



GOVERNMENT OF AMERICAN SAMOA

INDEPENDENT CONTRACTOR SERVICE CONTRACT #
(For Goods and Services)

PR 51495
3/3/21
9:28 am
C01457

This contract entered into by and between the Government of American Samoa (hereinafter GOVERNMENT) and **AMERICAN SAMOA COMMUNITY COLLEGE, P.O. Box 2609, Pago Pago, AS 96799** (hereinafter CONTRACTOR).

(1) DUTIES OF CONTRACTOR:

Within the term provided for herein CONTRACTOR shall faithfully and competently perform the duties below set out for the following agency, office, or department:

DEPARTMENT OF EDUCATION

Other and further duties reasonably related to those specifically set out and which may be accomplished within the term provided for herein may be assigned to the CONTRACTOR without additional cost to GOVERNMENT.

The duties of CONTRACTOR shall be:

American Samoa Teacher Education (TED) and Bachelors Education (BED) Program - SY 2021.

- Scope of Work is as per attached Exhibit A "Memorandum of Understanding Between the American Samoa Community College Teacher Education Program and the American Samoa Department of Education Regarding a Partnership to enable ASDOE Teachers and Private School Teachers to obtain ASDOE Teacher Certification for Elementary Teachers, or an Associate of Arts Degree with an Emphasis in Elementary Education and or an American Samoa Bachelor's of Education degree (B.Ed.) in Elementary Education" which is attached hereto and made a part hereof.

(2) TERM AND PLACE OF PERFORMANCE:

CONTRACTOR shall commence performance hereunder on January 1, 2021 and complete said performance no later than December 30, 2021.

All performance hereunder shall be in American Samoa, and to be conducted during those hours when the CONTRACTOR is not scheduled to work for regular work with the GOVERNMENT.

(3) PAYMENT:

Subject to the terms and conditions hereof, CONTRACTOR shall be entitled to the following compensation and benefits:

- | | |
|--------------------------|--------------|
| a. Professional Fee: | \$475,302.00 |
| b. Equipment & Supplies: | \$27,000.00 |

c. Transportation & Per Diem:	\$10,000.00
d. Other (please specify):	\$48,156.00 <i>(Indirect Costs)</i>
TOTAL CONTRACT:	\$560,458.00

All payments to which CONTRACTOR is entitled shall be made upon certification of completed obligation by the government Agency Head and approved by Contracting Officer, Office of Procurement. Payments to which the CONTRACTOR is entitled shall be made as follows:

- *Upon submittal of invoices for completed services as outlined in Exhibit A and approval of same.*

(4) ASSIGNMENT:

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

(5) AMENDMENTS IN WRITING:

This contract may be amended at any time during the term hereof without additional consideration, provided, however, no amendments or other variation of this contract shall be valid unless in writing and signed by CONTRACTOR and a duly authorized representative of GOVERNMENT.

(6) RELATIONSHIP OF PARTIES:

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

(7A) TERMINATION:

This clause applies only to contracts for \$10,000 or less:

GOVERNMENT may discharge CONTRACTOR and terminate this contract at any time when it shall determine that it has sufficient cause arising from CONTRACTOR'S dereliction or unsatisfactory performance of duty or failure to perform in accordance with each and every requirement of this contract or for misrepresentation by CONTRACTOR or conviction of CONTRACTOR of any felony. If the services of CONTRACTOR are terminated for cause prior to completion of the above-specified duties, GOVERNMENT may require repayment by CONTRACTOR of all advanced payments made and may require delivery of any partially completed work. In the event GOVERNMENT has benefited by the services rendered, the GOVERNMENT shall be liable only for the pro rata portion of the contract price for the portion of work completed, and any monies paid to CONTRACTOR in excess thereof shall be promptly repaid to GOVERNMENT.

GOVERNMENT may further at its option terminate this contract without cause effective upon receipt of written notice to CONTRACTOR. In the event of such termination without cause, CONTRACTOR shall be entitled only to pro rata payment for the portion of the work completed or

services rendered to the effective date of termination, provided that any completed or partially completed work is first delivered to the GOVERNMENT.

