

**DETERMINATION OF NEED FOR EXCEPTIONAL TERM CONTRACT**  
**Lot Apra Harbor Reservation F-12-1, F-12-2, F-12-3**

**1.0 OVERVIEW**

This Determination of Need for Exceptional Term Contract is issued pursuant to Public Law 34-99 wherein the Guam Ancestral Lands Commission hereby makes this “written Determination of Need justifying by a quantifiable sum an Exceptional Term Contract, and specifying the full term, inclusive of extensions, options and renewals, for such contract, and provide a copy of such Determination of Need to the Speaker of *I Liheslaturan Guahan*.”

The Guam Ancestral Lands Commission (hereinafter referred to as “GALC”) intends to issue a Request for Proposals (“RFP”) for the lease availability of Lot Apra Harbor Reservation F-12-1, portion of F-12-2, and F-12-3, also referred to as Parcel N14-1, Polaris Point, Piti, Guam consisting of approximately 13 combined acres or 52,609 ± square meters (The Property). The Property is located off Route 1, along Polaris Point road that leads to the Navy’s Submarine Retrofit Facility. The GALC intends to negotiate a lease agreement for the Property that allows a prospective developer to implement its proposed and approved development plans. The Property has potential for commercial and or industrial use as it is located near the Jose D. Leon Guerrero Commercial Port of Guam as well as being adjacent to Matson Navigation’s container yard. GALC intends to negotiate a lease agreement for the Property that allows a prospective lessee to utilize the Property for land uses consistent with the M-1 Light Industrial Zone designation. If required, the offeror will be allowed to pledge the leasehold interest in the property to secure development financing.

To allow prospective developers to invest in the Property and recover investments, GALC proposes to allow a lessee to lease the property for a term of up to fifty (50) years with one or more options to extend the term for an additional Forty-Nine (49) years. Such term will be subject to negotiations based primarily upon the amount of time required by the lessee to recover its investment, satisfy financing requirements and profit from investments.

Smaller scale developments (in the tens to hundreds of thousands of dollars), have traditionally been pursued by smaller organizations and are met with a distinctly unique set of challenges. Smaller local corporations, partnerships and sole proprietorships that are common on Guam are very much dependent on local financing institutions to engage in almost any form of commerce. A commercial loan is dependent on various terms such as, the principle loan amount, interest, and primarily, the borrower’s ability to repay. While there may be some organizations or businesses that might be able to afford a loan from hundreds of thousands to the millions of dollars, and still able to repay it back in less than five years, there are also a large number of small local businesses that are unable to do so. For example, even a \$250K business loan at only 4% interest over a mere 5 year term would require monthly payments of almost \$5K a month for the loan itself, not to mention other standard overhead, operational, or costs of goods sold. Limiting a lease term to 5 years would only add an additional hardship, or even exclusion, for most small local businesses to participate, employ local workers, or have any hope at success.

Even if a business were to be successful at negotiating a real property lease, a basic guideline for any local lending institutions is that a commercial loan would generally not be granted to any organization with only a leasehold interest that would be shorter than the life of the loan itself. Thus, in order to provide a fair commercial lease opportunity to a wider range of the small local business community and still provide a decent chance at success, it is concluded that an Exceptional Term Lease for longer than 5 years be allowed.

Estimated fair market rental value of the land based upon the Property's previous lease tenant indicates a land lease value of approximately \$0.25 to \$0.34 per square meter per month. A description of the property and the potential major components of a Request for Proposals follows, to provide preliminary but more detailed information on this development opportunity.

## **1.1 LAND USE CONSIDERATIONS**

**1.1.1 Property Location.** The Property is located along the southern border of Polaris Road, Piti, Guam (See attached Map).

**1.1.2 Previous Land Use.** The Property was formerly utilized by for metal recycling, aggregate storage, and construction equipment and materials storage.

**1.1.3 Current Zoning.** Public Law 30-232 designates Reservation Lot F-12 as Limited Industrial (M1) Zone. If a change to this zoning designation is needed to implement the developer's plans, an explanation of the need for change must be included in the proposal submitted in response to an RFP.

**1.1.4 Mining of Property.** Should aggregate mining be intended by the prospective developer as part of its development plan, GALC requires that proposal in response to an RFP discuss how the property will become usable after the developer ceases to use the property for this purpose and discuss royalties that will be paid from the use of the property for this purpose.

**1.1.5 Adjacent Property.** Roads and utilities may traverse the Property, serving other properties in the vicinity. These services shall continue uninterrupted but should relocation be desirable to satisfy development objectives, consultation must first be conducted with affected property owner(s) and GALC approval must be obtained. If approved, any and all relocation expenses shall be borne by the prospective developer.

## **1.2 GALC COMMITMENTS**

- To support designation of the appropriate zone for the property to accommodate the development plan, to the extent allowable by law.
- To support the developer in satisfying all regulatory, land use, environmental, business, building and other local and federal permitting requirements, to the extent allowable by law.
- To support the developer in presenting and securing approval of the lease agreement to the extent allowable by law.

