

1 **WHEREAS**, GWA accepted Mobil Oil Guam’s bid proposal [Exhibit C “Copy of
2 Bidder’s Proposal] of \$1.523 per gallon for Automotive Gasoline, Regular Unleaded and \$1.335
3 per gallon for Diesel Fuel Oil No. 2 to be used for GWA’s Transportation Fleet; and

4
5 **WHEREAS**, GWA issued the Notice of Award [Exhibit D] to Mobil Oil Guam; and

6
7 **WHEREAS**, on September 16, 2016, IP&E submitted in writing a formal Protest
8 [Exhibit E] on the award to Mobil Oil Guam; and

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10 **WHEREAS**, on September 16, 2016, GWA issued in writing its decision of denial to
11 IP&E protest [Exhibit F] relative to the award to Mobil Oil Guam; and

12
13 **WHEREAS**, on September 27, 2016, IP&E Holding LLC appealed the award to Mobil
14 Oil Guam to the Office of Public Accountability [Exhibit G “OPA PA-13”] relative to the award
15 to Mobil Oil Guam; and

16
17 **WHEREAS**, on November 23, 2016, the Office of Public Accountability [Exhibit H]
18 issued its decision relative to the appeal filed by IP&E on the award to Mobil Oil Guam; and

19
20 **WHEREAS**, the Office of Public Accountability in its decision on November 23, 2016,
21 determined that:

- 22 1. GWA was required to use only the estimated quantities of gallon of diesel and unleaded
23 gasoline provided in the IFB for evaluation and award rather than other factors such as
24 actual usage of gasoline and the cost of having more than one vendor for fuel.
25 2. IP&E was the lowest responsive bidder as to diesel [Exhibit H] and Mobil Oil Guam was
26 the lowest responsive bidder as to unleaded gasoline.
27 3. GWA shall award IP&E the contract for diesel and shall award Mobil the contract for
28 unleaded gasoline.

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1 **NOW BE IT THEREFORE RESOLVED**, the Consolidated Commission on Utilities
2 does hereby approve and authorize the following:

- 3 1. The recitals set forth above hereby constitute the findings of the CCU.
- 4 2. The CCU hereby authorizes GWA management to proceed based on the findings
5 and decision made by the Office of Public Accountability attached hereto as
6 Exhibit I, and which is incorporated into this Resolution in its entirety.
- 7 3. The CCU hereby further authorizes management to enter into a contract with
8 “Mobil Oil Guam”, to purchase Automotive Gasoline, Regular Unleaded at a
9 cost to be the sum of the previous month’s average daily prices as posted in
10 Platt’s Asia-Pacific Market Scan and a Premium Fee of \$.45 and IP&E for Diesel
11 Fuel Oil No. 2 at a cost to be the sum of the previous month’s average daily
12 prices as posted in Platt’s Asia-Pacific Market Scan and a Premium Fee of \$.50
13 per gallon for the duration of the contract term as specified in the IFB 2016-09
14 under the initial term of three (3) years, with an option to extend for two (2)
15 additional one (1) year renewal terms of twelve (12) months per renewal term
16 upon mutual agreement of both parties.
- 17 4. The CCU hereby further approves the funding (revenue funds) for purchases of
18 Automotive Gasoline, Regular Unleaded and Diesel Fuel Oil No. 2. at per the
19 cost formulas set forth in paragraph 3 above, in accordance with the terms of the
20 respective contracts.

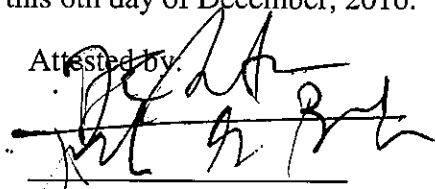
21
22 **RESOLVED**, that the Chairman certified and the Board Secretary attests to the adoption
23 of this Resolution.
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1 **DULY AND REGULARLY ADOPTED** this 6th day of December, 2016.

2 Certified by:

Attested by:

3
4 



5 **JOSEPH T. DUENAS**
6 Chairperson

J. GEORGE BAMBA
Secretary

7
8 I, J. George Bamba, Board Secretary of the Consolidated Commission on Utilities as
9 evidenced by my signature above do hereby certify as follows:

10 The foregoing is a full, true and accurate copy of the resolution duly adopted at a regular
11 meeting by the members of the Guam Consolidated Commission on Utilities, duly and
12 legally held at a place properly noticed and advertised at which meeting a quorum was
13 present and the members who were present voted as follows:

14	AYES:	<u>3</u>
15	NAYS:	<u>0</u>
16	ABSTENTIONS:	<u>1</u>
17	ABSENT:	<u>0</u>

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CONSOLIDATED COMMISSION ON UTILITIES




Guam Power Authority • Guam Waterworks Authority
P.O. BOX 2977 • Agana, Guam 96932

January 17, 2017

MEMORANDUM

TO: Members, Consolidated Commission on Utilities

SUBJECT: CCU POLL VOTE MATTER: RESOLUTION 12-FY2017
RELATIVE TO APPROVING THE RATIFICATION OF AWARD FOR THE
MULTI-YEAR PROCUREMENT OF AUTOMOTIVE GASOLINE,
REGULAR UNLEADED AND DIESAL FUEL OIL NO. 2 FOR GWA
TRANSPORTATION FLEET, GWA IFB. NO 2016-09 (see attached email dated
12/22/16)

Commissioner	Y/N	Initials	Time/Date	Comments
Joseph Duenas	Y		12/17/16 5:10:49 a.m.	Via email
Francis Santos	Y		12/11/16 11:57 a.m.	Via email
George Bamba	Abstained			Via email
Pedro Guerrero Judi Guthertz				Oath taken 1/12/17
Simon Sanchez	Y		12/18/16 4:47 p.m.	Via Email

