees of the Government of Guam in December 2014 or thereafter and retroactive pay reimbursements, which includes filing motions or oppositions to motion; prepare and try the case or cases before a judge or jury; participate in the sentencing of such case(s); and or obtain a non-trial resolution of the case(s).

## **BACKGROUND/TRAINING/EXPERIENCE:**

Attorney or Law Firm must be licensed to practice law on Guam and be in good standing with the Supreme Court of Guam and furnish such licenses in RFP submission.

Attorney or Law Firm must have a minimum of ten (10) years of criminal prosecution and or criminal defense experience.

Attorney or Law Firm must have a minimum of five (5) years of prosecuting and or defending property, financial, white collar, and or government corruption offenses.

Attorney or Law Firm must have prosecuted or defended a criminal case within the last three (3) years.

Attorney or Law Firm must have experience with presenting evidence to the grand jury. Attorney or Law Firm must have experience working with law enforcement officers or investigators, accountants, auditors, bank or finance institution officers or employees, government personnel specialist or human resource officers, and government payroll employees.

### **2.1.4 – DURATION OF AWARD**

The initial term of the contract resulting from this RFP will be for one (1) calendar year upon its full execution by all necessary parties. OAG, at its option, may renew the contract for up to two (2) additional years based on the availability of funds. OAG may thereafter renew contract upon written agreement between the Attorney General and Attorney or Law Firm. Such renewal shall be subject to the certification and availability of funds.

OAG shall provide timely notice if funds are not available for continuation of contract beyond the fiscal year. In the event of cancellation due to unavailability of funds, Offeror will be reimbursed unamortized, reasonably incurred, non-recurring costs.

### **2.1.5 – CONTRACT TYPE**

A contract pursuant to this RFP will be issued as drafted in **Attachment 1**. The cost shall be negotiated between the parties.

### **2.1.6 – FUNDING SOURCE(S)**

This service is funded by the General Fund.

## **2.2 – GENERAL INSTRUCTIONS**

### **2.2.1 – COMPLIANCE WITH RFP INSTRUCTIONS**

Failure to comply with the requirements of this RFP may result in proposals being deemed non-responsive and Offerors being disqualified from participation in this RFP.

### **2.2.2 – COMMUNICATION REGARDING THIS RFP**

**ANY CORRESPONDENCE OR COMMUNICATION BY A POTENTIAL OFFEROR WITH OAG MUST BE MADE IN WRITING TO THE ATTENTION OF JACQUELINE CRUZ VIA EMAIL AT [jzcruz@guamag.org](mailto:jzcruz@guamag.org) OR BY FACSIMILE AT 671-477-4703 OR BY HAND DELIVERY AT THE OFFICE OF THE ATTORNEY GENERAL. ALL WRITTEN COMMUNICATIONS MUST**

REFERENCE RFP 001 -2016 IN THE SUBJECT OR REFERENCE LINE. RFP PACKETS MAY BE PICKED UP AT THE OFFICE OF THE ATTORNEY GENERAL OR VIA OUR WEBSITE AT [www.guamag.org](http://www.guamag.org).

Each prospective Offeror **must** register contact information to ensure that they receive any notices regarding any changes or updates to the IFB/RFP. The OAG shall not be liable for failure to provide notice to any party who did not register contact information.

### 2.2.3 – ACCEPTABLE FORMAT OF PROPOSALS

***Proposals must be submitted in writing.***

Each Proposal Package should consist of the Offeror’s **separately** packaged and marked “Technical Submittal” and “the Offeror’s Cost Submittal.”

**The Proposal Package** shall be submitted in a clearly marked and sealed envelope or box.

**The Technical Submittal** should arrive in a clearly marked and sealed envelope or box that includes one (1) original with original signatures and notarizations where necessary and five (5) copies as well as one (1) electronic copy (CD or flash/thumb drive) of the Technical submittal.

**The Cost Submittal** should arrive in a clearly marked and sealed envelope or box that includes one (1) original and five (5) copies.

The Proposal Package should be delivered according to the instructions in **Section 2.2.4** and be marked on the outside with the following information:

Office of the Attorney General Request for Proposal No. <u>001 -2016</u>
Offeror’s Name: _____
Offeror’s Address: _____
Submittal Date: ___/___/___
Submittal Time: ___:___ a.m./p.m.
Attention: <b><u>Jacqueline Cruz</u></b> <b><u>Chief of Staff</u></b>

### 2.2.4 – TIME AND DATE FOR RECEIPT OF PROPOSALS

Proposals must be received by:

TIME: **3:00PM** Chamorro Standard Time (ChST)

DATE: **Thursday, March 31, 2016**

The Office of the Attorney General maintains the Official time in this regard. Proposals may be submitted any time before the deadline for receipt of proposals.

Proposals received past the time indicated above, AS THAT TIME IS INDICATED BY THE OAG, will not be considered for award.

