



Telephone Nos. (671) 648-3054/55 or Facsimile (671) 648-3165

Accountability	Impartiality	Competence	Openness	Value
INVITATION FOR MULTI-STEP BID (IFB) NO.: GPA-118-18				
DESCRIPTION: Supply of Reprocessed Guam Power Authority Waste Oil Meeting GPA's Specifications for Reprocessed Waste Oil				

SPECIAL REMINDERS TO PROSPECTIVE BIDDERS

Bidders are reminded to read the Sealed Bid Solicitation and Instructions, and General Terms and Conditions attached to the IFB to ascertain that all of the following requirements checked below are submitted in the bid envelope, submit one (1) original and six (6) bound copies of the Technical Proposal including one (1) original and six (6) printed copies of the Qualitative Scoring Workbook. One (1) electronic PDF format copy in CD, DVD, and/or USB Flash Drive of the Qualitative Scoring Workbook should also be submitted. The BIDDER's Price Proposal shall consist of one printed copy and one electronic (CD) copy of the MS Excel Workbook, **Price Proposal Evaluation.xls.**, at the closing date and time of closing.

- (XX) BID GUARANTEE (\$150,000.00 USD) May be in the form of;
(NOTE: Cashier's Check or Certified Check Refunds will be ONLY be made out to the name of the Bidder.)
Reference #11 on the General Terms and Conditions

- Cash, Bank Draft, Cashier's Check or Certified Check
- Wire Transfer to Guam Power Authority. Account information shall be sent to bidders upon request.
- Letter of Credit or
- Surety Bond – Valid only if accompanied by:
 - Current Certificate of Authority issued by the Insurance Commissioner;
 - Power of Attorney issued by the Surety to the Resident General Agent;
 - Power of Attorney issued by two (2) major officers of the Surety to whomever is signing on their behalf.

(XX) STATEMENT OF QUALIFICATION;

() SAMPLES;

() BROCHURES/DESCRIPTIVE LITERATURE; (Shall provide detailed literature on items offered.)

(XX) NON-COLLUSION AFFIDAVIT;

(XX) AFFIDAVIT OF DISCLOSURE OF MAJOR SHAREHOLDERS

(XX) NO GRATUITIES OR KICKBACKS AFFIDAVIT;

(XX) ETHICAL STANDARDS AFFIDAVIT;

(XX) WAGE DETERMINATION AFFIDAVIT;

(XX) RESTRICTIONS AGAINST SEX OFFENDERS AFFIDAVIT;

Affidavits must comply with the following requirements:

- The affidavit must be signed within 60 days of the date the bid is due;
- Date of signature of the person authorized to sign the bid and the notary date must be the same.
- First time affidavit must be an **original** – If copy, indicate Bid Number/Agency where original can be obtained.

(XX) OTHER REQUIREMENTS:

Restrictions against Sex Offenders Affidavit, Wage Determination Affidavit, No Gratuities or Kickbacks Affidavit, Ethical Standards Affidavit, together with additional requirements set forth under required forms as specified in Section 3. A Guam Business License with proof of Employer Identification Number (EIN) is not required in order to provide a proposal for this engagement, but is a pre-condition for entering into a contract with the Authority. Bidders MUST comply with PL 26-111 dated June 18, 2002, PL 28-165 dated January 04, 2007 and Wage Determination under the Service Contract Act www.wdol.gov. Additionally, upon award the successful bidder must provide to GPA the most Recently issued Wage Determination by the US Dept. of Labor.

The reminder must be signed and returned in the bid envelope together with the bid. Failure to comply with the above requirements will mean a disqualification and rejection of the bid.

On this _____ day of _____, 2018, I, _____,
authorized representative of _____, acknowledge receipt of this
special reminder to prospective bidders with the above referenced IFB.

Bidder Representative's Signature

INVITATION FOR BID

ISSUING OFFICE:

Guam Power Authority
 Procurement Management Materials Supply
 1st. Floor, Room 101
 Gloria B. Nelson Public Service Building
 688 Route 15
 Mangilao, Guam 96913

 9/20/18
 JOHN M. BENAVENTE P.E. DATE
 General Manager

DATE ISSUED: 09/20/2018 MULTI-STEP
 09/27/2018 BID INVITATION NO.: GPA-118-18

BID FOR: Supply of Reprocessed Guam Power Authority Used Oil Meeting GPA's
 Specifications for Reprocessed Used Oil

SPECIFICATION: See Attached

DESTINATION: See Attached

REQUIRED DELIVERY DATE: See Attached

INSTRUCTIONS TO BIDDERS:

INDICATE WHETHER: ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ CORPORATION

INCORPORATED IN: _____

Technical and Price Proposals (separate sealed envelope) shall be submitted to the issuing office above no later than **4:00 P.M., November 27, 2018**. Technical Proposals and Price Proposals submitted after the time and date specified above shall be rejected. See attached General Terms and Conditions and Sealed Bid Solicitation for details.

The undersigned offers and agrees to furnish within the time specified, the articles and services at the price stated opposite the respective items listed on the schedule provided, unless otherwise specified by the bidder. In consideration to the expense of the Government in opening, tabulating, and evaluating this and other bids, and other considerations, the undersigned agrees that this bid remain firm and irrevocable not less than six (6) months after the Price Proposal Opening Date.

NAME AND ADDRESS OF BIDDER:

SIGNATURE AND TITLE OF PERSON
 AUTHORIZED TO SIGN THIS BID:

AWARD: CONTRACT NO.: _____ AMOUNT: _____ DATE: _____

ITEM NO(S). AWARDED: _____

CONTRACTING OFFICER:

JOHN M. BENAVENTE, P.E. DATE
 General Manager

NAME AND ADDRESS OF CONTRACTOR:

SIGNATURE AND TITLE OF PERSON

**Invitation For Multi-Step Bid
No. GPA-118-18**

**SUPPLY OF REPROCESSED GUAM POWER AUTHORITY WASTE OIL
MEETING GPA'S SPECIFICATIONS FOR REPROCESSED WASTE OIL**



A handwritten signature in black ink, appearing to read "Jennifer Sablan".

JENNIFER G. SABLAN, P.E.

Manager, Strategic Planning and Operations Research

A handwritten signature in blue ink, appearing to read "John J. Cruz, Jr.".

JOHN J. CRUZ, JR., P.E

Assistant General Manager,
Engineering & Technical Services

A handwritten signature in blue ink, appearing to read "John M. Benavente".

JOHN M. BENAVENTE, P.E.

General Manager

SEPTEMBER 2018

Guam Power Authority
P.O. Box 2977
Hagatna, Guam 96932

**Invitation for Multi-Step Bid
No.: GPA-118-18**

**SUPPLY OF REPROCESSED GUAM POWER AUTHORITY USED OIL
MEETING GPA'S SPECIFICATIONS FOR REPROCESSED USED OIL**



Volume I

Commercial Terms and Conditions

September 2018

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Supply of Re-processed GPA Used Oil Meeting Ultra-Low Sulfur Diesel Fuel Specifications
Volume I: Commercial Terms and Conditions
September 2018

1. Introduction

The Guam Power Authority (GPA), hereinafter referred to as GPA, seeks to contract a firm to collect Used Oil from GPA's Used Oil Facility and re-process the Used Oil for re-utilization at a designated GPA Power Plant, provided the re-processed fuel oil meets GPA's Fuel Specifications for Ultra-Low Sulfur Diesel Fuel.

The procurement solicitation is a multi-step bid.

The CONTRACTOR shall be responsible for the following items:

- Hauling of Used Oil from GPA's Used Oil Facility into CONTRACTOR's Used Oil Reprocessing Facility.
- Testing of Reprocessed Used Oil.
- Delivery to GPA's designated power plants, provided reprocessed fuel oil meets specifications for ULSD, at a \$/gallon rate inclusive of hauling, as specified in CONTRACTOR's Price Proposal.

The CONTRACTOR should be a bona fide and active member of the Guam Response Services Limited (GRSL) or any other qualified and certified oil spill response company on Guam. Otherwise, the CONTRACTOR must secure an oil response service contract with GRSL or any other spill response company within thirty (30) days after contract award. A copy of subject contract must be provided to GPA within 30 days of award.

The Technical and Price Proposals shall be submitted on or before the Cut-off Date of Receipt of Proposals, **November 27, 2018 4:00 PM.** The bid evaluation shall be a two-step process. Step One will involve evaluation of the Technical or Qualitative Proposals (Qualitative Proposals), and the establishment of a Qualified Bidders List based (QBL) based on acceptable submitted Technical Proposals. Step Two will involve the evaluation of Price Proposals (Priced Offers) from the bidders identified on the QBL. Price Proposals for unqualified bidders shall be returned, unopened, after the Technical Proposal Evaluation. GPA will perform a comprehensive evaluation of each proposal and select the BIDDER with the best proposal based on the submitted Price Proposal Evaluation Workbook Sheet. If the selected vendor cannot proceed with the contract, GPA may elect to go to the next best BIDDER or cancel the bid.

Table 1: Bid Milestones indicate the projected start and end dates for the milestones in the Bid Process. **GPA reserves the right to change the Bid Milestones at its sole discretion.** Bidders are encouraged to confirm with GPA any of the scheduled milestones via an official letter to GPA.

Table 1: Bid Milestones Bid Process Milestones		From Date	To Date
Bid Announcement		9/20/2018	11/27/2018
Pre-Bid Conference		10/4/2018 9:00 AM	
Submit Questions		9/20/2018	10/18/2018
Cut Off Date for Receipt of Questions		10/18/2018 4:00 PM	
GPA Review and Answer Questions		10/18/2018	11/9/2018
Vendor Prepare Bids		9/20/2018	11/27/2018
Cut Off Date for Receipt of Proposals (Technical and Price Proposals)		11/27/2018 4:00 PM	
EVALUATION	Technical Proposal (Bid) Evaluation	12/03/2018	12/14/2018
Step One:	Determine & Notify Qualified Bidders	12/19/2018	12/21/2019
EVALUATION	Opening of Price Proposals (Public Opening)	1/08/2019 2:00 PM	
Step Two:	Evaluation of Price Proposal	1/10/2019	1/16/2019
	Notification of Qualified Bidder	1/23/2019	1/30/2019
Contract Finalization		1/31/2019	02/01/2019
Contract Approval & Award		02/01/2019	2/28/2019
Contract Signing		2/28/2019	
Contract Mobilization		1/28/2019	2/28/2019
CONTRACTOR Operational Commencement		3/1/2019	

Invitation for Multi-Step Bid (IFB) documents are organized into six separate volumes, as follows:

Volume I	—	Commercial Terms and Conditions
Volume II	—	Technical and Functional Requirements
Volume III	—	Used Oil Handling and Reprocessed Used Oil Delivery
Volume IV	—	Draft Contract
Volume V	—	Appendices
Volume VI	—	Schedules

In addition, the Invitation for Multi-Step Bid documents include two (2) sets of electronic spreadsheets (MS Excel Workbooks):

- Qualitative Proposal Scoring.xls
- Price Proposal Evaluation.xls.

1.1. Project Overview and Scope

The Guam Power Authority is soliciting proposals from qualified firms for the collection of Used Oil from GPA's Used Oil Facility and reprocessing of the Used Oil for re-utilization at a designated GPA Power Plant, provided that the reprocessed Used Oil meets GPA's Fuel Specifications for Reprocessed Used Oil. GPA will only purchase reprocessed Used Oil meeting GPA specifications, to be delivered by Proponent to a GPA designated facility (or facilities). GPA will not be required to purchase reprocessed Used Oil that does not meet GPA specifications.

1.2. GPA Overview

GPA is a public utility corporation that provides electric power service throughout the entire island of Guam. GPA, in conjunction with Private Partners, operates and maintains 13 power plants, with a total rated capacity of 552.4 MW. The authority also has installed and maintains an estimated combined total of 188 miles of 115 kV and 34.5 kV transmission lines and an estimated 495 miles of primary distribution lines, and 26 substations. In addition, the authority operates and maintains a total capacity of 18 MW for emergency generators to support 128 Guam Waterworks Authority water and sewage pump stations and sewage treatment facilities situated at various locations throughout the island and 10 portable units. GPA is comprised of several departments or divisions, which include Executive/Administrative, Finance, Computer Services, Engineering, Planning & Regulatory (Environmental), Safety, Human Resources, Customer Service, Facilities, Strategic Planning and Operations Research, Generation, Transmission & Distribution (T&D), and Transportation. Majority of the departments are located in a central office building, however T&D, Generation, and Transportation Offices and buildings are located throughout the island.

2. Instructions to Bidders

2.1. Introduction

This is a multi-step bid procurement. The **Technical and Price Proposals should both be submitted on or before the Cut-off Date of Receipt of Proposals, November 27, 2018 4:00 PM**. In Step One, only the submitted Technical Proposals will be evaluated and determined whether Acceptable or Unacceptable. BIDDERS whose Technical Proposals are determined to be Acceptable shall qualify for Step Two. BIDDERS whose Technical Proposals are Unacceptable shall be notified, and the unopened Price Proposal packages shall be returned. In Step Two, the Price Proposals of the Bidders whose Technical Proposals that are determined to be Acceptable, either initially or as a result of discussions, will be considered for award.

2.2. Language and Correspondence

The official language of Guam is English. The bid and all accompanying documents shall be in English. Any prospective BIDDER desiring an explanation or interpretation of the solicitation, commercial terms, Technical Specification, etc., must make a request in writing to GPA at the address listed below, referencing the Invitation for Multi-Step Bid No.

ATTENTION: JOHN M. BENAVENTE
GENERAL MANAGER

GUAM POWER AUTHORITY
POST OFFICE BOX 2977
HAGATNA, GUAM 96932-2977

FAX: 1 (671) 648-3054 / 55
Attention: Supply Management Administrator

The written request may also be sent via-email by sending an electronic copy of the written request to the Procurement Officer handling the IFB. All inquiries must be received by Procurement no later than **October 18, 2018 4:00 PM**.

Any information given to a prospective BIDDER concerning a solicitation will be furnished promptly to all parties recorded by Procurement as having received the Invitation for Bid as an amendment to the solicitation if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective BIDDERS. Oral explanations or instructions given will not be binding.

2.3. Technical and Functional Requirements Examination

Before submitting their proposal, BIDDERS must familiarize themselves with the nature and extent of the work, duly noting any local conditions that may affect the work to be done and the labor, materials, and equipment required.

BIDDERS are also required to carefully examine all tender documents inclusive of all technical and functional requirements and to inform themselves of all conditions and requirements for the execution of the proposed work in accordance with the laws and regulations of the Territory of Guam. Ignorance on the part of BIDDERS of any part of the tender documents will in no way relieve them of the obligations and responsibilities assumed under the contract.

2.4. Used Oil Facility Tour

All prospective BIDDERS shall, at their own expense, visit Guam and GPA's Used Oil Facility to study local conditions, facilities available, craft wages, roads, communications, and transport facilities available. BIDDERS should also acquaint themselves with the relevant laws, rules, and regulations of Guam.

For the purpose of familiarizing BIDDERS with the GPA Used Oil Facility, BIDDERS may request GPA for a scheduled Facility Tour at least five (5) business days prior to intended site visit date. All requests must be submitted as specified in Section 2.2. Upon approval and subject to the availability of the facility, GPA shall coordinate with the BIDDER regarding the tour details.

2.5. Solicitation Amendment

Any amendment, modification or addendum issued by the Guam Power Authority, prior to the opening of the proposals, for the purpose of changing the intent of the Technical and Functional Requirements, clarifying the meaning or changing any of the provisions of this Invitation for Bid, shall be binding to the same extent as if written in the tender documents. Any addendum issued will be made available to all

BIDDERS via mail, fax, e-mail or posting to the ftp site. Announcements regarding any Amendment shall also be posted at the GPA Website at:

http://www.guampowerauthority.com/gpa_authority/procurement/gpa_current_rfps.php.

The BIDDERS shall acknowledge receipt of the amendment by a signature on one copy, which is to be returned to the GPA Supply Management Administrator. Acknowledgement may also be made by fax or e-mail.

2.6. Familiarity With Laws

The BIDDER shall be familiar with all Federal (U.S.) and local laws, ordinances, rules and regulations of Guam that in any manner affect the work. Ignorance of law on the part of the BIDDER will not relieve the BIDDER from responsibility.

2.7. Cost of Bidding

BIDDERS shall bear all costs associated with the preparation and submission of its proposal. GPA will not be responsible or liable for those costs, regardless of the outcome of the IFB process.

2.8. Price/Cost Data

BIDDERS shall provide prices/costs in U.S. Dollars. BIDDERS are required to furnish a fixed management fee, an O&M Spending Budget, and Performance Guarantees for each year of the contract as specified in the IFB documents. Price Proposals shall be submitted in the form as found in the MS EXCEL Workbook, **Price Proposal Evaluation.xls** on or before the Cut-Off Date for receipt of Proposals. Technical and Price Proposals shall be submitted on or before the Cut-off Date for Receipt of Proposals, with the Price Proposal on a separate sealed envelope marked "PRICE PROPOSAL" and indicating the date and time of bid package remittance. Any equipment and material prices shall be provided on the basis of CIF to the Guam job site unloaded and shall provide a breakdown of the price/cost data.

2.9. Documents Executed Outside of Guam

The Power of Attorney, performance bond guarantee, and documents defining the constitution of the joint venture, consortium, company or firm, if executed outside Guam, whether required to be submitted with the

proposals or after the award of the contract, must be authenticated by a Notary Public or other official authorized to witness sworn statements.

2.10. Proposal Submittal

This section outlines the requirements for proposal submittals, including the proposal package format and content required by GPA. The BIDDERS are advised to keep a copy of all documents submitted, including the Workbooks, and test electronic copies on disk prior to submission to GPA.

2.10.1. Qualitative Proposal Requirements

Each BIDDER' Qualitative Proposal Package shall include, but is not limited to, the following:

- Complete printed copies of the Qualitative Proposal;
- Complete printed responses and supporting information to the questions raised in the Qualitative Proposal Scoring Workbook;
- Complete printed and electronic copies of the Qualitative Proposal Scoring Workbook in a separate sealed envelope marked "QUALITATIVE PROPOSAL";
- Checklist forms defined in Appendix A;
- All other required forms defined in Volume V Appendices; and
- Supplementary information as described below.

The Technical Proposal Package shall be submitted in the format and quantities described below.

2.10.1.1 Qualitative Proposal

Each BIDDER's Technical Proposal shall include the following:

- All required documents as stated in Volume V of this bid
- All documents as described and required in the Qualitative Proposal Worksheet
- Letters from Client References
- Supporting Documents

A description for each requirement is included in the Qualitative Proposal Worksheet. These as well as all supplementary information and forms as required must be submitted in sufficient detail and clarity to permit a complete evaluation of the proposal with respect to the Bid Requirements. Supplementary information includes documents, references, drawings, diagrams, catalogs, illustrations, and such other information as necessary to clearly support responses to the Qualitative requirements.

2.10.1.2. Qualitative Proposal Scoring Workbook

The bidder shall submit copies of the Qualitative Proposal Scoring Workbook, prepared as instructed in the **Proposal Instructions** tab. Quantities shall follow the requirements specified in Section 2.1.10.5 of this Volume. For each checklist item, the bidder shall provide references on the responses and supporting documents.

2.10.1.13. Required Forms

Submittal of required forms as specified in Section 3 of this volume, as well as in Volume V Appendices, is mandatory. GPA shall automatically disqualify any proposal submitted without the supplementary information and required forms listed below:

1. A copy of the BIDDER's Articles of Incorporation or other applicable forms concerning business organization (i.e. partnership, sole proprietorship, etc.) and By-Laws;
2. Affidavit of Disclosure of Major Shareholder;
3. Non-collusion Affidavit;
4. No Gratuities or Kickbacks Affidavit;
5. Ethical Standards Affidavit;
6. Compliance with U.S. DOL Wage Determination Affidavit;
7. Restriction Against Sex Offenders Affidavit;
8. Audited financial information on BIDDER's firm and all subCONTRACTORs that will be used in the performance management of GPA's Fuel Bulk Storage Facility. BIDDERS must include their Dunn and Bradstreet Number or Other Major Credit Rating Agency rating;
9. Certificate of Good Standing to conduct business in jurisdiction of residence;
10. Information regarding outstanding claims against the BIDDER, if any;
11. Bid Bond;
12. A current Guam Business License. Although it is not required in order to provide a Bid for this engagement, obtaining a Guam Business License is a pre-condition for entering into a contract with the Authority.

2.10.1.4. Marking and Packaging of Qualitative Proposal

The QUALITATIVE PROPOSAL shall be submitted in a separate sealed package with the following information clearly marked on the outside of each side:

- 1) “QUALITATIVE PROPOSAL”;
- 2) “SUPPLY OF RE-PROCESSED GPA USED OIL MEETING ULTRA-LOW SULFUR DIESEL FUEL SPECIFICATIONS”;
- 3) The BIDDER’s Name;
- 4) Invitation for MSB Number;
- 5) Closing Date and Time (Guam Standard Time);
- 6) Addressed to, as follows:

ATTENTION : JOHN M. BENAVENTE, P.E.
GENERAL MANAGER

GUAM POWER AUTHORITY
POST OFFICE BOX 2977
HAGATNA, GUAM 96932-2977

If the BIDDER’s proposal cannot fit within one box or chooses to submit more than one box, each box must be labeled with the following:

- 1) Box number within the Set of Submitted Boxes
- 2) The Total Number of Boxes Submitted

2.10.1.5. Qualitative Proposal Submittal Quantity

BIDDERS are required to submit one (1) original and six (6) bound copies of their technical proposal including one (1) original and six (6) printed copies of the Qualitative Scoring Workbook. One (1) electronic copy of the Qualitative Scoring Workbook should also be submitted.

2.10.2. Price Proposal Requirements

The BIDDER's Price Proposal shall consist of one printed copy and one electronic (CD) copy of the MS Excel Workbook, **Price Proposal Evaluation.xls**. A printed copy is requested to ensure evaluation of the Proposal Worksheets in cases where there are errors with the electronic file.

The PRICE PROPOSAL shall be submitted in a separate sealed package with the following information clearly marked on the outside of each side:

- (1) "PRICE PROPOSAL";
- (2) "SUPPLY OF RE-PROCESSED GPA USED OIL MEETING ULTRA-LOW SULFUR DIESEL FUEL SPECIFICATIONS";
- (1) The BIDDER's Name;
- (2) Invitation for Multi-Step Bid Number;
- (3) Closing Date and Time (Guam Standard Time);
- (4) Addressed to, as follows:

ATTENTION : JOHN M. BENAVENTE, P.E.
GENERAL MANAGER

GUAM POWER AUTHORITY
POST OFFICE BOX 2977
HAGATNA, GUAM 96932-2977

If the BIDDER's proposal cannot fit within one box or chooses to submit more than one box, each box must be labeled with the following:

- 1) Box number within the Set of Submitted Boxes
- 2) The Total Number of Boxes Submitted

2.10.3. Non-Repudiation Issues

GPA has structured both its Manual and Electronic IFB submittal procedures to ensure non-repudiation of the submitted proposals. In this IFB, non-repudiation is strong and substantial evidence of the identity of the sender and owner of the proposal and of proposal's integrity in so far as it being unaltered from its original sent state, sufficient to prevent a party from successfully denying the origin, submission or delivery

of the proposal and the integrity of its contents. Non-repudiation applies to both parties to this IFB transaction. It binds the sender as well as precludes the recipient from denying the exchange of information and material upon the receipt of secure acknowledgement from the recipient.

GPA and the BIDDER shall manage the Manual IFB Submittal Process to address non-repudiation, security and confidentiality inclusive but not limited to the following:

- Manually executed signatures and printed media documents;
- Chain of custody receipts;
- Manual time-stamps for receipt of IFB materials;
- Machine generated Fax confirmation reports;
- Secure notification e-mail;
- Physical delivery of printed material proposals;
- Physically secured area storage of IFB materials.

2.10.4. Signature of Bidder

A duly authorized person must sign the BIDDER's proposals. All names shall be typed or printed below the signature. A proposal submitted by a corporation must bear the seal of the corporation, be attested to by its Secretary, and be accompanied by necessary Power-of-Attorney documentation.

Associated companies or joint ventures shall jointly designate one Power-of-Attorney person authorized to obligate all the companies of the association or joint venture. A proposal submitted by a joint venture must be accompanied by the document of formation of the joint venture, duly registered and authenticated by a Notary Public, in which is defined precisely the conditions under which it will function, its period of duration, the persons authorized to represent and obligate it, the participation of the several firms forming the joint venture, the principal member of the joint venture, and address for correspondence for the joint venture. BIDDERS are advised that the joint venture agreement must include a clause stating that the members of the joint venture are severally and jointly bound.

Wherever a legal signature is required, receipt of an electronic signature will suffice to meet the submittal deadline for those electing to use the Electronic Proposal Submittal process. The original signed documents must be reproduced electronically and be placed in the submitted compressed archive file. However, the original documents must be sent to GPA via post or courier and post-marked no later than the bid-opening date. In addition, GPA will accept an electronic scanned copy of Notarized documents with the compressed

archive submitted will suffice to meet the proposal deadline. However, the original documents must be sent to GPA via post or courier and post-marked no later than the bid-opening date.

2.10.5. Cut-Off Date for Receipt of Proposals

The Qualitative and Price Proposals have to be submitted on or before the GPA Cut-off Date for Receipt of Proposals, November 27, 2018 4:00 PM. Price Proposals shall be returned, unopened, to the BIDDERS whose Technical Proposals are deemed Not Acceptable.

2.10.6. Receipt and Handling of Proposals

Upon receipt, each Proposal submittal package will be time-stamped. The only acceptable evidence to establish the time of receipt at the GPA is the date/time stamp of the Guam Power Authority's procurement office on the wrapper or other documentary evidence of receipt maintained by GPA. Proposals will be stored in a secure place until the date and time set for proposal opening.

GPA procurement personnel and the BIDDERS must ensure that the outside of the sealed package is stamped received using the GPA Procurement Stamp. In addition, GPA procurement personnel must officially log the time and date that the BIDDER's sealed proposal package has been received. GPA makes no warranties on these submittal processes, manual or electronic.

2.10.7. Proposal Changes During Bid Process

Changes may be made by the BIDDERS to the Technical Proposal and Price Proposal prior to the Cut-off Date, and the proposals including corrections or changes made must be re-submitted on or before the Cut-off Date.

2.11. Step One Procedures

2.11.1. Evaluation of Qualitative Proposals

After the Close of the Proposal submission date, the GPA Evaluation Committee shall evaluate the Technical Proposals. Each of the responses and supporting information shall be evaluated and scored, in accordance with the scoring methodology described in the Qualitative Proposal Scoring Worksheet.

2.11.2 Scoring of Qualitative Proposals

GPA will use the score from the Qualitative Scoring Workbook to evaluate the contents of Proposals and categorize the Proposals as:

- a. **Acceptable;**
- b. **Unacceptable or Not Acceptable.** GPA shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

GPA shall evaluate and score each BIDDER using the methodology as described in Section Four of this volume. At the conclusion of the evaluation, GPA shall establish a Qualified Bidders List (QBL), and the Procurement Officer or his designee may initiate Step Two if there are sufficient acceptable Technical (Unpriced) Proposals to assure effective price competition in the second phase without technical discussions. If the Procurement Officer or his designee finds that such is not the case, the Procurement Officer shall issue an amendment to this Invitation for Bid or engage in technical discussions with BIDDERS as set forth below.

2.11.3. Discussions of Proposals

The Procurement Officer or his designee may conduct discussions with any bidder who submits an acceptable Qualitative Proposal. During the course of such discussions, the Procurement Officer or his designee shall not disclose any information derived from one Qualitative Proposal to any other BIDDER.

GPA may conduct discussions with any BIDDER to determine such BIDDER's qualifications for further consideration and explore with the BIDDER the scope and nature of the required services, method of performance and the relative utility of alternative methods of approach. During the course of such discussions, the Procurement Officer shall not disclose any information derived from a Qualitative Proposal to any other BIDDER.

Each BIDDER is requested not to contact GPA on any matter relating to its proposal, from the time of submission of the Proposals to the time the contract is awarded, except to respond to inquiries by GPA.

2.11.4. Notice of Unacceptable Proposal

A notice of unacceptability will be forwarded to the BIDDER upon completion of the Qualitative Proposal evaluation and final determination of unacceptability. When the Procurement Officer or his designee

determines a BIDDER's Qualitative Proposal to be unacceptable, such BIDDER shall not be afforded an additional opportunity to supplement its Qualitative Proposal.

2.12. Step Two Procedures

Upon completion of evaluation of Qualitative Proposals, qualified bidders will be notified and GPA will proceed with Step Two of the multi-step bid. GPA shall return the Price Proposal Packages submitted by BIDDERS whose Qualitative Proposals did not qualify for Step Two.

2.12.1. Opening of Price Proposals

Each selected BIDDER from the Qualified Bidders list will be notified of the Price Proposal Opening date, which is on **January 8, 2019 2:00 PM.**

BIDDERS may be present during the Bid Opening.

2.12.2. Proposal Changes During Bid Process

No changes may be made between Notification of Acceptable Proposal and Price Proposal Opening date.

2.12.3. Proposal Validity

All price/cost data submitted with the BIDDERS' proposals shall remain firm and open for acceptance for a period of not less than six (6) months after the Price Proposal Opening Date and thereafter shall be subject to renewal by mutual agreement between the BIDDER and GPA. BIDDER shall state the actual date of expiration in their proposal.

2.12.4. Preliminary Examination of Price Proposal

GPA will examine the Price Proposal on the opening date to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the Priced Offers are generally in order.

Arithmetical errors will be rectified on the following basis:

- If there is discrepancy between the unit price and the total price, including any discounts, that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected.
- If the Bidder does not accept the correction of the error, its bid will be rejected. If there is a discrepancy between words and figures, the amount in words will prevail.

2.12.5. Evaluation Criteria and Comparison of Priced Offers

GPA will evaluate and compare the Priced Offers for Bidder's Qualitative Proposals that were determined during Step One to be responsive to the tender document requirements.

2.13. Award of Contract

The contract will be awarded to the BIDDER evaluated as being qualified and with the best-priced proposal. The successful BIDDER will be notified by GPA through official written correspondence of the intent to award the contract (Notice of Intent to Award). The written correspondence may be sent by GPA via official letter, e-mail and fax.

The BIDDER will be required to send to Guam, within fourteen (14) days of the date of receipt of such notice, a representative or representatives with proper Power-of-Attorney for the purpose of executing a contract with such alterations or additions thereto as may be required to adopt such contract to the circumstances of the proposal. The successful BIDDER shall provide the required Performance Bond within fourteen (14) working days of receipt of the GPA Notice of Intent to Award.

Failure on the part of the successful BIDDER to provide a Performance Bond and/or to enter into a contract with GPA shall be sufficient grounds for the annulment of the award. GPA may determine the bidder to be non-responsive to the bid, and may proceed with sending a Notice of Intent to Award to the next most qualified BIDDER.

2.14. Bid Bond and Performance Bond Requirements

2.14.1. Performance Bond Form, Amount and Duration

The required performance bond shall be in the form as prescribed in Appendix B. At the beginning of the CONTRACT and at the beginning of each GPA Fiscal Year during which the CONTRACT is in effect, the

CONTRACTOR shall provide and maintain a performance bond in the amount equal to the Annual Contract Fee for that full or partial fiscal year within the term of the contract. If the CONTRACTOR is declared by GPA to be in default under the CONTRACT, GPA may exercise any or all rights and remedies it possesses under the provisions of the performance bond. The GPA Fiscal Year begins on October 1 and ends on September 30 of the following calendar year.

2.14.2. Performance Bond Execution by a Guam Licensed Surety Company

The CONTRACTOR shall provide a Performance Bond executed by a surety company licensed to do business on Guam. A list of surety companies licensed to do business on Guam is provided in Appendix C.

2.14.3. Bid Bond Form and Amount

A bid bond for an amount of \$150,000.00 (USD) is required and may be in the following form:

- a. Cash, Bank Draft or Certified Check made payable to the Guam Power Authority;
- b. By wire transfer to Guam Power Authority. Account information shall be sent to the bidders upon request.
- c. Letter of Credit;
- d. Surety Bond – valid if accompanied by:
 - (1) Current Certificate of Authority to do business on Guam issued by the Department of Revenue and Taxation;
 - (2) Power of Attorney issued by the Surety to the Resident General Agent
 - (3) Power of Attorney issued by two (2) major officers of the Surety to whoever is signing on their behalf.

Bonds submitted as Bid Guarantee without signatures and supporting documents are invalid and bids will be rejected. If a BIDDER desires to submit a bid bond with an acceptable bonding company, the BIDDER must submit original copies of Appendix J.

2.15. General Proposal Guidelines and Requirements

2.15.1. Amendments to the Bid Documents

GPA may elect to change the IFB documents in whole or part. GPA shall send all Amendments to the IFB documents via fax and/or e-mail. In addition, GPA will make all Amendments available on the Internet at <http://www.guampowerauthority.com/procurement/index.html> .

