

AMENDMENT 5

**REQUEST FOR PROPOSALS
UOG RFP No. P22-02**

Date Issued: May 2, 2022

“DESIGN BUILD CONSTRUCTION SERVICES FOR A NEW SCHOOL OF ENGINEERING”

This is to notify all prospective offerors of the following amendment set forth below:

- 1.1 Question & Answer Sheet 3** set forth in the attached.
- 1.2 Deadline for submission should read as follows: Friday, June 10, 2022 on or by 4pm. (Your bid submission must be submitted electronically to the Bid Share Folder provided by procurement office and 1 original copy dropped off to the procurement office before bid deadline.)**

All other terms and conditions remain the same.



Emily G. Gumataotao
Supply Management Administrator

Please acknowledge receipt and return by email to uog.bids@triton.uog.edu:

Name of company: _____

Print Name/Signature/date

QUESTION & ANSWER SHEET 3

April 15, 2022

FROM: Emily G. Gumataotao, Supply Management Administrator

RE: UOG-RFP-P22-02 - New School of Engineering Building

VENDOR: GHD, dated, 04/14/2022

Q 1.) In the RFP Document, under UOG-03 General Requirements,

Question or Clarification:

Q1

It is our understanding that an automatic sprinkler system will be required.

Please provide hydrant flow test information for review or indicate if design team should assume that a fire pump and tank is required to supply the automatic sprinkler system.

A 1.) The flow test should be done by the successful Offeror.

PROCUREMENT RESPONSE

April 15, 2022

FROM: Emily G. Gumataotao, Supply Management Administrator

RE: UOG-RFP-P22-02 - New School of Engineering Building

VENDOR: Sumitomo Mitsui Const. Co. Ltd., dated, 04/12/2022

Q 1.) In the RFP Document, under UOG-03 General Requirements,

Question or Clarification: **Q1**

1.) In the RFP Document, under UOG-03 General Requirements, Par. 2 Description of Contract Deliverables, states "To be eligible as a potential awardee for this Design-Build Services Contract Agreement ... Then the team must provide a Price Proposal that is within the budget allowable to implement the project." The Funding amount stated in the RFP is \$6,700,000 to \$7,700,000. With the volatility of the construction material prices, increasing fuel prices and building cost, the amount provided of up to \$7,700,000 does not seem to be a viable construction budget . We would like to ask the following: (a) Will UOG be able to augment the funding if the cost proposal from all bidders exceeds the funding amount (\$7,700,000)? (b) If so, can UOG provide the additional funding source and additional amount? (c) Will UOG be able to award the contract within Sixty (60) days if all cost proposal exceeds the funding amount of \$7,700,000?

A 1.) The funding limit is as stated. We are looking for responses from highly qualified Offerors who can provide innovative solutions/options, including phasing-in options should additional funding be necessary or unavailable.

PROCUREMENT RESPONSE

April 21, 2022

FROM: Emily G. Gumataotao, Supply Management Administrator

RE: UOG-RFP-P22-02 - New School of Engineering Building

VENDOR: Sumitomo Mitsui Const. Co. Ltd., dated, 04/19/2022

Q 1.) In the RFP Document, under UOG-03 General Requirements,

Question or Clarification:

Q1

The RFP No. P22-02 documents indicate that the funding source for this project is a US Department of Agriculture (USDA) Rural Development Community Facilities Loan. According to documents and information regarding USDA loan condition 2.a. or "other sources" funds required under USDA loan condition 2.b. and also the information provided to us through Sunshine Reform Act requests, it seems to us that the required protocols to secure the USDA loan may not have been completed yet.

1. May we know if our understanding of the USDA loan status is incorrect? If our understanding is incorrect, what is the correct status of the USDA loan?
2. If our understanding is correct, what is the plan to obtain funding for this project? Are there alternative funds, such as cash reserves, available for this project?

Attachment Provided: Yes No

- USDA Letter of Conditions, dated September 25, 2020.
- UOG Supplemental Response to March 22, 2022 Sunshine Reform Act Request, dated April 12, 2022.

Q1. May we know if our understanding of the USDA loan status is incorrect? If our understanding is incorrect, what is the correct status of the USDA loan?

A 1. The USDA loan is approved, we are just going through the process with USDA to insure that we meet all their requirements for construction.

Q2. If our understanding is correct, what is the plan to obtain funding for this project? Are there alternative funds, such as cash reserves, available for this project?

A 2. UOG is looking at all options for additional funding that might be needed.

NOTE: ALL UOG solicitations are subject to the availability of funding.

Attached: Original April 19, 2022 request for information.

UOG-08 Form - Written Requests for Clarification and Questions
(Mandatory Form Use)

Instructions

Provide this form for each and every written request submitted for a Question to be Answered or a Clarification Request on Current RFP Information.

Request No. 03 [X] Question [] Clarification

Date: 04 / 19 / 2022

Time: 03 : 50 AM / PM

From:

Company Name	Company Employee	Delivery Method
<u>Sumitomo Mitsui Const. Co., Ltd.</u>	<u>Chad Enoki</u>	[X] Email [] By Hand [] Fax

Question or Clarification:

The RFP No. P22-02 documents indicate that the funding source for this project is a US Department of Agriculture (USDA) Rural Development Community Facilities Loan. According to documents and information regarding USDA loan condition 2.a. or "other sources" funds required under USDA loan condition 2.b. and also the information provided to us through Sunshine Reform Act requests, it seems to us that the required protocols to secure the USDA loan may not have been completed yet.