(7B) TERMINATION FOR CONVENIENCE (as per §10.0260(a), A.S.A.C):

This clause applies to all contracts in excess of \$10,000:

- (a) The GOVERNMENT may terminate performance of work under this contract in whole or, from time to time, in part if the contracting officer determines that a termination is in the GOVERNMENT'S interest. The contracting officer shall terminate by delivering to the CONTRACTOR a notice of termination specifying the extent of termination and the effective date.
- (b) After receipt of a notice of termination, and except as directed by the contracting officer, the CONTRACTOR shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
 - (1) Stop work as specified in the notice;
 - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract;
 - (3) Terminate all subcontracts to the extent they relate to the work terminated;
 - (4) Assign to the GOVERNMENT, as directed by the contracting officer, all right, title, and interest of the CONTRACTOR under the subcontracts terminated, in which case the GOVERNMENT shall have the right to settle or to pay any termination settlement proposal arising out of those terminations;
 - (5) With approval or ratification to the extent required by the contracting officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause;
 - (6) As directed by the contracting officer, transfer title and deliver to the GOVERNMENT (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the GOVERNMENT;
 - (7) Complete performance of the work not terminated;
 - (8) Take any action that may be necessary, or that the contracting officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the CONTRACTOR and in which the GOVERNMENT has or may acquire an interest;
 - (9) Use its best efforts to sell, as directed or authorized by the contracting officer, any property of the types referred to in subparagraph (6) of this subsection; provided, however, that the CONTRACTOR (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the contracting officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the GOVERNMENT under this contract, credited to the price or cost of the work, or paid in any other manner directed by the contracting officer.
- (c) The CONTRACTOR shall submit to the contracting officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the contracting officer. The CONTRACTOR may request the

GOVERNMENT to remove those items or enter into an agreement for their storage. Within 15 days, the GOVERNMENT will accept title to those items and remove them or enter into a storage agreement. The contracting officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

- (d) After termination, the CONTRACTOR shall submit a final termination settlement proposal to the contracting officer in the form and with the certifications prescribed by the contracting officer. The CONTRACTOR shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the contracting officer upon written request of the CONTRACTOR within this 1-year period. However, if the contracting officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the CONTRACTOR fails to submit the proposal within the time allowed, the contracting officer may determine, on the basis of information available, the amount, if any, due the CONTRACTOR because of the termination and shall pay the amount determined.
- (e) Subject to paragraph (d) of this clause, the CONTRACTOR and the contracting officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated.

(7C) TERMINATION FOR DEFAULT (GOODS & SERVICES) (as per §10.0260(b), A.S.A.C):

This clause applies to all contracts in excess of \$10,000:

- (a) Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the procurement officer may notify the CONTRACTOR in writing of the delay or nonperformance; and if not cured in ten days or any longer time specified in writing by the procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part the procurement officer may procure similar supplies or services in a manner and upon terms deemed appropriate by the procurement officer. The CONTRACTOR shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- (b) CONTRACTOR'S Duties. Notwithstanding termination of the contract and subject to any directions from the procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the GOVERNMENT has an interest.
- (c) Compensation. Payment for completed supplies delivered and accepted shall be at the contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and procurement officer. The GOVERNMENT may withhold from amounts due the CONTRACTOR such sums as the procurement officer deems

to be necessary to protect the GOVERNMENT against loss because of outstanding liens or claims of former lien holders and to reimburse the GOVERNMENT for the excess costs incurred in procuring similar goods and services.

- (d) Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of subcontractors, the CONTRACTOR shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the CONTRACTOR to make progress in the prosecution of the work hereunder which endangers such performance) if the CONTRACTOR has notified the procurement officer within 15 days after the cause of the delay and the failure arises out of causes such as, acts of God, acts of the public enemy, acts of the government and any other governmental entity in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes or other labor disputes, freight embargoes, or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the supplies of services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the contract requirements.

Upon request of the CONTRACTOR, the procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the GOVERNMENT under the clause entitled "Termination for Convenience."

- (e) Erroneous Termination for Default. If, after notice of termination of the CONTRACTOR'S right to proceed under the provisions of this clause, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience, be the same as if the notice of termination had been issued pursuant to such clause.
- (f) Additional Rights and Remedies. The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.
- (8) EQUAL OPPORTUNITY (as per §10.0260(c), A.S.A.C):

This clause shall apply to all contracts in excess of \$10,000, unless this contract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor (41 CFR, ch. 60):

During the performance of this contract, the CONTRACTOR agrees as follows:

- (a) The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including

apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this Equal Opportunity clause.