2.15.2. Proprietary Data

For the purposes of this solicitation and submitted proposals, the laws, rules and regulations of Territory of Guam governing confidentiality shall govern. BIDDERS may designate those portions of the Proposal that contain trade secrets or other proprietary data that are to remain confidential.

The Procurement Officer or his designee shall examine the proposals to determine the validity of any request for nondisclosure of trade secrets and other proprietary data identified in writing. If the BIDDER and GPA do not agree as to the disclosure of data, the Procurement Officer or his designee shall inform the BIDDER in writing and in e-mail within five working days of the closing date for Proposal submittal what portions of the Proposal will be disclosed and that, unless the BIDDER protests under the Conditions of Contract Disputes clause the information will be so disclosed. The proposal shall be opened to public inspection subject to any continuing prohibition of the disclosure of confidential data.

2.15.3. Acceptance of Proposals

GPA reserves the right to reject any or all proposals and to waive minor informalities if it appears in GPA's best interest to do so. Any effort by a BIDDER to influence GPA in the proposal evaluation, proposal comparison or contract award decisions may result in the rejection of the proposal. Once GPA has arrived at a decision regarding the award of the contract, it will notify promptly the successful BIDDER through official written correspondence and shall include information advising the proponents of the timing of the bid milestones such as Contract Finalization, Awarding and Mobilization. Potential Bid Awardees shall await this notification from GPA prior to commencement of any Contract Terms Finalization.

2.15.4. Solicitation Cancellation or Delay

The Guam Power Authority reserves the right to delay award or to cancel the Invitation for Bid, or to reject all proposals or any individual proposal in whole or in part, at any time prior to the final award. When a bid is canceled, or rejected prior to final award, notice of cancellation or rejection shall be sent to all BIDDERS and all proposal materials will be promptly returned. The reasons for cancellation or rejection shall be made a part of the procurement file that is available for public inspection.

After opening, but prior to award, all proposals may be rejected in whole or in part when the Procurement Officer or his designee determines that such action is in the Territory's best interest for reasons including but not limited to:

- a) The supplies and services being provided are no longer required;
- b) The solicitation did not provide consideration of other factors of significance to the Territory;
- c) All otherwise acceptable proposals received have clearly unreasonable price/cost data;
- d) There is reason to believe that the proposals may not have been independently arrived at in open competition, may have been collusive and may have been submitted in bad faith;

Any individual proposal may be rejected in whole or in part when in the best interest of the Territory.

2.15.5. Disqualification of BIDDER

When, for any reason, collusion or other anticompetitive practices are suspected among BIDDERS, a notice of the relevant facts shall be transmitted to the Guam Attorney General. BIDDERS suspected of collusion or other anticompetitive practices may be suspended or debarred from participating in future procurement opportunities for a specified period.

2.15.6. False Statements in Proposal

BIDDERS must provide full, accurate, and complete information as required by this solicitation and its attachments. The penalty for making false statements in any proposal or bid is prescribed in 18 U.S.C. 1001 and Title 9, Guam Code Annotated. Note, by use of a digital signature to sign the proposal, the BIDDER agrees that this act legally binds the BIDDER to his proposal.

2.15.7. Prohibition Against Gratuities, Kickbacks, and Favors to the Territory

Pursuant to GCA 5 Section 5630 (c), this clause is conspicuously set forth to alert all parties in this procurement that *Guam Public Law Title 5 § 5630. Gratuities and Kickbacks* prohibits against gratuities, kickbacks and favors to the Territory.

2.15.8. Restriction against CONTRACTORs Employing Convicted Sex Offenders from Working at Government of Guam Venues

GCA 5 §5253 Restriction Against Contractors Employing Convicted Sex Offenders from Working at Government of Guam Venues:

- (a) No person convicted of a sex offense under the provisions of Chapter 25 of Title 9 Guam Code Annotated, or an offense as defined in Article 2 of Chapter 28, Title 9 GCA in Guam, or an offense in any jurisdiction which includes, at a minimum, all of the elements of said offenses, or who is listed on the Sex Offender Registry, and who is employed by a business contracted to perform services for an agency or instrumentality of the government of Guam, shall work for his employer on the property of the Government of Guam other than public highway.
- (b) All contracts for services to agencies listed herein shall include the following provisions: (1) warranties that no person providing services on behalf of the contractor has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry; and (2) that if any person providing services on behalf of the contractor is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry, that such person will be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.
- (c) Duties of the General Services Agency or Procurement Administrators. All contracts, bids, or Requests for Proposals shall state all the conditions in § 5253(b).
- (d) Any contractor found in violation of § 5253(b), after notice from the contracting authority of such violation, shall, within twenty-four (24) hours, take corrective action and shall report such action to the contracting authority. Failure to take corrective action within the stipulated period may result in the temporary suspension of the contract at the discretion of the contracting authority.

SOURCE: *Added by P.L. 28-024:2 ((Apr. 21, 2005). Amended by P.L. 28-098:2 (Feb. 7, 2006).*

3. Required Forms and Supplemental Information

GPA shall automatically disqualify any proposal submitted without the supplementary information and required forms listed below:

- Documents required as part of Qualitative Proposal Requirements;
- A copy of the BIDDER's Articles of Incorporation or other applicable forms concerning business organization (i.e. partnership, sole proprietorship, etc.) and By-Laws;
- Audited financial information on BIDDER's firm and all subCONTRACTORS that will be used in the performance management of GPA's Fuel Bulk Storage Facility. BIDDERS must include their Dunn and Bradstreet Number or Other Major Credit Rating Agency rating.
- Certificate of Good Standing to conduct business in jurisdiction of residence;
- Information regarding outstanding claims against the BIDDER, if any;
- Required affidavits (Major Shareholders Disclosure; Non-Collusion; Declaration Regarding Compliance with DOL Wage Determination; No Gratuities or Kickbacks; Ethical Standards Affidavit and Restriction Against Sex Offenders Employed by Service Providers to Govt. of Guam)
- Proposal Checklist
- Bid Bond
- A current Guam Business License. Although it is not required in order to provide a Bid for this engagement, obtaining a Guam Business License is a pre-condition for entering into a contract with the Authority.

The following forms and workbooks will be available on the GPA Website's Procurement Page, in *Volume V Appendices*. All Appendices and the MS EXCEL Workbooks Qualitative Proposal Worksheet.xls and Price Proposal.xls must be completed:

- Appendix A: Proposal Checklists
- Appendix B: Bid Bond
- Appendix C: Major Shareholders Disclosure Affidavit
- Appendix D: Non-collusion Affidavit
- Appendix E: Local Procurement Preference
- Appendix F: Performance Bond
- Appendix G: No Gratuities or Kickbacks
- Appendix H: Ethical Standards Affidavit

- Appendix I: Declaration Re Compliance with U.S. DOL Wage Determination
- Appendix J: Restriction against Sex Offenders Employed by Service Providers to Government of Guam from Working on Government of Guam Property
- Qualitative Proposal Worksheet.xls
- Price Proposal.xls

GPA also provides the following supplemental information in *Volume VI – Schedules*:

- Schedule A Ultra Low Sulfur Diesel Specifications
- Schedule B Used Oil Specifications
- Schedule C Historical Quantities, Used Oil Received in GPA Used Oil Facility
- Schedule D Reprocessed Used Oil Sampling, Testing and Delivery Guidelines
- Schedule E Used Oil Facility Diagram
- Schedule F Used Oil Handling/Disposal Procedure and Guideline
- Schedule G Appendices – Used Oil Handling Forms
- Schedule H Notification Listing

3.1. Qualitative Proposal Forms

The following referenced forms shall be completed and submitted with the Proposal.

3.1.1. Proposal Checklists

The BIDDER shall complete Form A-1 by acknowledging the receipt of the Invitation for Multi-Step Bid Documents received from Guam Power Authority, including the latest IFB Amendments received. Acknowledgement of receipt shall be given by signing or putting an initial beside each line item received. This Form is an acknowledgement of receipt, review and understanding of the IFB documents.

During the submission of the Proposals, the BIDDER shall complete Form A-2. This Form provides an inventory of documents submitted by the BIDDER in response to the Proposal requirements.

3.1.2. Major Shareholders Disclosure Affidavit

The BIDDER shall fill out the Major Shareholders Disclosure Affidavit form in Appendix D and submit it with its Proposal.

3.1.3. Non-collusion Affidavit

The BIDDER shall fill out the Non-Collusion Affidavit form in Appendix E and submit it with its Proposal.

3.1.4. No Gratuities or Kickbacks Affidavit

The BIDDER shall fill out the No Gratuities or Kickbacks Affidavit Form in Appendix F and submit it with its Proposal.

3.1.5. Ethical Standards Affidavit

The BIDDER shall fill out the Ethical Standards Affidavit Form in Appendix G and submit it with its Proposal.

3.1.6. Compliance with US DOL Wage Determination

The BIDDER shall fill out and sign *Form E – Declaration of Compliance with US DOL Wage Determination* and submit it with the Technical Proposal.

3.1.7. Bid Bond Form

As stated in section 2.14.3, if a BIDDER desires to submit a bid bond with an acceptable bonding company, the BIDDER must submit original copies of Appendix I.

3.1.8. Local Procurement Preference Application

The BIDDER shall fill out and sign the Local Procurement Preference Application in Appendix J and submit it with the Technical Proposal.

3.1.9. Restriction Against Sex Offenders

The BIDDER shall complete the form, *Restriction against Sex Offenders Employed by Service Providers to Government of Guam from Working on Government of Guam Property* (Appendix K) and submit it as part of the Technical Proposal.

3.2. Qualitative Proposal Workbook

The BIDDER shall complete the Qualitative Proposal Workbook in accordance with the instructions given in the workbook's Instructions tab. The workbook shall be submitted as part of the Qualitative Proposal.

3.3. Price Proposal Form (Price Proposal.xls)

The BIDDER shall propose a Price Proposal in \$ per Gallon (\$/gal) based on GPA's Reference Price and Discount Offer in percentage, for each contract year in the worksheet, "Price Proposal.xls". Costs for optional extension years shall also be provided; doing so allows GPA to calculate the cost of the contract should it be extended for the additional contract periods.

4. Proposal Scoring Mechanism

4.1. Overview

GPA will use the Proposal Scoring Mechanism described in this Section of the Invitation for Bid (IFB) to qualify BIDDERS for the participation in the final bid stage. The Proposal Scoring Mechanism provides the BIDDERS the opportunity to highlight their qualifications to bid in terms of their expertise, resources, skills, operating philosophy and commitments to perform specific tasks required under this solicitation. The qualitative proposal scoring is designed to assess the quality of the BIDDER's expertise, resources, skills, and the quality and comprehensiveness of the responses to specific questions or requirements.

4.2. Qualitative Proposal Evaluation

GPA may elect to have up to five (5) evaluators for this IFB. Each evaluator shall assess and review the Bidder's Technical Proposal documents. Each GPA evaluator shall score each BIDDER separately under a point system to determine the acceptability of each Proposal. The majority of the determinations of GPA evaluators shall prevail in the decision to Qualify or not Qualify a BIDDER for Step 2 — Price Proposal.

The instructions for filling out the Qualitative Proposal Scoring Workbook are listed in the **Proposal Instructions** tab in the Workbook. The BIDDER must complete all entries in the **Part 1- Qual Support References** tab of the Workbook. The tab, **CONTRACTOR Qualifications Checklist** is automatically populated once BIDDER completes all entries in **Part 1- Qual Support References**. Each GPA evaluator will be provided a copy of Part 1 – Qual Support References as well as the BIDDER's technical proposal materials. Evaluators shall review and evaluate BIDDER responses in **Part 1- Qual Support References** worksheet tab, and fill out the **Part 2 – Qual Eval Scoresheet** tab using the following steps:

- 1) Each evaluator shall review BIDDER's response to each question on the CONTRACTOR Checklist Items. The Evaluator shall be guided by information provided by the bidder regarding location of responses to each question in Part 1 – Qual Support References tab.
- 2) In **Part 2 – Qual Eval Scoresheet tab**, Evaluator shall assign a Raw Rating Score for each BIDDER's response to each question. The Evaluator shall be guided by the Checklist Weight and Proposal Scoring Information provided in the **Proposal Scoring Information** tab.
- 3) Each evaluator shall determine BIDDER's weighted average raw score using pre-specified weights for each question. Part 2 – Qual Eval Scoresheet tab has been formatted to automatically populate the Evaluated CONTRACTOR Qualifications Score.

The evaluators will use the supporting information on the following tabs for evaluation: **Proposal Scoring Information** tab and **CONTRACTOR Qualifications Checklist** tab. The Total Qualitative Score is 500 points. Each GPA evaluator will analyze the contents of the Proposals and categorize the Proposals as:

- Acceptable: Score \geq 70%
- Unacceptable: Score $<$ 70%.

A percent score of less than 70% indicates that a GPA evaluator has determined that the BIDDER has not supplied sufficient evidence of qualifications and should not be allowed to participate in Step 2 – Price Proposal.

After each GPA evaluator, has completed the evaluation and scoring of BIDDERS, GPA shall complete the Table below. The Procurement Officer will enter for each GPA evaluator and BIDDER one and only one of the following in the appropriate table cell below:

- Acceptable
- Unacceptable.

The Procurement Officer or his designee may initiate Step Two if there are sufficient acceptable Unpriced Technical Proposals to assure effective price competition in the second phase without technical discussions. If the majority of the GPA evaluators rate the BIDDER as Acceptable, that BIDDER is determined to be Qualified and will be allowed to participate in Step 2– Price Proposal.

If the Procurement Officer or his designee finds that such is not the case, the Procurement Officer or his designee shall issue an amendment to this Invitation for Bid or engage in technical discussions with BIDDERS who are rated by a majority of the GPA evaluators as Acceptable or Potentially Acceptable. During the course of such discussions, the Procurement Officer or his designee shall not disclose any information derived from one Technical Proposal to any other BIDDER.

Once discussions are begun, any BIDDER who has been notified that its Offer has been finally found acceptable may submit supplemental information amending its Technical Proposal at any time. Such submission may be made at the request of the Procurement Officer or upon the BIDDER's own initiative.

BIDDERS who are rated by the majority of the GPA evaluators as Unacceptable is determined to be Not Qualified and will not be allowed to participate in Step 2– Price Proposal. The Procurement Officer shall record in writing the basis for finding a Bidder Not Qualified and make it part of the procurement file.

Table 1. Final Evaluation of Bidder Qualification

GPA Evaluator	BIDDER 1	BIDDER 2	BIDDER 3	BIDDER 4	BIDDER 5
1					
2					
3					
4					
5					

4.3. Price Proposal Evaluation

The BIDDER shall propose a Price Proposal in \$ per Gallon (\$/gal) based on GPA's Reference Price and Discount Offer in percentage.

After review of Price Proposal for compliance with the requirements of the solicitation, GPA will award the contract to the most responsive and responsible bidder with the lowest Price Proposal, whose Qualitative Proposal was deemed Acceptable.

5. Conditions of Contract

5.1. Definitions

Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof.

Approved

The word "Approved," when applied by ENGINEER to CONTRACTOR's drawings or documents, shall mean that the drawings or documents are satisfactory from the standpoint of interfacing with GPA-furnished components, and/or that ENGINEER has not observed any statement or feature that appears to deviate from the Specification requirements.

Approved as Revised

The words "Approved as Revised," when applied by ENGINEER to CONTRACTOR's drawings or documents shall mean that the drawings or documents are approved as defined above, except that the corrections shown are required for the proper interfacing with GPA-furnished components or are necessary to be in conformance with the Specification's requirements.

Change Order

A written instrument to CONTRACTOR signed by GPA authorizing an addition, deletion, or revision in the goods or special services, or an adjustment in the purchase order price or the delivery time, issued after the effective date of the Contract Agreement (Agreement).

CONTRACTOR

The CONTRACTOR with whom GPA has entered into the Contract Agreement.

Day

A calendar day of twenty-four (24) hours measured from midnight to the next midnight

Delivery Time

The total number of days or the dates stated in the Agreement for furnishing the Goods and/or Special Services

Defective

An adjective which when modifying the words Goods or Special Services refers to Goods or Special Services which are unsatisfactory, faulty, deficient, do not conform to the Contract Documents, or do not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents.

Drawings

Drawings are all official drawings approved by the ENGINEER and showing the character and scope of the Goods to be furnished.

Effective Date of the Contract Agreement

The date indicated in the Purchase Agreement on which it becomes effective, or if no such date is indicated, the date by which the Purchase Contract is signed by both parties.

ENGINEER

Wherever the words "ENGINEER" or "ENGINEERS" appear in the CONTRACT Documents, it shall mean GPA's engineer duly appointed as "ENGINEER". GPA shall assign several ENGINEERS as required to cover specialized areas of expertise.

ENGINEER's Instructions

Written instructions issued by ENGINEER which clarify or interpret the CONTRACT Documents or order minor changes or alterations in the Goods or Special Services to be furnished but which do not involve a change in the Purchase Price or the Delivery Time.

General Manager

The General Manager is the Chief Executive Officer of the Guam Power Authority. The office and title of General Manager shall apply to any person acting in a regular or in an acting capacity as the Chief Executive Officer of the Guam Power Authority.

Goods

All property required to be furnished by CONTRACTOR under the procurement documents.

Modification

A written amendment of the Purchase Agreement signed by both parties, or Change Order, or ENGINEER's Instructions.

OWNER

The Guam Power Authority (An autonomous instrumentality of the Government of Guam).

Point of Delivery

The place at which property in the goods shall pass to GPA shall be CIF landed at job-site, Guam, unloaded.

Project

The plant, facilities, or works the Goods and Services are to be used for or incorporated into.

PURCHASER

The Guam Power Authority with whom CONTRACTOR has entered into the Contract Agreement.

Contract Agreement (Agreement)

The written agreement between GPA and CONTRACTOR covering the furnishing of the Goods, Special Services, and other services in connection therewith evidencing what is contemplated and agreed to between the parties including any other Contract Documents either attached to the Agreement or made a part thereof by reference therein.

Contract Documents

The Contract Agreement, Bonds (where required), these General Conditions, any Supplementary Conditions, the Specifications, the Drawings and any other documents specifically identified in the Contract Agreement, together with all Modifications issued after execution of the Contract Agreement.

Procurement Officer

The General Manager of the Guam Power Authority or the General Manager's designee.

Seller

The CONTRACTOR

SITE or Site

The SITE is the area where the Project is to be constructed or executed. In this case, the SITE is the GPA Fuel Bulk Storage Facility as delineated in Volume II Technical and Functional Requirements and Volume III GPA Fuel Bulk Storage Facility Technical Description.

Special Services

Services to be furnished by CONTRACTOR at the GPA Fuel Facility as required by the Contract Agreement.

Territory

The Territory of Guam.

5.2. Scope of the Agreement

This CONTRACT supersedes any and all other agreements related to the management of the Fuel Bulk Storage Facility, either oral or in writing between parties hereto with respect to the retainment of the CONTRACTOR by the Authority and contains all of the covenants and agreements between the parties. Each party to this Contract acknowledges that no representation, promises or agreement, orally or otherwise, has been made by any party or anyone acting on behalf of any party and that no other agreement not contained in this Contract shall be valid or binding. Any modification of this Contract will be effective only if in writing, and mutually agreed to and signed by both parties. For purposes of this Contract, both the signature of the General Manager and the Chairman of the Consolidated Commission on Utilities (CCU) are the only signatures that will effectively bind GPA to this Contract.

5.3. Indemnity

CONTRACTOR shall indemnify and hold GPA and ENGINEER harmless from any claim, liability or product liability, loss, damage, demand, cause of action or suit, expense, or fee of legal counsel arising out of or in connection with the Goods or Special Services provided by the CONTRACTOR.

5.4. Accounting

For accounting purposes and for use in establishing property records, GPA may require CONTRACTOR to provide a reasonable price breakdown of the total price into separate prices applying to the individual items supplied under the Agreement.

Where the Agreement covers the reimbursement of the traveling or living expenses of the CONTRACTOR's employees or agents, the CONTRACTOR agrees to furnish complete itemization and breakdowns of such expenses when requested by GPA.

In the event of any changes to or termination of the Agreement, or the furnishing of goods or services on a labor hour or a cost reimbursable basis, CONTRACTOR shall supply information in such detail as may be reasonably required by GPA to support all applicable charges. GPA, or an independent auditor designated by GPA, shall have the right to audit, during normal working hours, CONTRACTOR's accounts and records relating to such charges. The expense of such audit will be borne by GPA.

5.5. Waiver of Claims

The making and acceptance of final payment will constitute:

- A waiver of all claims by GPA against CONTRACTOR, except claims arising from unsettled liens, claims relative to defective Goods or special services appearing after final payment, or from failure to comply with the Contract Documents or the terms of any special guarantees specified therein; nor will final payment constitute a waiver by GPA of any rights in respect of CONTRACTOR's continuing obligations 'under the Procurement Documents; and
- A waiver of all claims by CONTRACTOR against GPA other than those previously made in writing and still unsettled.

5.6. Supervision and Coordination by CONTRACTOR

CONTRACTOR shall competently and efficiently manage, supervise, and direct production of the Goods and furnishing of Special Services and coordinate all operations required to deliver the Goods and furnish any required Special Services.

CONTRACTOR shall designate, in writing to GPA, a person with authority to act on behalf of CONTRACTOR with respect to CONTRACTOR's obligations under the CONTRACT Documents, and all communications given to or received from that person will be binding on CONTRACTOR.

CONTRACTOR shall perform all such activities as an independent CONTRACTOR and not as an agent of GPA. When others furnish materials and equipment for assembly by the CONTRACTOR, CONTRACTOR shall receive, unload, store, and handle it and become responsible therefore as though CONTRACTOR was furnishing such materials and/or equipment under the Agreement.

5.7. Substitutions

If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall make written application to ENGINEER for acceptance thereof certifying that the proposed substitute will perform adequately the function as called for by the general design, be similar and of equal substance to that specified, and be suited to the same use and capable of performing the same function as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not prejudice the CONTRACTOR's warranty or timely delivery of the Goods, whether or not acceptance of the substitute will require a change in any of the Contract Documents to adapt the design to the substitute and whether or not incorporation or use of the substitute in connection with the production of the Goods is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair, and replacement service will be indicated. ENGINEER may require CONTRACTOR to furnish at CONTRACTOR's expense such additional data about the proposed substitute as is required by ENGINEER. GPA may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety with respect to any substitute.

5.8. Documentation and Drawings

GPA shall have the right to reproduce any and all drawing, prints, or other data or documents received from CONTRACTOR.

The Agreement will not be deemed satisfactorily completed until all requirements have been complied with including, but not limited to, proper material documentation, final drawings and reproductions, and other requirements stated in the Contract Documents. GPA may withhold final payment hereunder, pending completion of all such requirements by the CONTRACTOR.

At the time of each submission, CONTRACTOR shall in writing call ENGINEER's attention to any deviations that the drawings or documents may have from the requirements of the Specification or Contract Documents. CONTRACTOR shall also direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals. CONTRACTOR's submission of any drawing or document bearing CONTRACTOR's approval shall constitute a representation to GPA and ENGINEER that CONTRACTOR assumes full responsibility for having determined and verified the design criteria, quantities, dimensions, installation requirements, materials, catalog numbers, and similar data and that CONTRACTOR has reviewed or coordinated each drawing or document with the requirements of the Contract Documents.

ENGINEER's review and approval of CONTRACTOR's drawings or documents will be only for conformance with the design concept of the Goods and for compliance with the information given in the Contract Documents. Such review and approval will not extend to design data reflected in drawings or documents that is peculiarly within the special expertise of CONTRACTOR or any party dealing directly with CONTRACTOR. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make corrections required by ENGINEER when drawings or documents are marked "Approved as Revised" and shall return the required number of corrected copies.

GPA and/or ENGINEER shall have the right to reproduce any and all drawing, prints, or other data or documents received from CONTRACTOR that are considered necessary for engineering, construction, or other purposes, despite any notice to the contrary appearing on the item. When a drawing or document approval is required by the Specifications, CONTRACTOR shall not commence production of any part of the Goods affected thereby until such drawing or document has been reviewed and approved by ENGINEER.

ENGINEER's review and approval of CONTRACTOR's drawings or documents will not relieve CONTRACTOR from responsibility for any deviations from the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to such deviation at the time of submission and ENGINEER has given written concurrence and approval to the specific deviation, nor will any concurrence or approval by ENGINEER relieve CONTRACTOR from responsibility for errors or omissions in the drawings or documents submitted.

5.9. Continuing Performance

CONTRACTOR shall continue its performance under the Agreement during all claims, disputes, or disagreements with GPA. Production of Goods will not be delayed or the timely delivery of Goods or furnishing of Special Services be prejudiced, delayed, or postponed pending resolution of any claims, disputes, or disagreements, except as CONTRACTOR and GPA may otherwise agree in writing.

5.10. Access to Facility

CONTRACTOR shall provide representatives of GPA, testing agencies, and governmental agencies with jurisdictional interests proper and safe access to the Cabras Used Oil Facility and GPA's Designated Facility

for Receiving Reprocessed Fuel Oil as is necessary for the performance of their functions and in connection with the Contract Documents.

5.11. Expediting

CONTRACTOR shall expedite delivery of the Goods and any related work of subCONTRACTORs. When requested or required by the Contract Documents, CONTRACTOR shall also provide GPA with an itemized schedule for engineering, outsourcing, fabrication, and shipping, which shall be followed by expediting reports including status of deliveries of materials and/or equipment purchased from subCONTRACTORs, if any, each month during its performance under the Agreement. If CONTRACTOR encounters delay in obtaining materials, or foresees any delay in its own manufacturing works, CONTRACTOR shall immediately inform GPA of such situation.

GPA and/or its designee shall be allowed reasonable access to CONTRACTOR's and its subCONTRACTOR's works for the purpose of expediting project progress.

Any expediting done by GPA shall not relieve CONTRACTOR from its obligations as to the Delivery Time specified in the Agreement.

5.12. Compliance with Law

CONTRACTOR shall comply, and secure compliance by its subCONTRACTORs, with all applicable laws or regulations in connection with the Goods and services furnished hereunder. This includes the securing of any business or other licensing, certifications, or permits required. If CONTRACTOR discovers any variance between the provisions of applicable laws and regulations and the drawings, Specifications, and other technical data furnished by the GPA, CONTRACTOR shall promptly notify GPA in writing thereof and obtain necessary changes from GPA before proceeding with the work affected thereby.

5.13. Price Adjustment

Price Adjustment Methods

Any adjustment in contract price within the parameters of this contract shall be made in one or more of the following ways:

- a) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

- b) By unit prices specified in the contract or subsequently agreed upon;
- c) By the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract or subsequently agreed upon;
- d) In such other manner as the parties may mutually agree; or
- e) In the absence of agreement between the parties, by a unilateral determination by the Procurement Officer of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the Procurement

Submission of Cost or Pricing Data

The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of Section 3-403 (Cost or Pricing Data) of the Guam Procurement Regulations.

5.14. Changes

5.14.1. Change Order

By a written order, at any time, and without notice to surety, the Procurement Officer may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:

- a) Drawings, designs, or Specifications, if the supplies to be furnished are to be specially manufactured for the Territory in accordance therewith;
- b) Method of shipment or packing; or
- c) Place of delivery.

5.14.2. Time Period for Claim

Within 30 days after receipt of a written change order under **Paragraph 4.15.1 Change Order**, unless the Procurement Officer extends such period in writing or e-mail, The CONTRACTOR shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the CONTRACTOR's claim unless the Territory is prejudiced by the delay in notification.

5.14.3. Claims Barred After Final Payment

No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract.

5.14.4. Other Claims Not Barred

In the absence of such a change order, nothing in this clause shall be deemed to restrict the CONTRACTOR's right to pursue a claim arising under the contract if pursued in accordance with the clause entitled, "Claims Based on the General Officer's Actions or Omissions, - Notice of Claim", or for breach of contract.

5.15. Contract Price

The Contract Price constitutes the total consideration to be paid by GPA to THE CONTRACTOR for performing other services in connection therewith in accordance with the Contract Documents as amended by the parties pursuant to the Agreement. Unless expressly provided otherwise in the Contract Documents, the Contract Price is not subject to escalation in respect of materials and/or labor cost or any other factor or variation in rates of exchange, and all duties, responsibilities, and obligations assigned to or undertaken by THE CONTRACTOR shall be at its expense without change in the Contract Price. Charges, fees, CONTRACTOR's profit, and all other expense shall be deemed to be included in the Contract Price. Furthermore, the Contract Price includes management fees and incentive/penalty payments. Therefore, the Contract Price is dynamic but bounded.

Only a formal Change Order, accepted by GPA, may change the Contract Price. THE CONTRACTOR shall make any claim for an increase in the Contract Price in advance of performance of any such changes. However, GPA reserves the right to challenge or refute such claims.

5.16. Payment Milestones and Schedule

Payment milestones have been selected to clearly identify the actual status of the portion of the Work completed rather than anticipated project progress schedules. Payments will be based on actual completion of each milestone event, where applicable, and not on the scheduled completion date. When a change in the Agreement is approved, the total contract price will be altered to the new total, and the remaining milestone payments will be adjusted.

Milestones shall not be scheduled more frequently than once every month. GPA will not approve a milestone payment until all preceding milestones have been approved. GPA will make payments within thirty (30) days from receipt and approval of the invoice for the completed milestone.

The payment milestones for monies due to the CONTRACTOR from GPA are as follows:

- Monthly Fees based on the actual quantity of reprocessed fuel oil accepted at GPA's Designated Facility (or Facilities)

The payment milestones for monies due to GPA from the CONTRACTOR are as follows:

- Expenses resulting from minor repairs or penalties due to Oil Spills, Non-Compliance with Environmental, Local and Federal Regulations, due to the negligence on the part of the contract

5.17. Force Majeure

Force Majeure referred to herein shall mean an occurrence beyond the control and without the fault or negligence of the party affected including, but not limited to, acts of God or the public enemy, expropriation or confiscation; changes in law procedures, war, rebellion, or riots; floods, unusually severe weather that could not reasonably have been anticipated; fires, explosions, epidemics, catastrophes, or other similar occurrences which are not within the control of the party affected. However, the following shall not be considered as *Force Majeure*:

- a) Delay caused by lack or inability to obtain raw materials, congestion at CONTRACTOR's or its subcontractor's facilities, or elsewhere; market shortages, or similar occurrences, or
- b) Delay, either on the part of THE CONTRACTOR or its subcontractors, caused by shortages of supervisors or labor, inefficiency, or similar occurrences, or
- c) Sabotage, strikes, or any other concerted acts of workmen, which occur only in the facilities of THE CONTRACTOR or its subcontractors.

Should the circumstances of *Force Majeure* continue over a period of ninety (90) days, GPA has the right, if no other understanding is reached, to terminate the whole Agreement or any part thereof in accordance with Paragraph 4.28. Any delay or failure in performing the obligations under the Contract Documents of the parties hereto shall not constitute default under the Purchase Contract or give rise to any claim for damages or loss or anticipated profits if, and to the extent, such delay or failure is caused by Force Majeure, and if a claim is made therefore.

5.17.1. Invocation of Force Majeure

The party invoking Force Majeure shall perform the following:

- a) Notify the other party as soon as reasonably possible by facsimile, e-mail, telex, cable or Messenger/courier of the nature of Force Majeure, anticipated exposure time under Force Majeure, and the extent to which the Force Majeure suspends the affected party's obligations under the CONTRACT;
- b) Consult with the other party and take all reasonable, prudent steps to minimize the losses of either party resulting from the Force Majeure;
- c) Resume the performance of its obligations as soon as possible after the Force Majeure condition ceases.

5.17.2. Delivery Time and Force Majeure

Only a Change Order may change contractual Delivery Times. THE CONTRACTOR as provided in **Paragraph 4.15** and its sub-paragraphs shall file all claims for an extension in the Delivery Time.

The Delivery Time will be extended in an amount equal to time lost due to delays caused by Force Majeure if a claim is made therefore as provided in this Paragraph. No amendment to the Contract Price, however, shall be allowable because of Force Majeure occurrences.

Notwithstanding the foregoing, all time limits stated in the Purchase Order documents are of the essence in the agreement. The provisions of this Paragraph shall not exclude recovery for damages (including compensation for additional professional services) for delays not caused by Force Majeure.

5.18. Warranty

THE CONTRACTOR'S obligation to furnish the Goods and Special Services and to perform other services in connection therewith in accordance with the Agreement is absolute, and THE CONTRACTOR warrants and guarantees to GPA that all Goods will be in accordance with the Contract Documents and will be new, fit for the purpose for which they are intended, and free from any defects, including faulty design, materials, or workmanship.

THE CONTRACTOR shall provide GPA with all warranties and guarantees in writing. GPA and the BIDDER shall negotiate the manner in which claims against these warranties are addressed including any remedies for non-responsiveness. This may include retention of contract amounts, performance bonds, etc.