1. May we know if our understanding of the USDA loan status is incorrect? If our understanding is incorrect, what is the correct status of the USDA loan?
2. If our understanding is correct, what is the plan to obtain funding for this project? Are there alternative funds, such as cash reserves, available for this project?

Attachment Provided: [X] Yes [] No

- USDA Letter of Conditions, dated September 25, 2020.
- UOG Supplemental Response to March 22, 2022 Sunshine Reform Act Request, dated April 12, 2022.



September 25, 2020

Mr. Wilfred P. Leon Guerrero, Chairman
University of Guam Endowment Foundation, Inc.
303 University Drive, UOG Station
Mangilao, Guam, 96923

Subject: Letter of Conditions for a \$21,700,000 Community Facilities Program Loan to Finance the renovation and expansion of the University of Guam Student Services Center and to construct an Annex for the School of Engineering

Dear Mr. Leon Guerrero:

This letter, with attachments, establishes conditions that must be understood and agreed to by the applicant before further consideration may be given to their application for Federal assistance. The State and Area Office staff of USDA Rural Development (RD) will administer the loan funds for this project on behalf of the Rural Housing Service. Any changes in project cost, source of funds, scope of services, or any other significant change (this includes significant changes in the Borrower's financial condition, operation, organizational structure or executive leadership) in the project or applicant must be reported to and approved by USDA Rural Development by written amendment to this letter. **Any changes not approved by USDA Rural Development will be cause for discontinuing processing of the application.**

This letter is not to be considered as loan approval or as representation to the availability of funds. The application can be processed on the basis of a USDA Rural Development loan not to exceed \$21,700,000. Funds for this project are provided by the Rural Housing Service (RHS).

Please complete and return the attached Form RD 1942-46, "Letter of Intent to Meet Conditions," and Form RD 1940-1, "Request for Obligation of Funds," within the next ten (10) days, if you desire that we give further consideration to your application. The execution of these and all other documents required by USDA Rural Development must be authorized by appropriate resolutions of the applicant's governing body.

The loan will be considered approved on the date Form RD 1940-1, "Request for Obligation of Funds," is mailed by USDA Rural Development. This is also the date that the interest rate is established. The interest rate will be the lower of the rate in effect at the time of loan approval or the time of loan closing, whichever is less, unless you choose otherwise.

The loan will be repayable over a period not to exceed twenty-seven (27) years from the date of loan closing at the market interest rate. The first combined principal and/or interest payment will be due one (1) year following loan closing. The loan repayment will be made in amortized annual installments.

Project Budget—Based on Standard Form 424, “Application for Federal Assistance,” the project cost and funding will be as follows:

a. <u>Project Cost</u>	<u>Total</u>	<u>USDA Loan</u>	<u>Other</u>
Design Architectural Fees	\$ 1,102,400	\$ 1,102,400	
Project Inspection Fees	\$ 900,000	\$ 900,000	
Additional Architectural	\$ 200,000	\$ 200,000	
Site Works	\$ 480,069	\$ 480,069	
Demolish work	\$ 269,600	\$ 269,600	
Construction	\$19,221,605	\$15,369,605	\$3,852,000
Administrative			
Legal	\$ 200,000	\$ 200,000	
Bond Counsel			
Equipment	\$ 700,000	\$ 700,000	
Other-	\$ 1,294,765	\$ 1,294,765	
relocation expenses	\$ 120,000	\$ 120,000	
Contingencies	<u>\$ 1,063,561</u>	<u>\$ 1,063,561</u>	
TOTAL:	\$25,552,000	\$21,700,000	\$3,852,000

b. <u>Source of Funds</u>	
USDA Loan	\$21,700,000
Applicant Contribution	<u>\$ 3,852,000</u>
TOTAL:	\$25,552,000

Any changes in funding sources following obligation of Agency funds must be reported to the processing official. Project feasibility and funding will be reassessed if there is a significant change in project costs after bids are received. If actual project costs exceed the project cost estimates, an additional contribution by the borrower may be necessary.

Section I of the attached conditions (Items 1—17) must be satisfied prior to interim loan closing or before construction begins, whichever occurs first, in either case not later than one (1) year from the date of this letter. **In the event the project has not advanced to the point of construction within one (1) year, USDA Rural Development reserves the right to discontinue the processing of the application.**

If you have any questions, feel free to contact this office.

Sincerely,

BRENDA IOKEPA-
MOSES
Brenda Iokepa-Moses
State Director, Hawaii

Digitally signed by BRENDA
IOKEPA-MOSES
Date: 2020.09.25 21:00:41 -10'00'

cc: Alton Kimura, Community Programs Director, USDA Rural Development,
Thomas Krise, President, University of Guam