### **1.3 OFFER RESPONSIBILITIES**

A lease agreement(s) will be prepared once negotiations with the successful offeror(s) have concluded. Since the lease will require offeror(s) to carry out various responsibilities, including, but not limited to those listed below, proposals must indicate concurrence with paying the costs for and carrying out the major responsibilities listed below:

**1.3.1 Conceptual Plan.** Prepare a conceptual plan for the proposed development, commit to a specific development schedule and secure all necessary development permits. In submitting a proposal in response to an RFP, offerors are required to submit this conceptual plan for the development of the property or portion(s) thereof which shall identify the type of use, the market demand for the goods and/or services to be offered, a rough order of magnitude cost for developing the site and the offeror's ability to finance development and operations including evidence of such financial ability.

**1.3.2. Business Plan.** Create for itself and for GALC, a Business Plan that contains a project pro forma consistent with the conceptual plan covering the period of time required by the offeror(s) for project development and operation.

**1.3.3 Infrastructure.** Plan, implement and fund all infrastructure improvements needed for development plans.

**1.3.4. Management.** Accept management and maintenance responsibility for the Property that preserves the value and revenue generating capacity of the Property.

**1.3.5. Environmental Remediation (If Needed).** Accept responsibility for performance and costs of any environmental remediation required to develop the Property as proposed.

**1.3.6. Insurance.** Obtain all required property, liability and workmen's compensation insurance, and indemnify GALC from any liability arising from the development and use of the Property.

**1.3.7 Survey/Retracement.** Prepare a property boundary survey map of the proposed Property use and obtain all required approvals. Survey monuments must be maintained and visible at all times for inspection by GALC.

**1.3.8. Fees.** Pay all fees associated with the recording the Lease at the Department of Land Management.

## **1.4 OFFEROR REQUIREMENTS**

A primary consideration of the GALC and the Government of Guam is the benefits to be derived through the lease and development of this valuable asset. Traditional methods of generating revenue are addressed in subsections 1.4.1 and 1.4.2 below. However, GALC, GEDA and the Government of Guam recognize that significant public benefits can also be derived through public/private partnerships and other mechanisms that, considered as a whole, exceed the benefits derived from a traditional real estate lease transaction. Should other non-traditional methods be proposed by the offeror, these methods will be given serious consideration but offerors must still identify the benefits that would have been derived from a strict real estate lease transaction for comparative purposes. Offerors are required to address the following requirements in their proposals:

**1.4.1. Rent.** Rent will be based upon appraised/estimated fair market rental value. Prospective developers are required to identify the amount of ground rent to be paid annually/monthly over the term of the lease, taking into account GALC's objective of generating the highest amount of revenue. Periodic escalations in ground rent will also be required over the term of the lease and therefore, developer proposals must include escalations in their proposals and provide a fair and reasonable method incorporating fair market rental values for establishing ground rent.

**1.4.2. Participation Rent.** Subject to negotiations, GALC may require that the offeror(s) awarded the right to lease the Property pay participation rent which is defined as a negotiated percentage of the gross income from the operations of the business or businesses located on the Property, payable monthly. In line with GALC's objective of generating the highest amount of revenue, proposals submitted in response to this RFP should indicate whether it agrees to payment of participation rent and if so, identify the percentage of gross monthly income from the operations of the business or businesses located on the Property that will be paid as participation rent and provide a projection of monthly/annual participation rent payments. If proposals indicate agreement with payment of participation rent, proposals must also identify the method by which gross monthly income will be accounted for and any escalations in participation rent offered over the term of the lease.

**1.4.3. Alternative Payment Mechanisms.** Alternatives to property rent, subtenant and other rents may be proposed by offerors in their proposals, however, any proposal suggesting such alternatives must demonstrate how GALC's objective of generating the highest amount of revenue and or value is achieved by comparing the suggested alternative to the property rent, subtenant and other payments described above. Alternative payment schedules including rent deferrals may also be proposed but in no event will the total amount of rent be reduced. Interest may also be charged on any deferred rents.

**1.4.4. Security Deposit.** The proposal shall indicate that the developer(s) agrees to pay a non-refundable security deposit upon execution of a lease and the amount of such security deposit.

**1.4.5. Sublessee Use of Property.** Offerors must specify in their proposals whether or not subletting (or any form of third party use) is intended for any or all portions of the property being leased. Should subletting be intended, offerors shall identify the proportion of sublessee rents paid to the lessee to be paid to GALC, if any. In addition, participation rent as described above may be required to be paid by sublessees.

**1.4.6. Other Requirements.** To ensure acceptability of the intended lease agreement by the public and the government of Guam, additional requirements may be imposed and/or negotiated that are not specifically identified in this RFP, at the discretion of the Government of Guam. In addition, Public Law 34-99 requires Legislative approval of all leases whose term exceeds five (5) years. Additional requirement(s) may be imposed by the Guam Legislature. By submitting a proposal in response to this RFP, prospective offerors understand and agree that additional requirements may be negotiated by the Executive and/or Legislative Branches of the Government of Guam.

## ATTACHMENT A: MAP

### NOTE:

- Not to Scale
- Lot Apra Harbor Reservation Lot F-12-1, F-12-2, F-12-3 (13 combined acres or 52,609 ± sm)
- South of Jose D. Leon Guerrero Commercial Port of Guam
-  NOT Part of Available Lease Area