THE CONTRACTOR shall be responsible for remedying all defects, without limitation, in design, materials, workmanship, operating characteristics, or performance of the Goods developing within twelve (12) months from the date on which GPA has placed the Goods in continuous service, or within twenty-four (24) months from the date of final payment, whichever date shall first occur, or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee or by any specific provisions of the Contract Documents.

Any part(s) supplied in replacement of the defective part(s) of the Goods or any Goods repaired pursuant to the provisions of this Paragraph shall be supplied or repaired on the same terms and conditions as provided for herein for the supply of the Goods and in particular a new warranty period shall apply. Such new warranty period shall expire on the date twelve (12) months from the date of such replacement or repair or on the expiration date of the warranty for the original Goods that were replaced or repaired, whichever is later.

In the event the CONTRACTOR furnishes special services for installation and startup, such services shall be rendered in a competent and diligent manner and in accordance with the Contract Documents, accepted industry practice and any applicable professional standards.

5.19. Tests and Inspections

GPA or its designee shall have the right to inspect or observe the production, inspection, or testing of the Goods at any time and place including the CONTRACTOR's facilities and those of its subCONTRACTORS where the Goods are being produced.

THE CONTRACTOR shall conduct, at its responsibility and expense, all tests and inspections called for by the Contract Documents. In the event that witness inspection by GPA is required under the Contract Documents, the costs and expense arising therefrom shall be borne by the CONTRACTOR, including inspector's fees, transportation, hotel, and general flying expenses. In the event that CONTRACTOR's inspection is required at the site, CONTRACTOR's transportation, hotel, and general living expenses shall be borne by THE CONTRACTOR.

Any inspection made by the inspector of GPA and/or its designee will be final. Such inspections or the witnessing of CONTRACTOR's test and inspection by GPA and/or its designee shall not relieve THE CONTRACTOR of any of its responsibilities or liabilities under the Contract Documents, nor be interpreted in any way as implying acceptance of the Goods.

THE CONTRACTOR shall repair and replace, without cost or delay, anything found defective by tests and inspections, and also to bear all costs of re-inspection.

The CONTRACTOR must carry out at its authority and expense any inspection required by statutory Authority, governmental regulation, or other similar Authority on the codes or standards.

5.20. Remedying Defective Parts

If at any time GPA determines that the replacement parts are defective, THE CONTRACTOR shall, upon written notice from GPA, do all things necessary, at its expense, to make good the defects as soon as possible after being notified to do so by GPA. THE CONTRACTOR warrants that THE CONTRACTOR, unless otherwise agreed, shall remedy any defects. It is understood, that if so instructed by GPA, THE CONTRACTOR shall make shipment by the fastest available method.

In the event that THE CONTRACTOR does not take prompt action to fulfill its obligations hereunder as required by GPA and to the satisfaction of GPA, GPA may, after ten (10) days written notice to THE CONTRACTOR, and without prejudice to any of its rights under the Agreement, accept the defective Goods and carry out the remedial work itself instead of requiring correction or removal and replacement, and charge THE CONTRACTOR for the costs of the work. In an emergency where delay would cause serious risk of loss or damage, GPA may take such action without prior notice to or waiting for action by THE CONTRACTOR.

5.20.1. Remedying Defective Special Services

If at any time GPA notifies THE CONTRACTOR in writing that any of the Special Services are defective, THE CONTRACTOR shall promptly provide acceptable services. If THE CONTRACTOR fails to do so, GPA may obtain the Special Services elsewhere.

5.20.2. Cost of Remedying Defects

All direct, indirect, and other costs of correcting, removing, and replacing defective Parts or of obtaining Special Services elsewhere and of exercising GPA's rights and remedies under **Paragraph 4.4, 4.19**, and other sections as they apply, will be charged against THE CONTRACTOR and, if incurred prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents

and a reduction in the Purchase Price, or if incurred after final payment, an appropriate amount will be paid by THE CONTRACTOR to GPA. Such direct, indirect, and other costs will include, in particular but without limitation, compensation for additional professional services required and all costs of repair and replacement of property of GPA or others destroyed or damaged by correction, removal, or replacement of defective Goods. THE CONTRACTOR shall not be allowed an extension of the Delivery Time because of any delay in performance attributable to the exercise by GPA of GPA's rights and remedies under this paragraph.

5.21. Stop Work Order

5.21.1. Order to Stop Work

The Procurement Officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding ninety-days (90-days) after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Procurement Officer shall either:

- a) Cancel the stop work order; or
- b) Terminate the work covered by such order, as provided in the 'Termination for Default Clause' or the 'Termination for Convenience Clause' of this contract.

5.21.2. Cancellation or Expiration of the Order

If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contract price shall be modified in writing accordingly, if:

- a) The stop work order results in an increase in the time required for, or in the CONTRACTOR's cost properly allocable to, the performance of any part of this contract; and
- b) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the Procurement Officer decides that the facts justify

such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

5.21.3. Termination of Stopped Work

If a stop work order is not canceled and the work covered by such order is terminated for default or Convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

5.22. Termination for Convenience

5.22.1. Termination

The Procurement Officer may, when the interest of GPA or the Territory so require, terminate this contract in whole or in part, for the Convenience of the Territory. The Procurement Officer shall give written notice of the termination to the CONTRACTOR specifying the part of the contract terminated and when termination becomes effective. [GSA Procurement Regulations 6-101.10.]

5.23.2. CONTRACTOR's Obligations

The CONTRACTOR shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the CONTRACTOR will stop work to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Procurement Officer may direct the CONTRACTOR to assign the CONTRACTOR's right, title, and interest under terminated orders or subcontracts to the GPA. The CONTRACTOR must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

5.22.2. Right to Supplies

The Procurement Officer may require the CONTRACTOR to transfer title and deliver to GPA in the manner and to the extent directed by the Procurement Officer:

- a) Training material;
- b) Any completed supplies; and,

- c) Such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this contract.

The CONTRACTOR shall, upon direction of the Procurement Officer, protect and preserve property in the possession of the CONTRACTOR in which the Territory has an interest. If the Procurement Officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such supplies and manufacturing materials in accordance with the standards of **Uniform Commercial Code of Guam (UCCG), Section 2706**. Utilization of this Section in no way implies that the Territory has breached the contract by exercise of the Termination for Convenience Clause.

5.22.3. Compensation Under Termination for Convenience

The CONTRACTOR shall perform the following for compensation under termination for convenience.

- a) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for Convenience together with cost or pricing data to the extent required by **Section 3-403 (Cost or Pricing Data) of the Guam Procurement Regulations** bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Procurement Officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph (c) of this Paragraph.
- b) The Procurement Officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data to the extent required by **Section 3-403 (Cost or Pricing Data) of the Guam Procurement Regulations** and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by GPA, the proceeds of any sales of supplies and manufacturing materials, and the contract price of the work not terminated.
- c) Absent complete agreement under Subparagraph (b) of this Paragraph, the Procurement Officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under Subparagraph (b) shall not duplicate payments under this subparagraph:
 - i. Contract prices for supplies or services accepted under the contract;
 - ii. Costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted supplies or services; provided, however, that if it appears that the CONTRACTOR would

have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

- iii. Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to **Paragraph 4.23.2** of this clause. These costs must not include costs paid in accordance with other subparagraphs of this Paragraph;
 - iv. The reasonable settlement costs of the CONTRACTOR including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract for the termination and settlement of subcontracts there under, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract. The total sum to be paid to the CONTRACTOR under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph (b) of this Paragraph, and the contract price of work not terminated.
- d) Cost claimed, agreed to, or established under subparagraph (b) and (c) of this Paragraph shall be in accordance with **Chapter 7 (Cost Principles) of the Guam Procurement Regulations. 13 GCA 2796 (UCCG)** states:

2706. SELLER's Resale Including contract for Resale

- (1) Under the conditions stated in **Section 2703** on CONTRACTOR's remedies, the CONTRACTOR may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the CONTRACTOR may recover the difference between the resale price and the contract price together with incidental damages allowed under the provisions of this division (Section 2710), but less expenses saved in consequence of the buyer's breach.
- (2) Except as otherwise provided in Subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the CONTRACTOR. Sale may be as a unit or in parcels and at any time and place and on any terms, but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

- (3) Where the resale is at private sale the CONTRACTOR must give the buyer [i.e., GPA] reasonable notification of his intention to resell.
- (4) Where the resale is at public sale:
 - (01) Only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and
 - (02) It must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the CONTRACTOR must give the buyer [i.e., GPA] reasonable notice of the time and place of the resale; and,
 - (03) If the goods are not to be within the view of those attending the sale, the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective BIDDER s; and
 - (04) The CONTRACTOR may buy.
- (5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer [i.e., GPA] even though the CONTRACTOR fails to comply with one or more of this section's requirements.
- (6) The CONTRACTOR is not accountable to the buyer [i.e., GPA] for any profit made on any resale. A person in the position of a CONTRACTOR (**Section 2707**) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (Subsection 3) of Section 2711."

5.23. Termination for Defaults

5.23.1. 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 non-performance and if not corrected 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 cost incurred on procuring similar goods or services.

5.23.2. 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 GPA has an interest.

5.23.3. Compensation

Payment for completed supplies delivered and accepted by the GPA 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 the Procurement Officer; if the parties fail to agree, the Procurement Officer shall set an amount subject to the CONTRACTOR's rights under Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations. GPA may withhold from amounts due the CONTRACTOR such sums as the Procurement Officer deems to be necessary to protect the GPA against loss because of outstanding liens or claims of former lien holders and to reimburse the PURCHASER for the excess costs incurred in procuring similar goods and services.

5.23.4. 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 fifteen (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; act of the Territory and any other governmental entity in its sovereign 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 or 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 GPA under the clause entitled "Termination For Convenience", Paragraph (As used in the Paragraph of this clause the term "subCONTRACTOR" means subCONTRACTOR at any tier.)

5.23.5. 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, or that the delay was excusable under the provisions of Section 53.4. Excuse for Nonperformance or Delayed Performance, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for Convenience of GPA, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for Convenience of GPA, the contract shall be adjusted to compensate for such termination and the contract modified accordingly subject to the CONTRACTOR's rights under Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations.

5.23.6. 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.

5.24. Disputes

All controversies between GPA and the CONTRACTOR, which arise under, or are by virtue of, this contract and which are not resolved by mutual agreement, shall be resolved under Guam Procurement Law and the Government Claims Act.

5.25. Consequential Damages

Unless expressly provided for otherwise in this Agreement, neither party, including their agents and employees, shall be liable to the other party for consequential damages, including, but not limited to, loss of use, loss of profit and interest due to breach of contract, breach of warranty, negligence, or any other cause

whatsoever, provided nothing herein shall relieve CONTRACTOR from its liability for injury to persons or property, including property of GPA, whether such liability arises in contract, including breach of warranty, or tort, including negligence.

5.26. Notices

Whenever any provision of the Contract Documents requires the giving of written notice it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

5.27. Computation of Time

When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the time computation.

5.28. Language and Trade Terms

All communications, documents, and execution of services hereunder, unless otherwise designated, shall be in the English language. INCOTERMS (International Rules for the Interpretation of Trade Terms) published by the International Chamber of Commerce in 1980 and any subsequent revisions thereto shall govern interpretation of trade terms in the Contract Documents

5.29. Governing Law

The laws of Guam shall govern the validity and interpretation of these conditions, the Agreement and legal relations of the parties. CONTRACTOR shall not transfer or assign to any third parties any obligations or rights under the Agreement, nor any claims against GPA arising directly or indirectly out of the Agreement.

CONTRACTOR shall not sublet the Agreement in whole or in part without the prior written consent of GPA. Written consent of GPA for subletting shall not relieve CONTRACTOR of any of his obligations under the Agreement.

5.30. Non-waiver

GPA shall not consider any provisions of this Agreement waived unless GPA gives notice of such waiver in writing. Even if such notice has been given, such waiver shall not be construed as being a waiver of any other past or future right of GPA under the provisions of this Agreement, unless otherwise expressly stipulated therein. Failure of GPA to insist upon strict performance of any of the terms and conditions hereof, or failure or delay of GPA to insist upon strict performance of any of the terms and conditions hereof, or failure or delay of GPA to exercise any acts, rights, or remedies provided herein or by law shall not relieve CONTRACTOR of liability under any guarantees or of obligations under the Agreement and shall not be deemed a waiver of any right of GPA to insist upon strict fulfillment of the Agreement or of any of GPA's rights or remedies as to the Goods or special services furnished.

5.31. Severability

If any work, phrase, clause, article, or other provision of this Agreement is or is deemed or adjudicated or otherwise found to be against public policy, void, or otherwise unenforceable, then said work, phrase, clause, article, or other provision shall be deleted or modified, in keeping with the express intent of the parties hereto as necessary to render all the remainder of this Agreement valid and enforceable. All such deletions or modifications shall be the minimum necessary to affect the foregoing.

5.32. Rights and Remedies

The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, will be in addition to, and shall not be construed in any way as a limitation of any rights and remedies available to any or all of them which are otherwise imposed or available by law or contract, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this paragraph shall be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply. All representations, warranties, and guarantees made in the Contract Documents will survive final payment and termination or completion of this Agreement.

5.33. New material

Unless this contract specifies otherwise, the CONTRACTOR represents that the Goods and components are new. If the CONTRACTOR believes that furnishing used or reconditioned Goods or components will be in

GPA's interest, the CONTRACTOR shall so notify GPA in writing. The CONTRACTOR's notice shall include the reasons for the request along with a proposal for any consideration to GPA if GPA authorizes the use of used or reconditioned Goods or components.

5.34. Claims based on the General Manager's Action or Omissions

If any action or omission on the part of the General Manager, or his/her designee, requiring performance changes within the scope of the contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) The CONTRACTOR shall have given written notice to the General Manager, or his/her designee:
 - i. Prior to the commencement of the work involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
 - ii. Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the work; or
 - iii. Within such further time as may be allowed by the Procurement Officer in writing. This notice shall state that the CONTRACTOR regards the act or omission as a reason that may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Procurement Officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Procurement Officer or designee of such officer.
- (2) The notice required by subparagraph (1) of this Paragraph describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
- (3) The CONTRACTOR maintains and, upon request, makes available to the Procurement Officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

5.35.1 Limitations of Clause

Nothing herein contained shall excuse the CONTRACTOR from compliance with any rules of law precluding GPA and its officers and any CONTRACTORS from acting in collusion or bad faith in issuing or performing change orders that are clearly not within the scope of the contract.

5.35.2 Standards of Design and Workmanship

The finished Work shall be complete in all respects. The intent of the Specifications is to acquire or purchase management services, training, operations and maintenance materials and services, and supply and inventory management and control. All hardware shall be manufactured, fabricated, assembled, finished, and documented with quality workmanship throughout, and all of its components shall be new and suitable for the purposes specified, all firmware/software shall be designed, implemented, tested, and documented in accordance with the best and recognized correct practices and shall be suitable for the purpose specified. All work shall conform to industry best practices.

5.35. Standard Work Schedule

Work scheduled and performed by the CONTRACTOR on GPA's premises shall conform to published GPA working hours and shall account for GPA's observed holidays.

5.36. Interference with Operation

Interference with normal operation of GPA's facilities or equipment, or that of any CONTRACTORS or subCONTRACTORS on GPA's premises, shall be avoided. The GPA's representative will determine in advance whether such interference is unavoidable and will establish the necessary procedures under which the interferences will be allowed.

5.37. Release of Information

The CONTRACTOR shall not release any information including the contract price concerning this project or any part thereof in any form, including advertising, news releases, or professional articles, without written permission of GPA.

5.38. Liens

In the event that a lien of any nature shall at any time be filed against the hardware, firmware, or software or the CONTRACTOR's facility by any person, firm, or corporation which has supplied material or services at the request of the CONTRACTOR, and for the cost of which the CONTRACTOR is liable under the terms of the Agreement, the CONTRACTOR agrees, promptly on demand of GPA and at the CONTRACTOR's expense, to take any and all action necessary to cause any such lien to be released or discharged therefrom. The CONTRACTOR agrees to hold GPA harmless from all liens, claims, or demands in connection with the Work.

5.39. Title

Title to any of the hardware, firmware, and software, management practices, training and other documents and/or processes required by GPA to continue the improved management, operations and maintenance of the GPA Fuel Bulk Storage Facility will pass to GPA upon placement of the equipment within GPA's premises prior to commencement of its installation, subject to GPA's inspection thereof. The CONTRACTOR shall retain title and be responsible for movement of the equipment from the delivery carrier onto the premises and the subsequent unpacking of the equipment. If, for any reason, the Work is terminated prior to its completion, the title to all the Work performed to that time including all hardware, firmware, software, management practices, training and other documents and/or processes required by GPA to continue the improved management, operations and maintenance of the GPA Fuel Bulk Storage Facility, whether in the CONTRACTOR's facility, in transit, or on GPA's premises, shall immediately pass to GPA.

5.40. Insurance

CONTRACTOR shall not commence work under this contract until he has obtained all insurance required under this section and GPA has approved such insurance, nor shall the CONTRACTOR allow any Subcontractor to commence work on this subcontract until all similar insurance required of the Subcontractor has been so obtained and approved. CONTRACTOR and Subcontractor shall maintain all insurance required during the course of the work.

5.41. CONTRACTOR's and Subcontractors' Insurance

A. Mandatory Insurance Requirements

Prior to commencing the work, CONTRACTOR shall obtain and thereafter maintain during the course of the work Insurance with companies acceptable to GPA. The CONTRACTOR shall not allow any subCONTRACTOR to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved. The minimum limits of insurance shall be as follows unless a higher limit is required by statute:

1. **General Liability.** General Liability including products, completed operations and contractual coverage for this Agreement. It shall have coverage for “on an occurrence basis” commercial general liability which includes owner’s and CONTRACTOR’s protective and contractual liabilities, and have a general aggregate limit of One Million US Dollars (US\$1,000,000), a product and completed operations aggregate limit of One Million US Dollars (US\$1,000,000), and a single occurrence limit of One Million US Dollars (US\$1,000,000), and One Million US Dollars (US\$1,000,000) for any of the above. GPA shall be additional insured.
2. **Auto Liability.** Auto Liability covering bodily injury and property damage. It shall carry coverage for owned, hired and non-owned vehicles, which includes endorsement for loss, property damage or destruction and personal bodily injury in single aggregate minimum amount of One Million US Dollars (US\$1,000,000) for each occurrence. GPA shall be additional insured.
3. **Excess Liability.** Excess Liability with limits of \$5,000,000 or higher. GPA shall be additional insured.
4. **Worker’s Compensation and Employer’s Liability.** Worker’s Compensation and Employer’s Liability – Statutory Limits. The coverage shall include all employees and all statutory limits and requirements for workers’ compensation for the Territory of Guam, and including but not limited to employers’ (CONTRACTOR) liability for employee bodily injury. Add Waiver of Subrogation endorsement in favor of GPA.
5. **Pollution Liability Insurance.** CONTRACTOR shall carry at a minimum one million US dollars (US\$1,000,000.00) per occurrence pollution liability insurance.

B. Optional Insurance:

Bidders are requested to place Price Proposal for the following additional requirements, which GPA may require the Bidder to obtain upon notification of contract award in lieu of or in addition to basic insurance requirements above. If bidder cannot provide policies stated below, please indicate by replying “Unable to provide.”

General Liability. In addition to requirements above, add Waiver of Subrogation in favor of GPA.

Auto Liability. In addition to requirements above, add Waiver of Subrogation in favor of GPA.

Excess Liability. In addition to requirements above, add Waiver of Subrogation in favor of GPA.

Worker's Compensation and Employer's Liability. Increase coverage to \$1,000,000 / \$1,000,000/ \$1,000,000.

Pollution Liability. Increase Pollution Liability coverage to \$5,000,000.00 per occurrence, and GPA shall be an additional insured. Waiver of subrogation shall be granted in favor of GPA.

Professional Liability or Architects and Engineers Liability in the amount of \$1,000,000.

Builder's Risk or Installation Floater, when applicable, is to be furnished by CONTRACTOR, which shall include GPA as named insured.

5.41.1. Indemnification

The CONTRACTOR shall indemnify, defend and hold harmless owner against all loss, damage, or expense (including reasonable attorney's fees incurred by owner) arising out of the performance of the work, including injury or death to any person or persons resulting from the acts or omission of the CONTRACTOR or the CONTRACTOR's employees, servants, agents or subCONTRACTORS and from mechanics and materialism liens.

5.41.2. Certificate of Insurance

CONTRACTOR shall furnish certificates of insurance and waiver of subrogation endorsement to GPA prior to commencement of work showing evidence of such coverage, including the statement to the effect that cancellation or termination of the insurance shall not be effective until at least (10) days after receipt of written notice to GPA. At all times CONTRACTOR's insurance, shall be primary to any other insurance that may be carried by GPA. The statement of limits of insurance coverage shall not be construed as in any way limiting the CONTRACTOR's liability under this agreement. GPA shall be an additional insured on all liability coverage and certificates of insurance shall clearly indicate such.

5.41.3. Insurance Company and Agent

All insurance policies herein required of the CONTRACTOR shall be written by a company duly authorized and licensed to do business in the State or Territory where work under this contract is being performed and be executed by some agent thereof duly licensed as an agent in said State or Territory.

5.42. GPA Insurance

GPA agrees that it will keep the property and machinery and equipment insured, at a minimum, against loss or damage by fire with extended coverage endorsement for full replacement value as determined by GPA from time to time. Such insurance shall be issued by financially responsible insurers duly authorized to do

business in the state or territory where the property is located and shall contain the standard form of waiver of subrogation. The insurance company shall be required to give GPA not less than thirty days (30) notice in the event of cancellation or material alteration of such coverage. Nothing contained herein shall be construed as creating any liability or responsibility on the part of the CONTRACTOR for the adequacy of insurance coverage on the property. As to any insurable risks of loss or damage to the property and machinery and equipment not required to be insured hereunder, GPA shall bear the cost of the same. GPA shall be deemed to be self-insured as to the deductible or co-insurance amount applicable to such insurance coverage and shall pay any deductible or co-insurance amount applicable in the event of such loss or damage.

5.43. Waiver of Subrogation

The parties hereby release each other and their respective officers, employees, and agents from all loss or damage to the Premise property, machinery and equipment and to the fixtures, personal property, equipment and improvements of either GPA or CONTRACTOR in or on the Property, notwithstanding that any such loss or damage may be due to or result from the negligence of either of the parties or their respective officers, employees or agents. This waiver does not apply to maintenance and repair assumed under this contract by the CONTRACTOR.

Invitation for Multi-Step Bid

No.: GPA-118-18

SUPPLY OF REPROCESSED GUAM POWER AUTHORITY USED OIL MEETING GPA'S SPECIFICATIONS FOR REPROCESSED USED OIL



Volume II

Technical and Functional Requirements

September 2018

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1. Overview

The Guam Power Authority (GPA), hereinafter referred to as GPA, seeks to contract a firm to collect Used Oil from GPA's Used Oil Facility and re-process the Used Oil for re-utilization at a designated GPA Power Plant, provided the re-processed fuel oil meets GPA's Specifications for Reprocessed Used Oil.

The CONTRACTOR shall be responsible for the following items:

- Hauling of Used Oil from GPA's Used Oil Facility into CONTRACTOR's Used Oil Reprocessing Facility. GPA may require contractor to haul Used Oil from GPA locations storing Used Oil, aside from the Used Oil Facility.
- Testing of Reprocessed Used Oil.
- Delivery to GPA's designated power plants, provided reprocessed fuel oil meets specifications for Reprocessed Used Oil, at a \$/gallon rate inclusive of testing and hauling, as specified in CONTRACTOR's Price Proposal.

GPA receives Used Oil into its Used Oil Facility (WOF), from various sources such as the GPA Piti#8 and #9 Power Plant, GPA Transportation Division, GPA Substation, and from various facilities on-island, as mandated by Governor Ada's directive in 1990.

With the exception of Used Oil from Piti#8 and #9 Power Plant, all Used Oil received in the facility must meet the requirements stated in Schedule B of this bid, as mandated by USEPA. The Used Oil collected in the WOF is used in Cabras 1&2 Facility, as a minimum addition to the primary fuel which is Residual Fuel Oil.

Aside from the WOF, GPA also occasionally stores Used Oil in other facilities, such as the Cabras and Piti Power Plants.

Without the Cabras 1&2 Facility, GPA would only be able to dispose the Used Oil properly by shipping off-island via certified local companies.

GPA intends to address the proper disposal of Used Oil received in its WOF by seeking qualified firms to reprocess the Used Oil such that it meets GPA's specifications for Reprocessed Used Oil and be utilized in a designated GPA facility (or GPA facilities).

2. Proposal Requirements

2.1. Used Oil Reprocessing Experience

The CONTRACTOR must have progressive successful experience in the business of Used Oil handling and Used Oil re-processing. The more extensive experience in the business of Used Oil Handling and Used Oil Reprocessing will be an advantage.

2.2. Qualifications / Qualitative Proposal

The CONTRACTOR shall demonstrate sufficient qualifications for this solicitation by providing the following as part of the Qualitative or Technical Proposal:

2.2.1. Business Structure and Business Approach

The CONTRACTOR shall provide company information such as name, local address, corporate headquarters (if any) and affiliate company in support for the performance of the required services. The business structure and nature of services provided shall be provided together with the company information. A copy of the Articles of Incorporation and By-Laws or other applicable forms concerning the business organization is also requested. A description of CONTRACTOR's organizational structure, subsidiaries and parent companies, short biographies of company officers, and proposed project and management teams shall also be included.

The CONTRACTOR shall outline business concepts to be used in order to perform, meet, and achieve the objectives of this solicitation.

2.2.2. Financial Information

The CONTRACTOR shall provide documentation to illustrate its financial position and capability.

1. Historical financial records, reviewed or audited by certified reviewing or auditing firm(s), as follows:
 - a. For publicly traded entities:
 - o Audited financials for the last three consecutive fiscal years; or audited financials for the latest three consecutive fiscal years for which audited financial statements are available and unaudited financial statements for the most recent fiscal year ended; and
 - o Balance Sheet, Income statement and financial ratios for the last three consecutive fiscal years.
 - b. For private, non-publicly traded entities:

- Unaudited financials for the last five consecutive fiscal years; and
 - Disclosure of major creditors and lien holders; and
 - Letters from creditors and lien holders that CONTRACTOR has been making payments according to loan agreements and is current on their account.
- 2. Guam Tax Clearance from the Guam Department of Revenue & Taxation, if locally registered.
- 3. Creditworthiness information, including but not limited to:
 - a. A notarized statement that there are no outstanding or potential litigations or liens against the CONTRACTOR; and
 - b. Dunn and Bradstreet number and most recent reports (preferred); or any other information supporting that the CONTRACTOR is creditworthy.
- 4. The CONTRACTOR shall also provide a copy of the Insurance Policy demonstrating compliance with the Insurance Requirements specified in Volume I Commercial Terms and Conditions.

2.2.3. Presentation of Technology for Reprocessing Used Oil

The CONTRACTOR shall demonstrate its capability to reprocess Used Oil to meet GPA's Ultra-Low Sulfur Diesel Specifications:

- (a) Detailed description of the technology proposed for the collection of Used Oil and processing of Used Oil into an acceptable reprocessed Used Oil product, including information on the commercial applications of the technologies used for collecting and processing Used Oil into a refined product meeting GPA's Reprocessed Used Oil specifications (example: location of facility, quantity processed, etc.)
- (b) Evidence that the technology and process proposed has been in commercial operation for at least five (5) years.
- (c) Evidence of CONTRACTOR's experience with installation, operation and maintenance of proposed technology and processes.
- (d) Evidence of CONTRACTOR's certification and qualification to install, operate and maintain proposed technology and processes, including any contracts with OEMs.

GPA may consider providing a portion of the Cabras Facility for CONTRACTOR's use in collection and processing, subject to a review of the CONTRACTOR's footprint requirement and operations proposal by GPA. CONTRACTOR may indicate in the proposal if such needs exist, for GPA to consider if contract is awarded. However, proponent may only be able to use the facility within the next five (5) to ten (10) years.

2.2.4. Technical Requirements

The CONTRACTOR shall demonstrate its experience and expertise in the management and operation of Used Oil handling, Used Oil collection, and Used Oil processing facilities, as well as in petroleum handling and storage:

- (a) Supporting information showing a minimum of five (5) years progressive experience in Used Oil Handling, Used Oil Collection, Used Oil Reprocessing;
- (b) Supporting information showing a minimum of five (5) years progressive experience in Petroleum Handling, Petroleum Storage and Petroleum Delivery;
- (c) Experience in handling tank and pipeline leaks, and major incidents in fuel bulk storage facilities, and implementation/completion of remedies;
- (d) Mobilization capability for resources required in emergency oil spills or incidents
- (e) Experience and expertise in complying with local and federal laws regarding environmental compliance, specifically with the handling, storage, and transport of oil products; creation, approval and execution of Spill Prevention, Control and Countermeasure Plan (SPCC Plan) and Best Management Practices (BMP), and any other pertinent local and environmental regulations, requirements and practices, such as but not limited to OPA 90, FRP, etc. Other activities related to Fuel Bulk Storage Facility Management.

2.2.5. Compliance with Local and Federal Requirements

The CONTRACTOR shall demonstrate its familiarity, expertise, and experience with local and federal laws regarding Used Oil and fuel oil, specifically with the handling, storage and transport of oil products. The contractor shall also be solely responsible for ensuring that Used Oil reprocessing facility and processes comply with all applicable local and federal laws and requirements.

2.2.6. Proposed Supply Schedule and Quantities

The CONTRACTOR shall provide GPA a proposed schedule to begin supplying ULSD from reprocessed Used Oil, including projected frequency and volume, subject to the reprocessed Used Oil meeting the ULSD Specifications required by GPA. GPA shall solely determine if the proposed frequency and volumes are acceptable, but GPA reserves the right to reduce the quantities or frequency of deliveries, as may be needed by the designated facility or facilities.

2.2.7. Letters of Recommendation from Client References

The CONTRACTOR shall also provide at least three letters from Client References containing project description summaries for work performed under a scope similar to this solicitation, and details on the proponent's qualifications for and performance of the tasks assigned by client.

2.2.8. Supporting Documents

The CONTRACTOR shall also provide the following documents to supplement their Qualitative Proposal:

- (a) Certificate of Good Standing to conduct business in jurisdiction of residence
- (b) Certifications related to Used Oil and/or Petroleum Handling Work
- (c) Any other information, brochures, company profile publications that may help the Authority in the evaluation and selection process

2.3. Price Proposal

The Price Proposal is broken down as follows:

- (1) GPA's Reference Price of \$/gallon for ULSD
- (2) Bidder's proposed Discount Rate, in %
- (3) Discount Fee, \$/gallon

The most responsive and most responsible bidder with the highest discount, which yields the lowest Net \$/gallon price will be awarded the contract. This Price Proposal is inclusive of services to collect fuel from GPA Used Oil Facility, and for delivery into GPA's designated facility or facilities.

3. Used Oil Handling, and Receiving of Reprocessed Oil

3.1. Used Oil Collection from GPA's Used Oil Facility

The CONTRACTOR awarded this contract must:

- (1) Plan for the scheduled collection of Used Oil during normal business hours, except during emergency situations, in coordination with GPA's Generation Division and the Generation Division's Performance Management Contractor (PMC) for Cabras 1&2 Power Plant. GPA Generation Division's business hours are from 7:00 AM to 5:00 PM daily. CONTRACTOR and GPA shall each appoint a primary contact and alternate contact for the collection of Used Oil from GPA WOF. GPA may require contractor to haul Used Oil from GPA locations storing Used Oil, aside from the Used Oil Facility, and GPA will also appoint a primary contact and alternate contact for each of the additional sites that the CONTRACTOR will be required to haul used oil from.
- (2) Assign a qualified and certified Third-Party Inspection Contractor to conduct services as specified in this section. The Third-Party Inspection Contractor shall be approved by GPA, but all costs will be borne by CONTRACTOR.
- (3) Collect Used Oil from GPA's Used Oil Facility (WOF) or any other facility designated by GPA, at dates and times agreed upon between CONTRACTOR and GPA's Generation Manager or his Designees, and the PMC.
 - a. CONTRACTOR shall equip its vacuum trucks with transfer pumps and meters and/or whatever else is necessary to collect Used Oil from GPA's WOF. The tanker truck meter shall be utilized to determine the quantity of Used Oil received by CONTRACTOR
 - b. The Third-Party Inspection Contractor shall conduct inspection of CONTRACTOR's Vacuum Truck to confirm that it is empty. Once inspection is complete, CONTRACTOR shall load/transfer Used Oil to its vacuum truck. Once Used Oil transfer and loading is completed, all intake and discharge ports shall be secured/sealed by the Third-Party Inspection Contractor approved by GPA. This is to ensure that no additional amount of Used Oil is added to possibly contaminate the vacuum truck content.
 - c. CONTRACTOR shall provide GPA a collection ticket wherein at a minimum, the following information will be included:
 - Date and time of collection
 - Quantity collected
 - CONTRACTOR's representative's signature
 - GPA representative's signature and/or PMC representative's signature
 - Third Party Inspector's Signature

- d. CONTRACTOR shall closely coordinate with the GPA Generation Division and GPA Cabras 1&2 PMC and shall exercise its best efforts to collect Used Oil during the mutually agreed-upon schedule and quantities.
- (4) GPA shall ensure that standard operating procedures and best management practices for the operation of the WOF and receiving tanker truck are implemented during collection. GPA has the right to decline collection of Used Oil from WOF if CONTRACTOR and CONTRACTOR's Tanker Truck is not properly equipped to receive Used Oil, or if there is proof that there is contamination within the vacuum truck.