- (b) The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
 - (c) The CONTRACTOR will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the CONTRACTOR, advising the labor union or workers' representative of CONTRACTOR'S commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - (d) The CONTRACTOR will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 - (e) The CONTRACTOR will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - (f) In the event of the CONTRACTOR'S noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, orders, this contract may be cancelled, terminated, or suspended, in whole or in part, and the CONTRACTOR may be declared ineligible for further GOVERNMENT contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967; and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 - (g) The CONTRACTOR will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the GOVERNMENT may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the CONTRACTOR may request the GOVERNMENT to enter into such litigation to protect the interests of the GOVERNMENT.
- (9) CONTRACT WORK HOURS AND SAFETY STANDARDS ACT OVERTIME COMPENSATION (as per §10.0260(d), A.S.A.C):

For contracts in excess of \$2,500 which involve employment of mechanics or laborers:

This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 USC 327-333), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

- (a) Overtime Requirements. No CONTRACTOR or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, apprentices, trainees, watchmen, and guards shall require or permit any laborer, mechanic, apprentice, trainee, watchman, or guard in any work week in which he is employed on such work to work in excess of 8 hours in any calendar day or in excess of 40 hours in such work week on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer, mechanic, apprentice, trainee, watchman or guard receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of 8 hours in any calendar day or in excess of 40 hours in such work week, whichever is the greater number of overtime hours.
 - (b) Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the provisions of paragraph (a), the CONTRACTOR and any subcontractor responsible therefore shall be liable to any affected employee for his unpaid wages. In addition, such CONTRACTOR and subcontractor shall be liable to the American Samoa Government for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, apprentice, trainee, watchman, or guard employed in violation of the provisions of paragraph (a) in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of 8 hours or in excess of his standard work week of 40 hours without payment of the overtime wages required by paragraph (a).
 - (c) Withholding for Unpaid Wages and Liquidated Damages. The Contracting Officer may withhold from the government prime CONTRACTOR, from any monies payable on account of work performed by the CONTRACTOR or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such CONTRACTOR or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph (b).
 - (d) Subcontracts. The CONTRACTOR shall insert paragraphs (a) through (d) of this clause in all subcontracts, and shall require their inclusion in all subcontracts of any tier.
 - (e) Records. The CONTRACTOR shall maintain payroll records containing the information specified in 20 CFR 516.2(a). Such records shall be preserved for three years from the completion of the contract.
- (10) EXAMINATION OF RECORDS (as per §10.0260(e), A.S.A.C):

This clause applies if this contract was negotiated:

The CONTRACTOR agrees that the Contracting Officer, the Comptroller General of the United States, or the Secretary of the Interior, or any of their duly authorized agents or representatives, shall, until the expiration of three years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the CONTRACTOR involving transactions related to this contract.

The CONTRACTOR further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Contracting Officer, the Comptroller General of the United States, or the Secretary of the Interior, or any of their duly authorized agents or representatives, shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent book, documents, papers and records of such subcontractor, involving transactions related to this contract.

(11) CLEAN AIR AND WATER (as per §10.0260(f), A.S.A.C):

This clause is applicable to all contracts over \$100,000, unless this requirement has been waived by EPA:

(a) "Air Act," as used in this clause, means the Clean Air Act (42 USC 7401 et seq.).

"Clean air standards," as used in this clause, means:

- (1) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;
- (2) An applicable implementation plan as described in section 110(d) of the Air Act (42 USC 7410(d));
- (3) An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 USC 7411(c) or (d)); or
- (4) An approved implementation procedure under section 112(d) of the Air Act (42 USC 7412 (d)).

"Clean water standards," as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 USC 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 USC 1317).

"Compliance," as used in this clause, means compliance with:

- (1) Clean air or water standards; or
- (2) A schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

"Facility," as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the administrator, or a designee, of the Environmental Protection Agency, determines that independent facilities are collocated in one geographical area.

"Water Act," as used in this clause, means Clean Water Act (33 USC 1251 et seq.).

(b) The CONTRACTOR agrees:

- (1) To comply with all the requirements of section 114 of the Clean Air Act (42 USC 7414) and section 308 of the Clean Water Act (33 USC 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;
- (2) That no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing;
- (3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and
- (4) To insert the substance of this clause into any nonexempt subcontract, including this subparagraph (b)(4).

(12) PATENTS (as per §10.0260(g), A.S.A.C):

For Contracts involving research, development, experimental or demonstration work:

The CONTRACTOR shall hold and save the GOVERNMENT and its officers, agents, servants, and employees harmless from liability of any nature or kind including cost and expenses for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract, including its use by the GOVERNMENT, unless otherwise specifically stipulated in the contract documents.

License and/or royalty fees for the use of a process which is authorized by the GOVERNMENT on the project must be reasonable, and paid to holder of the patent or his authorized licensee, directly by the GOVERNMENT and not by or through the CONTRACTOR.