If delivered via hand delivery, Federal Express, DHL, or other courier service, proposals must be delivered to the following physical address below. Please submit your proposal for services, resume and vitae letters of recommendation, and credential (e.g., copy of Guam Bar License, Certificate of Good Standing from Guam Supreme Court, etc.) to:

Office of the Attorney General  
Re: RFP No. **001 -2016**  
590 S. Marine Corps Drive  
ITC Building, Suite 706  
Tamuning, Guam 96913

If delivered via the United States Postal Service, bids must be delivered to the following mailing address:

MAILING ADDRESS: Office of the Attorney General  
Re: RFP No. **001 -2016**  
590 S. Marine Corps Drive  
ITC Building, Suite 706  
Tamuning, Guam 96913

### **2.2.5 – PROPOSAL SUBMISSION FORM**

Each Proposal Package will consist of the Offeror's Technical Submittal with all required forms, complete with original signatures and notarizations where necessary and Offeror's Cost Submittal.

**Technical Submittal.** The Technical Submittal should contain a thorough description of the Offeror's practice, description of relevant cases as lead counsel and resources available. At a minimum, the Technical Submittal should demonstrate that the products and services meet the specifications contained in the following areas:

- Name of Offeror and location of principal place of business;
- Age of Offeror's business and average number of employees over the last business's last fiscal year;
- Abilities, qualifications, and experience of all persons who would be assigned to provide required services;
- Listing of other contracts under which services similar in scope, size, or discipline were performed; and

- A detailed plan for performance of the services required by this RFP.
- Copy of Guam Business License (offeror is licensed to do business in Guam).

**Cost Submittal.** Offeror's Cost Submittal should include itemized pricing for all products and services being proposed under this RFP. At a minimum, the Cost Submittal should contain hourly rates and estimated expense costs for each consultant, subcontractor or employee proposed to work on this project and line item costs for each product necessary for the term of the contract. The Cost Submittal should be broken down into rates and costs for the first year, and rates for each renewal term (see 2.1.4).

**Forms.** Additional Proposal Package requirements include the return of the required forms and documents listed in **Section 4**.

#### **2.2.6 – LATE PROPOSALS NOT ACCEPTED**

Proposals received after the time and date in Section 2.2.4 – Time and Date for Receipt of Proposals will be considered nonresponsive and disqualified from participating in this solicitation.

#### **2.2.7 – TRADE SECRETS AND OTHER PROPRIETARY DATA**

Offeror must complete and submit **OAG Procurement Form 003** with the proposal, whether or not the Offeror wishes to designate information within the proposal as a Trade Secret or other proprietary information.

Blanket designations of confidentiality placed on the front cover of a proposal will not be accepted as a valid designation of proprietary information. Every item, page, section or subsection that the Offeror wishes to designate as a trade secret or proprietary data should be clearly marked and separable from the remainder of the proposal.

#### **2.2.8 – ACKNOWLEDGEMENT OF AMENDMENTS TO RFP**

This RFP may not be modified unless done by an Amendment made in writing by the Chief Prosecutor. Offerors must acknowledge in writing the receipt of any amendments to this RFP. Each amendment will contain an Amendment Acknowledgement Form. For each amendment, offerors must sign the Acknowledgment Form and return the signed copy via e-mail or fax to OAG. Signed Acknowledgment Forms for every amendment must also be included with the proposal submission. **Offerors who fail to properly submit Amendment Acknowledgment Forms may be deemed nonresponsive and disqualified from participating in this solicitation.**

### **2.3 – EVENTS, CONFERENCES and/or MEETINGS PERTINENT TO THIS RFP**

#### **2.3.1 – PRE-PROPOSAL CONFERENCE**

Pre-Proposal Conference(s), as appropriate, may be conducted in accordance with 2 GAR Div. 4 § 3109(g)(4) (Pre-Proposal Conferences). Such a conference may be held at any time prior to the established date for submission of proposals. A pre-proposal

conference will be held on **February 25, 2016, at 2:00 p.m.**, at the 9<sup>th</sup> floor conference room of the Attorney General's Office. Attorneys must be present to pick up confidential packet at this time, or alternatively contact Chief Prosecutor, Phillip Tydingco @ 488-1956 or email [ptydingco@guamag.org](mailto:ptydingco@guamag.org) to make arrangements to pick up packet. This must be done by no later than Friday, February 25, 2016, close of business. Failure to pick up packet will deem proposals non-responsive (See 2.3.1). Upon the Attorney signing the confidentiality and non-disclosure agreement, a confidential packet containing information thus far received by the OAG will be released for the purpose of attorneys or law firms to review the matter for conflicts, to create a proposal and to determine cost estimates. Each attorney will also agree that the confidential packets will not be duplicated and returned back to OAG on or before the submission date and time of the RFP.

Additional **pre-proposal conferences may be held at OAG's discretion.** Any potential offeror may submit a request for additional pre-proposal conferences in writing to the attention of **Jacqueline Cruz, Chief of Staff.** In the event OAG determines to hold additional pre-proposal conference(s), all potential offerors, that is all offerors who have requested, registered and received an RFP packet from OAG, will be informed of the date, time, location and requirements of the pre-proposal conference. A summary, minutes or recording of the pre-proposal conference will be made available to all potential offerors.

At any pre-proposal conference or site visit, OAG may provide verbal answers to verbal questions from potential Offerors. **AT NO TIME SHALL A VERBAL ANSWER BE CONSIDERED AN OFFICIAL OAG RESPONSE.** All questions must be submitted in writing in accordance with **Section 2.3.2 – Pre-Proposal Written Questions.** Only written answers may be relied upon.