3.2. Storage and Reprocessing of Used Oil

The CONTRACTOR awarded this contract must:

- (1) Store Used Oil collected from GPA from tanker truck into CONTRACTOR's proper storage facility assigned to store GPA Used Oil until ready for re-processing. The storage facility shall be secured and sealed and no Used Oil shall be added to contaminate the existing Used Oil in the designated storage facility except additional Used Oil collected from GPA's WOF.
 - a. A sample seal is attached in Schedule F. Contractor must present proof that storage tank is sealed every week upon collection of Used Oil from GPA WOF.
 - b. If Used Oil collected from GPA WOF is to be stored in the designated storage facility that already stores Used Oil collected from GPA WOF, then the storage facility shall be secured and re-sealed following off-loading of additional Used Oil.
- (2) Re-process Used Oil collected from GPA WOF in CONTRACTOR's facility to produce fuel meeting GPA's Specifications for Reprocessed Used Oil, illustrated in Volume VI, Schedule A. The CONTRACTOR may also be required to ensure that reprocessed Used Oil must meet other regulations, such as those that may come from USEPA and Guam EPA, regarding the quality of reprocessed Used Oil.
- (3) Conduct daily determination of fuel oil quantity for all transfers, receipts, deliveries and for inventory. A report shall be submitted to GPA, for the purposes of tracking Used Oil transfers and estimated reprocessed oil quantity.
- (4) Dispose of any waste products resulting from the reprocessing of GPA Used Oil. GPA shall not be responsible for disposal of any Used Oil nor waste products resulting from the reprocessing of Used Oil obtained from GPA WOF. Nor shall GPA accept into the facility any Used Oil from CONTRACTOR resulting from the reprocessing of the Used Oil already obtained from GPA WOF.

3.3. Sampling and Testing of Reprocessed Used Oil

The CONTRACTOR awarded this contract must comply with GPA's requirements regarding the Sampling and Testing of Reprocessed Used Oil.

- (1) The CONTRACTOR shall designate storage facilities for storage of reprocessed Used Oil collected from GPA's WOF.
- (2) CONTRACTOR shall assign a Third-Party Testing Facility to conduct all required sampling and testing. GPA shall approve the Third-Party Testing Facility, but all sampling and testing costs will be borne by CONTRACTOR.
- (3) The storage tank and designated tanker truck with Reprocessed Used Oil will be presented to GPA's Designated Facility and GPA's Planning and Regulatory Division and sampling and testing to be witnessed by GPA designated representative and conducted by approved Third-Party Testing Facility.
- (4) At GPA's discretion, sampling will be required at either or both the source storage facility for ULSD produced from re-processed Used Oil, or at the tanker truck to be used for delivery to the designated GPA Facility or Facilities.
- (5) After sampling, has been completed, storage facility shall be secured and sealed. To protect the integrity of the tested product, all valves such as intakes/discharge shall be secured and sealed.
- (6) All test procedures shall be consistent with the ASTM Test Methods as prescribed in Section 1.0 of the contract, and in Volume VI Schedule 1 of this bid. The CONTRACTOR may also be required to ensure that reprocessed Used Oil must meet other regulations, such as those that may come from USEPA and Guam EPA, regarding the quality of reprocessed Used Oil.
- (7) A properly filled-up "Chain of Custody of Samples and Testings" must be submitted to the laboratory together with the fuel samples.
- (8) CONTRACTOR shall provide the test results to GPA once available and shall seek GPA's approval for delivery of product to the GPA designated facility or facilities.
- (9) GPA's Planning and Regulatory Division shall issue Clearance to Contractor.
- (10) Once GPA's approval is received, CONTRACTOR will deliver coordinate with GPA's Generation Division and GPA's designated facility (or facilities) for delivery of ULSD.

3.4. Delivery of ULSD from Reprocessed Used Oil from GPA WOF

The CONTRACTOR shall deliver Reprocessed Used Oil from GPA's WOF that meets GPA's Specifications for Reprocessed Used Oil to the point of delivery designated by GPA, following the requirements stated as follows:

- (1) CONTRACTOR shall provide test results to GPA once available and shall seek GPA's approval for delivery of product to the GPA designated facility or facilities, at a specific date and time no less than

- 48 hours after the test results and notification of intent to deliver is received by GPA. The results shall be sent to GPA's Designated Facility and GPA's Planning and Regulatory Division for review of compliance with specifications and other specifications as may be required to comply with USEPA.
- (2) If Reprocessed Used Oil meets GPA's Specifications for Reprocessed Used Oil, GPA's Planning and Regulatory Division shall provide clearance for GPA Designated Facility or Facilities to accept fuel and, approve CONTRACTOR's requested date and time. The management and staff of GPA's Designated Facility will decide whether or not to accept the reprocessed Used Oil, with guidance from GPA Planning and Regulatory Division and SPORD. If the designated facility is unable to receive reprocessed Used Oil at the requested date and time, GPA will propose an alternate date and time to CONTRACTOR. GPA may accept reprocessed Used Oil on Monday thru Friday, between 7:00 AM to 5:00 PM or as may be required by the facility depending on facility's operating hours.
 - (3) The CONTRACTOR shall provide transfer pumps at its delivery trucks and/or whatever else may be necessary to deliver Reprocessed Fuel Oil to the GPA Storage Tanks at the designated facility or facilities to the height of 45 feet.
 - (4) Title to the Reprocessed Used Oil shall pass from CONTRACTOR to GPA when the Reprocessed Used Oil has passed the GPA pipeline flange at the GPA storage tank(s) connecting the CONTRACTOR's tanker truck delivery hose.
 - (5) All risk of loss, cost and environmental liabilities prior to the time of passage of title of the Reprocessed Used Oil shall be borne by the CONTRACTOR. All expenses incurred for the delivery of the product to the GPA designated facility or facilities shall be at the CONTRACTOR's account.
 - (6) If Reprocessed Used Oil does not meet GPA's Specifications for Reprocessed Used Oil, GPA reserves the right to reject the delivery.
 - (7) In the event of a dispute over the accuracy of CONTRACTOR's meters, and independent third party mutually agreeable to both parties will be utilized to perform a recalibration in order to confirm the accuracy of the meter(s) in question. In the event of an erroneous calibration of meters, CONTRACTOR will pay the cost of the calibration recertification. Any loss incurred by GPA as a result of miscalibration or of faulty meters shall be negotiated and reimbursed to GPA in equivalent amount.
 - (8) The quantity of Reprocessed Used Oil accepted by GPA will not exceed the amount of Used Oil collected by the CONTRACTOR from GPA's Used Oil Facility.

4. Other Requirements

4.1. Reprocessed Used Oil Quality

Fuel Specifications are shown in Schedule A. GPA has endeavored to ensure that each successive quantity fuel to be supplied is compatible with a representative sample of the previous delivery. Compatibility shall be confirmed by GPA's Fuel Testing CONTRACTOR, using an accepted test method reflected in the associated testing at loading and upon delivery.

The CONTRACTOR shall ensure that the products to be delivered to GPA's designated facility or facilities meet the Fuel Specifications required by GPA. The CONTRACTOR shall not cause to contaminate the reprocessed Used Oil to be delivered to GPA and shall be liable for any product contamination resulting from the negligent act of its employees or agents. Such negligent act shall be subject to claims by GPA against the CONTRACTOR.

4.2. Disposal of Used Oil and Waste Products

The CONTRACTOR shall dispose of any waste products resulting from the reprocessing of GPA Used Oil. GPA shall not be responsible for disposal of any Used Oil nor waste products resulting from the reprocessing of Used Oil obtained from GPA WOF. Nor shall GPA accept into the facility any Used Oil from CONTRACTOR resulting from the reprocessing of the Used Oil already obtained from GPA WOF.

4.3. Amendment of Product Specification

Should GPA wish to alter any of the specifications set out in Schedule A, for good cause, it shall give written notice to CONTRACTOR thirty (30) days prior to effectivity of new specifications. If such changes cause an increase in CONTRACTOR's cost of reprocessing Used Oil, an equitable adjustment shall be made and the agreement modified in writing accordingly. Any claim by CONTRACTOR for adjustment under this section must be asserted in writing. CONTRACTOR and GPA shall, in good faith, negotiate an equitable adjustment pursuant to the change in specifications.

4.4. Compliance with All Applicable Local and Federal Regulations

The CONTRACTOR shall be responsible for complying with all applicable local and federal regulations, including but not limited to:

- CFR Section 279.11
- CFR Section 279 – all other applicable Subparts

- GAPACSR 1310.pdf
- Spill Prevention, Control and Countermeasure Plan

4.5. Liability and Damages

- (1) The CONTRACTOR shall be responsible for any and all liabilities and damages resulting from his operation, which is attributable to the negligence of the CONTRACTOR and/or its Subcontractors and shall hold GPA harmless of any and all such liabilities and damages.
- (2) The CONTRACTOR shall be responsible for any damages inside and outside GPA's property resulting from his operation including the clean up of any spill without any cost to GPA. For spill clean-up at GPA property, CONTRACTOR is required to commence clean up immediately and inform GPA's Generation Division and Planning & Regulatory Division about the spill. The CONTRACTOR will be responsible for all activities and expenses related to the spill until the clean-up operations are completed and acceptable by both GPA and Guam EPA. If GPA assistance is needed by CONTRACTOR, CONTRACTOR will be responsible for expenses incurred by GPA in the efforts to assist in clean-up operations; additionally, GPA may deny acceptance of CONTRACTOR's future Reprocessed Used Oil deliveries.

4.6. CONTRACTOR's Insurance

CONTRACTOR shall not commence work under this Contract until he has obtained all insurance required under this section and such insurance has been approved by **GPA**, nor shall the **CONTRACTOR** allow any Subcontractor to commence work on his subcontract until all similar insurance required of the Subcontractor has been so obtained and approved.

The **CONTRACTOR** shall provide a copy of their Insurance Policy to GPA within the period prescribed by **GPA**. All updates or revisions after contract commencement shall also be forwarded to **GPA**. Failure on the part of the **CONTRACTOR** to provide the required documents and/or to enter into a contract with **GPA** shall be sufficient grounds for the annulment of the award. **GPA** may determine the bidder to be non-responsive to the bid and may proceed with sending a Notice of Intent to Award to the next most qualified BIDDER.

A. Mandatory Insurance Requirements

Prior to commencing the work, CONTRACTOR shall obtain and thereafter maintain during the course of the work Insurance with companies acceptable to GPA. The CONTRACTOR shall not allow any subCONTRACTOR to commence work on his subcontract until all similar insurance

required of the subcontractor has been so obtained and approved. The minimum limits of insurance shall be as follows unless a higher limit is required by statute:

1. **General Liability.** General Liability including products, completed operations and contractual coverage for this Agreement. It shall have coverage for "on an occurrence basis" commercial general liability which includes owner's and CONTRACTOR's protective and contractual liabilities, and have a general aggregate limit of One Million US Dollars (US\$1,000,000), a product and completed operations aggregate limit of One Million US Dollars (US\$1,000,000), and a single occurrence limit of One Million US Dollars (US\$1,000,000), and One Million US Dollars (US\$1,000,000) for any of the above. GPA shall be additional insured.
2. **Auto Liability.** Auto Liability covering bodily injury and property damage. It shall carry coverage for owned, hired and non-owned vehicles, which includes endorsement for loss, property damage or destruction and personal bodily injury in single aggregate minimum amount of One Million US Dollars (US\$1,000,000) for each occurrence. GPA shall be additional insured.
3. **Excess Liability.** Excess Liability with limits of \$5,000,000 or higher. GPA shall be additional insured.
4. **Worker's Compensation and Employer's Liability.** Worker's Compensation and Employer's Liability – Statutory Limits. The coverage shall include all employees and all statutory limits and requirements for workers' compensation for the Territory of Guam, and including but not limited to employers' (CONTRACTOR) liability for employee bodily injury. Add Waiver of Subrogation endorsement in favor of GPA.
5. **Pollution Liability Insurance.** CONTRACTOR shall carry at a minimum one million US dollars (US\$1,000,000.00) per occurrence pollution liability insurance.

B. Optional Insurance:

Bidders are requested to place Price Proposal for the following additional requirements, which GPA may require the Bidder to obtain upon notification of contract award in lieu of or in addition to basic insurance requirements above. If bidder cannot provide policies stated below, please indicate by replying "Unable to provide."

General Liability. In addition to requirements above, add Waiver of Subrogation in favor of GPA.

Auto Liability. In addition to requirements above, add Waiver of Subrogation in favor of GPA.

Excess Liability. In addition to requirements above, add Waiver of Subrogation in favor of GPA.

Worker's Compensation and Employer's Liability. Increase coverage to \$1,000,000 / \$1,000,000/ \$1,000,000.

Pollution Liability. Increase Pollution Liability coverage to \$5,000,000.00 per occurrence, and GPA shall be an additional insured. Waiver of subrogation shall be granted in favor of GPA.

Professional Liability or Architects and Engineers Liability in the amount of \$1,000,000.

Builder's Risk or Installation Floater, when applicable, is to be furnished by CONTRACTOR, which shall include GPA as named insured.

C. Insurance Company and Agent:

All insurance policies herein required of the CONTRACTOR shall be written by a company duly authorized and licensed to do business in the State or Territory where work under this contract is being performed and be executed by some agent thereof duly licensed as an agent in said State or Territory.

D. Waiver of Subrogation:

The parties hereby release each other and their respective officers, employees, and agents from all loss or damage to the Premise property, machinery and equipment and to the fixtures, personal property, equipment and improvements of either GPA or CONTRACTOR in or on the Property, notwithstanding that any such loss or damage may be due to or result from the negligence of either of the parties or their respective officers, employees or agents. This waiver does not apply to maintenance and repair assumed under this contract by the CONTRACTOR.

4.7. Indemnity

The CONTRACTOR shall indemnify and hold GPA harmless from all damages to persons or property or to receiving facilities and delivery facilities, regardless of ownership, including the cost of enforcement of indemnity, actually and proximately caused by CONTRACTORS or its agents in the performance of the requirements of the scope of work. CONTRACTOR shall carry at all times appropriate levels of insurance as determined by GPA to cover any such damage.

4.8. Oil Spill Inventory / Equipment

The CONTRACTOR will be responsible for the clean-up and mitigation of any oil spill caused by CONTRACTOR, its Sub-contractors, Agents and Employees. The CONTRACTOR is responsible for the purchase, operation, maintenance and deployment of all necessary oil spill equipment as required in the SPCC Plan. In the event of a major incident not caused by negligence on the part of the CONTRACTOR wherein additional supplies and equipment are purchased and utilized by the CONTRACTOR, GPA will

reimburse the cost for the additional supplies and equipment purchased. At all times, CONTRACTOR shall present actual receipts and supporting documentation whenever invoicing such expenses.

4.9. Oil Pollution Act of 1990

The CONTRACTOR is responsible for compliance with the requirements, as well as the oil spill and recovery provisions, of the federal law Oil Pollution Act of 1990 (OPA 90) as necessary for the operations of the Fuel Bulk Storage Facility, and shall include the cost of compliance with this requirement on the Price Proposal under Contract Item 1.

4.10. Membership with a Qualified and Certified Spill Response Company

The CONTRACTOR is required to be a bona fide member of a qualified and certified Spill Response Company on Guam that is recognized by federal and regulatory bodies such as the US Coast Guard. If not yet a member, the CONTRACTOR should qualify to become an active member or must secure an oil spill response service contract within thirty (30) days after award of the contract. Proof of membership or of an oil response agreement must be provided to GPA within thirty (30) days of the date of contract award.

Full and active membership with a qualified and certified Spill Response Company on Guam that is recognized by federal and regulatory bodies such as the US Coast Guard, would be considered a strong positive indicator in the assessment of qualifications. The CONTRACTOR is responsible for providing GPA proof of membership and the qualifications and certifications of the Spill Response Company during the bid, as part of the Qualitative Proposal.

4.11. Federal and Local Regulatory Compliance

The CONTRACTOR shall be responsible for complying with all Environmental, Homeland Security, and other Federal and Local compliance requirements to include, but not limited to the following areas:

- (a) Mandatory membership with the Guam Response Services Limited (G.R.S.L.) and/or any other qualified and certified Oil Spill Response Companies on Guam, as required by law, and to comply with the Oil Pollution Act of 1990 (OPA 1990).
- (b) Conduct all activities such as but not limited to monitoring, report submission and payments of fees, required to comply with all existing and applicable environmental regulations, requirements permit and plans. These include, but are not limited to:
 - OPA '90 / OPA '90 Facility Plan
 - SPCC Plan
 - Facility Response Plan

- NPDES permit
- (c) Remediation of all oil spill incidents to the satisfaction of local and federal regulatory bodies.
- (d) Submit results of all audits, investigations and other local/federal activities to GPA.

The CONTRACTOR shall also comply with all other requirements pertaining to Environmental, Homeland Security and other Federal and Local Compliance Requirements as specified in Volume II of the Invitation for Bid.

5. Contract Price, Bid Price and Price Proposal

5.1. Contract Price

The Contract price in U.S. dollars per gallon (\$/gal) for all Reprocessed Used Oil meeting GPA's ULSD Specifications that is delivered by CONTRACTOR to the GPA designated facility or facilities shall be inclusive of all costs and liabilities required to fulfill the contract.

The CONTRACT PRICE shall be the REFERENCE PRICE (\$/gal) less the DISCOUNT FEE (\$/gal).

The CONTRACT PRICE shall be adjusted according to the periodic price changes in the REFERENCE PRICE, which shall be based on Platt's Asia-Pacific/Arab Gulf Marketscan FOB Singapore Price Assessment for Gasoil 10 ppm, with a conversion factor of 42 gallons per barrel. The REFERENCE PRICE shall be calculated by getting the daily average of the effective spot prices reported for the previous month in the Platt's Asia-Pacific/Arab Gulf Marketscan FOB Singapore Price Assessment for Gasoil 10 ppm.

The DISCOUNT FEE shall be based on the CONTRACTOR's DISCOUNT RATE (%). The DISCOUNT FEE shall be calculated by multiplying the CONTRACTOR's DISCOUNT RATE with the REFERENCE PRICE. The CONTRACTOR's DISCOUNT RATE shall remain fixed for the entire contract term, and the DISCOUNT FEE shall adjust according to the period price changes in the REFERENCE PRICE.

For the purposes of price calculations, the conversion factor will be 42 gallons per barrel, and calculation shall be up to three (3) decimal points for the unit price per gallon. Illustration below:

CONTRACT PRICE ILLUSTRATION:

A	REFERENCE PRICE	\$2.000
B	CONTRACTOR's DISCOUNT RATE	10%
C	DISCOUNT FEE Line Item A x Line Item B, in \$	\$0.200
D	CONTRACT PRICE Line Item A Minus Line Item C	\$1.800

5.2. Bid Price

The BID REFERENCE PRICE shall be used to evaluate the price proposal. The BID REFERENCE PRICE shall be the average of the effective price posted in Platt's Asia-Pacific/Arab Gulf Marketscan FOB Singapore Price Assessment for Gasoil 10 PPM for June 1, 2018.

BID REFERENCE PRICE:

Asia-Pacific/Arab Gulf Marketscan

June 1, 2018

Asia Products		FOB Singapore		
		(Low)	(High)	(MOPS)
Gasoil 10 ppm	(\$/bbl)	90.15	90.19	90.170

Bid Reference Price = 90.170 per barrel = **\$2.147 per U.S. gallon**

The BID REFERENCE PRICE shall be \$2.147 per U.S. gallon.

DISCOUNT RATE:

Discount Rate must be provided for GPA's designated facility and optional facilities.

DISCOUNT RATE (%)	10-year Base Period	5-year Extension Options	
		1 st 5-year Extension	2 nd 5-year Extension
Designated Site:			
Alternate Site:			

DISCOUNT FEE:

Discount Fee based on Bid Reference Price and Discount Rate must be provided for GPA's designated facility and optional facilities.

DISCOUNT FEE (\$/gal)	10-year Base Period	5-year Extension Options	
		1 st 5-year Extension	2 nd 5-year Extension
Designated Site:			
Alternate Site:			

BID PRICE

Bid prices must be provided for GPA's designated facility and optional facilities.

BID PRICE (\$/gal)	10-year Base Period	5-year Extension Options	
		1 st 5-year Extension	2 nd 5-year Extension
Designated Site:			
Alternate Site:			

5.3. Invoice Price Determination

The price invoiced to the Guam Power Authority shall be adjusted according to the periodic price changes in Platt's Asia-Pacific/ Arab Gulf Marketscan FOB Singapore Price Assessment for Gasoil 10 ppm.

The invoice price for the fuel delivered in any month shall be the daily average of the effective spot prices reported for the previous month in the Platt's Asia-Pacific/ Arab Gulf Marketscan FOB Singapore Price Assessment for Gasoil 10 ppm (referred to as the Reference Price), less the discount fee described above.

All price postings are at the "Price effective dates."

Sample calculation of CONTRACT PRICE:

INVOICE PRICE CALCULATION FORMULA

Delivery Month: June 2018

(1) Sample Calculation of **REFERENCE PRICE**:

REFERENCE PRICE= Average of Previous Month's Daily MOPS

Previous Month: May 2018

Average of the Daily MOPS for May 2018: \$90.526 per Barrel

Average Price: \$2.155 per Gallon (rounded to three decimal places)

REFERENCE PRICE for June 2018: **\$2.155 per Gallon**

(2) Sample **DISCOUNT RATE**:

DISCOUNT RATE = 20% (sample rate only)

(3) **DISCOUNT FEE**:

DISCOUNT FEE = **\$2.155 x 20% = \$0.431**

(4) **CONTRACT PRICE**

CONTRACT PRICE = Reference Price – Discount Fee

CONTRACT PRICE = \$2.155 per gallon - \$0.431 per gallon

CONTRACT PRICE = **\$1.724 per gallon**

This is the **CONTRACT PRICE** for fuel delivered to GPA for the sample month.

6. Contract Terms

6.1. Contract Period

GPA intends for this contract to be a ten-year (10-year) contract with options to extend for up to two additional five-year (5-year) terms, unless otherwise terminated in accordance with the provisions of the contract. Extension of the agreement is incumbent upon the express agreement of both parties. In the event of such extension, all terms and conditions shall remain unchanged and shall be implied by both parties in writing.

Invitation for Multi-Step Bid

No.: GPA-118-18

SUPPLY OF REPROCESSED GUAM POWER AUTHORITY USED OIL MEETING GPA'S SPECIFICATIONS FOR REPROCESSED USED OIL



Volume III

Used Oil Handling and Reprocessed Used Oil Delivery

September 2018

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1. Overview

1.1. Purpose

This section of the bid documents provides basic technical information about the Used Oil Facility and Used Oil Handling Operations at Guam Power Authority. This work is in conjunction with the other documents provided as part of this IFB, and is intended to be a factual description of the facility and refrains from offering conjecture or opinion, except where clearly identified. It is assumed that prospective proponents of this contract will conduct their own verifying due diligence effort.

1.2. Used Oil Handling System Overview

Generating plants, local garages and commercial operations generate large volumes of Used Oil and their by-products throughout the island. Currently the island does not have any good method to dispose of this Used Oil other than shipping it off-island and having it either processed or burned. In order to resolve this situation, the Governor, by letter dated October 5, 190, requested GPA to assist by burning Used Oil in the Cabras 1 & 2 Steam Turbine Power Plant. Various sources of this oil are from the following:

- Commercial deliveries from service stations, oil change locations and recycling centers meeting specifications required by GPA's Planning and Regulatory Division (Vol. VI, Schedule B);
- MEC / Piti 8 & 9, Used Oil from engine fuel oil separators;
- TEMES, combustion turbine, lube oils;
- The GPA combustion turbines and diesel generating units;
- Used Oil from the shipping, trucks and airline meeting specifications required by GPA's Planning and Regulatory Division (Vol. VI, Schedule B).

Prior to the Used Oil delivery and receiving a GPA's Used Oil Facility (WOF), the Used Oil transporter and generator is required to have a qualified and certified testing laboratory to conduct Used Oil analysis as required under 40 CFR 279.11, subpart E, and 22 GAR Sec. 1310, and provide the results of the test to GPA's Planning and Regulatory Division. If the Used Oil quality meets the requirements, then it can be accepted at the GPA WOF. It is estimated that Cabras 1 & 2 is requested to process and burn up to 5,000 gallons of this Used Oil and byproducts daily.

2. Site Description and Characteristics

2.1. General Location

Guam's climate is tropical marine; generally warm and humid, moderated by northeast trade winds. Guam's temperature ranges between 73 and 90 degrees Fahrenheit (23 and 32 degrees Celsius). It has a mean annual temperature of 81 degrees (27 degrees C). May and June are the hottest months of the year. However, there is little seasonal temperature variation. The coolest and least humid months, December through February, are marked by prevailing westerly trade winds. The average humidity varies from an early morning high of 86% to an afternoon low of 72%. The high moisture content of the atmosphere during the rainy season, combined with the warm temperatures, contributes to the rapid deterioration of manufactured materials through rust, rot and mildew. The average yearly rainfall ranges between 90 and 110 inches (229 and 279 cm).

There are two seasons, the dry and the rainy. The dry season (fanumnangan) lasts from December through June. The rainy season (fanuchanan) prevails within the remaining months. Guam's subterranean water lens supplies fresh water far in excess of the island's present needs.

2.2. Site Location and Description

The Cabras Facility is located on the island of Guam. Guam is the largest and southernmost island of the Marianas archipelago. The westernmost possession of the United States since 1898, the island is at 13.48° north latitude and 144.45° east longitude. Guam is approximately 1,500 nm southeast of Tokyo; 2,100 nm southeast of Hong Kong; 1,500 nm east of Manila; and 3,100 nm northwest of Sydney; 6,000 nautical miles (nm) west of San Francisco; 3,700 nm west-southwest of Honolulu. The island is composed of both volcanic material and limestone base seabed material from coral deposits.

2.3. Communication

GPA personnel can be contacted by following the Contact Information in Schedule H.

2.4. Incident Mitigation Capabilities

The facility has a series of Standard Operating Procedures (SOP) which are employed GPA wide. The following SOP's pertain to these issues:

- SP-049 Tropical Cyclone Emergency System Restoration (ESR);
- SP-050 Oil Spill Containment, Clean-up and Reporting;
- SP-057 Supplements I through VII to the Hazard Communication Program;
- SP-063 Hazard Communication Program;
- SP-067 Employees Hazard Reporting;
- SP-088 Emergency Condition (Support Services Section).

3. Used Oil Handling Within GPA

3.1. Responsibility for Operation and Maintenance of GPA's Used Oil Facility

GPA entered into a Performance Management Contract (PMC) for GPA's Steam Turbine Power Plant, Cabras 1&2. The contract commenced in October 1, 2010 and will expire on September 30, 2020. The Contractor, TEMES Guam Inc., manages the GPA Used Oil Handling System (GPA Used Oil Facility or WOF). As required in the contract, the PMC manages and refines GPA policies and procedures in the operation and maintenance of the WOF, as it is critical to the cost-effective performance of Cabras 1&2, and Piti 8&9.

3.1.1. Used Oil Facility Operation

Operating the WOF requires at least one full-time person working approximately three to four days a week during normal (day) shift to handle the Used Oil. There is currently one Plant Operator III assigned to the WOF, and other relief watch personnel as needed. If the relief watch is not available to man the WOF, deliveries are received by the operators on shift. The operators maintain a daily log of all activities at the WOF, including deliveries, transfers and gallons processed. Deliveries can be schedule Monday to Friday between 7:00 AM and 5:00 PM, subject to the approval of GPA's Generation Division.

GPA may require contractor to haul Used Oil from GPA locations storing Used Oil, aside from the Used Oil Facility. In cases where hauling would be from a location other than Used Oil Facility, GPA will schedule a specific date and time with the CONTRACTOR for the specific location selected.

3.1.2. Used Oil Receiving

A receiving station with a hose hook-up and strainers are provided for tanker deliveries where the tanker driver is responsible for connecting his truck and cleaning the receiving strainers during and after discharge, so that strainers are ready for the next truck delivery. The detailed procedure is as follows:

- (1) Prior to delivering Used Oil to GPA WOF, the Used Oil generator or transport shall sample and test the Used Oil to meet the requirements specified in Volume VI, Schedule B. Please refer to Section 4 for additional details.
- (2) Once the results are available, it will be sent to GPA's Planning and Regulatory Division for approval, following Sampling and Testing Requirements in Schedule F, Used Oil Handling Procedures (GP-014).

- (3) Driver positions the truck and informs GPA Cabras 1&2 Power Plant Operator of the load.
Forms/documents and seal tags will be turned over to operator.
- (4) CPA Cabras 1&2 Power Plant operator inspects documents and seals. If there are no issues, instruct Used Oil generator/transporter's driver to start discharge into main containment section.
- (5) Driver monitors discharge flow, shifts and cleans receiving strainers as needed.
- (6) Oil content is skimmed by GPA Cabras 1&2 Power Plant Operator from main containment over to oil section, which is then transferred to the Used Oil tank.
- (7) Once discharge is completed, driver disconnects then cleans strainer one final time.
- (8) Drivers are required to provide invoices and to sign off on every delivery made to the GPA WOF.

3.1.3. Rejected Deliveries

A delivery is scheduled only if the WOF is ready to receive the Used Oil. Reasons for rejected delivery will be as follows:

- (a) Used Oil not meeting the specifications in Volume VI – Schedule B. Instructions for sampling and testing are in Volume VI – Schedule G. The Used Oil generator and/or transporter is responsible for coordinating with GPA's Planning and Regulatory Division will be responsible for inspecting the test results and confirming acceptability of Used Oil.
- (b) Loads containing mostly water and not Used Oil will be turned away due to the WOF's limited ability to process waste water.
- (c) If WOF levels are high, deliveries will be either rejected or cancelled and Used Oil generator or transported will be advised to return when the WOF can accommodate the delivery.

3.2. GPA Divisions Supporting Used Oil Handling

3.2.1. Generation Division

The Generation Department is located on the Cabras plant property. The group is comprised of the Manager of Generation Division, the Assistant Manager for Generations, the Generation Administration Section, and the staff of the various GPA power plants, and the various Contractors for the power plants. For Used Oil Handling (delivery of Used Oil to the Facility, and transferring Used Oil from the Facility to CONTRACTOR's Facility), the CONTRACTOR will work directly with the Cabras 1&2 PMC, and the Cabras 1&2 Staff.

3.2.2. Planning & Regulatory Division

The Planning & Regulatory Division is located at GPA's Main Office, the Gloria B. Nelson Public Service Bldg. located at Route 15 in Mangilao, Guam. The group is comprised of the Environmental Manager, two Engineer Supervisors, three Engineer III's, one Engineer I and one Plant Operator/Maintenance Supervisor. For Used Oil Handling, the CONTRACTOR will work directly with the Planning and Regulatory Division if transporting Used Oil to the facility.

3.3. Oil Quality Sampling and Testing

Used Oil to be received into the GPA WOF shall follow instructions and testing requirements in accordance with the requirements specified in Volume VI, Schedules B, C and G.

Reprocessed Used Oil meeting GPA's Specifications for Reprocessed Used Oil to be delivered to GPA's designated facility shall follow instructions indicated in Volume II of this bid. The Reprocessed Oil quality is sampled, tested and reported back to GPA by a certified independent third party inspection and testing contractor. Sample report headings include the product type, source, type of sample, and date. Results of the sample are summarized and include API Gravity @ 60-degree f., Viscosity @ 100-degree F, Flash Point, Fire point, Water, Sediment, sulfur, ash content, carbon residue, metals such as Vanadium and aluminum + silicon, and gross heating value. Fuel quality specifications are listed in Schedule A.

4. Supply and Delivery of Reprocessed Used Oil Meeting GPA's Specifications for Diesel Fuel

Reprocessed Used Oil meeting GPA's Specifications for Diesel Fuel shall be delivered by CONTRACTOR to GPA's designated facility after the quality report has been submitted to GPA and approved. Delivery process shall follow that specified in Volume II of this bid.

4.1. Designated Facility

The GPA Designated Facility shall be determined after contract award. It may include the various GPA Power Plants and other GPA Facilities or Locations that can accept and utilize reprocessed Used Oil.

4.2. Delivery of Reprocessed Used Oil

Delivery of Reprocessed Used Oil shall follow the process described in Volume II, Section 3.4 of this bid.