ATTACHMENT TO LETTER OF CONDITIONS

SECTION I. CONDITIONS TO BE SATISFIED PRIOR TO LOAN CLOSING OR BEFORE CONSTRUCTION BEGINS, WHICHEVER OCCURS FIRST

1. **Reserves**

- a. The applicant will establish prior to loan closing a prefunded debt reserve equal to Five years of annual debt service payments. The actual prefunded amount will be computed based on the effective note interest rate at time of closing (currently at 2.25% and changes quarterly).
- b. The applicant will be required to establish a capital assets reserve account in an amount established by the RD Architect and Applicant's Architect; however, this amount will be no less than \$50,000 per year up to a maximum of \$500,000.
- c. Funding is conditioned upon the University of Guam's establishment of a restricted deposit account into which the University of Guam shall immediately deposit any and all funds appropriated by the Guam Legislature pursuant to Guam Public Law 33-92 for the purpose of supporting lease payments due to the University of Guam Endowment Foundation under the Facilities Lease for the Student Services Annex and College of Engineering buildings. Funds so deposited may be used only to make lease payments due under the Facilities Lease, and prior written concurrence from Rural Development must be obtained before funds may be withdrawn from this account for any other purpose. Lease payments shall be made to a specified deposit account to be established by the University of Guam Endowment Foundation, using the Pre-Authorized Debit (PAD) payment process. The University of Guam must execute Form RD 402-1, Deposit Agreement, or other Deposit Account Control Agreement acceptable to the Office of General Counsel, to enable Rural Development to perfect a security interest in this deposit account.

Additionally, the University of Guam Endowment Foundation must establish a restricted deposit account into which the University of Guam will transfer lease payments due to the University of Guam Endowment Foundation under the Facilities Lease. Funds received and held in this account may be used only to make payments on the USDA Community Facilities loan, and prior written concurrence from Rural Development must be obtained before funds may be withdrawn from this account for any other purpose. The University of Guam Endowment Foundation must execute Form RD 402-1, Deposit Agreement, or other Deposit Account Control Agreement acceptable to the Office of General Counsel, to enable Rural Development to perfect a security interest in this deposit account

2. **Disbursement of Funds**

- a. Interim loan financing from another lender during construction will be required in accordance with 1942.17 (n)(2) for all construction loans greater than \$50,000. You will need to provide Rural Development a copy of the proposed interim financing package

prior to execution. Multiple advances directly from Rural Development are not authorized during the construction phase.

- b. The applicant will provide evidence that funds from other sources will be made available for the project cost in the amount of \$3,852,000. This evidence should include a copy of the loan/grant award that addresses how funds will be disbursed.
- c. The applicant's contribution of funds toward the project cost shall be considered the first funds expended and must be deposited in its project account before construction is started. Evidence of applicant's injection must be provided to RD.
- d. Agency funds will not be used to pre-finance funds committed to the project from other sources.
- e. The Debt Collection Improvement Act (DCIA) of 1996 requires that all Federal payments be made by Electronic Funds Transfer/Automated Clearing House (EFT/ACH). Borrowers receiving payments by EFT will have funds directly deposited to a specified account at a financial institution with funds being available to the recipient on the date of payment. The borrower should complete Form SF-3881, Electronic Funds Transfer Payment Enrollment Form, for each account where funds will be electronically received. The completed form(s) must be received by Rural Development at least forty-five (45) days prior to the first advance of funds. Failure to do so could delay loan closing.

3. **Security Requirements**

- a. The proposed loan will be secured by a First Leasehold Mortgage and an Assignment of Lease Rents covering that certain Site and Facilities Lease dated September 14, 2016, together with any amendments to said leases by and between the University of Guam and the University of Guam Endowment Foundation, Inc. on the proposed Student Services Center and Engineering Annex.
- b. Funding is conditioned upon Rural Development obtaining and approving the University of Guam's written consent prior to the University of Guam Endowment Foundation's execution of the leasehold mortgage. Rural Development must obtain OGC review of this written consent prior to acceptance and approval.
- c. The loan will be secured with a first lien on all assets of the borrower including a leasehold interest in the subject buildings.
- d. At loan closing, the applicant will execute the attached Form RD 1942-9 "Loan Resolution (Security Agreement)". Please review the refinancing provision on page 4, section 7. Also note the certification on the bottom of page 4, which is to be executed at the time of loan closing.
- e. A UCC Financing Statement lien search will be conducted by the Agency to identify lien priority position. Form UCC-1, "Financing Statement," with Form UCC-1Ad, "UCC Financing Statement Addendum," as appropriate, or other action as allowed by State statute, will be prepared by USDA Rural Development and filed with the Territory

of Guam and a copy recorded with the Department of Land Management and/or the Department of Revenue and Taxation of the Government of Guam, to perfect a security interest in collateral to encumber the following:

- (1) All revenue and income, assessments, deposit accounts, certificates of title, contract rights, accounts, payment intangibles, general intangibles, and all tangible personal property associated with the structures on the project site, equipment and goods, pertaining to all activities of Debtor in operating the community facility known as University of Guam Student Services Center and the School of Engineering Annex, along with all proceeds, products, replacements, and substitutions thereof; and
- (2) All proceeds, products, accessions, and such security hereafter acquired.

TOGETHER WITH, all rights of way, easements, permits, franchises, licenses, water rights, equipment, inventory and other property, real or personal, in which Borrower now owns or hereafter acquires interest, and real property located at the University of Guam campus as further described in Exhibit "A" attached hereto and made a part hereof.

Disposition of such collateral is not hereby authorized.

A filing fee (fee subject to change based on current rate accessed by the Government of Guam and land title recorder), payable to the Treasury of Guam must be provided to the Agency at least 90 days prior to loan closing.