### **2.3.2 – PRE-PROPOSAL WRITTEN QUESTIONS**

Potential Offerors may submit written questions concerning this RFP before the time and date listed below. Questions must be submitted in writing according to the instructions contained in **Section 2.2.2** herein. All questions and responses will be made available in writing to every potential offeror who have properly completed and submitted a bid offeror's Register. Questions submitted after the time and date below will not be considered or answered.

Questions regarding this RFP must be received in writing by OAG by:

TIME: **5:00 PM** Chamorro Standard Time (ChST)

DATE: **Thursday, March 10, 2016**

### **2.3.3- PRE-PROPOSAL CONFLICTS CHECK**

A conflict packet of potential names will be made available to Potential Offerors beginning **February 25, 2016.** Each potential Offeror is ethically responsible to review

the list and to determine if a conflict exists. The list of names are not all inclusive, additional names may be added based on the winning Offeror’s investigation.

**2.4 – AWARD**

**2.4.1 – EVALUATION FACTORS FOR AWARD**

OAG will award a contract to the best qualified Offeror. In determining the best qualified Offeror, an Evaluation Committee will evaluate each proposal including an interview according to the factors below. A total of 100 points is available (2 GAR §3114(j)).

An Evaluation Committee comprised of one (1) Senior Prosecutor or Attorney and two (2) active members of the Guam Bar Association shall conduct the evaluations of the Proposals and interview each of the Offerors, including determining the responsiveness, responsibility and ranking of each Offeror. The Chief Prosecutor shall negotiate with the highest ranked Offeror and if necessary; with the next ranked Offeror pursuant to 2 GAR §3114(k).

<u>Evaluation Factors</u>	<u>Points</u>
Presentation and Interview (1-1.5 hour) Presentation of Proposal Performance or responses to interview questions of the evaluation committee regarding the duties, obligations, responsibilities and plan for performing the required services as an independent prosecutor	30
The ability to perform the services as reflected by the background experience, technical training and education, general experience, specific experience in providing the required services, and the qualifications and abilities of personnel proposed to be assigned to perform the services	25
Availability to perform the services of the independent prosecutor or provide the same immediately	20
A record of past performance of similar size and scope of work	25
<b>Total Available Points</b>	<b>100</b>

**2.4.2- DETERMINATION OF RESPONSIBILITY AND RESPONSIVENESS**

Responsibility of an offeror will be determined in accordance with 2 GAR §3116.

Offerors should be prepared to promptly provide to OAG information relating to the offeror's responsibility. Such information may include but is not limited to documentation of financial, personnel, and other resources, expertise, or records of performance. Failure of an offeror to comply with a request by OAG for information relating to responsibility may result in a determination that the offeror is not responsible and therefore disqualified from an award.

#### **2.4.3 – NOTICE AND EXECUTION OF AWARD**

Any award pursuant to this RFP will not be complete until an agreement for the scope of work and the project is fully executed by the selected Offeror, OAG, and other required parties. A sample agreement is included in this RFP as **ATTACHMENT 1**. OAG reserves the right to alter the sample agreement as allowed by applicable law or regulation.

### **2.5 – GENERAL INFORMATION**

#### **2.5.1 – DELIVERY AND PERFORMANCE SCHEDULE**

The selected Offeror shall commence work on the date specified in the notice to proceed. A contract for goods and/or services procured through this RFP shall be subject to the availability of funds and applicable delivery and payment deadlines.

#### **2.5.2 – METHOD OF PAYMENT**

Offerors submitting proposals in response to this RFP should be aware that payments for goods and/or services procured through this RFP will be made in installments agreed upon in the contract and tied to satisfactory completion and progress of assigned tasks.

#### **2.5.3 – INSPECTION AND ACCEPTANCE OF GOODS**

Offerors submitting proposals in response to this RFP should be aware that OAG reserves the right to inspect and test all goods, supplies, materials or equipment delivered in response to this RFP. OAG reserves the right to reject and, at its discretion, require replacement of those items that are determined to be defective in material, construction, workmanship, manufacturing, or performance and/or that do not conform to the specifications described in this RFP.

#### **2.5.4 – ALTERNATE PROPOSALS**

An alternate proposal will not be accepted. A submission of an alternate proposal will be considered nonresponsive and disqualified from participating in this solicitation.

#### **2.5.5 – SAMPLES OR DESCRIPTIVE LITERATURE**

Pursuant to 2 GAR Div. 4 § 3109(e)(3), samples or descriptive literature should not be submitted to OAG unless expressly requested within this RFP. Regardless of any condition set by an offeror, unsolicited samples or descriptive literature will not be examined, tested, or deemed to vary any of the requirements of this RFP.

## SECTION 3 – TERMS AND CONDITIONS

### 3.1 – REQUIREMENTS FOR ALL SOLICITATIONS

Proposals must fulfill the requirements for all solicitations identified in this RFP. Each of the forms identified herein must be completed and returned according to the instructions provided. The term “GCA” refers to the Guam Code Annotated. The term “GAR” refers to the Guam Administrative Regulations, Division 4, Procurement Regulations. Administration of this RFP shall be subject to the Guam Procurement Law at 5 GCA Chapter 5 and the procurement regulations at 2 GAR Division 4.