GPA reserves the right to reject a delivery as follows:

(1) Reprocessed Used Oil not meeting the Specifications in Volume VI – Schedule A. Additional guidelines can be found in Volume II Section 3 and Volume VI Schedule D.

4.3. GPA Divisions Supporting Supply and Delivery of Reprocessed Used Oil

4.3.1. GPA Designated Facility

The GPA Designated Facility shall be determined after contract award.

4.3.2. GPA SPORD

The GPA Strategic Planning and Operations Research Division will assist the Generation Division in managing the supply and delivery of Reprocessed Used Oil by assisting in the review of the fuel quality, and in calculating the effective invoice prices.

Draft Contract for Review

**Invitation for Multi-Step Bid
No.: GPA-118-18**

**SUPPLY OF REPROCESSED GUAM POWER AUTHORITY USED OIL
MEETING GPA'S SPECIFICATIONS FOR REPROCESSED USED OIL**



Volume IV

Draft Contract

September 2018

NOTE:

This draft is provided by GPA for Proponents' review.

Any questions, clarifications, corrections, or proposals for modification or alternate contract structure should be brought to GPA's attention during the period for accepting and responding to questions.

Draft Contract for Review

**SUPPLY OF REPROCESSED GUAM POWER AUTHORITY USED OIL
MEETING GPA'S SPECIFICATIONS FOR REPROCESSED USED OIL**

Draft Contract for Review

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This Agreement and Formal Contract (“Contract”), is made and entered into on the ____ day of ____, 20XX by and between:

CONTRACTOR, _____, hereinafter referred to as CONTRACTOR, duly organized, licensed, registered and qualified to do business in Guam with its principal address at

1. and –

Guam Power Authority, hereinafter referred to as the “**Authority**” or “**GPA**”, a Public Corporation with its office located at 1911 Route 16, Harmon, Guam, 96911;

RECITALS

WHEREAS, a backlog of Used Oil has been accumulated in Guam and within GPA due to insufficient or inadequate disposal options on Guam; and

WHEREAS, GPA has a facility available for the disposal of Used Oil, however, the facilities were not made available outside of GPA due to legal concerns and potential liabilities; and

WHEREAS, the Governor, by letter dated October 5, 1990, requested GPA to assist in the resolution of Used Oil disposal issues; and

WHEREAS, GPA agreed to accept Used Oil in its Used Oil facilities (WOF), provided it is done at no cost to GPA, and there is adequate testing to limit GPA’s liability and ensure that Used Oil accepted into the facility meets the requirements specified by the United States Environmental Protection Agency (USEPA) and Guam Environmental Protection Agency (GEPA); and

WHEREAS, prior to Used Oil accepted into GPA’s WOF, Used Oil transported is required to conduct Used Oil analysis required under 40 CFR 266.40 subpart E, conducted by an independent certified laboratory approved by GPA, and submit the results showing compliance with the requirements to GPA; and

WHEREAS, Used Oil meeting the requirements are accepted into GPA WOF, and burned at GPA Cabras 1&2 Power Plant; and

WHEREAS, continuous burning of WOF at the Cabras 1&2 Power Plant has led to serious operational issues, hence GPA is seeking options to re-utilize or dispose of Used Oil other than burning at Cabras 1&2; and

WHEREAS, the Consolidated Commission on Utilities and Guam Public Utilities Commission approved the solicitation of the Supply of Re-processed GPA Used Oil Meeting GPA Diesel Specifications; and

WHEREAS, GPA, upon evaluation of the submitted bid proposals, determined that **CONTRACTOR** is the most responsive bidder to provide the services set forth in the IFB;

WHEREAS, **CONTRACTOR** is fully willing to provide, and is capable of providing, the management, operations, maintenance and repair services set forth in the IFB and Agreement in accordance with the terms and conditions thereof;

NOW, THEREFORE, in consideration of the above premises and the mutual promises set forth herein and the terms and conditions hereinafter set forth and for other good and valuable consideration, receipt of which is hereby acknowledged; **CONTRACTOR** and GPA hereby agree as follows:

SECTION 1. DEFINITIONS

“\$” refers to currency in U.S. dollars.

“ASTM” means the American Society for Testing and Materials, a recognized organization providing globally-accepted standard testing and evaluation methods for petroleum.

“API” means the American Petroleum Institute, a recognized organization providing globally accepted petroleum procedures.

“Barrel” means a volume equivalent to 42 U.S. Gallons.

“Contract” means this written agreement between **GPA** and **CONTRACTOR** covering the Supply of Fuel oil and any other Contract Documents either attached to the Agreement or made a part thereof by reference therein.

“Contract Documents” means the Contract, Bonds (where required), these General Conditions, any Supplementary Conditions, the Specifications, and any other documents specifically identified in the Contract, together with all Modifications issued after execution of the Contract.

“Contracting Officer” means the General Manager of the **GPA** and shall include his authorized representatives.

“CONTRACTOR” means the party which has duly entered into this Contract with **GPA** to perform the work herein contemplated or his or their authorized assignee.

“Day” means a calendar day of twenty-four (24) hours measured from midnight to the next midnight.

“Month” means a calendar month.

“Year” means a calendar year.

“Delivery Time” means the total number of hours or days or the dates stated in this Agreement for furnishing the Reprocessed Used Oil.

“GPA Diesel Fuel” means reprocessed Used Oil produced in conformity with the provisions of the quality in the Specification which are set forth in Schedule A.

“General Manager” means the Chief Executive Officer of **GPA**. The office and title of General Manager shall apply to any person acting in a regular or in an acting capacity as the Chief Executive Officer of **GPA**.

“Notice” means and includes all written notice demands, instructions, claims, approvals and disapprovals required to obtain compliance with Contract requirements. Any written notice by either party to the Contract shall be sufficiently given if delivered to or at the last known business address of the person, firm, or corporation constituting the other party to the contract, or to his, their, or its duly authorized agent, representative, or officers, or when enclosed in a postage prepaid envelope addressed to such last known business address and deposited in a United States mail box and file the same with the Contracting Officer.

“Procurement Officer” means the General Manager or the General Manager’s designee.

“PURCHASER” means GPA.

“Seller” means the CONTRACTOR.

“Territory” means the Territory of Guam.

“OPA ’90” means the Oil Pollution Act of 1990 enacted by the U.S. Congress.

“Platt’s Asia-Pacific/ Arab Gulf Marketscan” refers to the source document for the Fuel Oil Contract pricing.

“Metric Ton” means unit of mass equal to 1,000 kilograms (2,205 pounds)

“Reprocessed Fuel Oil” means a liquid hydrocarbon product satisfying the specifications in [Section 8](#) and [Schedule A](#).

“Gallon” means a U.S. standard gallon of 231 cubic inches at sixty degrees Fahrenheit.

“GPA Designated Facility” means the GPA Fuel Oil receiving facility at each plant site location.

“CCU” means the Guam Consolidated Commission on Utilities.

“PUC” means the Guam Public Utilities Commission.

“Independent Inspector” means a qualified third-party petroleum inspection contractor acceptable to both parties providing petroleum sampling, measurement and other services before, during and after a delivery.

SECTION 2. USED OIL COLLECTION

CONTRACTOR agrees to collect Used Oil from GPA's Used Oil Facility (WOF) in the quantities and schedules agreed upon between GPA and **CONTRACTOR**.

GPA will provide access to **CONTRACTOR**'s vehicles, equipment and personnel to GPA's Used Oil Facility, and make available at no cost to **CONTRACTOR**, Used Oil in quantities to justify **CONTRACTOR**'s expense of mobilizing oil recovery vehicles to collect and remove Used Oil from GPA Used Oil Facility.

CONTRACTOR will collect Used Oil from GPA's Used Oil Facility at no additional cost to GPA, at the date and time agreed upon between GPA's Generation Manager or his designee and **CONTRACTOR**'s Authorized Representative. Collection shall be scheduled between 7:00 AM and 3:00 PM on regular business days (Monday-Friday except holidays). **CONTRACTOR** shall provide GPA copies of transportation manifests indicating quantity of Used Oil collected/removed. **CONTRACTOR** shall be solely responsible for the clean up on

The first collection of Used Oil from GPA's WOF pursuant to this Contract is anticipated to be on **April 1, 2019**.

CONTRACTOR accepts full responsibility for cleanup of any oil spills, caused by **CONTRACTOR**, its agents or subcontractors, which may occur during pumping or transporting operations. If a spill should occur, **CONTRACTOR** should promptly notify GPA's Generation Manager or designee, and GPA's Environmental Manager or designee, and should follow applicable GPA Standard Operating Procedures for Oil Spill Response.

CONTRACTOR shall be accountable to GPA for the actions of its employees, representatives, agents and subcontractors. **CONTRACTOR** shall be responsible for any damage by its employees, representatives, agents and subcontractors to GPA property and shall repair, clean, replace or restore the damaged property to the condition existing immediately prior to damage.

SECTION 3. SUPPLY OF REPROCESSED USED OIL

CONTRACTOR agrees to furnish and **GPA** agrees to accept and pay for Used Oil collected from GPA's WOF, reprocessed to meet GPA's Specifications for Reprocessed Used Oil, as illustrated in Schedule A.

The first delivery of Reprocessed Used Oil pursuant to the Contract is anticipated to be on or about **XXXX XX, 2019**.

In the event that the Gross Heating Value is lower than the required Heating Value as specified in Schedule A, GPA reserves the right to reject the Reprocessed Used Oil or accept under the condition that the CONTRACTOR shall compensate GP to the equivalent quantity of the differential in heating value drop as calculated. This adjustment of equivalent quantity is to make-up for the shortfall in the required BTU of the product as delivered to GPA.

CONTRACTOR shall be accountable to GPA for the actions of its employees, representatives, agents and subcontractors. CONTRACTOR shall be responsible for any damage by its employees, representatives, agents and subcontractors to GPA property and shall repair, clean, replace or restore the damaged property to the condition existing immediately prior to damage

SECTION 4. CONTRACT TERM

The Contract term shall be for ten (10) years to commence on April 1, 2019 and shall continue until midnight of March 31, 2029, with GPA's option to extend the contract for two additional five-year terms, with mutual agreement of both parties, for a potential total contract term of twenty (20) years.

SECTION 5. CONTRACT PRICE

The Contract price in U.S. dollars per gallon (\$/gal) for all Reprocessed Used Oil meeting GPA's DIESEL FUEL Specifications that is delivered by CONTRACTOR to the GPA designated facility or facilities shall be inclusive of all costs and liabilities required to fulfill the contract.

The CONTRACT PRICE shall be the REFERENCE PRICE (\$/gal) less the DISCOUNT FEE (\$/gal).

The CONTRACT PRICE shall be adjusted according to the periodic price changes in the REFERENCE PRICE, which shall be based on Platt's Asia-Pacific/Arab Gulf Marketscan FOB Singapore Price Assessment for Gasoil 10 ppm, with a conversion factor of 42 gallons per barrel. The REFERENCE PRICE shall be calculated by getting the daily average of the effective spot prices reported for the previous month in the Platt's Asia-Pacific/Arab Gulf Marketscan FOB Singapore Price Assessment for Gasoil 10 ppm.

The DISCOUNT FEE shall be based on the CONTRACTOR's DISCOUNT RATE (%). The DISCOUNT FEE shall be calculated by multiplying the CONTRACTOR's DISCOUNT RATE with the REFERENCE PRICE. The CONTRACTOR's DISCOUNT RATE shall remain fixed for the entire contract term, and the DISCOUNT FEE shall adjust according to the period price changes in the REFERENCE PRICE.

For the purposes of price calculations, the conversion factor will be 42 gallons per barrel, and calculation shall be up to three (3) decimal points for the unit price per gallon.

CONTRACT PRICE ILLUSTRATION:

A	BID REFERENCE PRICE	\$2.147
B	CONTRACTOR'S DISCOUNT RATE	XX%
C	DISCOUNT FEE Line Item A x Line Item B, in \$	\$X.XXX
D	CONTRACT PRICE Line Item A Minus Line Item C	\$X.XXX

The BID REFERENCE PRICE was used to evaluate the price proposal.

The BID REFERENCE PRICE is the average of the effective price posted in Platt's Asia-Pacific/Arab Gulf Marketscan FOB Singapore Price Assessment for Gasoil 10 PPM for June 1, 2018.

(A) BID REFERENCE PRICE:

Asia-Pacific/Arab Gulf Marketscan

June 1, 2018

Asia Products

		<u>FOB Singapore</u>		
		(Low)	(High)	(MOPS)
Gasoil 10 ppm	(\$/bbl)	90.15	90.19	90.170
Bid Reference Price	= 90.170 per barrel = <u>\$2.147 per U.S. gallon</u>			

(B) CONTRACTOR'S DISCOUNT RATE:

Contractor will provide Discount Rate(s) for GPA's designated facility and optional facilities.

DISCOUNT RATE (%)	10-year Base Period	5-year Extension Options	
		1 st 5-year Extension	2 nd 5-year Extension
Designated Site:			
Alternate Site:			

(C) DISCOUNT FEE:

Discount Fee based on Bid Reference Price and Discount Rate must be provided for GPA's designated facility and optional facilities.

DISCOUNT FEE (\$/gal)	10-year Base Period	5-year Extension Options	
		1 st 5-year Extension	2 nd 5-year Extension
Designated Site:			
Alternate Site:			

(D) CONTRACT PRICE

Contract prices must be provided for GPA's designated facility and optional facilities.

CONTRACT PRICE (\$/gal)	10-year Base Period	5-year Extension Options	
		1 st 5-year Extension	2 nd 5-year Extension
Designated Site:			
Alternate Site:			

INVOICE PRICE DETERMINATION:

The price invoiced to the Guam Power Authority shall be adjusted according to the periodic price changes in Platt's Asia-Pacific/ Arab Gulf Marketscan FOB Singapore Price Assessment for Gasoil 10 ppm.

The invoice price for the fuel delivered in any month shall be the daily average of the effective spot prices reported for the previous month in the Platt's Asia-Pacific/ Arab Gulf Marketscan FOB Singapore Price Assessment for Gasoil 10 ppm (referred to as the Reference Price), less the discount fee described above.

INVOICE PRICE CALCULATION FORMULA

Delivery Month: June 2018

(1) Sample Calculation of **REFERENCE PRICE**:

REFERENCE PRICE= Average of Previous Month's Daily MOPS

Previous Month: May 2018

Average of the Daily MOPS for May 2018: \$90.526 per Barrel

Average Price: \$2.155 per Gallon (rounded to three decimal places)

REFERENCE PRICE for June 2018: **\$2.155 per Gallon**

(2) Sample **DISCOUNT RATE**:

DISCOUNT RATE = 20% (sample rate only)

(3) **DISCOUNT FEE**:

DISCOUNT FEE = **\$2.155 x 20% = \$0.431**

(4) **CONTRACT PRICE**

CONTRACT PRICE = Reference Price – Discount Fee

CONTRACT PRICE = \$2.155 per gallon - \$0.431 per gallon

CONTRACT PRICE = **\$1.724 per gallon**

This is the **CONTRACT PRICE** for fuel delivered to GPA for the sample month.

SECTION 6. USED OIL COLLECTION AND REPROCESSED USED OIL DELIVERY

Used Oil from GPA's WOF will be collected by the CONTRACTOR on the dates pre-arranged with GPA, in the quantities agreed upon between CONTRACTOR and GPA. CONTRACTOR shall coordinate with GPA's Generation Manager and his designees and shall abide by all requirements (Local and Federal) related to the collection of Used Oil.

The Reprocessed Used Oil meeting GPA's Specifications for Reprocessed Used Oil will be delivered to the plant GPA designated facility or facilities covered in this Contract. The **CONTRACTOR** shall be available to deliver the Fuel Oil to the point of delivery as designated by **GPA** in the schedule agreed upon by GPA and CONTRACTOR, for the quantities approved by GPA. The **CONTRACTOR** shall provide

transfer pumps at its delivery trucks and/or whatever else may be necessary to deliver Fuel Oil to **GPA** storage tanks to the height of 45 feet. **CONTRACTOR** must closely coordinate with key personnel at GPA's designated facility or facilities and exercise its best efforts to deliver Fuel Oil to **GPA** to meet operational requirements regardless of the estimates provided by **GPA**.

SECTION 7. TITLE, CUSTODY AND RISK OF LOSS

Title to the Fuel Oil shall pass from the **CONTRACTOR** to GPA when the Reprocessed Used Oil has passed the GPA pipeline flange at the GPA storage tanks connecting the **CONTRACTOR**'s tanker truck delivery hose.

All risk of loss, cost and liabilities prior to the time of passage of title of the Fuel Oil shall be on the **CONTRACTOR**.

SECTION 8. TERMS OF PAYMENT

Invoices for Reprocessed Used Oil delivered pursuant to quantity (Reprocessed Used Oil receipts) and quality prescribed under the terms of this contract shall be submitted no more frequently than monthly, based on the number of Gallons of Reprocessed Used Oil delivered to **GPA** during the preceding period. The invoices must be supported by Reprocessed Used Oil receipts or receiving tickets including a receipt acknowledgement from a **GPA** representative.

The payment terms are 30 days (net) beginning on the date the invoice is received by the **GPA** accounts payable section. All payments shall be based on the delivered quantity, corrected to volume (net) at 60 °F.

The invoices shall be supported by a copy of the certified laboratory report and the delivery/receiving tickets. All receiving tickets will include an authorized signature from a representative of GPA acknowledging the delivery and quantity certification from the third party inspector.

SECTION 9. WARRANTY AND CLAIMS

CONTRACTOR agrees, represents and warrants as follows:

a. **Ability to Supply and Deliver Reprocessed Used Oil.**

CONTRACTOR shall commit to supply Product that meet the specification prescribed under [Section 8](#) and [Schedule A](#) herein and other pertinent sections. If the Reprocessed Used Oil fails to meet the specifications herein, **CONTRACTOR** shall be liable for any direct damages resulting therefrom. GPA will not be required to purchase Reprocessed Used Oil unless the required specifications are met. **CONTRACTOR** shall own, lease or have the right to use tanker trucks, storage tanks, and other facilities sufficient to meet **CONTRACTOR**'s obligations under this Contract.

b. **Ability to Collect Used Oil.**

CONTRACTOR shall own, lease or have the right to use tanker trucks, storage tanks, and other facilities sufficient to meet **CONTRACTOR**'s obligations under this Contract with regards to collection of Used Oil from GPA's WOF.

CONTRACTOR shall be solely responsible for any damages caused by the **CONTRACTOR** or its agents during the process of Fuel Oil supply and delivery.

Claims against the **CONTRACTOR** for direct costs incurred on account of its negligent actions shall be given in writing together with all supporting documents, invoices and correspondence by **GPA** within thirty days (30) from date of delivery of Fuel Oil as specified in [Section 4](#).

SECTION 10. PRODUCT AND QUALITY

Test Methods shall be in conformance with the prescribed procedures set forth by the American Society for Testing and Materials (ASTM) Standards for Petroleum Products, Lubricants, and Fossil Fuels, or alternative tests acceptable and subject to prior authorization by **GPA**.

The Fuel Oil delivered to **GPA** shall have the physical and chemical characteristics as described in [Schedule A](#). Quality determination shall be performed and certified by an independent third party laboratory facility acceptable to **GPA**. Certificate of Quality (COQ) shall be representative of the product in the **CONTRACTOR'S** storage facility in Guam.

SECTION 11. QUANTITY AND QUALITY ASSURANCE

CONTRACTOR'S 'Terminal Loading Rack' meters shall be utilized to determine the quantity of Reprocessed Used Oil delivered by tanker truck to **GPA** and shall be the basis for the Bill of Lading (BOL). **CONTRACTOR** shall have such meters calibrated no less than annually and shall furnish **GPA** a copy of the certificate of newly calibrated meter(s) within 10 days after the calibration date. In the event of a dispute over the accuracy of the **CONTRACTOR's** meters, an independent third party mutually agreeable to both parties will be brought in to perform a recalibration. In the event of a miscalibration, the costs shall be borne by the **CONTRACTOR**. Any loss incurred by **GPA** as a result of miscalibration of meters shall be negotiated and returned to **GPA**.

CONTRACTOR is required to install security seals on valves and compartments of the delivery tanker trucks after Reprocessed Used Oil loading is completed. Seals shall remain intact upon inspection by the **GPA** receiving facility. Seal numbers shall be recorded in the delivery receipt and initialed by an authorized terminal representative. **GPA** reserves the right to reject deliveries with tampered or missing seals.

In the event that a meter is not installed or is defective, quantity of the product delivered by the **CONTRACTOR** shall be determined by an Independent Third Party Inspector by gauging the receiving tanks before and after delivery. Cost shall be borne by the **CONTRACTOR**.

CONTRACTOR is required to install security seals on appropriate valves at the receiving pipeline to the GPA storage tank after Fuel Oil loading is completed. Seals shall remain intact until the next delivery. Seal numbers shall be recorded in the delivery receipt and initialed by an authorized terminal representative.

Quantity shall be corrected to the volume at sixty degrees Fahrenheit. Conversion shall be made in accordance with the ASTM-IP Petroleum Measurement Tables (IP-200), Table 6B (latest edition).

Appropriate Certificate of Quality (COQ) reports shall also accompany each delivery and must be presented to the **GPA** receiving facility. Quality must conform with the requirements specified under [Section 9](#) and [Schedule A](#) as a condition for acceptance of delivery.

In the event of a dispute over the quality of Fuel Oil received by **GPA**, an inspection of Fuel Oil will be conducted by an appointed third party inspector mutually acceptable to **GPA** and the **CONTRACTOR**.

CONTRACTOR shall provide a comprehensive summary of the Fuel Oil delivery reports.

CONTRACTOR shall tailor its reports to **GPA's** needs. **CONTRACTOR** shall submit copy(ies) of all Certificates of Quality (COQ) for the delivery month. Reports shall be submitted to the GPA within five (5) working days after each report month. **CONTRACTOR** shall also submit other reports and/or documentations that is relevant to the contract as may be required by the Authority.

SECTION 12. QUANTITY DETERMINATION

In the event of the variances between the BOL quantity and the GPA receipts, GPA shall pay (absorb) a quantity shortfall up to ONE-FOURTH (0.25 %) of the gallons established quantity; shortages beyond the 0.25% tolerance shall be covered by the **CONTRACTOR**.

GPA reserves the right to require the intervention of a third party independent inspector for quantity determination. Such inspector shall be mutually acceptable to **GPA** and the **CONTRACTOR**. All quantities shall be corrected to volume at sixty degrees Fahrenheit (60 °F) in accordance with the ASTM-IP Petroleum Measurement Table, Table 6B, the latest edition published shall be applicable.

Quantity certification prepared by independent inspector shall be final and binding upon both parties.

SECTION 13. GOVERNMENT LAWS AND REGULATIONS

(a) If at any time during the term of the Contract the Government of the United States or the Territory of Guam enacts laws or issues regulations which would prevent **GPA** from burning the Reprocessed Used Oil to be supplied hereunder, **GPA** shall use its best efforts to obtain an exemption. In the event **GPA**, cannot obtain an exemption from such laws and regulations, **CONTRACTOR** shall use its best efforts to furnish **GPA** substitute Fuel Oil which complies with such governmental laws and regulations at the same price set out herein, or if unreasonable, at a price to be renegotiated by the parties. If the substitute Fuel Oil causes an increase or decrease in **CONTRACTOR**'s cost of performance of the Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly. Any claim of **CONTRACTOR** for adjustment under this section must be asserted in writing within thirty (30) days from date of receipt by **CONTRACTOR** of the notification of substitute Fuel Oil in compliance with Government laws, rules and regulations. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this Contract entitled "Governing Law and Disputes"([Section 21](#)). However, nothing in this clause shall excuse the **CONTRACTOR** from proceeding with the Contract Fuel Oil specifications as changed in order to comply with Government laws, rules and regulations. Only in the event that the parties cannot mutually agree upon the price at which **CONTRACTOR** is to furnish such substitute Fuel Oil, and **CONTRACTOR** refuses to provide such substitute Fuel Oil at the Contract price set out herein shall **GPA** then have the option of purchasing from other sources Fuel Oil at a lower price than that offered by **CONTRACTOR** in such negotiations which complies with such laws and regulations, but in any event, the **CONTRACTOR** shall have no recourse, other than those specified herein.

(b) **CONTRACTOR** shall at all times comply with all applicable laws and regulations of the Territory of Guam and the Federal Government and their respective agencies.

SECTION 14. PERMITS AND RESPONSIBILITIES

The **CONTRACTOR** shall, without additional expense to **GPA**, be responsible for obtaining any necessary licenses and permits, and for complying with any applicable Federal and Territorial laws, codes and regulations necessary for performance of the Contract by **CONTRACTOR**.

SECTION 15. FORCE MAJEURE

No failure or omission by either party to carry out or to observe any of the terms, provisions or conditions of the Contract shall, except in relation to obligations to make payments under the Contract, give rise to any claim by one party against the party in question or be deemed to be a breach of the Contract if such failure or omission arises from any cause reasonably beyond the control of the party, including but without prejudice to the generality of the foregoing:

(a) War, etc. War, hostilities, acts of public enemy or belligerents, sabotage, blockade, revolution, insurrection, riot or disorder;

- (b) Restraints. Arrest or restraint of princes, rulers or peoples;
- (c) Confiscation. Expropriation, requisition, confiscation or nationalization;
- (d) Rationing. Embargoes, export or import restrictions or rationing or allocation, whether imposed by law, decree or regulation or by voluntary cooperation of industry at the insistence or request of any governmental authority or person purporting to act therefor;
- (e) Regulations. Interference by restriction or onerous regulations imposed by civil or military authorities, whether legal or de facto and whether purporting to act under some constitution, decree, law or otherwise;
- (f) Acts of God. Acts of God, fire, frost or ice, earthquake, storm, lightning, tide, tidal wave, or peril of the sea, accident of navigation or breakdown or injury of vessels;
- (g) Loss of Tankers. Loss of tanker tonnage due to sinking by belligerents or to governmental taking whether or not by formal requisition;
- (h) Accidents. Accidents to or adjuncts of shipping navigation;
- (i) Strikes. Epidemics, quarantine, strikes or combination of workmen, lockouts, or other labor disturbances;
- (j) Explosions. Explosion, accidents by fire or otherwise to wells, pipes, storage facilities, refineries, installations, machinery;
- (k) Taking by Government. Unavailability of Fuel Oil because of the election of the government of the country of its origin to take royalty product in kind;
- (l) Other Events. Any event, matter or thing wherever occurring and whether or not of the same class or kind as those set forth, which shall not be reasonably within the control and without the fault or negligence of the party affected thereby.

No failure or omissions to carry out or to observe any of the terms, provisions or conditions of the Contract shall give rise to any claim by one party against the other, or be deemed to be a breach of the Contract from the time of and to the extent occasioned by the Force Majeure, not from the date of notice of the Force Majeure is received.

SECTION 16. NOTICE TO OTHER PARTY

Either party whose obligations may be affected by any of the forces or causes set out in [Section 15](#), supra, shall promptly notify the other party in writing, giving full particulars thereof as soon as possible after the occurrence of such force or cause. Such party shall exercise due diligence to remove such cause with all reasonable dispatch and to resume performance at the earliest practicable time.

SECTION 17. PAYMENT REQUIRED

Notwithstanding the provisions of [Section 15](#), supra, **GPA** shall not be relieved of any obligation to make payments for any Fuel Oil delivered to Guam dock/**GPA** tanks hereunder; however, during the force majeure condition the obligation shall be suspended, except for Fuel Oil deliveries made prior to the force majeure condition.

SECTION 18. PRORATION OR EQUITABLE ALLOCATION

If any of the events enumerated in [Section 15](#), supra, have occurred, **CONTRACTOR** shall prorate or otherwise allocate in a fair and equitable manner among its customers, including **GPA**, the supplies of Fuel Oil **CONTRACTOR** have available for delivery at the time of the occurrence or for the duration of such event taking into account **GPA's** unique situation as Guam's total dependence on Fuel Oil. **CONTRACTOR** shall also seek an alternative source of Fuel Oil to fulfill its contractual obligations.

SECTION 19. ALTERNATE SUPPLY

CONTRACTOR reserves the right to supply Fuel Oil meeting **GPA** specifications from any alternate source. In the event that supplies are taken from such other places, then the price to Guam will remain the same as established in [Section 4](#) above.

In the event **CONTRACTOR** is unable to fulfill its obligations under this Contract as a result of [Section 15](#), supra, or if there is a sudden, unexpected increase in fuel demand that **CONTRACTOR** will be unable to supply at the time needed, **CONTRACTOR** shall seek an alternative source of Fuel Oil so long as such condition shall exist.

In the event **CONTRACTOR** is unable to fulfill its obligations under this Contract as a result of any negligence on the part of the **CONTRACTOR**, **CONTRACTOR** shall seek an alternative source of Fuel Oil so long as such condition shall exist, without additional cost to **GPA**.

GPA may at its sole discretion seek an alternative source of Fuel Oil so long as such condition of negligence shall exist. If the cost of Fuel Oil during such period of negligence shall exceed the Contract price as provided in [Section 4](#), the **CONTRACTOR** shall be liable to **GPA** for the difference, which may be taken from the Performance Bond.

SECTION 20. RESUMPTION OF PERFORMANCE

If **CONTRACTOR** is prevented from delivering or **GPA** is prevented from receiving all or any Fuel Oil to be sold under the Contract for the reasons which fall within the provisions of [Section 15](#), supra, then the party so prevented shall, as to the remainder of the Fuel Oil not affected thereby, promptly resume performance of the Contract. No curtailment or suspension of deliveries or payment under the causes listed in [Section 15](#), supra, shall operate to extend the term of or terminate the Contract unless the occurrence of force majeure will materially impair, for an indefinite period of time, the parties' ability to perform the Contract.

SECTION 21. GOVERNING LAW AND DISPUTES

- (a) All controversies between **GPA** and the **CONTRACTOR** which arise under, or are by virtue of, this Contract and which are not resolved by mutual agreement, shall be decided by **GPA** pursuant to Guam Procurement laws and regulations.
- (b) **CONTRACTOR** may pursue applicable remedies under the Guam Procurement Law and regulations and the Government Claims Act.
- (c) The **CONTRACTOR** shall comply with any decision of **GPA** and proceed diligently with performance of this Contract pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, this Contract; provided, however, that in any event the **CONTRACTOR** shall proceed diligently with the performance of the Contract where the General Manager of **GPA** has made a written determination that continuation of work under the Contract is essential to the welfare of the Territory.

This Contract is made under, and shall be governed and construed in accordance with, the laws, statutes and regulations of the Territory of Guam, to the exclusion of all other legal systems. Wherever a term defined by the Uniform Commercial Code is used in the Contract the definition contained in the Uniform Commercial Code of Guam will control, unless otherwise specified.

The parties expressly submit to the jurisdiction of the Superior Court of the Territory of Guam, for the resolution of any dispute or difference or claims between the parties in connection with the Contract, and to service of process by registered mail. The **CONTRACTOR** agrees to accept the jurisdiction of the Superior Court of the Territory of Guam for the resolution of any claims including but not limited to, claims for consequential, special or punitive damages. Judgment upon any award rendered by the Superior Court of the Territory of Guam may be entered in any court of any country having jurisdiction, and such award shall be binding upon the parties. The **CONTRACTOR** waives all rights against **GPA** to claim consequential, special or punitive damages.

SECTION 22. CONTRACTOR'S INSURANCE

CONTRACTOR shall not commence work under this Contract until he has obtained all insurance required under this section and such insurance has been approved by **GPA**, nor shall the **CONTRACTOR** allow any Subcontractor to commence work on his subcontract until all similar insurance required of the Subcontractor has been so obtained and approved.

The **CONTRACTOR** shall provide a copy of their Insurance Policy to GPA within the period prescribed by **GPA**. All updates or revisions after contract commencement shall also be forwarded to **GPA**.

Failure on the part of the **CONTRACTOR** to provide the required documents and/or to enter into a contract with **GPA** shall be sufficient grounds for the annulment of the award. **GPA** may determine the bidder to be non-responsive to the bid, and may proceed with sending a Notice of Intent to Award to the next most qualified BIDDER.

A. WORKMEN'S STATUTORY COMPENSATION INSURANCE AND EMPLOYER'S

LIABILITY INSURANCE: The **CONTRACTOR** shall take out and maintain during the life of this Contract the applicable statutory Workmen's Compensation Insurance with an insurance company authorized to write such insurance and in the applicable State or Territory covering all his employees, and in the case of any work sublet, the **CONTRACTOR** shall require the Subcontractor similarly to provide statutory Workmen's Compensation Insurance for the latter's employees. The **CONTRACTOR** shall secure and maintain, during the life of this Contract, Employer's Liability Insurance with a limit of \$500,000 with an insurance company authorized to write such insurance in all states or territories where the Contractor will have employees located in the performance of this Contract. **CONTRACTOR** shall provide a Waiver of Subrogation in favor of **GPA** via endorsement to the Workers Compensation policy.