- f. The applicant will evidence the loan with a Promissory Note(s) on Form RD 440-22 prepared by USDA Rural Development.
- g. An Assignment of Income, Assessments, and Revenues will be dated and executed.
- h. The applicant's Articles of Incorporation and By-Laws with all amendments have been approved by the Office of the General Counsel. The applicant must submit a Certificate of Good Standing from the Secretary of State, dated within six months before loan closing, to USDA Rural Development.
- i. The Promissory Note will be secured by the USA—Acting through the Rural Housing Service being named as the registered lien holder on the Certificate of Title for the vehicle being financed.
- j. The applicant is required to execute Form RD 440-15, Security Agreement.

4. **Appraisal Requirements**

- a. Appraisal reports must be performed by a State Certified general real estate appraiser licensed in the state where the property is located. The appraiser must have the specific qualifications, experience and competency to appraise the type of facility being financed. The Appraisal report must be completed in accordance with the UL dated June 3, 2020. Please see attachment.
- b. The values to be determined are the “As Is” Market Value and/or the “Prospective Market Value” of the Leasehold interest, as of completion of construction pursuant to Uniform Standards of Professional Appraisal Practice (*USPAP*) and Agency appraisal requirements. [12 CFR, Chapter 1, Subpart C, Part 34.42(h)].
- c. USDA Rural Development must be listed as an intended user of the appraisal report.
- d. The appraisal must determine that the value is equal to or exceeds the amount of the USDA loan(s), plus any other indebtedness against the security.
- e. The appraisal must be submitted and approved by USDA Rural Development prior to the start of construction or earlier if required.
- f. Once construction is complete and prior to closing the Agency direct loan(s), any appraisal more than one year from the estimated date of closing must be updated and submitted 90 days in advance of loan closing. The value of the appraisal must demonstrate that the Agency remains fully secured. Loan closing will be subject to the appraisal being an amount sufficient to adequately secure the proposed loan in the opinion of Rural Development.
- g. Reports shall be in compliance with the reporting requirements of *USPAP* Standard Rule 2-2 for an Appraisal Report and with the Agency requirements.
- h. Appraisers must be prepared to discuss their analyses, opinions, and conclusions and provide additional written support, clarification, and a corrected electronic appraisal report, at no additional cost, if requested by a USDA Regional Appraisal Reviewer.

5. **Insurance and Bonding Requirements**—The applicant must provide evidence of adequate insurance and fidelity bond coverage by loan closing or start of construction, whichever occurs first. Adequate coverage, in accordance with USDA Rural Development’s Regulations, must then be maintained for the life of the loan and evidence must be submitted to Rural Development annually. It is the responsibility of the applicant and not that of USDA Rural Development to assure that adequate insurance and fidelity bond coverage is maintained. Applicants are encouraged to review coverage amounts and deductible provisions with their attorney, consulting engineer, and/or insurance provider(s).

- a. **Property Insurance**—Fire and extended coverage will be required on all above-ground structures, including applicant-owned equipment and machinery housed therein. Provide USDA Rural Development with proof of coverage and attach Lender’s Loss Payable

- Endorsement (438 BFU or equivalent) naming the UNITED STATES OF AMERICA as lender.
- b. **Workers' Compensation Insurance**—The applicant will be required to carry workers' compensation insurance for all employees in accordance with the laws of the Territory of Guam. Provide USDA Rural Development with proof of coverage.
 - c. **General liability and vehicular coverage must be maintained**—Provide USDA Rural Development with proof of coverage.
 - d. **Earthquake Insurance (if applicable)**—If the project involves acquisition or construction in earthquake prone areas, you must purchase an earthquake insurance policy at the time of loan closing.
 - e. **Fidelity Bond**—Persons who have access to the funds and custody to any property will be covered by a fidelity bond or an adequate crime policy that protects the applicant from an employee crime. Coverage may be provided either for all individual positions or persons, or through "blanket" coverage providing protection for all appropriate employees and/or officials. The amount of coverage required by USDA Rural Development will be sufficient to cover the total annual debt and reserve service requirements for the loan. The United States of America will be named as co-obligee on the bond. A certified power-of-attorney with effective date will be attached to each bond. Provide USDA Rural Development with a copy of the bond and the power of attorney.
6. **Civil Rights & Equal Opportunity**— The Borrower has received an award of Federal funding and is required to comply with U.S. statutory and public policy requirements, including but not limited to:
- a. **Section 504 of the Rehabilitation Act of 1973** – Under Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Agency financial assistance. The Standard for compliance is the Architectural Barriers Act Accessibility Standards (ABAAS).
 - b. **Civil Rights Act of 1964** – All recipients are subject to, and facilities must be operated in accordance with, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and 7 CFR 1901, Subpart E, particularly as it relates to conducting and reporting of compliance reviews. Instruments of conveyance for loans and/or grants subject to the Act must contain the covenant required by Paragraph 1901.202(e) of this Title.
 - c. **The Americans with Disabilities Act (ADA) of 1990** – This Act (42 U.S.C. 12101 et seq.) prohibits discrimination on the basis of disability in employment, State and local government services, public transportation, public accommodations, facilities, and telecommunications.