### 3.2 – LICENSE TO CONDUCT BUSINESS ON GUAM; POLICY IN FAVOR OF LOCAL PROCUREMENT

Offerors providing services or supplies pursuant to or in support of this RFP are subject to licensure requirements in accordance with 5 GCA § 5008. Information about obtaining a license to do business on Guam may be obtained from the Guam Department of Revenue and Taxation. Preferential selection of businesses licensed to do business in Guam may be made in accordance with 5 GCA § 5008.

### 3.3 – LIST OF FORMS REQUIRED FOR ALL SOLICITATIONS

Offerors must complete and submit all forms required by this RFP and those listed in Section 4 herein.

### 3.4 – DISCLOSURE OF OWNERSHIP AND COMMISSIONS

Offerors must expressly identify all major shareholders in accordance with 5 GCA § 5233.

***\*\*\*AG Procurement Form 002 (Rev. Nov. 17, 2005) must be completed and included in all proposals to this RFP\*\*\****

### 3.5 – OFFERORS CERTIFY THAT PRICE OR OFFER WAS INDEPENDENTLY ARRIVED AT WITHOUT COLLUSION

By submitting a proposal, an Offeror certifies that the price or offer in its proposal was independently arrived at without collusion in accordance with 2 GAR § 3126(b).

***\*\*\*AG Procurement Form 003 (Jul. 12, 2010) must be completed and included in all responses to this RFP\*\*\****

### 3.6 – PROHIBITION AGAINST GRATUITIES AND KICKBACKS

By submitting a proposal, an Offeror certifies to the best of its knowledge that neither it, nor any of its officers, representatives, agents, subcontractors, or employees, have violated or are violating the prohibition against gratuities and kickbacks set forth in 5 GCA § 5630.

Offerors submitting proposals must certify to the best of their knowledge that neither they, nor any of their officers, representatives, agents, subcontractors, or employees have offered, given or agreed to give, any government of Guam employee or former government employee, any

payment, gift, kickback, gratuity or offer of employment in connection with the Offerors response to this RFP. 5 GCA § 5630(c); 2GAR § 11107(3) and 11107(4)(e).

***\*\*\*AG Procurement Form 004 (Jul. 12, 2010) must be completed and included in all responses to this RFP\*\*\****

### **3.7 – REPRESENTATION REGARDING ETHICAL STANDARDS**

By submitting a proposal, Offeror represents that it has not knowingly influenced and promises that it will not knowingly influence a government employee to breach any of the ethical standards set forth in 5 GCA Chapter 5 Article 11 (Ethics in Public Contracting) of the Guam Procurement Act and in Chapter 11 of the Guam Procurement Regulations.

***\*\*\*AG Procurement Form 005 (Jul. 12, 2010) must be completed and included in all responses to this RFP\*\*\****

### **3.8 – REPRESENTATION REGARDING CONTINGENT FEES**

By submitting a proposal, Offeror represents that it has not retained a person to solicit or secure a territorial contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business, in accordance with 5 GCA § 5631.

***\*\*\*AG Procurement Form 007 (Jul. 12, 2010) must be completed and included in all responses to this RFP\*\*\****

### **3.9 – RIGHT OF OAG TO CANCEL REQUEST FOR PROPOSAL**

OAG reserves the right to cancel this RFP at any time when it is in the best interests of OAG, in accordance with 5 GCA § 5225 and 2 GAR § 3115(c).

OAG reserves the right to reject any proposal in whole or in part when it is in the best interest of the Department, in accordance with 2 GAR Div. 4 § 3115(e)(2).

### **3.10 – PROHIBITION AGAINST EMPLOYMENT OF SEX OFFENDERS**

Any entity providing services pursuant to this RFP is prohibited from employing sex offenders to provide the services or goods being procured through this RFP. Specifically, pursuant to 5 GCA § 5253:

#### **§ 5253. Restriction Against Contractors Employing Convicted Sex Offenders from Working at Government of Guam Venues.**

- a) No person convicted of a sex offense under the provisions of Chapter 25 of Title 9 Guam Code Annotated, or an offense as defined in Article 2 of Chapter 28, Title 9 GCA in Guam, or an offense in any jurisdiction which includes, at a minimum, all of the elements of said offenses, or who is listed on the Sex Offender Registry, and who is employed by a business contracted to perform

services for an agency or instrumentality of the government of Guam, shall work for his employer on the property of the government of Guam other than a public highway.

- b) All contracts for services to agencies listed herein shall include the following provisions: (1) warranties that no person providing services on behalf of the contractor has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry; and (2) that if any person providing services on behalf of the contractor is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry, that such person will be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.
- c) Any Offeror found in violation of § 5253(b), after notice from the contracting authority of such violation, shall, within twenty-four (24) hours, take corrective action and shall report such action to the contracting authority. Failure to take corrective action within the stipulated period may result in the temporary suspension of the contract at the discretion of the contracting authority.