B. COMMERCIAL GENERAL LIABILITY:

1. The **CONTRACTOR** shall maintain, during the life of this Contract, such Commercial General Liability as shall protect him against claims for damages resulting from (a) bodily injury, including wrongful death, and (b) property damage, which may arise from operations under this Contract whether such operations be by himself or by any Subcontractor or anyone directly or indirectly employed by either of them. The minimum acceptable limits of liability to be provided Liability Insurance shall be as follows:

Bodily Injury Limits:	\$ 1,000,000 Each Person
Property Damage Limits:	\$ 1,000,000 Each Occurrence
	\$ 2,000,000 Aggregate

2. The Commercial General Liability required by the preceding Subparagraph 1 shall include the following extensions of coverage:

- (a) The property damage coverage shall include a Broad Form Property Damage Endorsement.
- (b) Contractual Liability coverage shall be included.
- (c) Protective Liability coverage shall be included to protect the **CONTRACTOR** against claims arising out of operations performed by his Subcontractors.
- (d) Products Liability and/or Completed Operations coverage shall be included.
- (e) **GPA** shall be an additional insured on Commercial General Liability policy.
- (f) **CONTRACTOR** shall grant Waiver of Subrogation in favor of **GPA**.

C. AUTOMOBILE LIABILITY INSURANCE:

The **CONTRACTOR** shall take out and maintain during the life of the Contract, such Automobile Liability insurance as shall protect him against claims for damages resulting from (a) bodily injury, including wrongful death, and (b) property damage, which may arise from the operations of any owned, hired or non-owned automobiles used by or for him in any capacity in connection with the carrying out of this Contract. **GPA** shall be an additional insured on Auto Liability policy. **CONTRACTOR** will grant Waiver of Subrogation in favor of **GPA**. The minimum acceptable limits of liability to be provided by such Automobile Liability Insurance shall be as follows:

Bodily Injury Limits:	\$ 1,000,000 Each Person
	\$ 1,000,000 Each Occurrence

Property Damage Limits: \$ 1,000,000 Each occurrence

D. POLLUTION LIABILITY INSURANCE:

The **CONTRACTOR** shall take out and maintain during the life of the Contract, Pollution Liability Insurance with minimum limits of \$5,000,000 that provides coverage for third party bodily injury, third party property damage, and clean-up cost whether ordered by a government

entity or not ordered by a government entity. Grant waiver of subrogation in favor of **GPA**. **GPA** is to be an additional insured.

E. EXCESS LIABILITY

Excess Liability with limits of \$5,000,000. **GPA** shall be an additional insured. **CONTRACTOR** shall grant Waiver of Subrogation in favor of **GPA**.

F. CERTIFICATE OF INSURANCE:

The **CONTRACTOR** shall furnish **GPA** with two (2) copies of a Certificate of Insurance evidencing policies required in Paragraphs B, C, D, E, and F above. Such certificates shall specifically indicate that the Commercial General Liability Insurance includes all extensions of coverage required in Paragraph C., Subparagraph 2. above. Such certificate shall specifically state that the insurance company or companies issuing such insurance policies shall give **GPA** at least thirty (30) days written notice in the event of cancellation of or material change in any of the policies. If coverage on said certificate(s) is shown to expire prior to completion of all terms of this Contract, the **CONTRACTOR** shall furnish a Certificate of Insurance evidencing renewal of such coverage to **GPA**. The Certificates of Insurance shall clearly show this Contract number.

The **CONTRACTOR** shall provide a copy of their Insurance Policy to **GPA** as part of the bid requirements. All updates or revisions after contract commencement shall also be forwarded to **GPA**.

G. SUBCONTRACTOR'S INSURANCE:

The **CONTRACTOR** shall require each of his Subcontractors to take out and maintain during the life of his Subcontract, the same insurance coverage required of the **CONTRACTOR** under Paragraphs B, C, D, E, and F above, including the extensions of coverage required under Paragraph C., Subparagraph 2, above. Each Subcontractor shall furnish to the **CONTRACTOR** two (2) copies of a Certificate of Insurance and such certificate shall contain the same information required in Paragraph C. above. The **CONTRACTOR** shall furnish one (1) copy of the certificate to **GPA**.

H. INSURANCE COMPANY AND AGENT:

All insurance policies herein required of the **CONTRACTOR** shall be written by a company duly authorized to do business in the Territory where supply under this Contract is being performed and be executed by some agent thereof duly licensed as an agent in said State or Territory.

SECTION 23. INDEMNITY

CONTRACTOR shall indemnify and hold **GPA** harmless from all damages to persons or property or to receiving facilities and delivery facilities, regardless of ownership, including the cost of enforcement of the indemnity, actually and proximately caused by **CONTRACTOR** or its agents in making deliveries hereunder. **CONTRACTOR** shall be responsible for cleaning up any Fuel Oil spillage caused by it or its agent or **CONTRACTORS** during the process of Fuel Oil delivery. **CONTRACTOR** shall carry at all times appropriate levels of insurance as determined by **GPA** to cover any such damage. The **CONTRACTOR** shall ensure that any transportation owned or leased by the Contractor for deliveries under this agreement shall meet the requirements of the U.S. Oil Pollution Act of 1990 (OPA 90).

SECTION 24. TRANSPORTATION

CONTRACTOR shall arrange for the transportation of the Fuel Oil to **GPA**.

All risk of loss, cost and liabilities prior to the time of passage of title of the Fuel Oil to shall be on the **CONTRACTOR**.

CONTRACTOR 's and **GPA**'s rights and duties under [Section 23](#) and [Section 24](#) do not supersede or control the provisions of [Section 15](#) Force Majeure.

SECTION 25. FAILURE TO COLLECT USED OIL

If the **CONTRACTOR** refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure the timely collection of Used Oil or commits any other substantial breach of this Contract, **GPA** may notify the **CONTRACTOR** in writing of the delay or non-performance and if not cured within THIRTY (30) days of the date of notification, **GPA** may terminate the Contract in whole or such part of the Contract as to which there has been a delay or a failure to properly perform

SECTION 26. FAILURE TO PAY

Failure to pay an invoice and any late penalties, if any, within a period of THIRTY (30) days from the due date of such invoice, shall be a default and should such a default not be cured within THIRTY (30) days of default, **CONTRACTOR** may, at its option, do either of the following:

- (a) Terminate the Contract forthwith or forthwith suspend delivery under the Contract until further notice, on notifying **GPA** orally or by notice in writing; or
- (b) Continue to supply Fuel Oil and bring suit in the Superior Court of Guam for amounts past due and as they become due.

SECTION 27. FAILURE TO COMPLY WITH LAWS

In the event the **CONTRACTOR** or any person or entity identified as principals in the offer submitted in connection with the bid shall be found by any court or administrative agency having jurisdiction over the subject matter of the violation, to have violated any law, rule or regulation in connection with **CONTRACTOR**'s performance of the obligations under the Contract in any manner whatsoever directly or indirectly which violation shall constitute a breach of the peace, or an act involving moral turpitude or otherwise constitute endangerment of the health, safety and welfare of the citizens of the Territory of Guam, **GPA** may at its sole discretion terminate this Contract upon THIRTY (30) days written notice.

SECTION 28. DEFAULT

If a PARTY refuses or fails to perform any of its obligations under this Contract, the non-breaching PARTY shall notify the PARTY either by e-mail or in writing within thirty (30) days of the breach. If the PARTY does not remedy the breach within thirty (30) days after the date of notification, non-breaching PARTY may by giving notice to the other PARTY terminate the Contract in whole or suspend taking of delivery under the Contract.

In the event of partial termination or suspension under this provision, **GPA** reserves the right to procure Fuel Oil supply from another source upon notification to **CONTRACTOR** either by e-mail or in writing. Fuel Oil to be procured shall be at the prevailing market price at the time of partial termination or suspension.

In the event of termination because of **GPA's** default, the **CONTRACTOR** shall not be liable for the difference between the Contract price and the prevailing market price at the time of termination.

SECTION 29. ATTORNEYS FEES

Should a default by either party result in litigation, the successful party shall be entitled to recover its reasonable attorney's fees from the defaulting party.

SECTION 30. TERMINATION FOR CONVENIENCE**(a) Termination.**

The delivery of Fuel Oil supply under this Contract may be terminated by **GPA** in accordance with this clause in whole, or from time to time in part.

Any such termination shall be effected by delivery to the **CONTRACTOR** of a written Notice of Termination specifying the extent to which supply of Fuel Oil under the Contract is terminated, and the Contract shall be terminated effective NINETY (90) days after receipt of notice by **CONTRACTOR**.

In the case of termination of this Contract, **GPA** shall reimburse the **CONTRACTOR** of all the expenses related to the period of the Performance Bond that were not used.

(b) **CONTRACTOR's OBLIGATIONS.**

The **CONTRACTOR** shall incur no further obligations in connection with the terminated Fuel Oil supply and delivery and on the date set in the Notice of Termination the **CONTRACTOR** will stop delivery of Fuel Oil to the extent specified. The **CONTRACTOR** shall also terminate outstanding orders and Contracts, if any, as they relate to the terminated Contract for Fuel Oil supply. The **CONTRACTOR** shall settle the liabilities and claims arising out of the termination of orders and Contracts, if any, connected with the terminated Fuel Oil supply. **GPA** may direct the **CONTRACTOR** to assign the **CONTRACTOR'S** right, title and interest under the terminated orders or Contracts to **GPA**. The **CONTRACTOR** must still deliver Fuel Oil where supply is not terminated by the Notice of Termination and may incur obligations as are necessary to do so.

(c) **Compensation.**

- (1) The **CONTRACTOR** shall submit a termination claim specifying the amounts due because of the termination for convenience. If the **CONTRACTOR** fails to file a termination claim within ONE (1) year from effective date of termination, **GPA** may pay the **CONTRACTOR**, if at all, an amount set in accordance with subparagraph (3) of this paragraph.
- (2) **GPA** and the **CONTRACTOR** may agree to a settlement provided the **CONTRACTOR** has filed a termination claim supported by cost or pricing data to the extent required by Section 3-403 (Cost or Pricing Data) of the Guam Procurement Regulations and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by **GPA**, the proceeds of any sales of supplies and manufacturing materials under the Uniform Commercial Code of Guam, and the Contract price of the Fuel Oil supply not terminated.
- (3) Absent complete agreement under subparagraph (2) of this paragraph, **GPA** may pay the **CONTRACTOR** the following amounts, provided payments agreed to under subparagraph (2) shall not duplicate payments under this subparagraph:
 - (i) Fuel Oil Contract prices for supplies or services accepted under the Contract by **GPA**;
 - (ii) Costs incurred in preparing to perform and performing the terminated portion of the delivery of Fuel Oil plus a fair and reasonable profit on such portion of the delivery (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted Fuel Oil supplies or services; provided, however, that if it appears

that the **CONTRACTOR** would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(iii) Costs of settling and paying claims arising out of the termination of Contracts or orders pursuant to paragraph (2) of this clause. These costs must not include costs paid in accordance with subparagraph (3)(ii) of this paragraph;

(iv) The reasonable settlement costs of the **CONTRACTOR** including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract for the termination and settlement of Contracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the **CONTRACTOR** under this subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the **CONTRACTOR** reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under the Uniform Commercial Code.

SECTION 31. REMEDIES CUMMULATIVE

Each and all remedies available to a party in the event of the other party's failure to comply timely with any or all the terms and conditions of the Contract may be exercised independently or in combination (such rights being nonexclusive one with the other). The remedies set forth in the Contract are in addition to, and not in lieu of, all of the remedies available at law or in equity.

SECTION 32. COVENANT AGAINST CONTINGENT FEES

The **CONTRACTOR** warrants no person or selling agency has been employed or retained to solicit or secure the Contract upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agency maintained by the **CONTRACTOR** for the purpose of securing business. For breach or violation of this warranty, **GPA** shall have the right to annul the 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.

SECTION 33. NOTICE

Except as otherwise expressly specified herein, any notice to be given hereunder by either party to the other shall be deemed sufficiently given if in writing and enclosed in an envelope properly stamped and

addressed to the party at the address set forth in this section, and deposited in the United States mail. Either party may change its address by giving fifteen (15) days prior written notice to the other party. Such address until further notice shall be:

GPA: General Manager
Guam Power Authority
Post Office Box 2977
Hagatna, Guam 96932-2977
TELEFAX: (671) 648-9225

CONTRACTOR:

SECTION 34. INTEREST OF OTHER PARTIES

CONTRACTOR warrants that no member of the governing body of **GPA**, and no other officer, employee, or agent of **GPA** who exercises any functions or responsibilities in connection with the work to which the Contract pertains, and no employee, agent or member of the Guam Legislature or other public official of the Government of Guam, has or shall have any personal economic or financial interest, direct or indirect, in the Contract.

SECTION 35. ASSIGNMENT

CONTRACTOR declares that the only persons or parties interested in the Contract as principals are named herein and that the Contract is made without participation by or benefit to any other person, firm or corporation, except as specified herein.

CONTRACTOR agrees that it will not assign to nor permit Contract participation in whole or in part by any other person, firm or corporation not specified as a principal without the prior written consent of **GPA**. If such assignment is permitted, **CONTRACTOR** will guarantee the performance of all terms and obligations of the Contract, and such assignment shall not alter **CONTRACTOR**'s obligations hereunder. No assignee of **CONTRACTOR** shall have the right to assign the Contract without **GPA**'s consent which may be given or refused at **GPA**'s absolute discretion.

SECTION 36. TIME

Time is of the essence in the Contract and in every part, hereof.

SECTION 37. SPECIFICATIONS

Should **GPA** wish to alter any of the specifications set out in [Section 8](#) and [Schedule A](#), method and terms of delivery, for good cause, it shall give written notice to **CONTRACTOR** within thirty (30) days. If such changes cause an increase or decrease in **CONTRACTOR**'s cost of performance of Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly. Any claim by **CONTRACTOR** for adjustment under this section must be asserted in writing within thirty (30) days from the date of receipt by **CONTRACTOR** of the notification of changed specifications. **CONTRACTOR** and **GPA** shall, in good faith, negotiate an equitable adjustment pursuant to the change in specifications. If **CONTRACTOR** and **GPA** fail to agree on the adjustment to be made within thirty (30) days after **CONTRACTOR** receives notice of altered specifications, or if **CONTRACTOR** is unwilling to meet the altered specifications, the parties shall be subject to the provisions under [Section 21](#) (Governing Law and Disputes) clause. However, nothing in this clause shall excuse the **CONTRACTOR** from proceeding with the Contract Fuel Oil specifications as changed.

SECTION 38. AMENDMENT AND WAIVER

Neither the Contract nor any provision hereof may be changed, waived, altered, amended, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, alteration, amendment, discharge or termination is sought. For purposes of this Contract, the signature of the Chairman or his designee, of the Consolidated Commission on Utilities is required to bind **GPA**.

Failure by either party to object to any failure of performance by the other party of any provision of the Contract shall not constitute a waiver of, or estoppel against, the right of such party to require such performance by the other. Nor shall any such failure to object constitute a waiver or estoppel with respect to any succeeding failure of performance.

SECTION 39. DESCRIPTIVE HEADINGS

The descriptive headings of the several sections and subsections in this Contract are inserted for convenience only and shall not be deemed to affect the meaning or construction of any provision hereof.

SECTION 40. RELATIONSHIP OF PARTIES

Nothing contained in the Contract shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association

between **CONTRACTOR** and **GPA**, and no provisions contained in the Contract nor any acts of the parties shall be deemed to create any relationship between **GPA** and **CONTRACTOR**, other than the relationship of buyer and seller.

SECTION 41. NUMBER AND GENDER

In the Contract the masculine gender includes the feminine and neuter, the singular number includes the plural, and the word "person" includes corporation, partnership, firm or association wherever the context so requires.

SECTION 42. SUCCESSORS IN INTEREST

Each and all of the covenants, conditions, and restrictions in the Contract shall inure to the benefit of and shall be binding upon the permitted assignees and successors in interest of either party.

SECTION 43. PARTIAL INVALIDITY

Should any part of the Contract for any reason be declared to be invalid, such decision shall not affect the validity of any remaining portion thereof, which remaining portion shall remain in force and effect as if the Contract had been executed with the invalid portion thereof eliminated, and it is hereby declared the intention of the parties that they would have executed the remaining portion of the Contract without including any such part, parts, or portions which may, for any reason, be hereafter declared invalid.

SECTION 44. EQUAL OPPORTUNITY CLAUSE

During the performance of the 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, political opinion or affiliation, 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, political opinion or affiliation, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demoting, 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 **GPA** 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 the **CONTRACTOR**, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, political opinion or affiliation, or national origin.

SECTION 45. PROHIBITION AGAINST GRATUITIES, KICKBACKS, AND FAVORS TO THE TERRITORY.

5 GCA §5630(c) prohibits the CONSULTANT against gratuities, kickbacks, and favors to the Territory.

SECTION 46. RESTRICTIONS AGAINST CONTRACTOR EMPLOYING CONVICTED SEX OFFENDERS FROM WORKING AT GOVERNMENT OF GUAM VENUES

5 GCA §5253(b) restricts the **CONTRACTOR** against employing convicted sex offenders from working at Government of Guam venues. It states:(b) All contracts for services to agencies listed herein shall include the following provisions: (1) warranties that no person providing services on behalf of the **CONTRACTOR** has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry; and (2) that if any person providing services on behalf of the **CONTRACTOR** is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry, that such person will be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.

SECTION 47. CONTRACT DOCUMENTS

It is mutually agreed that the following lists of documents which are attached hereto, bound herewith or incorporated herein by reference shall constitute the contract documents, all of which are made a part hereof, and collectively evidence and constitute the contract between the parties hereto, and they are as fully a part of this Agreement as if they were set out verbatim and in full herein, and are designated as follows:

1. This Contract, GPA-XXX-18
2. Amendments to IFB GPA-XXX-18
3. IFB GPA-XXX-18
4. CONTRACTOR's QUALITATIVE AND PRICE PROPOSALS
5. The Performance Bond
6. Affidavit of Disclosure of Major Shareholders
7. Audited Financial Information of CONTRACTOR's firm and all subcontractors that will be used in the performance of the requirements delineated in this contract.

8. Certificate of Good Standing to conduct business in jurisdiction of residence
9. Non-collusion Affidavit
10. Ethical Standards Affidavit
11. No Gratuities or Kickbacks Affidavit
12. Declaration Re Compliance with US DOL Wage Determination
13. Restriction Against Sex Offenders Employed by Service Providers to Government of Guam
From Working on Government of Guam Property

In case of discrepancies or conflicts between the above-referenced contract documents, this CONTRACT shall take precedence over the bid documents, and CONTRACTOR's proposal submitted in response to the bid. In case of discrepancies or conflicts between the Amendments to GPA-XXX-18 and the IFB, the Amendments shall take precedence. Should CONTRACTOR believe there is any discrepancy or inconsistency between this CONTRACT and other contract documents, CONTRACTOR shall bring such discrepancy to the attention of the General Manager before proceeding with the work affected thereby.

SECTION 48. CONTRACT BINDING EFFECT

All EXHIBITS attached hereto are incorporated herein by reference in its entirety.

This Contract is binding upon the **CONTRACTOR** only if **CONTRACTOR** has been awarded the Contract in response to the **IFB-GPA-057-17**. This Contract is subject to the approval of **GPA** and the Public Utilities Commission and it shall not be binding on part of **GPA** until such approval is made as evidenced by the signatories below.

IN WITNESS, WHEREOF the parties hereto have executed this contract as of the day and year first written.

CONTRACTOR:

OWNER:

GUAM POWER AUTHORITY

JOHN M. BENAVENTE, P.E.

General Manager

Date: _____

Date: _____

CERTIFIED AS TO FUNDS AVAILABLE:

Date: _____

By: _____

PAMELA AGUIGUI

GPA'S Certifying Officer

Account No. _____

Amount: _____

APPROVED AS TO FORM:

Date: _____

By: _____

D. GRAHAM BOTHA, Esq.,

GPA Staff Attorney

PERFORMANCE AND PAYMENT BONDS

KNOW ALL MEN BY THESE PRESENTS that _____

(Name of CONTRACTOR)

herein after called the CONTRACTOR and _____

(Name of Surety)

a corporation duly organized under the laws of the State of _____

(hereafter referred to as: "Surety") authorized to transact business in Guam as Surety, are held and firmly bound unto the Guam Power Authority, as obligee, for use and benefit of claimants as herein below defined, in the amount of _____

_____ Dollars (\$_____) for the payment whereof the CONTRACTOR and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the CONTRACTOR has by written agreement dated _____, 20____, entered into a Contract with the Guam Power Authority for the Supply of Re-processed Guam Power Authority Used Oil Meeting GPA Diesel Fuel Specifications in accordance with Drawings and Specifications prepared by the Guam Power Authority, which Contract is by reference made a part hereof, and is hereafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the CONTRACTOR shall promptly and faithfully perform said Contract, and shall promptly make payment to all claimants as hereinafter defined for all labor and material used or reasonably required for use in the performance of the

Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

- A. The Surety hereby waives notice of any alteration or extension of the time made by the Guam Power Authority provided the same is within the scope of the Contract.
- B. Whenever CONTRACTOR shall be and is declared to be in default under the Contract by the Guam Power Authority, and the Guam Power Authority has performed its Contract obligations, the Surety may promptly remedy the default or shall promptly:
 - 1. Complete the Contract in accordance with its terms and conditions; or
 - 2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by the Guam Power Authority and the Surety of the lowest responsive, responsible bidder, arrange for a Contract between such bidder and the Authority, and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less than balance of the Contract price, but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price", as used in this paragraph shall mean the total amount payable by the Guam Power Authority to CONTRACTOR under the Contract and any amendments thereto, less the amount properly paid by the Guam Power Authority to CONTRACTOR. No right of action shall accrue on this bond to or for the use of any person or corporation other than the Guam Power Authority or successors of the Authority.
- C. A claimant is defined as one having a direct contract with the CONTRACTOR, or with a sub-CONTRACTOR of the CONTRACTOR for labor, material, or both, used or reasonably required for use in the performance of the Contract labor and material being construed to include that part

of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

- D. The above-named CONTRACTOR and Surety hereby jointly and severally agree with the Guam Power Authority that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) calendar days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Guam Power Authority shall not be liable for the payment of any costs or expenses of any such suit.
- E. No suit or action shall be commenced hereunder by a claimant:
1. Unless claimant, other than one having a direct contract with the CONTRACTOR, shall have given written notice to any two of the following:

The CONTRACTOR, the Guam Power Authority, or the Surety above named, within ninety (90) calendar days after such claimant did or performed that last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be personally served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the CONTRACTOR at any place the principal maintains an office or conducts its business.
 2. After the expiration of one (1) year following the date on which the last of the labor was performed or material was supplied by the party bringing suit.
 3. Other than in a court of competent jurisdiction in and for Guam.
- F. The amount of the payment bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens,

which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

SIGNED AND SEALED THIS _____ day of _____ 20____.

IN THE PRESENCE OF:

(Note: If the Principles are Partners, each must execute the Bond)

(WITNESS)

(CONTRACTOR)

(SEAL)

(TITLE)

(MAJOR OFFICER OF SURETY)

(MAJOR OFFICER OF SURETY)

(TITLE)

(TITLE)

INVITATION FOR MULTI-STEP BID

NO.: GPA-118-18

**SUPPLY OF REPROCESSED GUAM POWER AUTHORITY USED OIL
MEETING GPA'S SPECIFICATIONS FOR REPROCESSED USED OIL**



Volume V

APPENDICES

September 2018

APPENDIX A

Proposal Checklists

DOCUMENT RECEIPT CHECKLIST

Document Title	Proponent Initial
Volume I Commercial Terms and Conditions	_____
Volume II Scope of Work	_____
Volume III Used Oil Handling and Reprocessed Used Oil Delivery	_____
Volume IV Draft Contract	_____
Volume V Appendices	_____
APPENDIX A – Proposal Checklist	_____
APPENDIX B – Bid Bond Form and Instructions APPENDIX C –	_____
Major Shareholders Disclosure Affidavit APPENDIX D – Non-	_____
Collusion Affidavit	_____
APPENDIX E – Local Procurement Preference Application	_____
APPENDIX F – Performance Bond	_____
APPENDIX G – No Gratuities or Kickbacks Affidavit	_____
APPENDIX H – Ethical Standards Affidavit	_____
APPENDIX I – Declaration Re Compliance with US DOL Wage Determination	_____
APPENDIX J – Restriction Against Sex Offenders Employed by Service Providers to	_____
Government of Guam from Working on Government of Guam Property	_____
Volume VI Schedules	_____
Schedule A –Diesel Fuel Specifications	_____
Schedule B – Used Oil Specifications	_____
Schedule C – Historical Quantities, Used Oil Received in GPA Used	_____
Oil Facility	_____
Schedule D – Reprocessed Used Oil Sampling, Testing and Delivery	_____
Guidelines	_____
Schedule E – Used Oil Facility Diagram	_____
Schedule F – Used Oil Handling/Disposal Procedure and Guideline	_____
Schedule G – Appendices – Used Oil Handling Forms	_____
Schedule H – Notification Listing	_____
Qualitative Proposal Worksheet	_____
Contiguous Amendment Notifications from Amendment No. 1 through _____	_____
Others:	_____

TECHNICAL PROPOSAL SUBMITTAL CHECKLIST¹

	ITEM	QUANTITY (ORIGINALS)	QUANTITY (COPIES)	GPA INITIAL
1	Technical Qualification Proposal	_____	_____	_____
2	Written Responses and Supporting Information to the Questions Raised in the Qualitative Scoring Workbook	_____	_____	_____
3	Electronic Copy of the Completed Qualitative Scoring Workbook (Reference Worksheet)	_____	_____	_____
4	Completion of data input into Technical Proposal Form	_____	_____	_____
5	Electronic Copy of the Completed Price Technical Proposal Workbook	_____	_____	_____
6	Supplementary Information:	_____	_____	_____
6.1	Articles of Incorporation and By-Laws	_____	_____	_____
6.2	Affidavit of Disclosure of Major Shareholders ²	_____	_____	_____
6.3	Audited Financial Information on Bidder and Sub-contractors ²	_____	_____	_____
6.4	Certificate of Good Standing ²	_____	_____	_____
6.5	Non-collusion Affidavit ²	_____	_____	_____
6.6	Client References	_____	_____	_____
6.7	Bid Bond ²	_____	_____	_____
6.8	Local Procurement Preference Application	_____	_____	_____
6.9	No Gratuities or Kickbacks Affidavit ²	_____	_____	_____
6.10	Ethical Standards Affidavit ²	_____	_____	_____
6.11	Declaration Re Compliance with US DOL Wage Determination ²	_____	_____	_____
6.12	Restriction Against Sex Offenders to Government of Guam from Working on Government of Guam Property ²	_____	_____	_____

¹ Quantities supplied for each item must comply with minimums established in Volume I of the Invitation for Bid documents.

² Proposal is subject to automatic disqualification if this article is not provided.

APPENDIX B

Bid Bond Form and Instructions



Edward J.B. Calvo
Governor

GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUAHAN
P.O. BOX 2977 · AGANA, GUAM U.S.A. 96932-2977

Telephone Nos. (671) 648-3054/55 Fax: 648-3165

Raymond S. Tenorio
Lieutenant Governor

BID BOND

NO.: _____

KNOW ALL MEN BY THESE PRESENTS that _____, as

Principal Hereinafter called the Principal, and (Bonding Company), _____

A duly admitted insurer under the laws of the Territory of Guam, as Surety, hereinafter called the Surety are

Held firmly bound unto the Territory of Guam for the sum of _____ Dollars

(\$ _____), for Payment of which sum will and truly to be made, the said Principal and the said

Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for (identify project by number and brief description)

NOW, THEREFORE, if the Territory of Guam shall accept the bid of the Principal and the Principal shall enter into a Contract with the Territory of Guam in accordance with the terms of such bid, and give such bond or bonds as may be specified in bidding or Contract documents with good and sufficient surety for the faithful performance of such Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Territory of Guam the difference not to exceed the penalty hereof between the amounts specified in said bid and such larger amount for which the Territory of Guam may in good faith contract with another party to perform work covered by said bid or an appropriate liquidated amount as specified in the Invitation for Bids then this obligation shall be null and void, otherwise to remain full force and effect.

Signed and sealed this _____ day of _____ 2018.

(PRINCIPAL) (SEAL)

(WITNESS)

(TITLE)

(MAJOR OFFICER OF SURETY)

(TITLE)

(MAJOR OFFICER OF SURETY)

(TITLE)

(RESIDENT GENERAL AGENT)

SEE INSTRUCTIONS FOR SUPPORTING DOCUMENTS REQUIRED.

INSTRUCTION TO PROVIDERS:

NOTICE to all Insurance and Bonding Institutions:

The Bond requires the signatures of the Vendor, two (2) major Officers of the Surety and Resident General Agent, if the Surety is a foreign or alien surety.

When the form is submitted to the Guam Power Authority, it should be accompanied with copies of the following:

1. Current Certificate of Authority to do business on Guam issued by the Department of Revenue and Taxation.
2. Power of Attorney issued by the Surety to the Resident General Agent.
3. Power of Attorney issued by two (2) major officers of the Surety to whoever is signing on their behalf.

Bonds, submitted as Bid Guarantee, without signatures and supporting documents are invalid and Bids will be rejected.

APPENDIXC

Major Shareholders Disclosure Affidavit



GUAM POWER AUTHORITY

ATURIDĀT ILEKTRESEDĀT GUAHAN
P.O. BOX 2977 · AGANA, GUAM U.S.A. 96932-2977

SPECIAL PROVISION FOR MAJOR SHAREHOLDERS DISCLOSURE AFFIDAVIT

All Bidders/Offerors are required to submit a current affidavit as required below. Failure to do so will mean disqualification and rejection of the bid/rfp.

5 GCA §5233 (Title 5, Section 5233) states:

"Section 5233 Disclosure of Major Shareholders. As a condition of submitting a bid or offer, any partnership, sole proprietorship or corporation doing business with the government of Guam shall submit an affidavit executed under oath that lists the name and address of any person who has held more than ten percent (10%) of the outstanding interest or shares in said partnership, sole proprietorship or corporation at any time during the twelve (12) month period immediately preceding submission of a bid, or, that it is a not for profit organization that qualifies for tax exemption under the Internal Revenue Code of the United States or the Business Privilege Tax law of Guam, Title 12, Guam Code Annotated, Section 26203©. With the exception of not for profit organizations, the affidavit shall contain the number of shares or the percentage of all assets of such partnership, sole proprietorship or corporation which have held by each such person during the twelve (12) month period. In addition, the affidavit shall contain the name and address of any person who has received or is entitled to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the bid or offer and shall also contain the amounts of any such commission, gratuity or other compensation. The affidavit shall be open and available to the public for inspection and copying."

1. If the affidavit is a copy, indicate the BID/RFP number and where it is filed.
2. Affidavits must be signed within 60 days of the date the bids or proposals are due.

MAJOR SHAREHOLDERS OF DISCLOSURE AFFIDAVIT

TERRITORY OF GUAM)

HAGATNA, GUAM)

I, undersign, _____,
 (partner or officer of the company of, etc.)

being first duly sworn, deposes and says:

1. That the person who have held more than ten percent (10%) of the company's shares during the past twelve (12) months are as follows:

<u>Name</u>	<u>Address</u>	<u>Percentage of Shares Held</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
Total number of shares		_____

2. Persons who have received or are entitled a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the bid/rfp for which this Affidavit is submitted are as follows:

<u>Name</u>	<u>Address</u>	<u>Amount of Commission Gratuity or other Compensation</u>
_____	_____	_____
_____	_____	_____

Further, affiant sayeth naught.

Date: _____

 Signature of individual if bidder/offeror is a sole
 Proprietorship; Partner, if the bidder/offeror is a
 Partnership Officer, if the bidder/offeror is a
 corporation.

Subscribe and sworn to before me this _____ day of _____,

20 _____.

Notary Public _____

In and for the Territory of Guam

My Commission expires _____.

APPENDIX D

Non-collusion Affidavit

NON-COLLUSION AFFIDAVIT

Guam)
) ss:
 Hagatna)

I, _____ first being duly sworn, depose and say:
 (Name of Declarant)

1. That I am the _____ of _____.
 (Title) (Name of Bidding/RFP Company)
2. That in making the foregoing proposal or bid, that such proposal or bid is Genuine and not collusive or shame, that said bidder/offeror has not colluded, Conspired, connived or agreed, directly or indirectly, with any bidder or person, to put in a sham or to refrain from bidding or submitting a proposal and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the bid of affiant or any other bidder, or to secure any overhead, project or cost element of said bid price, or of that of any bidder, or to secure any advantage against the GUAM POWER AUTHORITY or any person interested in the proposed contract; and
3. That all statements in said proposal or bid are true.
4. This affidavit is made in compliance with Guam Administrative Rules and Regulations §§3126(b).

 (Declarant)

SUBSCRIBED AND SWORN to me before this _____ day of _____ 20__.