If the CONTRACTOR uses any design, device, or materials covered by letters for patent or copyright, he shall provide for such use by suitable agreement with the owner of such patented or copyright design, device, or material. It is mutually agreed and understood, that, without exception, the contract prices shall include all royalties or costs arising shall from the use of such design, device, or materials, in any way involved in the work. The CONTRACTOR and/or his sureties shall indemnify and save harmless the GOVERNMENT from any and all claims for infringement, by reason of the use of such patented or copyrighted design, device, or materials or any trademark or copyright in connection with work agreed to be performed under this contract, and shall indemnify the GOVERNMENT for any cost, expense or damage which it may be obligated to pay by reason of such infringement at any time during the work or after completion of the work.

(13) PROHIBITION AGAINST GRATUITIES AND KICKBACKS (as per §10.0260(h), A.S.A.C):

- (a) Gratuities. It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.

- (1) GOVERNMENT may, by written notice to CONTRACTOR, terminate the right of CONTRACTOR to proceed under this agreement if it is found, after notice and hearing by the Contracting Officer, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by CONTRACTOR or any agent or representative of CONTRACTOR to any officer or employee of the American Samoa Government, including members of the American Samoa Legislature, with a view toward securing an agreement or securing favorable treatment with respect to the performing of such an agreement, provided that the existence of the facts upon which the Contracting Officer makes such findings shall be in issue and may be reviewed by any competent court.
- (b) Kickbacks. It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
- (1) GOVERNMENT may, by written notice to the CONTRACTOR, terminate the right of CONTRACTOR to proceed under this contract if it is found, after notice and hearing by the Contracting Officer, that any payment, gratuity, or offer of employment was made by or on behalf of a subcontractor under a contract to the prime contractor, or higher tier subcontractor, or any person associated therewith as an inducement for the award of a subcontract or order.
- (c) Remedies of GOVERNMENT. In the event this contract is terminated as provided herein above, GOVERNMENT shall be entitled: (i) to pursue the same remedies against CONTRACTOR the GOVERNMENT could pursue in the event of a breach of contract by CONTRACTOR; or (ii) recover the full amount of such payment, gratuity, or the amount of money which would have been earned as a result of the illegal offer of employment by the person so employed.
- (d) Prescribed Remedies not Exclusive. The rights and remedies of GOVERNMENT provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(14) CONTINGENT FEES (as per §10.0260(i), A.S.A.C):

CONTRACTOR warrants that no person or selling agency has been employed or retained to solicit or secure this contract on an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by CONTRACTOR for the purpose of securing business. For breach or violation of this warranty, GOVERNMENT shall have the right to annul this contract without liability or in its discretion to deduct from the contract price, or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

(15) COVENANT AGAINST COLLUSION (as per §10.0260(j), A.S.A.C):

CONTRACTOR warrants that neither he nor any of his employees have directly or indirectly entered into any secret or non-secret agreement, participated in any collusion, or otherwise taken any action in restraint of competition in connection with the bid or proposal submitted. For breach or violation of the warranty, GOVERNMENT shall have the right to annul this agreement without liability or in its discretion to pursue the same remedies against CONTRACTOR. GOVERNMENT could pursue

in the event of breach of contract by CONTRACTOR, and as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages not to exceed 10% of the contract price.

(16) INDEMNITY:

CONTRACTOR shall indemnify, defend and hold harmless the GOVERNMENT, its officers, employees and agents from and against any and all claims and demands whatsoever, including costs and attorneys fees, resulting from CONTRACTOR'S negligent acts or omissions in connection with performance of this contract or use by CONTRACTOR of any patented article, patented process, patented appliance, or copyright material.

(17) TAX CLEARANCE:

American Samoa tax rules for the purpose of collecting Taxes under American Samoa Code Annotated (A.S.C.A.) Title 11, Section 11.0403 – Revenue;

- (a) Businesses are required to pay taxes on income earned in American Samoa. This will include quarterly estimated tax payments, 2% wage tax and withholding of all employment taxes as applicable under the Internal Revenue Service (IRS) and American Samoa tax laws.
- (b) Wages earned in American Samoa are taxed in accordance with American Samoa tax laws. A non-resident who performs personal services in American Samoa is taxed if their presence is greater than 90 days and earnings are \$3,000 or more U.S. dollars.
- (c) Tax Clearance. In accordance with the American Samoa Code Annotated, Title 11, as now or hereafter amended, the final payment on this agreement unless otherwise agreed to in writing by an authorized official of the GOVERNMENT, shall not be made until the CONTRACTEE obtains receipt of a tax clearance from the Tax Office to the effect that all the delinquent taxes levied or accrued under the American Samoa statutes against the CONTRACTOR have been paid.