**SOURCE:** Added by P.L. 28-24:2. Amended by P.L. 28-98:2 (Feb. 7, 2006).

### **3.11 – WAGE AND BENEFITS DETERMINATION FOR SERVICES**

Offerors submitting proposals must pay employees providing services procured through this RFP in accordance with the Wage Determination for Guam and the Northern Mariana Islands issued and promulgated by U.S. Department of Labor for such labor as is employed in the direct delivery of contract deliverables to the government of Guam. 5 GCA § 5801 and § 5802, as applicable. A copy of the most recent wage determination is included herein. The Wage Determination for Guam and the Northern Mariana Islands also can be found on the U.S. Department of Labor’s website: <http://www.wdol.gov>.

Offerors submitting proposals must provide health and similar benefits for employees, such benefits having a minimum value as detailed in the Wage Determination issued and promulgated by U.S. Department of Labor and shall contain provisions guaranteeing a minimum of ten (10) paid holidays per annum per employee. 5 GCA § 5802.

***\*\*\*AG Procurement Form 006 (Feb. 16, 2010) must be completed and included in all responses to this RFP.\*\*\****

### **3.12 – MANDATORY DISPUTES CLAUSE (2 GAR § 9103(g))**

A. In accordance with Guam procurement law, all controversies between the territory and the Contractor which arise under, or by virtue of, this contract and which are not resolved by mutual agreement, shall be decided by the OAG, Chief of Staff in writing, within 60 days after written request by the Contractor for a final decision concerning the controversy; provided however that if the procurement officer does not issue a written decision within 60 days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the Contractor may proceed as if an adverse decision had been received. The Chief of Staff shall immediately furnish a copy of the decision to the Contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. Any such decision shall be final and conclusive, unless fraudulent, or the Contractor brings an action seeking review of the decision before the Guam Office of Public Accountability. The Contractor shall comply with any decision of the procurement officer and proceed diligently with performance of this contract pending final resolution by the Office of Public Accountability or the Superior Court of Guam of any controversy arising under or by virtue of this contract, except where there has been a material breach of the contract by OAG; provided, however, that in any event the Contractor shall proceed diligently with the performance of the contract where OAG has made a written determination that continuation of work under the contract is essential to public health and safety.

B. Any disputes for expenses incurred in reliance upon this agreement shall be subject to the Government Claims Act found at Title 5, Guam Code Annotated, Chapter 6.

#### SECTION 4 – FORMS REQUIRED FOR ALL PROPOSALS SUBMITTED IN RESPONSE TO RFP

Proposal must contain signed and, where required, notarized originals of the forms listed below.

	<u>Form Name</u>	<u>Form Title</u>
1.	OAG Procurement Form 020 (see page 16)	SPECIAL PROVISION – RESTRICTION AGAINST SEX OFFENDERS
2.	OAG Procurement Form 021 (see page 17)	REQUEST FOR PROPOSAL – DESIGNATION OF PROPRIETARY INFORMATION
3.	AG Procurement Form 002 (Rev. Nov. 17, 2005) (see page 18)	AFFIDAVIT DISCLOSING OWNERSHIP and COMMISSIONS
4.	AG Procurement Form 003 (Jul. 12, 2010) (See page 19)	AFFIDAVIT re NON-COLLUSION
5.	AG Procurement Form 004 (Jul. 12, 2010) (See page 20)	AFFIDAVIT re GRATUITIES or KICKBACKS
6.	AG Procurement Form 005 (Jul. 12, 2010) (See page 21)	AFFIDAVIT re ETHICAL STANDARDS
7.	AG Procurement Form 006 (Feb. 16, 2010)(See page 22)	DECLARATION re COMPLIANCE WITH U.S. DOL WAGE DETERMINATION (Including a supplemental copy of the U.S. DOL WAGE DETERMINATION RATES)
8.	AG Procurement Form 007 (Jul. 15, 2010) (See page 23)	AFFIDAVIT re CONTINGENT FEES

**Special Provisions**

RFP: **001-2016**

**RE: PROFESSIONAL SERVICE FOR INDEPENDENT PROSECUTOR**  
**(SPECIAL ASSISTANT ATTORNEY GENERAL)**

**Restriction against Sex Offenders Employed by service providers to  
Government of Guam from working on Government Property.**

If a contract for services is awarded to the bidder or offeror, then the service provider must warrant that no person in its employment who has been convicted of a sex offense under the provisions of chapter 25 of Title 9 of Guam code Annotated or of an offense defined in Article 2 of chapter 28 of Title 9 of the Guam Code Annotated, or who has been convicted in any other jurisdiction of an offense with the same elements as heretofore defined, or who is listed on the Sex Offender Registry, shall provide services on behalf of the service provider while on Government of Guam property, with the exception of public highways. If any employee of a service provider is providing services on government property and is convicted subsequent to an award of a contract, then the service provider warrants that it will notify the Government of Guam the conviction within twenty-four (24) hours of the conviction, and will immediately remove such convicted person from providing services on government property. If the service provider is found to be in violation of any of the provisions of this paragraph, then the government will give notice to the service provider to take corrective action. The service provider shall take corrective action within twenty-four (24) hours of notice from the Government, and the service provider shall notify the Government when action has been taken. If the service providers fail to take corrective steps within twenty-four (24) hours of notice from the Government, then the Government in its sole discretion may suspend temporarily and contract for services until corrective action has been taken.