) Seal (

 Notary Public

SPECIAL PROVISIONS

All offerors are required to submit a current affidavit; failure to do so will mean disqualification and rejection of the proposal.

APPENDIX E

Local Procurement Preference Application



GUAM POWER AUTHORITY

ATURIDĀT ILEKTRESEDĀT GUAHAN
P.O. BOX 2977 · AGANA, GUAM U.S.A. 96932-2977

Edward J.B. Calvo
Governor

Telephone Nos. (671) 648-3054/55 Fax: 648-3165

Raymond S. Tenorio
Lieutenant Governor

Accountability

Impartiality

Competence

Openness

Value

LOCAL PROCUREMENT PREFERENCE APPLICATION

Based on the law stipulated below, please place a checkmark or an "X" on the block indicating the item that applies to your business:

5GCA, Chapter 5, Section 5008, "Policy in Favor of Local Procurement" of the Guam Procurement Law states:

All procurement of supplies and services shall be made from among businesses licensed to do business on Guam and that maintains an office or other facility on Guam, whenever a business that is willing to be a contractor is:

- () (a) A licensed bonafide manufacturing business that adds at least twenty-five percent (25%) of the value of an item, not to include administrative overhead, suing workers who are U.S. Citizens or lawfully admitted permanent residents or nationals of the United States, or persons who are lawfully admitted to the United States to work, based on their former citizenship in the Trust Territory for the Pacific Islands; or
- () (b) A business that regularly carries an inventory for regular immediate sale of at least fifty percent (50%) of the items of supplies to be procured; or
- () (c) A business that has a bonafide retail or wholesale business location that regularly carries an inventory on Guam of a value of at least one half of the value of the bid or One Hundred Fifty Thousand Dollars (\$150,000.0) whichever is less, of supplies and items of a similar nature to those being sought; or
- () *(d) A service actually in business, doing a substantial business on Guam, and hiring at least 95% U.S. Citizens, lawfully admitted permanent residents or national of the United States, or persons who lawfully admitted to the United States to work, based on their citizenship in any of the nations previously comprising the Trust Territory of the Pacific Islands.

- Bidders indicating qualification under (d) may be considered QUALIFIED for the Local Procurement Preference **only if** the Government's requirement is for service. Service is defined Pursuant to 5 GCA Government Operations Subparagraph 5030 entitled DEFINITIONS under Chapter 5 of the Guam Procurement Law.

1. I _____, representative for _____, have read the requirements of the law cited above and do hereby qualify and elect to be given the LOCAL PROCUREMENT PREFERENCE for Bid No.: GPA _____. By filling in this information and placing my signature below, I understand that the Guam Power Authority will review this application and provide me with a determination whether or not the 15% preference will be applied to this bid.
2. I _____, representative for _____, have read the requirements of the law cited above, and do not wish to apply for the Local Procurement Preference for Bid No.: GPA _____.

Bidder Representative Signature

Date

NOTE:

Prospective Bidders not completing this form will automatically be not considered for Local Procurement Preference. Non-completion of this form is not a basis for rejection of the bid or proposal.

APPENDIX F

Performance Bond

PERFORMANCE BOND NUMBER: _____

KNOW ALL MEN BY THESE PRESENTS that _____, as Principal, hereinafter called **CONTRACTOR**, and _____, a corporation hereinafter called **SURETY**, are held and firmly bound unto the **GUAM POWER AUTHORITY** as Obligee, in the amount of _____ Dollars (\$ _____), an amount negotiated for the first partial **GUAM POWER AUTHORITY** fiscal year within the term of the **CONTRACT**, for the payment whereof **CONTRACTOR** and **SURETY** bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, **CONTRACTOR** has by written agreement dated _____, 2009, entered into a **PURCHASE POWER AGREEMENT** with the **GUAM POWER AUTHORITY** through midnight of _____, _____, in accordance with forms and specifications prepared by the **GUAM POWER AUTHORITY** which **CONTRACT** is by reference made a part hereof, and is hereinafter referred to as the "**CONTRACT**".

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if **CONTRACTOR** shall promptly and faithfully perform said **CONTRACT** then this obligation shall be null and void; otherwise it shall remain in full force and effect. The **SURETY** hereby waives notice of any alteration or extension provided the same is within the scope of the **CONTRACT**. Whenever **CONTRACTOR** shall be and is declared by the **GUAM POWER AUTHORITY** to be in default under the **CONTRACT**, **GUAM POWER AUTHORITY** having performed its obligation thereunder, the **SURETY** may promptly remedy the default or shall promptly:

- (1) Complete the **CONTRACT** in accordance with its terms and conditions; or,
- (2) Obtain a bid or bids for completing the **CONTRACT** in accordance with its terms and conditions and upon determination by the **GUAM POWER AUTHORITY** and the **SURETY** jointly of the lowest responsive, responsible **BIDDER**, arrange for a **CONTRACT** between such **BIDDER** and the **GUAM POWER AUTHORITY** and make available as work progresses (even though there should be a default or a succession of defaults under the **CONTRACT** or **CONTRACTS** of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the **CONTRACT** price; but not exceeding, including other costs and damages for which the **SURETY** may be liable hereunder, the amount set forth in the first paragraph hereof.

The term "balance of the **CONTRACT** price", as used in this paragraph shall mean the total amount payable by the **GUAM POWER AUTHORITY** to **CONTRACTOR** under the **CONTRACT** for the current fiscal year and any amendments thereto, less the amount properly paid by the **GUAM POWER AUTHORITY** to **CONTRACTOR** for that partial or full fiscal year.

The term fiscal year shall mean the time between October 1 in the calendar year to September 30 of the next calendar year.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the **GUAM POWER AUTHORITY** or successors of the **GUAM POWER AUTHORITY**.

Signed and sealed this _____ day of _____, 20____.

Principal)

(Seal)

(Witness)

(Bonding Company)

(Title)

(Title)

(Witness)

By: _____

(Attorney-In-Fact)

APPENDIX G

No Gratuities or Kickbacks Affidavit

NO GRATUITIES OR KICKBACKS AFFIDAVIT

AFFIDAVIT

(Offeror)

TERRITORY OF GUAM)

HAGATNA, GUAM)

SS:

_____, being first duly sworn, deposes and says:

As the duly authorized representative of the Offeror, that neither I nor of the Offeror's officers, representatives, agents, subcontractors, or employees has or have offered, given or agreed to give any government of Guam employee or former employee, any payment, gift, kickback, gratuity or offer of employment in connection with Offeror's proposal.

Signature of Individual if Proposer is a Sole
Proprietorship; Partner, if the Proposer is a
Partnership;
Officer, if the Proposer is a Corporation

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20____.

Notary Public
In and for the Territory of Guam
My Commission Expires:

APPENDIX H

Ethical Standards Affidavit

ETHICAL STANDARDS AFFIDAVIT

AFFIDAVIT

(Proposer)

TERRITORY OF GUAM)

HAGATNA, GUAM)

SS:

_____, being first duly sworn, deposes and says: That I am (the Sole Proprietor, a Partner or Officer of the Offeror) That Offeror making the foregoing Proposal, that neither he or nor of the Offeror's officers, representatives, agents, subcontractors, or employees of the Offeror have knowingly influenced any government of Guam employee to breach any of the ethical standards set forth in 5 GCA Chapter 5 Article 11, and promises that neither he nor any officer, representative, agent, subcontractor, or employee of Offeror will knowingly influence any government of Guam employee to breach any ethical standard set for in 5 GCA Chapter 5 Article 11.

Signature of Individual if Proposer is a Sole
Proprietorship; Partner, if the Proposer is a
Partnership;
Officer, if the Proposer is a Corporation

SUBSCRIBED AND SWORN to before me this _day of _____, 20____.

Notary Public
In and for the Territory of Guam
My Commission Expires:

APPENDIX I

Declaration Re Compliance with US DOL Wage Determination

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

Procurement No.: _____

Name of Offeror Company: _____

_____ hereby certifies under penalty of perjury:

(1) That I am _____ (the offeror, a partner of the offeror, an officer of the offeror) making the bid or proposal in the foregoing identified procurement;

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

§ 5801. Wage Determination Established.

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

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

§ 5802. Benefits.

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

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

Signature of Individual if Proposer is a Sole Proprietorship;

Partner, if the Proposer is a Partnership;

Officer, if the Proposer is a Corporation

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2018.

Notary Public
In and for the Territory of Guam
My Commission Expires:

APPENDIX J

Restriction against Sex Offenders Employed by Service Providers to Government of Guam from Working on Government of Guam Property

SPECIAL PROVISIONS

Restriction Against Sex Offenders Employed by Service Providers to Government of Guam from Working on Government of Guam Property

GCA 5 §5253 Restriction Against Contractors Employing Convicted Sex Offenders from Working at Government of Guam Venues:

- (a) No person convicted of a sex offense under the provisions of Chapter 25 of Title 9 Guam Code Annotated, or an offense as defined in Article 2 of Chapter 28, Title 9 GCA in Guam, or an offense in any jurisdiction which includes, at a minimum, all of the elements of said offenses, or who is listed on the Sex Offender Registry, and who is employed by a business contracted to perform services for an agency or instrumentality of the government of Guam, shall work for his employer on the property of the Government of Guam other than public highway.
- (b) All contracts for services to agencies listed herein shall include the following provisions: (1) warranties that no person providing services on behalf of the contractor has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry; and (2) that if any person providing services on behalf of the contractor is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry, that such person will be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.
- (c) Duties of the General Services Agency or Procurement Administrators. All contracts, bids, or Requests for Proposals shall state all the conditions in § 5253(b).
- (d) Any contractor found in violation of § 5253(b), after notice from the contracting authority of such violation, shall, within twenty-four (24) hours, take corrective action and shall report such action to the contracting authority. Failure to take corrective action within the stipulated period may result in the temporary suspension of the contract at the discretion of the contracting authority.

SOURCE: *Added by P.L. 28-024:2 (Apr. 21, 2005). Amended by P.L. 28-098:2 (Feb. 7, 2006).*

Signature of Bidder Date

Proposer, if an individual;
Partner, if a partnership;
Officer, if a corporation.

Subscribed and sworn before me this _____ day of _____, 2018.

Notary Public

**Invitation for Multi-Step Bid
No. GPA-118-18**

**SUPPLY OF REPROCESSED GUAM POWER AUTHORITY USED OIL
MEETING GPA'S SPECIFICATIONS FOR REPROCESSED USED OIL**



Volume VI

SCHEDULES

September 2018

SCHEDULE A	GPA's Specifications for Reprocessed Used Oil
SCHEDULE B	Used Oil Specifications
SCHEDULE C	Historical Quantities, Used Oil Received in GPA Used Oil Facility
SCHEDULE D	Reprocessed Used Oil Sampling, Testing and Delivery Guidelines
SCHEDULE E	Used Oil Facility Diagram
SCHEDULE F	Used Oil Handling Procedures (GP-014)
SCHEDULE G	Appendices – Used Oil Handling Forms
SCHEDULE H	Notification Listing

SCHEDULE A

GPA's Specifications for Reprocessed Used Oil

PRODUCT QUALITY SPECIFICATION: Reprocessed Used Oil

The Authority may require the supplier to conduct additional test as necessary.

Item	Description	Unit of Measure	Approved Test Method	Acceptable Alternate Test Methods	Minimum Allowed Value	Maximum Allowed Value
1	Sulfur Content	% mass	ASTM D-5453	ASTM D-7039	N/A	0.5
2	Sulfur Mercaptan	ppm (µg/g)	ASTM D-3227			NIL
3	Gravity, API @ 60 °F		ASTM D-1295	ASTM D-4052	35	41
4	Pour Point	°C	ASTM D-97	N/A	N/A	50
5	Flash Point	°C	ASTM D-93	N/A	60	N/A
6	Appearance at Ambient Temperature	Clear & Bright	Visual	N/A	Report	Report
7	Cetane Index No.		ASTM D-613	ASTM D976-80 ASTM D 4737	46	
8	Water & Sediments by Centrifuge	% vol	ASTM D-2709		N/A	0.05
9	Micro Carbon Residue on 10% distillation residue	% mass	ASTM D-524	ASTM D-4530 ASTM D-6371	N/A	0.200 *CCR Result shall be converted using table in method to RCR equivalent
10	Corrosion, Copper Strip, 3 hrs @ 50 °C		ASTM D-130	N/A	N/A	ASTM No. 1
11	Ash Content	% mass	ASTM D-482	N/A	N/A	0.01
12	Neutralization No., Total Acid No.	mg KOH/g	ASTM D-974	N/A	N/A	0.200
13	Color	ASTM color	ASTM D-1500	N/A	N/A	2.00
14	Guaranteed Heating Value	MMBTU/bbl	ASTM D-240	N/A	5.70	
15	Metals	ppm	Baird AE	N/A	Report	Report
16	Sediment By Extraction	% mass	ASTM D-473	N/A	N/A	0.1
17	Water By Distillation	% by vol	ASTM D-95	N/A	N/A	0.5
18	Vanadium Content	ppm	ASTM D-5708	a) UOP 800 b) ASTM D-5184 c) ASTM D-5863 d) IP 501 e) IP 433 f) ISO 14597 g) IP 470 h) IP 465 i) EN 13131	N/A	100
19	Silicon Content	ppm	ASTM D-5184	a) IP 470 b) IP 377 c) ISO 10487 d) IP 501	N/A	Combined Al + Si not to exceed 70 ppm *individual results to be reported separately
20	Aluminum Content	ppm				
21	Asphaltenes	% mass	ASTM D-6560	IP 143	N/A	7
22	Sodium	ppm	ASTM D-5863/B	ASTM D-5708/B IP 288	N/A	40
23	Total Sediment (Existent)	% mass	ISO 10306-2	ASTM D-4870 IP 377	N/A	0.10
24	Compatibility	a) Cleanliness Ratio b) Compatibility Ratio	ASTM D-4740	N/A	N/A	a) 1 b) 2
25	Density @ 15 °C	Kg/m ³	ASTM D-1295	ASTM D-4052	820	850
26	Odor				Report	
25	Hydrogen Sulfide Content (in liquid phase)	mg/kg	IP-399	IP-570	N/A	2.0
26	Used Lubricating Oil (ULO)				Fuel shall be free of ULO	
	Zinc	mg/kg	IP-501	IP-470		15
	Phosphorus	mg/kg	IP-501	IP-470		15
	Calcium	mg/kg	IP-501	IP-470		15

Item	Description	Unit of Measure	Approved Test Method	Acceptable Alternate Test Methods	Minimum Allowed Value	Maximum Allowed Value
27	Distillation Temp, 90% recovered	°C	ASTM D-86	N/A	282	360
28	Kinematic Viscosity	mm ² at 40 °C	ASTM D-445	N/A	1.9	4.1
29	Total Aromatic Hydrocarbons	% mass	IP 391	N/A	15	35
30	Polycyclic Aromatic Hydrocarbons	% mass	IP 391	N/A	N/A	11
31	Aromaticity	% vol	ASTM D-1319	N/A	15	35
32	Strong Acid No.	mg KOH/g	ASTM D-974	N/A	N/A	NIL
33	Stability (Oxidation), 16 Hrs	mg/L	D-2274	N/A	N/A	25
34	Haze Rating	Haze Rating	ASTM D-4176	N/A	N/A	1
35	Particulate Matter	mg/L	ASTM D-6217	N/A	N/A	10
36	Filter Blocking Tendency (FBT)		ASTM D-2068	IP 387	N/A	1.35
37	Fatty Acid Methyl Ester (FAME)	% vol	ASTM D-7371-14	EN 14078		0.1
38	Static Dissipation Additives (Stadis 450)	mg/L	Declared			Report
39	Lubricity Additive	mg/L	Declared			Report

SCHEDULE B

Used Oil Specifications

PRODUCT QUALITY SPECIFICATION: Used Oil Accepted in GPA Used Oil Facility

Prior to any Used Oil delivery at the GPA facility disposal site (GPA Used Oil Facility), the Used Oil transporter or generator are required to conduct the following Used Oil analysis, as required under 40 CFR 279.11 and 22 GAR Sec. 1310.

Laboratory analysis shall be conducted by an independent certified laboratory approved by the Authority.

COMPONENTS	ALLOWABLE LIMITS
Arsenic	5.00 ppm, max.
Cadmium	2.00 ppm, max.
Chromium	10.00 ppm, max.
Lead	100 ppm, max.
Total Halogen	Less than 1,000 ppm
PCB	Less than 2.00 ppm
Flash Point, deg F	140 min.
Water, volume %	5.00 max.
Sediments, weight %	2.00 max.
Sulfur content, %wt	2.00 max

Used Oil meeting the specifications prescribed above is acceptable for disposal at the GPA Used Oil Facility.

SCHEDULE C

Historical Quantities, Used Oil Received in GPA Used Oil Facility

MONTH	GPA	MEC	Unitek	GRESKO	TOTAL
May-15	46,231	74,880	8,000	5,120	134,231
Jun-15	57,901	93,600	10,000	6,400	167,901
Jul-15	57,901	93,600	10,000	6,400	167,901

Aug-15	23,160	37,440	4,000	2,560	67,160
Sep-15	28,950	46,800	5,000	3,200	83,950
Oct-15	23,160	37,440	4,000	2,560	67,160
Nov-15	23,160	37,440	4,000	2,560	67,160
Dec-15	23,160	37,440	4,000	2,560	67,160
Jan-16	28,950	46,800	5,000	3,200	83,950
Feb-16	23,160	37,440	4,000	2,560	67,160
Mar-16	23,160	37,440	4,000	2,560	67,160
Apr-16	23,160	37,440	4,000	2,560	67,160
May-16	40,530	65,520	7,000	4,480	117,530
Jun-16	57,900	93,600	10,000	6,400	167,900
Jul-16	28,950	46,800	5,000	3,200	83,950
Aug-16	23,160	37,440	4,000	2,560	67,160
Sep-16	11,580	18,720	2,000	1,280	33,580
Oct-16	34,740	56,160	6,000	3,840	100,740
Nov-16					-
Dec-16					-
Jan-17					-
Feb-17			9073	10000	19,073
Mar-17			13839	7731.5	21,571
Apr-17				4099.5	4,100
May-17				11596	11,596
Jun-17				7818	7,818
Jul-17				3646	3,646
Aug-17					-
Sep-17				10040	10,040
Oct-17			6054	7499	13,553
Nov-17			4636	7200	11,836
Dec-17			12300	7380	19,680

SCHEDULE D

Reprocessed Used Oil Sampling and Testing Guidelines

PRODUCT DELIVERY

The CONTRACTOR shall deliver Reprocessed Used Oil from GPA's WOF that meets GPA's Diesel Fuel Specifications to the point of delivery designated by GPA, following the requirements stated as follows:

- (a) All Reprocessed Used Oil must be delivered to the GPA designated facility or facilities covered in this contract.
- (b) CONTRACTOR shall provide test results to GPA once available and shall seek GPA's approval for delivery of product to the GPA designated facility or facilities, at a specific date and time no less than 48 hours after the test results and notification of intent to deliver is received by GPA. The results shall be sent to GPA's Generation Division and GPA's Strategic Planning and Operations Research Division. Deliveries may be made Monday thru Friday between the hours of 7:00 AM and 5:00 PM.
- (c) If Reprocessed Used Oil meets GPA's Diesel Fuel Specifications, GPA shall accept fuel and approve requested date and time. The management and staff of GPA's Designated Facility will decide whether or not to accept the reprocessed Used Oil, with guidance from GPA SPORD. If the designated facility is unable to receive reprocessed Used Oil at the requested date and time, GPA will propose an alternate date and time to CONTRACTOR.
- (d) The CONTRACTOR shall provide transfer pumps at its delivery trucks and/or whatever else may be necessary to deliver Reprocessed Fuel Oil to the GPA Storage Tanks at the designated facility or facilities to the height of 45 feet. The delivery trucks should have calibrated meters installed to determine quantity of reprocessed fuel oil delivered to GPA.
- (e) Title to the reprocessed Used Oil and custody thereof shall pass from the Contractor to GPA when the reprocessed Used Oil has passed the GPA pipeline flange connecting the tanker truck delivery hose and GPA storage tanks.
- (f) Contractor must exercise its best efforts to deliver Reprocessed Used Oil to GPA to meet operational requirements.
- (g) All risk of loss, cost and environmental liabilities prior to the time of passage of title of the Reprocessed Used Oil shall be borne by the CONTRACTOR. All expenses incurred for the delivery of the product to the GPA designated facility or facilities shall be at the CONTRACTOR's account.
- (h) If Reprocessed Used Oil does not meet GPA's Diesel Fuel Specifications, GPA reserves the right to reject the delivery.
- (i) In the event of a dispute over the accuracy of CONTRACTOR's meters, an independent third party mutually agreeable to both parties will be utilized to perform a recalibration in order to confirm the accuracy of the meter(s) in question. In the event of an erroneous calibration of meters, CONTRACTOR will pay the cost of the calibration recertification. Any loss incurred by GPA as a result of miscalibration or of faulty meters shall be negotiated and reimbursed to GPA in equivalent amount.

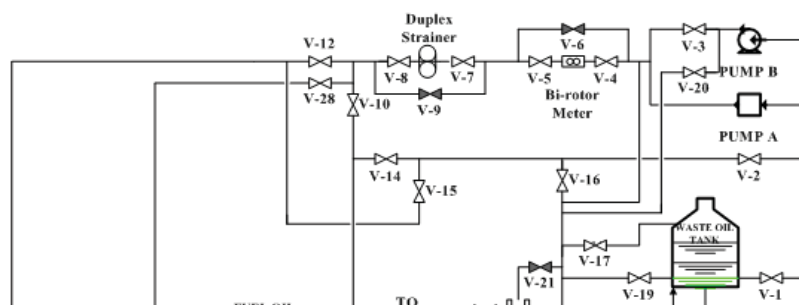
QUANTITY AND QUALITY ASSURANCE

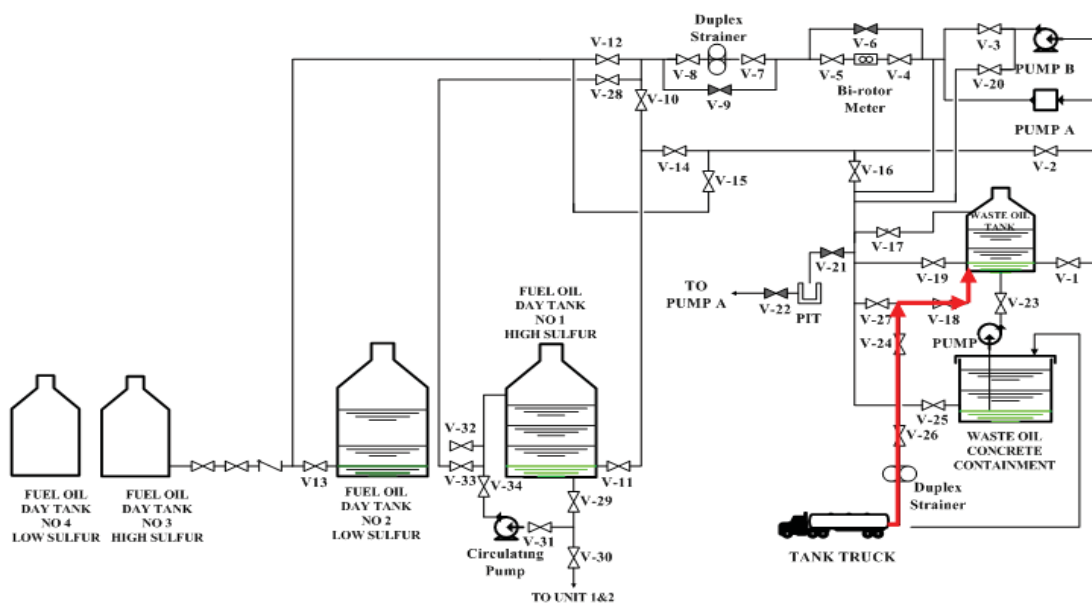
Any existing pump system, metering system, and storage tank installed at the facility shall be used to transfer the Reprocessed Used Oil delivered by Contractor.

- (a) If the Contractor finds this system unsatisfactory, alternative methods may be considered by GPA but shall be at the expense and liability of the Contractor.
- (b) The Reprocessed Used Oil shall be supplied in bulk and will be unloaded by the Contractor's own staff into the GPA Storage Tanks. Drum delivery will not be accepted unless under special request and authorization by the Authority.
- (c) Measurement of the quantity of each delivery of Reprocessed Used Oil shall be determined by Contractor's own calibrated meter, installed at no cost to GPA.
- (d) The flow meter reading will be verified by the receiving facility prior to the beginning and after completion of delivery to verify the exact quantity of product received into the GPA tanks.
- (e) Periodic flow meter calibration by the Contractor is required and shall be performed by certified independent third-party inspector acceptable to GPA. Calibration shall be conducted every six (6) months or less (as may be necessary), starting at the beginning of the contract period. A copy of the certificate of calibration must be provided to the Authority no later than 5 calendar days after the date of calibration.
- (f) Contractor is required to install seal(s) on delivery tankers and must remain intact as a condition for acceptance of product deliveries. Individual seal numbers must be recorded in the delivery tickets and each number initialed by the terminal dispatch officer for verification by the receiving facility.
- (g) Contractor must provide a copy of the certificate of quality of Reprocessed Used Oil issued by a reputable testing facility at no cost to GPA. Certificate of quality must accompany each product delivery to GPA and must conform with the requirements referenced under Section 2.01.
- (h) GPA reserves the right to require the Contractor to have the product tested in a Guam facility at no cost to GPA.

SCHEDULE E

Used Oil Facility Diagram





SCHEMATIC DIAGRAM FOR WASTE OIL SYSTEM

Flow diagram 2 — Receiving waste oil into waste oil tank

SCHEDULE F

Used Oil Handling Procedure (GP-014)

SCHEDULE G

Appendices – Used Oil Handling Forms

SCHEDULE H

Notification Listing

Qualitative Proposal Scoring: Proposal Scoring Information

Item	BIDDER Checklist Items	Checklist Weight	Maximum Raw Rating Score	Maximum Weighted Score	Percent of Total Weighted Score
	Experience and Expertise on Used Oil Reprocessing	20		100	20.0%
	Supporting information showing a minimum of five (5) years progressive experience in Used Oil Handling, Used Oil Collection, Used Oil Reprocessing.	5	5	25	.
	Supporting information showing a minimum of five (5) years progressive experience in Petroleum Handling, Petroleum Storage and Petroleum Delivery.	5	5	25	
1	Experience in handling tank and pipeline leaks, and major incidents in fuel bulk storage facilities, and implementation/completion of remedies.	3	5	15	
	Mobilization capability for resources required in emergency oil spills or incidents.	3	5	15	
	Experience and expertise in complying with local and federal laws regarding environmental compliance, specifically with the handling, storage, and transport of oil products; creation, approval and execution of Spill Prevention, Control and Countermeasure Plan (SPCC Plan) and Best Management Practices (BMP), and any other pertinent local and environmental regulations, requirements and practices, such as but not limited to OPA 90, FRP, etc.	4	5	20	
	Business Structure and Company Information	5		25	5.0%
2	Company information such as name, local address, corporate headquarters (if any) and affiliate company; business structure and nature of services provided together with company information.	1	5	5	
	Copy of articles of incorporation and by laws or other applicable forms concerning business organization.	4	5	20	
	Organizational Chart	5		25	5.0%
3	Description of CONTRACTOR's organizational structure, subsidiaries and parent companies, short biographies of company officers.	2	5	10	
	Proposed project and management teams, including team members' qualifications and certification.	3	5	15	
	Financial Information	15		75	15.0%
	Guam Tax Clearance from the Guam Department of Revenue & Taxation if a locally registered company	3	5	15	
	Credit Worthiness information, including but not limited to:		5	0	
	A notarized statement that there is no outstanding or potential litigations or liens against the CONTRACTOR; and	3	5	15	
	Dunn and Bradstreet Number and most recent reports (preferred); or any other information supporting creditworthiness	3	5	15	
4	Audited Financials	6	5	30	
	<i>For Publicly Traded Entities:</i>				
	Audited Financials for the last three consecutive fiscal years; or Audited financials for the last three consecutive fiscal years for which audited financial statements are available, and unaudited financial statements for the most recent fiscal year ended.	6			
	<i>For Private, Non-publicly Traded Entities:</i>				
	Unaudited Financials for the last five consecutive fiscal years; and	3			
	Disclosure of major creditors and lien holders; and	1			
	Letters from creditors and lien holders that proponent has been making payments according to loan agreements and is current on their account.	2			
	Insurance Policy	5		25	5.0%
5	Provide a copy of your Insurance Policy for GPA's review, and proof of compliance with GPA's Insurance Requirements.	5	5	25	
	Mobilization Capability Checklist	5		25	5.0%
6	Proof Of Capability To Mobilize Full Support Services No Later Than 30 days after contract signing.	5	5	25	
	Used Oil Handling and Reprocessing Technology	25		125	25.0%

Qualitative Proposal Scoring: Proposal Scoring Information

Item	BIDDER Checklist Items	Checklist Weight	Maximum Raw Rating Score	Maximum Weighted Score	Percent of Total Weighted Score
7	Detailed description of the technology proposed for the collection of Used Oil and processing of Used Oil into an acceptable ULSD product, including information on the commercial applications of the technologies used for collecting and processing Used Oil into a refined ULSD product (example: location of facility, quantity processed, etc.).	6	5	30	
	Evidence that the technology and process proposed has been in commercial operation for at least five (5) years.	6	5	30	
	Evidence of CONTRACTOR's experience with installation, operation and maintenance of proposed technology and processes.	5	5	25	
	Evidence of CONTRACTOR's certification and qualification to install, operate and maintain proposed technology and processes, including any contract with OEMs.	5	5	25	
	Proposed schedule to begin supplying ULSD from reprocessed Used Oil, including projected frequency and volume.	3	5	15	
	Other Documents	20		100	20.0%
8	At least three (3) letters from current or recent clients citing their experience with BIDDER for work performed under a scope similar to this solicitation, and certifications related to Used Oil Handling and Reprocessing.	5	5	25	
	Certificate of Good Standing to conduct business in jurisdiction of residence.	5	5	25	
	Certifications related to Used Oil and/or Petroleum Handling Work.	5	5	25	
	Proof of membership or intent to become a member of a Guam-based oil spill response company, including documentation showing oil spill response company's certification from Coast Guard.	5	5	25	
	Additional Information Provided.				
	PMC Qualifications Score	100		500	100.0%

Minimum Score - Acceptable Proposal	350.00
Maximum Compliance Score	500.00
Minimum Percent Score - Acceptable Proposal	70.0%

RATINGS GUIDE:

- 5 - Excellent and plentiful relevant qualifications and project experience. Very highest client references.
- 3 - Average relevant qualifications and project experience. Average client references.
- 1 - Poor relevant qualifications and few relevant projects. Fair Client references.
- 0 - No substantial relevant experience.