(18) APPLICABLE LAW; JURISDICTION:

This contract shall be construed according to the laws of American Samoa. All judicial proceedings shall be in the High Court of American Samoa. CONTRACTOR hereby appoints the Treasurer, Government of American Samoa, as agent for service within the jurisdiction, if an agent of CONTRACTOR cannot be found in American Samoa after a reasonable search.

(19) PROHIBITION AGAINST INTEREST IN CONTRACT:

- (a) No member of or delegate to the Congress of the United States or Fono of American Samoa shall be permitted to any share or part of this contract or to any benefit to arise from the same; provided that the foregoing provision of this contract shall not apply if made with a corporation for its general benefit.
- (b) No employee of the GOVERNMENT, who in their capacity as an employee of the GOVERNMENT exercises any function or responsibility in connection with the carrying out of the project or the award or administration of this contract, shall have any private interest, direct or indirect, in this contract.

- (c) The CONTRACTOR represents and covenants that none of its owners, shareholders, officers, directors, trustees, partners, employees, managers or other associated persons with a private interest in this contract are government employees exercising the functions or responsibilities described in subparagraph 19(b) hereof.

(20) NOTICES:

All notices and correspondence required to be sent to either party hereunder shall be sent to the parties or their respective addresses as listed below either by certified mail or via personal delivery. Service of any notice or demand by mail shall be deemed complete ten (10) days after mailing or ten (10) days after the date actually received, whichever is first. Notice may also be given by facsimile followed by certified mailing of the original notice.

AMERICAN SAMOA GOVERNMENT

Contracting Officer:

Chief Procurement Officer
Office of Procurement
Pago Pago, AS 96799
Phone: (684) 699-1170
Fax: (684) 699-2387

With Copies to:

Director
Department of Education
American Samoa Government
Pago Pago, AS 96799
Phone: (684) 633-5237
Fax: (684) 633-4240

Attorney General
P.O. Box 7
American Samoa Government
Pago Pago, AS 96799
Phone: (684) 633-4163
Fax: (684) 633-1838

CONTRACTOR:

American Samoa Community College
P.O. Box 2609
Pago Pago, AS 96799
Phone: (684) 699-9155
Fax: (684) 699-6132
Email: r.pato@amsamoa.edu

Each party may change its designated address by serving notice on the other party as provided above.

AGREED TO BY AND BETWEEN:

Contractor:

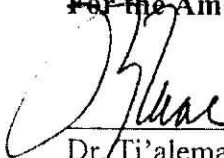
AMERICAN SAMOA COMMUNITY COLLEGE



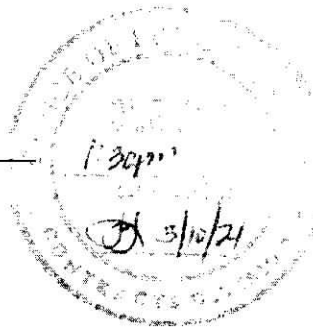
By: Dr. Rosevonne Pato
As Authorized Corporate Officer

2/22/2021
Date

For the American Samoa Government:

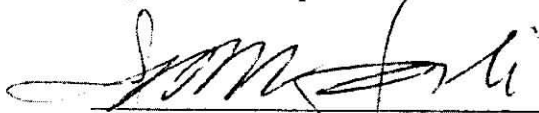


Dr. Ti'alemasunu Mikaele Etuale
Chief Procurement Officer



3/11/21
Date

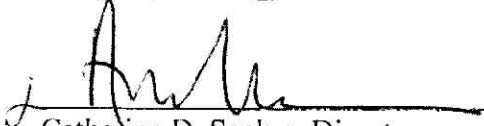
Department Representative:



Dr. Talauega Samasoni Asaeli, Director
Department of Education

2/26/21
Date

Budget (Funding):

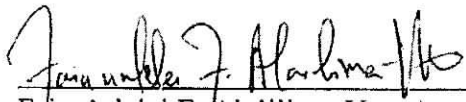


Catherine D. Saelua, Director
Office of Program Planning and Budget

3/8/21
Date

Account #: F00613-5325 (PR51495)

Office of the Attorney General (As to Form):



Fainu'ulelei F. Ala'ilima-Utu, Attorney General
Office of Legal Affairs

2/26/21
Date

Memorandum of Understanding

Between the American Samoa Community College Teacher Education Program and the American Samoa Department of Education Regarding a Partnership to enable ASDOE Teachers and Private School Teachers to obtain ASDOE Teacher Certification for Elementary Teachers, or an Associate of Arts Degree with an Emphasis in Elementary Education and or an American Samoa Bachelor's of Education degree (B.Ed.) in Elementary Education.