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Signature of Offeror	Date
Proposer, if an individual; Partner, if a partnership; Officer, if a corporation.	

**OFFICE OF THE ATTORNEY GENERAL  
590 S. MARINE CORPS DRIVE  
ITC BUILDING, SUITE 706  
HAGÅTÑA, GUAM 96913  
TEL: 671-475-3324 | FAX: 671-477-4703**

**REQUEST FOR PROPOSAL – DESIGNATION OF PROPRIETARY INFORMATION**

All Offerors are advised that pursuant to 2 GAR §3114(h) if a contract is awarded pursuant to a Request for Proposals (RFP), the successful proposal may be incorporated into the contract and thereafter considered public information. If an Offeror wishes to prevent the public release of certain information within a proposal on the basis that such information is a trade secret or other proprietary data, the Offeror must clearly designate the sections of the proposal as proprietary information and request in writing that such information be exempt from public disclosure.

For proposals selected for award under an RFP, the Attorney General, Office of the Attorney General (OAG) or his designee will examine requests to designate information as proprietary and issue a decision in writing as to whether such information will be considered proprietary. Disagreements as to whether information will be considered proprietary will be resolved pursuant to 2 GAR §3114(h)(2).

Offerors wishing to designate proposal information as proprietary must clearly mark such sections within the proposal and identify the corresponding sections and page numbers below and return this form with the proposal.

I, \_\_\_\_\_, an authorized representative of \_\_\_\_\_, hereby request that the sections and page numbers listed below of the proposal submitted in response to **RFP 001 -2016, Independent Prosecutor (Special Assistant Attorney General), Professional Services**, be considered a trade secret or proprietary data and therefore exempt from public disclosure:

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Name: \_\_\_\_\_

Signature

Title: \_\_\_\_\_

Company: \_\_\_\_\_

OAG Procurement Form 021









**DECLARATION RE COMPLIANCE WITH U.S. DOL WAGE DETERMINATION**

Procurement No.: \_\_\_\_\_

Name of Offeror Company: \_\_\_\_\_

I, \_\_\_\_\_ hereby certify under penalty of perjury:

(1) That I am \_\_\_\_\_ [please select one: the offeror, a partner of the offeror, an officer of the offeror] making the bid or proposal in the foregoing identified procurement;

(2) That I have read and understand the provisions of 5 GCA § 5801 and § 5802 which read:

**§ 5801. Wage Determination Established.**

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

The Wage Determination most recently issued by the U.S. Department of Labor at the time a contract is awarded to a contractor by the government of Guam shall be used to determine wages, which shall be paid to employees pursuant to this Article. Should any contract contain a renewal clause, then at the time of renewal adjustments, there shall be made stipulations contained in that contract for applying the Wage Determination, as required by this Article, so that the Wage Determination promulgated by the U.S. Department of Labor on a date most recent to the renewal date shall apply.

**§ 5802. Benefits.**

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

(3) That the offeror is in full compliance with 5 GCA § 5801 and § 5802, as may be applicable to the procurement referenced herein;

(4) That I have attached the most recent wage determination applicable to Guam issued by the U.S. Department of Labor. [INSTRUCTIONS - Please attach!]

\_\_\_\_\_  
Signature

**AFFIDAVIT re CONTINGENT FEES**

CITY OF \_\_\_\_\_ )  
 ) ss.  
ISLAND OF GUAM )

\_\_\_\_\_ [state name of affiant signing below], being first duly sworn, deposes and says that:

1. The name of the offering company or individual is [state name of company] \_\_\_\_\_.

2. As a part of the offering company’s bid or proposal, to the best of my knowledge, the offering company has not retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract. This statement is made pursuant to 2 GAR Division 4 § 11108(f).

3. As a part of the offering company’s bid or proposal, to the best of my knowledge, the offering company has not retained a person to solicit or secure a contract with the government of Guam 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. This statement is made pursuant to 2 GAR Division 4 § 11108(h).

4. I make these statements on behalf of myself as a representative of the offeror, and on behalf of the offeror’s officers, representatives, agents, subcontractors, and employees.

\_\_\_\_\_  
Signature of one of the following:  
Offeror, if the offeror is an individual;  
Partner, if the offeror is a partnership;  
Officer, if the offeror is a corporation.

Subscribed and sworn to before me

this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires \_\_\_\_\_, \_\_\_\_\_.

**ATTACHMENT 1**

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE GOVERNMENT OF GUAM  
AND**

\_\_\_\_\_, ESQ.  
**INDEPENDENT PROSECUTOR (SPECIAL ASSISTANT ATTORNEY GENERAL)**

**THIS AGREEMENT** is made by and between the OFFICE OF THE ATTORNEY GENERAL, (hereinafter called the “Government”) whose mailing address is 590 South Marine Corp Drive, Suite 706, Tamuning, Guam 96913 and \_\_\_\_\_, Esq. (hereinafter “Attorney”), whose address is: \_\_\_\_\_.