BIDDER:**EVALUATOR #**

Item	BIDDER Checklist Items	Checklist Weight	RAW SCORE (highest = 5, lowest = 0)	RAW SCORE x Checklist Weight
1	Experience and Expertise on Used Oil Reprocessing	20		0
	Supporting information showing a minimum of five (5) years progressive experience in Used Oil Handling, Used Oil Collection, Used Oil Reprocessing;	5		0
	Supporting information showing a minimum of five (5) years progressive experience in Petroleum Handling, Petroleum Storage and Petroleum Delivery;	5		0
	Experience in handling tank and pipeline leaks, and major incidents in fuel bulk storage facilities, and implementation/completion of remedies	3		0
	Mobilization capability for resources required in emergency oil spills or incidents	3		0
	Experience and expertise in complying with local and federal laws regarding environmental compliance, specifically with the handling, storage, and transport of oil products; creation, approval and execution of Spill Prevention, Control and Countermeasure Plan (SPCC Plan) and Best Management Practices (BMP), and any other pertinent local and environmental regulations, requirements and practices, such as but not limited to OPA 90, FRP, etc.	4		0
2	Business Structure and Company Information	5		0
	Company information such as name, local address, corporate headquarters (if any) and affiliate company; business structure and nature of services provided together with company information.	1		0
	Copy of articles of incorporation and by laws or other applicable forms concerning business organization.	4		0
3	Organizational Chart	5		0
	Description of CONTRACTOR's organizational structure, subsidiaries and parent companies, short biographies of company officers.	2		0
	Proposed project and management teams, including team members' qualifications and certification.	3		0
4	Financial Information	15		0
	Guam Tax Clearance from the Guam Department of Revenue & Taxation if a locally registered company	3		0
	Credit Worthiness information, including but not limited to:			
	A notarized statement that there is no outstanding or potential litigations or liens against the CONTRACTOR; and	3		0
	Dunn and Bradstreet Number and most recent reports (preferred); or any other information supporting creditworthiness	3		0
	Audited Financials	6		0
	For Publicly Traded Entities:			
	Audited Financials for the last three consecutive fiscal years; or Audited financials for the last three consecutive fiscal years for which audited financial statements are available, and unaudited financial statements for the most recent fiscal year ended.	6		0
	For Private, Non-publicly Traded Entities:			
	Unaudited Financials for the last five consecutive fiscal years; and	3		
5	Insurance Policy	5		0
	Provide a copy of your Insurance Policy for GPA's review, and proof of compliance with GPA's Insurance Requirements.	5		0
6	Mobilization Capability Checklist	5		0
	Proof Of Capability To Mobilize Full Support Services No Later Than 30 days after contract signing.	5		0

BIDDER:

EVALUATOR #

Item	BIDDER Checklist Items	Checklist Weight	RAW SCORE (highest = 5, lowest = 0)	RAW SCORE x Checklist Weight
7	Used Oil Handling and Reprocessing Technology	25		0
	Detailed description of the technology proposed for the collection of Used Oil and processing of Used Oil into an acceptable ULSD product, including information on the commercial applications of the technologies used for collecting and processing Used Oil into a refined ULSD product (example: location of facility, quantity processed, etc.).	6		0
	Evidence that the technology and process proposed has been in commercial operation for at least five (5) years.	6		0
	Evidence of CONTRACTOR's experience with installation, operation and maintenance of proposed technology and processes.	5		0
	Evidence of CONTRACTOR's certification and qualification to install, operate and maintain proposed technology and processes, including any contract with OEMs.	5		0
	Proposed schedule to begin supplying ULSD from reprocessed Used Oil, including projected frequency and volume.	3		0
8	Other Documents	20		0
	At least three (3) letters from current or recent clients citing their experience with BIDDER for work performed under a scope similar to this solicitation, and certifications related to Used Oil Handling and Reprocessing.	5		0
	Certificate of Good Standing to conduct business in jurisdiction of residence.	5		0
	Certifications related to Used Oil and/or Petroleum Handling Work.	5		0
	Proof of membership or intent to become a member of a Guam-based oil spill response company, including documentation showing oil spill response company's certification from Coast Guard.	5		0
	Additional Information Provided.			
PMC Qualifications Score		100		0

Minimum Score - Acceptable Proposal	350.00
Maximum Compliance Score	500.00
Minimum Percent Score - Acceptable Proposal	70.0%

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BIDDER:**EVALUATOR #**

Item	BIDDER Checklist Items	Checklist Weight	RAW SCORE (highest = 5, lowest = 0)	RAW SCORE x Checklist Weight
1	Experience and Expertise on Used Oil Reprocessing	20		0
	Supporting information showing a minimum of five (5) years progressive experience in Used Oil Handling, Used Oil Collection, Used Oil Reprocessing;	5		0
	Supporting information showing a minimum of five (5) years progressive experience in Petroleum Handling, Petroleum Storage and Petroleum Delivery;	5		0
	Experience in handling tank and pipeline leaks, and major incidents in fuel bulk storage facilities, and implementation/completion of remedies	3		0
	Mobilization capability for resources required in emergency oil spills or incidents	3		0
	Experience and expertise in complying with local and federal laws regarding environmental compliance, specifically with the handling, storage, and transport of oil products; creation, approval and execution of Spill Prevention, Control and Countermeasure Plan (SPCC Plan) and Best Management Practices (BMP), and any other pertinent local and environmental regulations, requirements and practices, such as but not limited to OPA 90, FRP, etc.	4		0
2	Business Structure and Company Information	5		0
	Company information such as name, local address, corporate headquarters (if any) and affiliate company; business structure and nature of services provided together with company information.	1		0
	Copy of articles of incorporation and by laws or other applicable forms concerning business organization.	4		0
3	Organizational Chart	5		0
	Description of CONTRACTOR's organizational structure, subsidiaries and parent companies, short biographies of company officers.	2		0
	Proposed project and management teams, including team members' qualifications and certification.	3		0
4	Financial Information	15		0
	Guam Tax Clearance from the Guam Department of Revenue & Taxation if a locally registered company	3		0
	Credit Worthiness information, including but not limited to:			
	A notarized statement that there is no outstanding or potential litigations or liens against the CONTRACTOR; and	3		0
	Dunn and Bradstreet Number and most recent reports (preferred); or any other information supporting creditworthiness	3		0
	Audited Financials	6		0
	For Publicly Traded Entities:			
	Audited Financials for the last three consecutive fiscal years; or Audited financials for the last three consecutive fiscal years for which audited financial statements are available, and unaudited financial statements for the most recent fiscal year ended.	6		0
	For Private, Non-publicly Traded Entities:			
	Unaudited Financials for the last five consecutive fiscal years; and	3		0
5	Insurance Policy	5		0
	Provide a copy of your Insurance Policy for GPA's review, and proof of compliance with GPA's Insurance Requirements.	5		0
6	Mobilization Capability Checklist	5		0
	Proof Of Capability To Mobilize Full Support Services No Later Than 30 days after contract signing.	5		0

BIDDER:

EVALUATOR #

Item	BIDDER Checklist Items	Checklist Weight	RAW SCORE (highest = 5, lowest = 0)	RAW SCORE x Checklist Weight
7	Used Oil Handling and Reprocessing Technology	25		0
	Detailed description of the technology proposed for the collection of Used Oil and processing of Used Oil into an acceptable ULSD product, including information on the commercial applications of the technologies used for collecting and processing Used Oil into a refined ULSD product (example: location of facility, quantity processed, etc.).	6		0
	Evidence that the technology and process proposed has been in commercial operation for at least five (5) years.	6		0
	Evidence of CONTRACTOR's experience with installation, operation and maintenance of proposed technology and processes.	5		0
	Evidence of CONTRACTOR's certification and qualification to install, operate and maintain proposed technology and processes, including any contract with OEMs.	5		0
	Proposed schedule to begin supplying ULSD from reprocessed Used Oil, including projected frequency and volume.	3		0
8	Other Documents	20		0
	At least three (3) letters from current or recent clients citing their experience with BIDDER for work performed under a scope similar to this solicitation, and certifications related to Used Oil Handling and Reprocessing.	5		0
	Certificate of Good Standing to conduct business in jurisdiction of residence.	5		0
	Certifications related to Used Oil and/or Petroleum Handling Work.	5		0
	Proof of membership or intent to become a member of a Guam-based oil spill response company, including documentation showing oil spill response company's certification from Coast Guard.	5		0
	Additional Information Provided.			
PMC Qualifications Score		100		0

Minimum Score - Acceptable Proposal	350.00
Maximum Compliance Score	500.00
Minimum Percent Score - Acceptable Proposal	70.0%

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GOVERNMENT OF GUAM

GENERAL TERMS AND CONDITIONS

SEALED BID SOLICITATION AND AWARD

Only those Boxes checked below are applicable to this bid.

- ☒ 1. **AUTHORITY:** This solicitation is issued subject to all the provision of the Guam Procurement Act (SGCA, Chapter 5) And the Guam Procurement Regulations (copies of both are available at the Office of the Complier of laws, Department of Law, copies available for inspection at the Guam Power Authority). It requires all parties involved in the Preparation, negotiation, performance, or administration of contracts to act in good faith.
- ☒ 2. **GENERAL INTENTION:** Unless otherwise specified, it is the declared and acknowledged intention and meaning of these General Terms and conditions for the bidder to provide the Government of Guam (Government) with specified services or with materials, supplies or equipment completely assembled and ready for use.
- ☒ 3. **TAXES:** Bidders are cautioned that they are subject to Guam Income Taxes as well as all other taxes on Guam Transactions. Specific information on taxes may be obtained from the Director of Revenue and Taxation.
- ☒ 4. **LICENSING:** Bidders are cautioned that the Government will not consider for award any offer submitted by a bidder who has not complied with the Guam Licensing Law. Specific information on licenses may be obtained from the Director of Revenue and Taxation.
- ☒ 5. **LOCAL PROCUREMENT PREFERENCE:** All procurement of supplies and services where possible, will be made from among businesses licensed to do business on Guam in accordance with section 5008 of the Guam Procurement Act (SGCA, Chapter 5) and Section 1-104 of the Guam Procurement Regulations.
- ☒ 6. **COMPLIANCE WITH SPECIFICATIONS AND OTHER SOLICITATION REQUIREMENTS:** Bidders shall comply with all specifications and other requirements of the Solicitation.
- ☐ 7. **“ALL OR NONE” BIDS:** Unless otherwise allowed under this Solicitation. “all or none” bids may be deemed to be non-responsive. If the bid is so limited, the Government may reject part of such proposal and award on the remainder.

NOTE: By checking this item, the Government is requesting all of the bid items to be bid or none at all. **The Government will not award on an itemized basis.** Reference: Section 3-101.06 of the Guam Procurement Regulations.

- ☒ 8. **INDEPENDENT PRICE DETERMINATION:** The bidder, upon signing the Invitation for Bid, certifies that the prices in his bid were derived at without collusion, and acknowledge that collusion and anti-competitive practices are prohibited by law. Violations will be subject to the provision of Section 5651 of that of the Guam Procurement Act. Other existing civil, criminal or administrative remedies are not impaired and may be in addition to the remedies in Section 5651 of the Government code.
- ☒ 9. **BIDDER'S PRICE:** The Government will consider not more than two (2) (Basic and Alternate) item prices and the bidder shall explain fully each price if supplies, materials, equipment, and/or specified services offered comply with specifications and the products origin. Where basic or alternate bid meets the minimum required specification, cost and other factors will be considered. Failure to explain this requirement will result in rejection of the bid.
- ☒ 10. **BID ENVELOPE:** Envelope shall be sealed and marked with the bidder's name, Bid number, time, date and place of Bid Opening.
- ☒ 11. **BID GUARANTEE REQUIREMENT:** Bidder is required to submit a Bid Guarantee Bond or standby irrevocable Letter of Credit or Certified Check or Cashier's Check in the same bid envelope to be held by the Government pending award. The Letter of Credit, Cash, Certified Check or Cashier's Check, Bid Guarantee Bond must be issued by any local surety or banking institution licensed to do business on Guam and made payable to the Guam Power Authority in the amount of \$150,000.00 USD. The Bid Bond must be submitted on Government Standard Form BB-1 (copy enclosed). Personal Checks will not be accepted as Bid Guarantee. If a successful Bidder (contractor) withdraws from the bid or fails to enter into contract within the prescribed time, such Bid guarantee will be forfeited to the Government of Guam. Bids will be disqualified if not accompanied by Bid Bond, Letter of Credit, Certified Check or Cashier's check. Bidder must include in his/her bid, valid copies of a Power of Attorney from the Surety and a Certificate of Authority from the Government of Guam to show proof that the surety company named on the bond instrument is authorized by the Government of Guam and qualified to do business on Guam. For detailed information on bonding matters, contact the Department of Revenue and Taxation. Failure to submit a valid Power of Attorney and Certificate of Authority on the surety is cause for rejection of bid. (GPR Section 3-202.03.3) **Pursuant to Public Law 27-127, all competitive sealed bidding for the procurement of supplies or services exceeding \$25,000.00 a 15% Bid Security of the total bid price must accompany the bid package.**
- ☒ 12. **PERFORMANCE BOND REQUIREMENT:** The Bidder may be required to furnish a Performance Bond on Government Standard Form BB-1 or standby irrevocable Letter of Credit or Certified Check or Cashier's Check payable to the Guam Power Authority issued by any of the local Banks or Bonding Institution in the amount equal to the Annual Contract Fee for that full or partial fiscal year within the term of the contract. In the event that any of the provisions of this contract are violated by the contractor, the Chief Procurement Officer shall serve written notice upon both the contractor and the Surety of its intention to terminate the contract. Unless satisfactory arrangement or correction is made with ten (10) days of such notice the contract shall cease and terminate upon the expiration of the ten (10) days. In the event of any such termination, the Chief Procurement Officer shall immediately serve notice thereof upon the Surety. The Surety shall have the right to take over and perform the contract, provided, however, that if the Surety does not commence performance thereof within 10 days from the date of the mailing of notice of termination, the Government may take over and prosecute the same to complete the contract or force account for the account and at the expense of the contractor, and the contractor and his Surety shall be liable to the Government for any excess cost occasioned the Government thereby (GPR Section 3-202.03.4).

- [X] 13. **PERFORMANCE GUARANTEE:** Bidders who are awarded a contract under this solicitation, guarantee that goods will be delivered or required services performed within the time specified. Failure to perform the contract in a satisfactory manner may be cause for suspension or debarment from doing business with the Government and to enforce Section 23 of these General Terms and Conditions. In addition, the Government will hold the Vendor liable and will enforce the requirements as set forth in Section 41 of these General Terms and Conditions.
- [X] 14. **SURETY BONDS:** Bid and Performance Bonds coverage must be signed or countersigned in Guam by a foreign or alien surety's resident general agent. The surety must be an Insurance Company, authorized by the government of Guam and qualified to do business in Guam. Bids will be disqualified if the Surety Company does not have a valid Certificate of Authority from the Government of Guam to conduct business in Guam.
- [X] 15. **COMPETENCY OF BIDDERS:** Bids will be considered only from such bidders who, in the opinion of the Government, can show evidence of their ability, experience, equipment, and facilities to render satisfactory service.
- [X] 16. **DETERMINATION OF RESPONSIBILITY OF BIDDERS:** The Chief Procurement Officer reserves the right for securing from bidders information to determine whether or not they are responsible and to inspect plant site, place of business; and supplies and services as necessary to determine their responsibility in accordance with Section 15 of these General Terms and Conditions (GPR Section 3-401).
- [X] 17. **STANDARD FOR DETERMINATION OF LOWEST RESPONSIBLE BIDDER:** In determining the lowest responsible offer, the Chief Procurement Officer shall be guided by the following:
- a) Price of items offered.
 - b) The ability, capacity, and skill of the Bidder to perform.
 - c) Whether the Bidder can perform promptly or within the specified time.
 - d) The quality of performance of the Bidder with regards to awards previously made to him.
 - e) The previous and existing compliance by the Bidder with laws and regulations relative to procurement.
 - f) The sufficiency of the financial resources and ability of the Bidder to perform.
 - g) The ability of the bidder to provide future maintenance and services for the subject of the award.
 - h) The compliance with all of the conditions to the Solicitation.
- [X] 18. **TIE BIDS:** If the bids are for the same unit price or total amount in the whole or in part, the Chief Procurement Officer will determine award based on Section 3.202.15.2, or to reject all such bids (GPR Section 3-202.15.2).
- [] 19. **BRAND NAMES:** Any reference in the Solicitation to manufacturer's Brand Names and number is due to lack of a satisfactory specification of commodity description. Such preference is intended to be descriptive, but not restrictive and for the sole purpose of indicating prospective bidders a description of the article or services that will be satisfactory. Bids on comparable items will be considered provided the bidder clearly states in his bid the exact articles he is offering and how it differs from the original specification.
- [] 20. **DESCRIPTIVE LITERATURE:** Descriptive literature(s) as specified in this solicitation must be furnished as a part of the bid and must be received at the date and time set for opening Bids. The literature furnished must clearly identify the item(s) in the Bid. The descriptive literature is required to establish, for the purpose of evaluation and award, details of the product(s) the bidder proposes to furnish including design, materials, components, performance characteristics, methods of manufacture, construction, assembly or other characteristics which are considered appropriate. Rejection of the Bid will be required if the descriptive literature(s) do not show that the product(s) offered conform(s) to the specifications and other requirements of this solicitation. Failure to furnish the descriptive literature(s) by the time specified in the Solicitation will require rejection of the bid.
- [] 21. **SAMPLES:** Sample(s) of item(s) as specified in this solicitation must be furnished as a part of the bid and must be received at the date and time set for opening Bids. The sample(s) should represent exactly what the bidder proposes to furnish and will be used to determine if the item(s) offered complies with the specifications. Rejection of the Bid will be required if the sample(s) do not show that the product(s) offered conform(s) to the specifications and other requirements of this solicitation. Failure to furnish the sample(s) by the time specified in the Solicitation will require rejection of the Bid.
- [] 22. **LABORATORY TEST:** Successful bidder is required to accompany delivery of his goods with a Laboratory Test Report indicating that the product he is furnishing the Government meets with the specifications. This report is on the bidder's account and must be from a certified Testing Association.
- [X] 23. **AWARD, CANCELLATION, & REJECTION:** Award shall be made to the lowest responsible and responsive bidder, whose bid is determined to be the most advantageous to the Government, taking into consideration the evaluation factors set forth in this solicitation. No other factors or criteria shall be used in the evaluation. The right is reserved as the interest of the Government may require to waive any minor irregularity in bid received. The Chief Procurement Officer shall have the authority to award, cancel, or reject bids, in whole or in part for any one or more items if he determines it is in the public interest. Award issued to the lowest responsible bidder within the specified time for acceptance as indicated in the solicitation, results in a bidding contract without further action by either party. In case of an error in the extension of prices, unit price will govern. It is the policy of the Government to award contracts to qualified local bidders. The government reserves the right to increase or decrease the quantity of the items for award and make additional awards for the same type items and the vendor agrees to such modifications and additional awards based on the bid prices for a period of thirty (30) days after original award. No award shall be made under this solicitation which shall require advance payment or irrevocable letter of credit from the government (GPR Section 3-202.14.1).
- [] 24. **MARKING:** Each outside container shall be marked with the Purchase Order number, item number, brief item description and quantity. Letter marking shall not be less than 3/4" in height.
- [] 25. **SCHEDULE FOR DELIVERY:** Successful bidder shall notify the Guam Power Authority Dededo Warehouse at (671) 653-2073, Information Technology Division at (671) 648-3060, and/or Guam Power Authority Cabras Warehouse at (671) 475-3319, at least twenty-four (24) hours before delivery of any item under this solicitation.
- [] 26. **BILL OF SALE:** Successful supplier shall render Bills of Sale for each item delivered under this contract. Failure to comply with this requirement will result in rejection of delivery. The Bill of Sale must accompany the items delivered but will not be considered as an invoice for payment. Supplier shall bill the Government in accordance with billing instructions as indicated on the Purchase Order.

- [] 27. **MANUFACTURER'S CERTIFICATE:** Successful bidder is required, upon delivery of any item under this contract, to furnish a certificate from the manufacturer indicating that the goods meet the specifications. Failure to comply with this request will result in rejection of delivery payment. Supplier shall bill the Government in accordance with billing instructions as indicated on the Purchase Order.
- [X] 28. **INSPECTION:** All supplies, materials, equipment, or services delivered under this contract shall be subject to the inspection and/or test conducted by the Government at destination. If in any case the supplies, materials, equipment, or services are found to be defective in material, workmanship, performance, or otherwise do not conform with the specifications, the Government shall have the right to reject the items or require that they be corrected. The number of days required for correction will be determined by the Government.
- [] 29. **MOTOR VEHICLE SAFETY REQUIREMENTS:** The Government will only consider Bids on motor vehicles which comply with the requirements of the National Traffic and Motor Vehicle safety Act of 1966 (Public Law 89-563) and Clean Air Act as amended (Public Law 88-206), that are applicable to Guam. Bidders shall state if the equipment offered comply with these aforementioned Federal Laws.
- [] 30. **SAFETY INSPECTION:** All motor vehicles delivered under this contract must pass the Government of Guam Vehicle Inspection before delivery at destination.
- [X] 31. **GUARANTEE:**
 a) **Guarantee of Vehicle Type of Equipment:**
 The successful bidder shall guarantee vehicular type of equipment offered against defective parts, workmanship, and performance, for a period of not less than one (1) year after date of receipt of equipment. Bidder shall also provide service to the equipment for at least one (1) year. Service to be provided shall include, but will not be limited to tune ups (change of spark plugs, contact points and condensers) and lubrication (change of engine and transmission oil). All parts and labor shall be at the expense of the bidder. All parts found defective and not caused by misuse, negligence or accident within the guarantee period shall be repaired, replaced, or adjusted within six (6) working days after notice from the Government and without cost to the Government. Vehicular type of equipment as used in this context shall include equipment used for transportation as differentiated from tractors, backhoes, etc.
 b) **Guarantee of Other Type of Equipment:**
 The successful bidder shall guarantee all other types of equipment offered, except those mentioned in 31a, above, against defective parts, workmanship, and performance for a period of not less than three (3) months after date of receipt of equipment. Bidder shall also provide service to the equipment for at least three (3) months. All parts found defective within that period shall be repaired or replaced by the Contractor without cost to the Government. Repairs, adjustments or replacements of defective parts shall be completed by the contractor within six (6) working days after notice from the Government.
 c) **Compliance with this Section is a condition of this Bid.**
- [X] 32. **REPRESENTATION REGARDING ETHICS IN PUBLIC PROCUREMENT:** The bidder or contractor represents that it has not knowingly influenced and promises that it will not knowingly influence a Government employee to breach any of the ethical standards and represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth on Chapter 11 (Ethics in Public Contracting) of the Guam Procurement Act and in Chapter 11 of the Guam Procurement Regulations.
- [X] 33. **REPRESENTATION REGARDING CONTINGENT FEES:** The contractor represents that it has not retained a person to solicit or secure a Government contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business (GPR Section 11-207).
- [X] 34. **EQUAL EMPLOYMENT OPPORTUNITY:** Contractors shall not discriminate against any employee or applicant of employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that employees are treated equally during employment without regards to their race, color, religion, sex, or national origin.
- [X] 35. **COMPLIANCE WITH LAWS:** Bidders awarded a contract under this Solicitation shall comply with the applicable standard, provisions, and stipulations of all pertinent Federal and/or local laws, rules, and regulations relative to the performance of this contract and the furnishing of goods.
- [] 36. **CHANGE ORDER:** Any order issued relative to awards made under this solicitation will be subject to and in accordance with the provisions of Section 6-101-03.1 of the Guam Procurement Regulations.
- [] 37. **STOP WORK ORDER:** Any stop work order issued relative to awards made under this solicitation will be subject to and in accordance with the provisions of Section 6-101-04.1 of the Guam Procurement Regulations.
- [X] 38. **TERMINATION FOR CONVENIENCE:** Any termination order for the convenience of the Government issued relative towards made under this solicitation will be subject to and in accordance with the provisions of Section 6-101.10 of the Government Procurement Regulations.
- [X] 39. **TIME FOR COMPLETION:** It is hereby understood and mutually agreed by and between the contractor and the Government that the time for delivery to final destination or the timely performance of certain services is an essential condition of this contract. If the contractor refuses or fails to perform any of the provisions of this contract within the time specified in the Purchase Order (from the date Purchase Order is acknowledged by vendor), then the contractor is in default. Defaults will be treated subject to and in accordance with the provisions of Section 6-101-08 of the Guam Procurement Regulations.
- [X] 40. **JUSTIFICATION OF DELAY:** Bidders who are awarded contracts under this Solicitation, guarantee that the goods will be delivered to their destination or required services rendered within the time specified. If the bidder is not able to meet the specified delivery date, he is required to notify the Chief Procurement Officer of such delay. Notification shall be in writing and shall be received by the Chief Procurement Officer at least twenty-four (24) hours before the specified delivery date. Notification of

delay shall include an explanation of the causes and reasons for the delay including statement(s) from supplier or shipping company causing the delay. The Government reserves the right to reject delay justification if, in the opinion of the Chief Procurement Officer, such justification is not adequate.

- [X] 41. **LIQUIDATED DAMAGES:** When the contractor is given notice of delay or nonperformance as specified in Paragraph 1 (Default) of the Termination for Default Clause of this contract and fails to cure in the time specified, the contractor shall be liable for damages for delay in the amount of one-fourth of one percent (1%) of outstanding order per calendar day from date set for cure until either the territory reasonable obtains similar supplies or services if the contractor is terminated for default, or until the contractor provides the supplies or services if the contractor is not terminated for default. To the extent that the contractor's delay or nonperformance is excused under Paragraph 40 (Excuse for Nonperformance or Delayed Performance) of the Termination for Default Clause of this contract, liquidated damages shall not be due the territory. The contractor remains liable for damages caused other than by delay (GPR Section 6-101-09.1).
- [X] 42. **PHYSICAL LIABILITY:** If it becomes necessary for the Vendor, either as principal, agent or employee, to enter upon the premises or property of the Government of Guam in order to construct, erect, inspect, make delivery or remove property hereunder, the Vendor hereby covenants and agrees to take, use, provide and make all proper, necessary and sufficient precautions, safeguards and protections against the occurrence of any accidents, injuries or damages to any person or property during the progress of the work herein covered, and to be responsible for, and to indemnify and save harmless the Government of Guam from the payment of all sums of money by reason of all or any such accidents, injuries or damages that may occur upon or about such work, and fines, penalties and loss incurred for or by reasons of the violations of any territorial ordinance, regulations, or the laws of Guam or the United States, while the work is in progress. Contractor will carry insurance to indemnify the Government of Guam against any claim for loss, damage or injury to property or persons arising out of the performance of the Contractor or his employees and agents of the services covered by the contract and the use, misuse or failure of any equipment used by the contractor or his employees or agents, and shall provide certificates of such insurance to the Government of Guam when required.
- [X] 43. **CONTACT FOR CONTRACT ADMINISTRATION:** If your firm receives a contract as a result of this Solicitation, please designate a person whom we may contact for prompt administration.

Name: _____ Title: _____

Address: _____ Telephone: _____

GOVERNMENT OF GUAM

SEALED BID SOLICITATION INSTRUCTIONS

1. **BID FORMS:** Each bidder shall be provided with two (2) sets of Solicitation forms. Additional copies may be provided upon request. Bidders requesting additional copies of said forms will be charged per page in accordance with Section 6114 of the Government Code of Guam. All payments for this purpose shall be by cash, certified check or money order and shall be made payable to the Guam Power Authority.
2. **PREPARATIONS OF BIDS:**
 - a) Bidders are required to examine the drawings, specifications, schedule, and all instructions. Failure to do so will be at bidder's risk.
 - b) Each bidder shall furnish the information required by the Solicitation. The bidder shall sign the solicitation and print or type his name on the Schedule. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent are to be accompanied by evidence of this authority unless such evidence has been previously furnished to the issuing office.
 - c) Unit price for each unit offered shall be shown and such price shall include packing unless otherwise specified. A total shall be entered in the amount column of the Schedule for each item offered. In case of discrepancies between a unit price and extended price, the unit price will be presumed to be correct.
 - d) Bids for supplies or services other than those specified will not be considered.
Time, if stated as a number of days, means calendar days and will include Saturdays, Sundays, and holidays beginning the day after the issuance of a Notice to Proceed. Time stated ending on a Saturday, Sunday or Government of Guam legal holiday will end at the close of the next business day.
3. **EXPLANATION TO BIDDERS:** Any explanation desired by a bidder regarding the meaning or interpretation of the Solicitation, drawings, specifications, etc., must be submitted in writing and with sufficient time allowed for a written reply to reach all bidders before the submission of their bids. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective bidder concerning a Solicitation will be furnished to all prospective bidders in writing as an amendment to the Solicitation if such information would be prejudicial to uninformed bidders.
4. **ACKNOWLEDGEMENT OF AMENDMENTS TO SOLICITATIONS:** Receipt of an amendment to a Solicitation by a bidder must be acknowledged by signing an acknowledgement of receipt of the amendment.
Such acknowledgement must be received prior to the hour and date specified for receipt of bids.
5. **SUBMISSION OF BIDS:**
 - a) Bids and modifications thereof shall be enclosed in sealed envelopes and addressed to the office specified in the Solicitation. The bidder shall show the hour and date specified in the Solicitation for receipt, the Solicitation number, and the name and address of the bidder on the face of the envelope.
 - b) Telegraphic bids will not be considered unless authorized by the Solicitation. However, bids may be modified or withdrawn by written or telegraphic notice, provided such notice is received prior to the hour and date specified for receipt (see paragraph 6 of these instructions).
 - c) Samples of items, when required, must be submitted within the time specified, unless otherwise specified by the Government, at no expense to the Government. If not destroyed by testing, samples will be returned at bidder's request and expense, unless otherwise specified by the Solicitation.
 - d) Samples or descriptive literature should not be submitted unless it is required on this solicitation. Regardless of any attempt by a bidder to condition the bid, unsolicited samples or descriptive literature will not be examined or tested at the bidder's risk, and will not be deemed to vary any of the provisions of this Solicitation.
6. **FAILURE TO SUBMIT BID:** If no bid is to be submitted, do not return the solicitation unless otherwise specified. A letter or postcard shall be sent to the issuing office advising whether future Solicitations for the type of supplies or services covered by this Solicitation are desired.
7. **LATE BID, LATE WITHDRAWALS, AND LATE MODIFICATIONS:**
 - a) Definition: Any bid received after the time and date set for receipt of bids is late. Any withdrawal or modification of a bid received after the time and date set for opening of bids at the place designated for opening is late (Guam Procurement Regulations Section 3-202)
 - b) Treatment: No late bid, late modification, or late withdrawal will be considered unless received before contract award, and the bid, modification, or withdrawal would have been timely but for the action or inaction of territorial personnel directly serving the procurement activity.
8. **DISCOUNTS:**
 - a) Notwithstanding the fact that prompt payment discounts may be offered, such offer will not be considered in evaluating bids for award unless otherwise specified in the Solicitation. However, offered discounts will be taken if payment is made within the discount period, even though not considered in the evaluation of bids.

b) In connection with any discount offered, time will be computed from date of delivery and acceptance of the supplies to the destination as indicated in the purchase order or contract. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the Government check.

9. **GOVERNMENT FURNISHED PROPERTY:** No material, labor or facilities will be furnished by the Government unless otherwise provided for in the Solicitation.
10. **SELLERS' INVOICES:** Invoices shall be prepared and submitted in quadruplicate (one copy shall be marked "original") unless otherwise specified. Invoices shall be "certified true and correct" and shall contain the following information: Contract and order number (if any), item numbers, description of supplies or services, sizes, quantities, unit prices, and extended total. Bill of lading number and weight of shipment will be shown for shipments made on Government bills of lading.
11. **RECEIPT, OPENING AND RECORDING OF BIDS:** Bids and modifications shall be publicly opened in the presence of one or more witnesses, at the time, date, and place designated in the Invitation for Bids. The name of each bidder, the bid price, and such other information as is deemed appropriate by the Procurement Officer, shall be read aloud and recorded, or otherwise made available. The names and addresses of required witnesses shall be recorded at the opening. The opened bids shall be available for public inspection except to the extent the bidder designates trade secrets or other proprietary data to be confidential as set forth in accordance with Section 12 below. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. Prices, makes and models or catalogue numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary (Guam Procurement Regulations Section 3-202.12.2).
12. **CONFIDENTIAL DATA:** The Procurement Officer shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. If the parties do not agree as to the disclosure of data, the Procurement Officer shall inform the bidders in writing what portions of the bid will be disclosed and that, unless the bidders protest under Chapter 9 of the Guam Procurement Act (P.L. 16-124), the bids will be so disclosed. The bids shall be opened to public inspection subject to any continuing prohibition on the disclosure of confidential data (Guam Procurement Regulations Section 3-202.12.3).
13. **MULTI-STEP SEALED BIDDING:**
 - a. It is defined as two-phase process consisting of a technical first-phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the territory, and a second-phase in which those bidders whose technical offers are determined to be acceptable during the first-step have their priced bids considered. It is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtained the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to evaluate and determine the acceptability of technical offers.
 - b. In addition to the requirements set forth in the General Terms and Conditions and the Special provisions, the following applies:
 - 1). only unpriced technical offers are requested in the first phase;
 - 2). priced bids will be considered only in the second phase and only from bidders whose unpriced technical offers are found acceptable in the first phase;
 - 3). the criteria to be used in the evaluation at those specified in the Special Provisions and the General Terms and Conditions;
 - 4). the territory, to the extent the Procurement Officer finds necessary, may conduct oral or written discussion of the unpriced technical offers;
 - 5). the bidders, may designate those portions of the unpriced technical offers which contain trade secrets or other proprietary data which are to remain confidential; and,
 - 6). the service being procured shall be furnished generally in accordance with bidder's technical offer as found to be finally acceptable and shall meet the requirements of the Invitation for Bids.
 - c. **RECEIPT AND HANDLING OF UNPRICED TECHNICAL OFFERS.**
Unpriced technical offers shall not be opened publicly, but shall be opened in front of two or more procurement officials. Such offers shall not be disclosed to unauthorized persons. Bidders may request nondisclosure of trade secrets and other proprietary data identified in writing.
 - d. **EVALUATION OF UNPRICED TECHNICAL OFFERS.**
The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bids. The unpriced technical offers shall be categorized as:
 - 1). acceptable;
 - 2). potentially acceptable, that is, reasonably susceptible of being made acceptable; or
 - 3). unacceptable. The Procurement Officer shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

The Procurement Officer may initiate Phase Two of the procedure if, in the Procurement Officer's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without technical discussions. If the Procurement Officer finds such is not the case, the Procurement Officer shall issue an amendment to the Invitation for Bids or engage in technical discussions as set forth in Subsection 3-202.20.5 of this Section.
 - e. Upon the completion of Phase One, the Procurement Officer shall invite each acceptable bidder to submit a price bid. Upon submission of prices, the Procurement Officer shall prepare the final evaluation and reconsideration for the Chief Procurement Officer's approval.