1. **Purpose:** The purpose this Memorandum of Understanding (MOU) is to establish a mutual framework governing the respective organizational relationships, responsibilities, and activities between the Parties (hereinafter the Parties shall be identified as the American Samoa Department of Education (ASDOE) and the American Samoa Community College Teacher Education Department (ASCC TED). The areas of responsibility and relationships presented herein provide the concept under which the program shall be executed.

This agreement is for the Teacher Professional Development-making improvements in teacher effectiveness and ensuring that all schools have highly qualified teachers. To include all courses offered for DOE Teacher Certification requirements, General education courses and Teacher Education courses that will lead to an AA Education Degree with emphasis in Elementary Education and a Bachelor of Elementary Education Degree. Not limited to Orientation Workshop for ASDOE/Community Adjunct Faculties.

2. **Duration and Time:**
Courses will be offered for Spring 2021, two 5-week Summer Sessions 1st & 2nd and a 10-week summer session to include practicum courses (summer lab school to be developed at a school site) Summer 2021, and Fall 2021 Semester. The MOU is to begin January 2021 to December 2021.
3. **Description of Goods and Services:** A total of **\$560,458** per year will be dedicated to fund this annual partnership between ASDOE and ASCC-TED Program. It is the focus of this program that all teachers will be given educational access and or assistance to enroll in courses to fulfill ASDOE certification requirements, provide access to courses to ensure that all teachers will be able to work toward fulfilling requirements to graduate with an AA degree with an emphasis in Elementary Education and or a Bachelor's in Education in Elementary Education degree. Any high school teacher with less than AA degree will be mandated to take courses that will be selected. During Spring and Fall, courses will be offered after school hours, during the Summer, courses are to be offered during daylight hours.

Note: Courses to be taught are based on TED data of the past 2 years, also is based on the projection taken from the list of teachers provided by Teacher Quality (TQ) needing services. What is not provided is a list of private school teachers who will attend for certification or who will be in a program at ASCC. Private school teachers receive clearance from TQ to participate on the premise that all documents required to attend ASCC are satisfactorily provided in a timely manner. We also acknowledge that the list we are provided does not guarantee teachers will enroll and that more or less teachers could participate throughout the year. It is only through registration that we acquire the number of actual in-service teachers who will participate and the number of actual courses that will be taught.

All courses will be taught on ASCC campus with the except of Certification Courses during the Fall & Spring 10-week sessions and Summer 5-week sessions. ED 240 Educational Technology will be taught both online and face to face due to the lab component of the course. Online courses taught will meet contact hours via internet connections with instructor(s) according to schedule.

ASDOE/Teacher Quality will:

1. Identify teachers in consultation with ASCC TED/BED Department, those teachers who will be committed to the program and have them complete a basic 3-part application package (personal, professional and commitment goals to continue the three (3) part consecutive years following achieving "highly qualified" status.
2. Maintain close working relationship with the successfully chosen teachers culminating with each of the participants graduating as scheduled, and upon completion of program.
3. Establish a synergetic relationship with ASCC Teacher Education Department for the purpose of tracking and monitoring the performance of each of the candidates and to detect and take appropriate actions in the event of potential problems of the candidates.
4. Contract the American Samoa Community College-TED/BED to entail duties and responsibilities involving and especially tracking the progress of each of the participating teachers.
5. Pay for all course fees, instructor fees and all other identified college related instructional costs for all teachers who will be taking courses with the TED/BED Program. These teachers must be identified by ASDOE/Teacher Quality in consultation with the Director of ASCC TED Department and designated staff/administrative assistant for ASDOE/TED Program.