- e. **Age Discrimination Act of 1975** – This Act (42 U.S.C. 6101 et seq.) provides that no person in the United States shall on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- f. **Limited English Proficiency (LEP) under Executive Order 13166** - LEP statutes and authorities prohibit exclusion from participation in, denial of benefits of, and discrimination under Federally assisted and/or conducted programs on the ground of race, color, or national origin. Title VI of the Civil Rights Act of 1964 covers program access for LEP persons. LEP persons are individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English. These individuals may be entitled to language assistance, free of charge. The recipient must take reasonable steps to ensure that LEP persons receive the language assistance necessary to have meaningful access to USDA programs, services, and information the recipient provides. These protections are pursuant to Executive Order 13166 entitled, “Improving Access to Services by Persons with Limited English Proficiency” and further affirmed in the USDA Departmental Regulation 4330-005, “Prohibition Against National Origin Discrimination Affecting Persons with Limited English Proficiency in Programs and Activities Conducted by USDA.”
- g. **Title IX of the Education Amendments of 1972** (for education facilities only)—Title IX (20 U.S.C. Â§1681 et seq.) prohibits discrimination on the basis of sex in any Federally funded education program or activity. Title IX applies, with a few specific exceptions, to all aspects of Federally funded education programs or activities. In addition to traditional educational institutions such as colleges, universities, and elementary and secondary schools, Title IX also applies to any education or training program operated by a recipient of Federal financial assistance.

Agency financial programs must be extended without regard to race, color, religion, sex, national origin, marital status, age, or physical or mental handicap. The recipient must display posters (provided by the Agency) informing users of these requirements, and the Agency will monitor the recipient’s compliance with these requirements during regular compliance reviews.

As a recipient of Rural Development funding, you are required to post a copy of the Non-Discrimination Statement listed below in your office and in include in full, on all materials produced for public information, public education, and public distribution both print and non-print.

h. Non-Discrimination Statement

USDA is an equal opportunity provider, employer, and lender
If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at <https://www.usda.gov/non-discrimination-statement>, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights,

1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or
(3) email: program.intake@usda.gov.

7. **Written Agreements for Professional Services**

- a. Any proposed contracts or other forms of agreements between the Applicant and third parties must be reviewed and approved by RD and legal counsel prior to the issuance of Guide 1 or 1(a) for interim financing and loan closing.
- b. Applicant must submit a legal service agreement satisfactory to USDA Rural Development.
- c. Applicant must submit Agreement for Architectural Services to be approved by USDA Rural Development.
- d. (For Design/Build Projects) – Agreement for Project Manager Services will have to be approved by USDA Rural Development.

8. **Land and Rights-of-Way**—The applicant must present satisfactory evidence that they have obtained, or can obtain, any and all lands, rights-of-way, easements, permits and franchises which are required by the engineering plan. Acquisitions of necessary land and rights must be accomplished in accordance with the Uniform Relocation and Real Property Acquisition Act. The following forms, copies of which are attached, may be used for these purposes:

- a. Form RD 442-21, “Right-of-Way Certificate” (with map attached)
- b. Form RD 442-22, “Opinion of Counsel Relative to Rights-of-Way”

9. **Permits**—All permits involving Federal, State, and local agencies must be obtained and evidence thereof provided to USDA Rural Development prior to bidding. For Design/Build Projects - All permits involving Federal, State, and local agencies must be obtained and evidence thereof provided to USDA Rural Development prior to the start of the construction phase of the project.

10. **Environmental Reviews**— The project as proposed has been evaluated to be consistent with the National Environmental Policy Act. Other Federal, State, tribal, and local laws, regulations and or permits may apply or be required. During any stage of project development, including construction, should environmental issues develop which require mitigation measures, USDA Rural Development applicants are required to notify USDA Rural Development and comply with such mitigation measures. Failure by an applicant to implement mitigation measures may disqualify the project from Agency funding. Mitigation measures identified or prepared as part of the Territory of Guam (if applicable the State’s Environmental Act) and NEPA environmental process must be implemented. If the project or any project element deviates from or is modified from the originally approved project, additional environmental review may be required.

At the conclusion of the proposal’s environmental review process, a specific action was determined necessary to avoid or minimize adverse environmental impacts. As outlined in

the Environmental Report dated October 28, 2013, the following action is required for successful completion of the project and must be adhered to during project design and construction:

"The federal threatened Mariana fruit bat (*Pteropus mariannus mariannus*) may live on or near the project site. For activities near forest areas, project work shall only occur during daylight hours, as artificial lighting used for work at night can disorient foraging or roosting bats and seabirds. This requirement shall be included as a condition for all construction contracts that are executed."

11. Architectural and Construction

- a. USDA Rural Development must approve any agreements or modifications to agreements for professional planning and design services. AIA Document "Standard Form of Agreement Between owner and Architect," may be used when appropriate or other Agency approved forms of agreement
- b. All construction will be completed under contract. The planning, bidding, contracting, and construction must comply with RD Instruction 1942 Subpart A, and any additional requirements of laws of the Territory of Guam and the requirements of other County, State, or Federal agencies.
- c. The following must be reviewed and approved by USDA Rural Development in the sequence indicated:
 - i. Preliminary Architectural Report
 - ii. Agreement for Architectural Services
 - iii. Final Plans and Specifications for the project
 - iv. Draft/Construction Bid Documents, prior to Going Out to Bid
 - v. Bid Award Information.
 - vi. Executed Contract Documents
- d. Affirmative steps should be taken to assure that small, minority and/or women-owned businesses are utilized as source of supplies, equipment, construction, and services.
- e. The Plans & Specifications must be reviewed and approved, when applicable, by any regulatory or other agencies that are required to review these documents.
- f. A representative of USDA Rural Development will attend all pre-construction conferences in connection with this project. These conferences must be held prior to the issuance of the Notice to Proceed to the contractors. The applicant's architect will conduct the conference and document the discussions and agreements.