**WITNESSETH:**

**WHEREAS**, the Government intends to engage the professional services of Attorney to provide legal services as Independent Prosecutor [Special Assistant Attorney General (SAAG)]; and

**WHEREAS**, the services to be rendered are of a special and temporary nature which has been determined to be in the best public interest to be performed under contract by professional personnel other than employees in the service of the Government; and

**WHEREAS**, the Attorney has agreed to accept the appointment as Independent Prosecutor; and

**WHEREAS**, the Government and the Attorney, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**SECTION 1: SCOPE OF SERVICES**

Attorney agrees to provide legal services in connection with the appointment of Attorney as an Independent Prosecutor (SAAG) for the purposes of reviewing evidence and investigating if necessary, as well as determining if criminal charges and further prosecution are warranted in connection with acts or omissions by officials and or employees of the Government of Guam that resulted in retroactive payments made to unclassified Government of Guam employees in December 2014 or thereafter in violation of Guam law, and retroactive pay reimbursements.

Attorney agrees to provide best efforts to the performance of duties and responsibilities as outlined below in accordance with the laws, rules, regulations and policies of the Government.

**SECTION 2: CONTRACT TERM**

Subject to the availability of funds, the term of this contract shall be for one (1) calendar year from the date signed by the Governor of Guam. The Office of the Attorney General (Government) may terminate this contract at any time, either for convenience or default.

Attorney may terminate this contract and withdraw from representation with the consent of the Office of the Attorney General and/or grounds as provided for by the Guam Rules of Professional Conduct and/or any other applicable provision of law.

### **SECTION 3: ATTORNEY'S COMPENSATION FOR SERVICES**

3.1 Attorney shall be compensated at the rate of \_\_\_\_\_ (\$\_\_\_\_\_) per hour of services provided by the Attorney from the date of appointment. (Appointment letter attached as Exhibit "A" for ease of reference.) Investigator shall be compensated at the rate of \_\_\_\_\_ (\$\_\_\_\_\_) per hour of service. The parties agree that the maximum amount of services presently funded is One Hundred Fifty Thousand Dollars (\$150,000.00) and such amount shall not be exceeded in total until Attorney provides a written request explaining why additional funds are necessary and the projected additional cost.

3.2 The Government shall reimburse the Attorney, subject to the availability of funds, for all costs and expenses incurred in connection with this Agreement:

A. Fees fixed by law or assessed by public agencies, long distance telephone calls, photocopying of cost incurred outside of office or Twenty Cents (20¢) per page for in-office copying, messenger services, and computerized legal research.

B. Any other expenses for which prior approval of the Office of the Attorney General has been obtained or that the Office of the Attorney General determines to have been beneficial or justified.

C. Attorney shall provide vouchers and receipts, together with a brief explanation of such expenses that it has incurred with each invoice submitted to Chief Prosecutor under this RFP (see 3.3 below).

3.3 The Government shall compensate Attorney based on monthly invoices provided by Attorney to the Office of the Attorney General for services rendered. Attorney shall be required to provide a record of hours worked and the description of work. Invoices shall not exceed the sum of \$150,000.00 unless prior approval is obtained from the Office of the Attorney General. The Chief Prosecutor shall review in confidence the record of hours worked and the description of work to verify the expense and determine the feasibility of pursuing the matter.

3.4 Obligation for payment of invoices shall be within thirty (30) days after invoice date and is subject to the availability of funds for such payment as well as review and acceptance of the record hours worked and work completed by the Chief Prosecutor.

3.5 Final payment and release of claims: Upon termination of this contract by either party, final payment shall be made upon satisfactory delivery and acceptance of all services as herein specified and performed under this Agreement. Prior to final payment and as a condition precedent thereto, the Attorney shall execute and deliver to the Government a release, in the form approved by the Government, of claims against the Government of Guam arising under and by virtue of this Agreement.

#### **SECTION 4: ATTORNEY AGREES**

4.1 To accept the Appointment by the Chief Prosecutor as delegated by the Attorney General of Guam the position of Independent Prosecutor (Special Assistant Attorney General).

4.2 Attorney is not covered by the Government Claims Act. Attorney contracts herein with the Government as an independent contractor, and is not an employee of the Office of the Attorney General for the purpose of performing the services hereunder.

4.3 Attorney shall not be entitled to employee benefits provided under this contract such as health or life insurance, retirement benefits, vacation leave or sick leave, and there shall be no withholding of taxes by the Office of the Attorney General.

4.3 Attorney assumes full responsibility for the payment of all contributions, payroll taxes, or assessments, territorial or federal, and further agrees to meet all requirements that may be specified under regulations of administrative officials or bodies charged with enforcement of any territorial or federal laws on this subject.

#### **SECTION 5: GOVERNMENT AGREES TO PROVIDE THE FOLLOWING SUPPORT SERVICES OR EQUIPMENT**

- |                                      |      |
|--------------------------------------|------|
| A. Material or equipment:            | None |
| B. Office space or secretarial help: | None |
| C. On-island transportation:         | None |

#### **SECTION 6: SCOPE OF AGREEMENT**

This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the retention of Attorney by the Government and contains all the covenants and agreements between the parties with respect to such retention in any matter whatsoever. Each party to this Agreement acknowledges that no representation, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of the Agreement will be effective only if it is in writing signed by the party to be charged. For the purpose of this paragraph and of the entire agreement, the signature of the Governor is the only signature that will bind the Government.