6. Provide the following eTextbooks for online Certification Courses as offered and agreed upon by Teacher Quality:

**Note cost listed for textbooks are for hardcopies that are subject to change. If ebooks are not available, Teacher Quality will either provide hard copy textbooks for in-service teachers or in-service teachers will need to purchase their own textbooks or risk being administratively dropped from courses as per ASCC Textbook Policy, ASCC Catalog 2020-2022, p. 38.*

A) Course: ED 150 Introduction to Teaching*

Text: First Days of School: How to Be an Effective Teacher; by Wong, H. & Wong, R.;

ISBN & Price: ISBN-978-0-9764233-1-7/**\$35.10**

Publisher/Copyright Year: Harry K. Wong Publications, Inc. (2009)

**This etext was not provided during Fall 2020, Recommendation: TQ or teachers to purchase hard copy book from ASCC Bookstore.*

B) Course: ED 240 Instructional Technologies

Text: Integrating Educational Technology into Teaching, 6th Ed.; by Roblyer, M.D., & Doering, A.H.;

ISBN & Price: ISBN-10:0-13-26-1225-8/**\$146.36**

Publisher/Copyright Year: Pearson Education Inc. (2013)

C) Course: ED 280 Multicultural Education

Text: An Introduction to Multicultural Education; by Banks, J.A.;

ISBN & Price: ISBN-13:978-0-13-269633-3/**\$116.40**

Publisher/Copyright Year: Pearson (2014)

D) Course: ED 300 Foundations of Education

Text: Foundations of American Education: Becoming Effective Teachers in Challenging Times, 17th Ed.;

ISBN & Price: ISBN-10:0-13-488109-7/13:078-0-13-448109-8/**\$169.85**

Publisher/Copyright Year: Pearson Education, Inc. (2018)

E) Course: ED 301 Educational Psychology

Text: Educational Psychology Theory and Practice, 10th Ed.;

ISBN & Price: ISBN-13:978-0-13-703435-2/**\$207.10**

Publisher/Copyright Year: Pearson Education, Inc. (2012)

F) Course: ED 305 Foundations of Curriculum & Instructions

Text: Developing the Curriculum, 10th Ed.;

ISBN & Price: ISBN-978-0-13-262751-1/**\$169.10**

Publisher/Copyright Year: Pearson Education Inc. (2013)

ASCC TED/BED will:

1. All ASCC General Education (GE) and Teacher Education Department (TED) courses specific to the AA with emphasis in Education and Bachelor of Elementary Education degrees Program will be held on the ASCC Campus. Courses identified as ASDOE Teacher Certification courses will be offered online with one exception of ED 240 that will be offered partially online and face to face due to a lab component (Please refer to note above). All GE and TED courses are offered after school hours with the exception of practicums and Student Teaching (ST) experiences and Summer sessions. ST experience course is offered only during regular school hours during Fall and Spring semesters. ASCC offers courses for ECE Certification.
2. Provide planning, implementation, and coordination under the guidance of the director of TED but not limited to the proper utilization of finances, timely reports and assessments as required.
3. Continue to employ Administrative Assistant to include AA Academic Assistant to work solely with the Director of Teacher Education on the planning, implementing, coordinating and scheduling of the program beginning Spring Semester 2021.
4. Contract ASDOE/ASCC-TED Academic Community Assistant to work solely with the Director of Teacher Education on the planning, recruiting, implementing and coordinating of outreach programs at school sites for interested students at the high school level. Compile and create student profiles for pre-service and in-service teachers with either an AA degree or B. Ed and teachers who are enrolled in approved DOE Teacher Certification courses.
5. The Academic Community Assistant (and to include another staff or faculty when needed) will travel to all school sites including travel to Manu'a and Aunu'u Schools for outreach, professional development and recruitment. Clearances will be obtained from school principals before visiting school sites.
6. Schedule all in-service Teacher Certification courses, AA & B. Ed. Courses in alignment with ASDOE Calendar to ensure that teachers can attend all scheduled sessions throughout the academic year.
7. TED Director will act as Project Director for ASDOE/TED MOU in collaboration with ASDOE/TQ Administration, ASCC Leadership, Office of Academic & Student Affairs, Dean of Academic & Student Affairs, ASDOE/TED Grants Analyst, ASCC Business Office, ASDOE Elementary Program Director, TED Faculty and Adjunct and all other external stakeholders.

8. Travel off island to a professional development training (PD) to keep abreast with current trends of education, technology and educational assessments. In light of the danger of the pandemic that may continue into 2021 and travel may not be permissible, an alternate use the budget for off island PD will be used as follows: 1/3 of allotted budget for PD on island and 2/3 of budget to purchase technical equipment or software as the educational trend is steering toward online learning, this will help to equip us with the necessary technology equipment to loan in-service teachers who will need the assistance while enrolled in courses for certification.
9. Provide for in-service teachers after hours computer lab time to do research and or assignments. Will have a staff or a part-time computer lab assistance to oversee after school or weekend computer lab usage for in-service teachers during Fall/Spring ASTEP after school sessions and summer (2 consecutive 5-week sessions).
10-weeks X 5 days = 50 days x 3 hours per day = 150 hours @ \$7.25 minimum wage = \$1087.50 X 2 semesters + 2 summer 5-week sessions = \$3,262.50.