12. For Design-Build Projects:

- a. The applicant is proposing a Design-Build procurement which must be approved by this Agency's National Office. The applicant will provide the required information needed to

- be submitted for concurrence to the Design-Build procurement method. Please see the attached Design/Build Concurrence Checklist.
- b. The applicant must retain a qualified Construction Project Manager who is independent of the Contractor/Design-Build firm. Credentials of the candidate must be submitted to the Agency for evaluation and concurrence prior to executing an agreement.
 - c. All development will be completed by contract. The planning, bidding, contracting, and construction must comply with RD Instruction 1942 Subpart A, and any additional requirements of State's law and the requirements of other County, State, or Federal agencies.
 - d. If approved for the Design-Build procurement method, the applicant's construction budget will be noted in the RFP documents to set parameters for a Guaranteed Maximum Price (GMP) agreement to be awarded through an open and free solicitation process. The GMP will be established no later than at the completion of the Design Development stage.
 - e. The following must be reviewed and approved by USDA Rural Development in the sequence indicated:
 - i. Preliminary Architectural Report
 - ii. Agreement for Architectural Services/Agreement for Project Manager Design-Build Procurement Method—Checklist Items
 - iii. Request for Qualifications (RFQ)
 - iv. RFQ Short List
 - v. Request For Proposals (RFP)
 - vi. Recommendation of Award
 - vii. Executed Contract Documents
 - viii. Final Plans and Specifications for the project
13. **Electronic Funds Transfer**—All loan funds will be transferred to borrowers via Electronic Funds Transfer/Automated Clearinghouse Systems (EFT/ACH). Normal transfers will be ACH, with money being placed in Borrower's account two business days after the USDA processing office approves the pay request. The applicant must submit the Electronic Funds Transfer Form containing the banking (ACH) information to the USDA Servicing Office at least 90 days prior to the date of loan closing. Failure to do so could delay loan closing.
14. **Automatic Payments** The applicant is required to participate in the Pre-Authorized Debit (PAD) payment process for all new and existing indebtedness to USDA Rural Development. It will allow for the applicant's payment to be electronically debited from its account on the date their payment is due. Form RD 3550-28, "Authorization Agreement for Pre-Authorized Payments," is attached. Please fill out and sign your "Individual/Company Information" section, then have your financial institution/bank fill out the bottom portion prior to submitting the form to the USDA Rural Development service office.

15. **Loan Closing**—The loan will be closed in accordance with USDA Rural Development instructions, the legal requirements of the USDA Office of General Counsel, and this Letter of Conditions. All applicable closing documents, including bond documents, must be submitted to USDA Rural Development at **least 90 days prior to the planned closing date**. Prior to loan closing, a request for reimbursement must be submitted to USDA with all the supporting invoices.
16. **Operating Budget**— Prior to loan closing, USDA Rural Development must review the applicant's approved operating budget. The budget must balance and include the proposed USDA debt service and reserve obligations. Each year the USDA loan is outstanding, the applicant will adopt an annual budget which provides for the annual debt service and reserve payments.
17. **Central Contractor Registration and Universal Identifier Requirements**—You as the recipient must maintain the currency of your information in the Central Contractor Registration (SAM) until you submit the final financial report required under this award and all grants funds under this award have been disbursed or de-obligated, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term. Recipients can register on-line at (<https://www.sam.gov>) You as the recipient may not make a sub-award to an entity unless the entity has provided its Data Universal Numbering System (DUNS) number to you. Sub-recipients with sub-awards of \$25,000 or more must also have and maintain a current CCR registration.

SECTION II. LOAN CONDITIONS TO BE SATISFIED DURING CONSTRUCTION

1. **Inspections**— A full-time resident inspector/project manager is required during construction unless a written exception is made by the Agency upon your written request. This service is to be provided by the consulting architect or other arrangements as approved by the Agency. Prior to the pre- construction conference, a resume of qualifications of the resident inspector(s) will be submitted to the owner and Agency for review and approval. The owner will provide a letter of acceptance for all proposed observers to the architect and Agency. The inspection reports must be available to USDA, Rural Development for review at any time. These reports must be kept at the project site or borrower's office, if nearby.
2. **Monthly Reporting**—The applicant must monitor and provide a monthly report to USDA Rural Development on actual performance during construction for each project financed, or to be financed, in whole or in part with USDA Rural Development funds, to include Forms RD 1924-18, "Partial Payment Estimate"; RD 1924-7, "Contract Change Order"; SF-271, "Outlay Report and Request for Reimbursement for Construction Programs"; and Project Daily Inspection Reports.
3. **Final Inspection**—A final inspection will be made by USDA Rural Development on the component USDA is financing before final payment is made.
4. **Excess Funds**—Any remaining funds must be utilized for approved purposes within 60 days following the final inspection or the funds will be canceled without further notification from USDA Rural Development.