#### **SECTION 7: RESPONSIBILITY OF ATTORNEY**

The Attorney shall be responsible for the professional and technical accuracy of all work and materials furnished under this contract. The Attorney shall, without additional cost to the Government, correct or revise all errors or deficiencies in his work.

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

#### **SECTION 8: ASSIGNMENT OF AGREEMENT**

Attorney may not assign this Agreement, or any sum becoming due the Attorney under the provisions of this Agreement, without the prior written consent of the Government.

#### **SECTION 9: GENERAL COMPLIANCE WITH LAWS**

Attorney shall be required to comply with all Federal and territorial laws and ordinances applicable to this work. Attorney shall attach a copy of appropriate business license or a statement of exemption pursuant to the laws of Guam.

#### **SECTION 10: ACCESS TO RECORDS AND OTHER REVIEW**

Attorney, including his subcontractors, if any, shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of final payment under the contract, for inspection by the Government. Each subcontract by Attorney pursuant to this Agreement shall include a provision containing the conditions of this Section 10.

#### **SECTION 11: OWNERSHIP OF DOCUMENTS**

All briefs, memoranda and other incidental Attorney work or materials furnished herein under shall be and remain the property of the Government including all publication rights and copyright interests, and may be used by the Government without any additional cost to the Government.

#### **SECTION 12: INDEMNIFICATION**

12.1 Attorney shall indemnify, defend and hold harmless the Territory of Guam and its employees, agents, successors and assigns from and against all actions (pending or threatened and whether at law or in equity in any forum), liabilities, damages, losses, costs and expenses, including but not limited to reasonable attorneys' and other professionals' fees, resulting from (i) misconduct or negligent or wrongful acts (collectively "claims" whether of commission or omission) of the Attorney or any of his/her representatives, agents, servants, employees or other persons or entities under the supervision or control of the Attorney while rendering professional services to the Government under this Agreement, or (ii) any breach or non-performance by the Attorney of any representation, warranty, duty or obligation of the Attorney under this Agreement. This indemnity shall not be limited by reason of any insurance coverage required of the Attorney. The Government shall provide timely notice to the Attorney of any such claims where upon Attorney shall provide indemnification as described herein.

12.2 Attorney shall not use, raise, or plead the defense of sovereign or governmental immunity in the adjustment or settlement of any Actions against the Attorney arising out of the work performed under this Agreement, or as a defense in any Actions, unless specifically authorized to do so in writing by the Government.

### **SECTION 13: CHANGES**

The Government may at any time, by written order make any changes in the services to be performed hereunder. If such changes cause an increase or decrease in the costs of doing the work under this Agreement, or in the time required for this performance, an equitable adjustment shall be made provided certification of funds is made and the Agreement shall be modified in writing accordingly.

### **SECTION 14: TERMINATION**

This contract is terminable by the Government at any time by written notice to Attorney, either for convenience or default. By written notice, Attorney may terminate this Agreement and withdraw from representation with the written consent of the Government and/or on grounds as provided for by the Guam Rules of Professional Conduct and/or any other applicable provision of law. Upon termination, all briefs, reports, summaries, completed work and work in progress, and such other information and materials as may have been accumulated by the Attorney in performing this Agreement shall, in the manner and to the extent determined by the Government, become the property of and be delivered to the Government. If the contract is terminated, Attorney shall be paid the reasonable value for services performed that are acceptable to the Government.

### **SECTION 15: SEVERABLE PROVISIONS**

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

### **SECTION 16: GOVERNING LAW**

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

### **SECTION 17: EFFECTIVE DATE OF AGREEMENT**

This Agreement shall take effect upon the date it is signed by the Governor of Guam and the date of this Agreement shall be the date upon which the Governor affixes his signature.

### **SECTION 18: GOVERNMENT NOT LIABLE**

18.1 The Government assumes no liability for any accident or injury that may occur to Attorney, his agents, dependents, or personal property while en-route to or from this territory or during any travel mandated by the terms of this Agreement.

18.2 The Office of the Attorney General shall not be liable to Attorney for any work performed under this agreement by Attorney or its prior to approval of this Agreement by the Governor and Attorney hereby express waives any and all claims against the Government for services performed in expectation of this Agreement prior to its approval by the Governor.

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

**OFFICE OF THE ATTORNEY GENERAL**

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
**PHILLIP J. TYDINGCO**

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Account No.: 5100A161100GA001-230  
Certified Amount: \$150,000.00  
CERTIFIED FUNDS AVAILABLE:

**APPROVED AS TO FORM & LEGALITY:**

\_\_\_\_\_  
**JACQUELINE CRUZ**  
Certifying Officer

\_\_\_\_\_  
**PHILLIP J. TYDINGCO**  
for Attorney General of Guam

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**BUREAU OF BUDGET AND  
MANAGEMENT RESEARCH**

**APPROVED:**

NOT REQUIRED PURSUANT TO  
5 GCA, SECTION 30118

\_\_\_\_\_  
**JOSEPH CALVO**  
Director

\_\_\_\_\_  
**EDDIE BAZA CALVO**  
Governor of Guam

Date: \_\_\_\_\_

Date: \_\_\_\_\_