Note: Lab hours are flexible including Saturdays.

10. ASCC-TED/ASBEP will provide program evaluation specifically adhered to in-service teachers enrolled in the College's AA and B.Ed. programs. Evaluation services will include quantitative data highlighting enrollment trends, completion and achievement statistics in a qualitative report that will be submitted to ASDOE. Stats will be provided for each 10-week and 5-week sessions during Spring, Summer and Fall.
11. Summer Lab School will be created in the field for in-service teachers to take 300-400 practicum courses during the summer of 2021. See supplement documentation.

Funding: The total funding needed equals to \$560,458 contractual services will be based on a yearly need.

Time Frame of Program: January 2021 to December 2021 to include: Spring 2021 one 10-week session, Summer 2021 1st & 2nd Sessions 5-week session each, Summer one 10-week session include a summer lab for practicum courses, Fall 2021 one 10-week session.

Note: A 10-week summer session (that includes a 6-week Lab School out in the field) will simultaneously take place along with the two 5-week summer sessions. Having a 10-week session during the summer makes it possible to

offer ED 340 (4 credit course) to be taught during this timeframe. The 10-week summer session is recommended to be offered every other year or when feasible and sensible to expedient in-service teachers to complete BED program.

Applicable Laws: The applicable statutes, regulations, directives, and procedures of the United States of America and American Samoa shall govern this MOU and all documents and actions pursuant to it.

Contract claims and disputes: All claims and disputes by the Parties arising under or relating to this MOU shall be resolved in accordance with Federal laws and the law of American Samoa and the terms of the MOU.

Dispute Resolution: In the event of a dispute between the Parties each agree to the use their best efforts to resolve that dispute in an informal fashion through consultation and communication or other forms of non-binding alternative dispute resolution mutually acceptable to communication, or other forms of non-binding alternative dispute resolution.

**ASDOE/ASCC Teacher Education Cohort
January - December 2021 Budget**

AA Degree and B. Ed. Degree costs:

<i>Spring 2021 15-wk (ST)</i>	<i>12 credits</i>
Spring 2021 (10 wk)	6-8 credits
Summer 2021 session 1 (5-wk)	6 credits
Summer 2021 session 2 (5-wk)	6 credits
Summer 2021 session (10-wk)	6-8 credits*
<i>Fall 2021 15-wk (ST)</i>	<i>12 credits</i>
Fall 2021 (10-wk)	4-8 credits
<hr/>	
Total (actual):	52-60 credits

Courses (buy out -instructors' contracts): \$ 288,443
(140 courses-this include Gen Ed. courses)

To includes the following fee:

Lump sum fee: \$400 per course: (140x400)	\$	56,000
or \$50 per student (average 8 per course)		
140 X 8 = 1120 students (\$56,000)		

Sub-Total Instructional costs:	\$	344,443
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Note: Projection of course buy out and fees are based on 140 courses, 8 students per course. There is an exception of ED 490 and ED 491 where the actual number of students who are on task to graduate are factored in to enroll in these courses. Projection is based on the last two years of ASTEP course offerings and fees.

Operational and All other costs:

Evaluation:	\$	10,000
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Personnel:

ASDOE/TED/Admin. Asst.:		25,360	
Data Specialist Fringe (16.7%)	\$	4,235	\$29,595

ASDOE/TED Academic Asst.:		23,000	
Academic Asst. Fringe (8.7%)	\$	2,001	25,001
<i>(position was not filled 2020, will fill 2021)</i>			

After hours computer lab:	\$	3,263
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Summer Lab School:

8 Mentors (\$2,000 per mentor)	\$	16,000
1 Admin (\$1,000)	\$	1,000
Students/teachers supplies & incentives	\$	7,000

Outreach (PD's) incentives, travel to schools including Manua, Aunuu, schools:	\$	4,000
<i>(did not used 2020 due to covid19)</i>		

ST-CTs (18) (Spring 8, Fall 13):	\$	42,000
\$2,000 per CT, student teaching		
<i>(projection from data 18 BED candidates)</i>		

Office Supplies & equipment:	\$	20,000
Travel (Professional Develop):	\$	10,000
<i>(see #8 for alternate use in case of covid-19)</i>		

Subtotal Operational & all other cost:	\$	167,859
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Indirect Cost @ <u>9.4%</u>	\$	<u>48,156</u>
Total Operational and All Other Cost:	\$	<u>560,458</u>