SECTION III. LOAN CONDITIONS TO BE SATISFIED AFTER PROJECT COMPLETION

1. **Financial Statements**—To be submitted on an annual basis in accordance with the following:
 - a. Borrowers and grantees that meet the Federal awards expended threshold established in 2 CFR 200, Subpart F, “Audit Requirements” (expends \$750,000 or more in federal financial assistance per fiscal year) shall submit an audit performed in accordance with the requirements of 2 CFR 200, Subpart F. Audits shall be submitted to USDA Rural Development in accordance with 2 CFR 200, Subpart F.
 - b. All borrowers exempt from USDA audit requirements and who do not otherwise have annual audits, will within 60 days following the end of the borrower’s fiscal year furnish USDA with annual financial statements, consisting of a verification of the organization’s balance sheet and statement of income and expenses. The recipient may use Form RD 442-2, “Statement of Budget, Income and Equity,” and 442-3, “Balance Sheet,” or similar format to provide the financial information.
 - c. An annual audit may be submitted in lieu of annual financial statements for any borrower or grantee that has an audit prepared at its own discretion and expense.
2. **Quarterly Reports**—A quarterly management report will be required for the first year for new borrowers and for all borrowers experiencing financial or management problems for one year from the date problems were noted. If the borrower's account is current at the end of the year, the processing office may waive the required reports. The recipient may use Form RD 442-2 or similar format to provide this information, and the reports are to be signed by the appropriate borrower official and submitted within 30 days of each quarter’s end.
3. **Audit agreement**—If you are required to obtain the services of a licensed Certified Public Accountant (CPA), you must enter into a written audit agreement with the auditor. The audit agreement may include terms and conditions that you and auditor deem appropriate.
4. **Debt Service Coverage Ratio**-- Beginning in the year 2023, a debt service coverage ratio (DSCR) of at least 1.25x will be maintained, with debt service to include the loan payments plus all required reserves. If the DSCR drops below 1.25x for any audited year, or quarterly financial report, then an independent management consultant shall be engaged at the expense of the Applicant to prepare a fiscal strategy report that documents how the debt service requirement will be met. This must be provided to RD no later than 90 days after any quarter in which the DSCR drops below 1.25x.
5. **Compliance Reviews**—Rural Development will be required to periodically conduct a compliance review of this facility and operation. Compliance reviews will be completed one year after loan closing and every three years thereafter. You will need to provide the local office the statistical information as requested.

The Agency will conduct regular compliance reviews of the borrower and its operation in accordance with 7 CFR Part 1901, Subpart E, and 36 CFR 1191, Americans with Disabilities

Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines. Compliance reviews will typically be conducted in conjunction with the security inspections described in this letter. If beneficiaries (users) are required to complete an application or screening for the use of the facility or service that the recipient provides, the recipient must request and collect data by race (American Indian or Alaska Native, Asian, Black or African American, White); ethnicity (Hispanic or Latino, Not Hispanic or Latino); and by sex. The Agency will utilize this data as part of the required compliance review.

6. **Continuation of Financing Statement**- At the time of renewal (every 5 years) the borrower must provide a **\$10.00** check payable to the **Secretary of State** (fee subject to change based on current Secretary of State fee schedule) for the continuation of the Financing Statement until the loan is paid in full.
7. **Security Inspections**—Rural Development is required to conduct an inspection of the facility a minimum of once every three years. The recipient must participate in these inspections and provide the required information.
8. **Graduation**—You may be required to refinance (graduate) the unpaid balance of the RD loan, in whole or in part, if at any time RD determines your entity is able to obtain a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time, the recipient will be requested to refinance. The ability to refinance will be assessed every other year for those loans that are five years old or older.
9. **Prepayment and Extra Payments** - Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of borrower, with no penalty.

Security instruments, including bonding documents, must contain the following language regarding extra payments, unless prohibited by State statute:

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of borrower. Refunds, extra payments and loan proceeds obtained from outside sources for the purpose of paying down the Agency debt, shall, after payment of interest, be applied to the installments last to become due under this note and shall not affect the obligation of borrower to pay the remaining installments as scheduled in your security instruments.



April 14, 2021

Mr. Wilfred P. Leon Guerrero, Chairman
University of Guam Endowment Foundation, Inc.
303 University Drive, UOG Station
Mangilao, Guam, 96923

Subject: Amended Letter of Conditions for a \$21,700,000 Community Facilities Direct Loan to Finance the renovation and expansion of the University of Guam Student Services Center and to construct an Annex for the School of Engineering

Dear Mr. Leon Guerrero:

This letter amends conditions outlined in our Letter of Conditions and Attachment to Letter of Conditions dated **September 25, 2020**. All conditions remain the same except those listed below.

1. Project Budget:

Any cost overruns must be funded by the University of Guam Endowment Foundation (or University of Guam) through cash equity (not taking on additional debt, future loans or bonds).

2. Reserves:

- a. The Applicant will prefund 2 years' worth of debt service reserve as a part of the upfront costs to the project. These funds are to be placed into a restricted account for the sole purpose of paying of the RD indebtedness in case there is a shortage of funds from the annual allocations from the Government of Guam to the University of Guam for the servicing of this debt. The debt service reserve account balance for the CF direct loan must be reported annually to the State Office.

Please complete and return the enclosed Form RD 1942-46, "Letter of Intent to Meet Conditions," to acknowledge and confirm your intent to meet the amended conditions stated herein.

We believe the information in this letter clearly sets forth the conditions, which must be complied with; however, this letter does not relieve you from meeting the requirements of USDA Rural Development Instruction 1942-A.

Mr. Wilfred Leon Guerrero, Chairman
University of Guam Endowment Foundation
Amended Letter of Conditions
April 14, 2021

If you have any questions, please feel free to contact Alton Kimura, Community Programs Director at (808) 933-8308 or Anthony Barcinas, Community/Business Programs Specialist at (671) 300-8567.

Sincerely,

DENISE SALMERON

Digitally signed by DENISE
SALMERON

Date: 2021.04.14 06:37:20 -10'00'

DENISE M. SALMERON

Acting State Director, Hawaii

cc: Community Programs Director, USDA Rural Development,
Thomas Krise, President, University of Guam



VIA-ELECTRONIC-MAIL

R. Marsil Johnson, Esq.
Blair Sterling Johnson & Martinez, P.C.
238 Archbishop Flores St., Ste 1008
Hagåtña, Guam 96910-5205

April 12, 2022

RE: Supplemental Response to March 22, 2022 Sunshine Reform Act Request

Dear Mr. Johnson,

I have reviewed your emails dated April 5, 2022, April 11, 2022, requesting, pursuant to Guam's Sunshine Reform Act of 1999 as codified in 5 G.C.A. §10103 *et. seq.*, categorical responses to your March 22, 2022 request for public records. Said requests and the University of Guam's (UOG) responses to them are as follows:

REQUEST NO. 2: Documents evidencing all interim financing obtained by UOG in connection with UOG RFP No. P22-02.

UOG'S RESPONSE: No such documents exist.

REQUEST NO. 3: Documents indicating UOG has received or has received a commitment for funds in the amount of \$3,852,000 as required by condition 2(b) of U.S. Department of Agriculture (USDA)'s Letter of Conditions to UOG in connection with UOG RFP No. P22-02 dated September 25, 2020.

UOG'S RESPONSE: No such documents exist.

REQUEST NO. 4: Documents stating any unpaid or outstanding loan amount, as of March 22, 2022, on all loan agreements entered into by UOG, as borrower.

UOG'S RESPONSE: UOG submits its April 4, 2022 Financial Statements, Additional Information and Independent Auditors' Report for years ended September 30, 2021 and 2020 which are bates stamped as pages UOG-001 to UOG-074 herein. Page UOG-042 indicates that UOG has a loan with the UOG Endowment Foundation and that the current balance, as of September 30, 2021, of said loan is \$1,400,000 and that the loan was for the UOG Triton Engagement Center Phase I Project (Storm Mitigation Outfall). Pages UOG-042-043 of the report indicates that UOG has a loan with the U.S.D.A. for the funding of the construction,

T: +1 671.735.2992 F: +1 671.734.2296 W: www.uog.edu

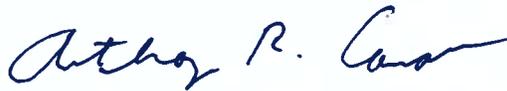
Mailing Address: 303 University Drive UOG Station Mangilao, Guam 96913

The University of Guam is a U.S. Land Grant Institution accredited by the Western Association of Schools and Colleges Senior College and University Commission and is an equal opportunity provider and employer.

operation, and maintenance of the UOG's School of Business and Public Administration, that the outstanding balance of this loan, as of September 30, 2021, was \$10,260,574, and that the amount of \$301,721 was due within a year.

Please contact me at 735-2990 if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Anthony R. Camacho". The signature is fluid and cursive, with the first name being the most prominent.

ANTHONY R. CAMACHO, ESQ.
UOG General Counsel

PROCUREMENT RESPONSE

April 28, 2022

FROM: Emily G. Gumataotao, Supply Management Administrator

RE: UOG-RFP-P22-02 - New School of Engineering Building

VENDOR: Ian Corp, dated, 04 / 28 (26) / 2022

Q1, Q2, Q3

Question or Clarification:

Do data sheets count towards the page limit when submitting the technical write up?

Are 11x17 pages acceptable? Or only 8x11?

Will blinds be needed for the interior windows?

Q 1.) Do data sheets count towards the page limit when submitting the technical write up?

A 1.) No, data sheets do not count in the page limit.

Q 2.) Are 11x17 pages acceptable? Or only 8x11?

A 2.) Only 8x11.

Q 3.) Will blinds be needed for the interior windows?

A 3.) Yes, blinds are needed for interior windows.

PROCUREMENT RESPONSE

May 2, 2022

FROM: Emily G. Gumataotao, Supply Management Administrator

RE: UOG-RFP-P22-02 - New School of Engineering Building

VENDOR: Sumitomo Mitsui Const. Co. Ltd., dated, 04/29/2022

Q 1.) We respectfully request a one-month extension of the the bid due date from May 20, 2022 to June 20, 2022.

Question or Clarification:

Q1

We respectfully request a one-month extension of the bid due date from May 20, 2022, to June 20, 2022. We are still awaiting certain quotations from suppliers and vendors. We are also awaiting responses to our RFI Nos. 02 (dated 04/12/2022) and 03 (dated 04/19/2022).

A 1.) We will grant a three-week extension to Friday, June 10, 2022. Responses to the RFI 02 and RFI 03 are in this package.