Concurred by:


Miguel Bordallo, GWA GM

1.18.17
Date

EXHIBIT A

IFB

INVITATION TO BID

The GUAM WATERWORKS AUTHORITY will receive sealed bids for supply of **Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded, for the GWA Transportation Fleet.** in **GWA IFB. NO. 2016-09.** Bids in duplicate copy will be accepted until 10:00 a.m. Chamorro Standard Time, _____, 2016 at the GWA Procurement Office, first floor located at the Gloria B. Nelson Public Services Building in Mangilao at which time and place all bids will be publicly opened and read aloud. All bids must be accompanied by a Bid / Performance Bond in the amount of 15 percent (15%) of the total bid price. Bid Bond security may be in a form of a certified check or cashier's check made payable to Guam Waterworks Authority. A non-refundable amount of \$15.00 is required for the purchase price of every set of bidding documents which are available at the GWA Procurement Office. Bidders can download a bid package at www.guamwaterworks.org without charge, although vendors must register with GWA Procurement Office to ensure that updated information, notices or bid amendments are distributed to you.

GWA reserves the right to revise or reject any or all proposals and to waive any minor imperfection in the bid proposal in the interest of the Guam Waterworks Authority.

Miguel C. Bordallo, P.E.
General Manager

GWA STAMP ISSUE DATE:



GUAM WATERWORKS AUTHORITY
Gloria B. Nelson Public Service Building
688 Route 15, Mangilao GU 96913

Dear Interested Bidder:

Attached herewith please find the Invitation for Bid by the **Guam Waterworks Authority (GWA), IFB-GWA-2016-09** relative to the supply of **Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded, for the GWA Transportation Fleet**. The Fuel supply contract shall be for a three (3) year term to commence on or about _____ 2016, and shall continue until midnight of _____, 2019.

The IFB is divided into two (2) parts:

- Part A: The solicitation
- Part B: Bid submittal documents
(Contract and Offer)

Part A consists of three (3) sections: Section I, gives the general background and summary of the solicitation. Section II, provides the instruction procedures and requirements for bidders. Section III, Bid Bond requirements.

Part B contains the Bid Submittal Documents consisting of the Proposed Contract and Bid Offer. The Bid Offer must be completed by the bidder and submitted in response to this IFB. In addition to these documents, the bidder is required to submit as part of their bid information pertaining to responsibility and other requirements specified in the solicitation. Failure to do so shall be grounds to declare a bid non-responsive.

All interested bidders are advised to read the instructions carefully and tender their offers in conformance to the material aspects and requirements of the IFB.

Si Yu'os Ma'ase,

Miguel C. Bordallo, P.E.
General Manager

INVITATION FOR BID NO. GWA-2016-09

**FOR SUPPLY OF
DIESEL FUEL OIL NO. 2
and
REGULAR UNLEADED AUTOMOTIVE GASOLINE**

**FOR GWA'S
TRANSPORTATION FLEET
AND
HEAVY EQUIPMENT**

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PART A

GUAM WATERWORKS AUTHORITY'S INVITATION FOR BIDS TO SUPPLY FUEL TO GWA'S VEHICLE FLEET (DIESEL FUEL OIL NO. 2 AND AUTOMOTIVE GASOLINE, REGULAR UNLEADED)

Section I: BACKGROUND AND SUMMARY OF SOLICITATION

The Guam Waterworks Authority ["GWA" or "Authority"] is a Guam public corporation. GWA is the sole non-military supplier of water service on the Island of Guam. The Authority desires to solicit and secure a Fleet Fuels (Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded) supply contract.

GWA is hereby soliciting bids for the supply of Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded, for an initial three (3) year term, with options to extend for two (2) additional one (1) year renewal terms of twelve (12) months per renewal term upon mutual agreement of both parties.

GWA vehicle and equipment fleet consists of approximately 152 light and medium duty vehicles and 35 pieces of heavy equipment.

Section II: INSTRUCTIONS, PROCEDURES AND REQUIREMENTS FOR BIDDERS.

1. Time, Schedule and location of bid submittal and opening.

The deadline for the submission of sealed bids is on _____, 2016, not later than 10:00 a.m., Chamorro Standard Time. **One (1) original, five (5) complete hard copies and one (1) electronic copy of the bid must be submitted, as part of the bid submittal.** Information pertaining to bidder financial responsibility, company profile, history of past Gov. Guam supply contracts, and other information relevant to this bid shall be submitted with the bid. It is advisable to use courier services to expedite delivery of your offer. The original bid must be signed in ink by a person authorized to submit bids on behalf of the bidder. Bid must be delivered to GWA Procurement Office, first floor located at Guam Waterworks Authority, Gloria B. Nelson Public Service Building, 688 Route 15, Mangilao, GU 96913.

The sealed submittal envelope shall-be marked on the lower left corner "**SEALED BID, DIESEL FUEL OIL NO. 2 AND AUTOMOTIVE GASOLINE, REGULAR UNLEADED SUPPLY, IFB NO. GWA-2016-_____, BID OPENING, _____, 2016 at 10:00 a.m. Chamorro Standard Time.**"

All questions regarding the bid must be submitted in writing and be delivered personally, via US mail, via express delivery or via fax and directed to the following parties:

Miguel C. Bordallo, P.E.
General Manager
Guam Waterworks Authority
Gloria B. Nelson Public Service Building
688 Route 15
Mangilao, GU 96913
E-mail: mcbordallo@guamwaterworks.org

Vince Guerrero
Supply Management Administrator
Guam Waterworks Authority
Gloria B. Nelson Public Service Building
688 Route 15
Mangilao, GU 96913
E-mail: vincentg@guamwaterworks.org
Fax. No.: (671) 649-3750

2. Form.

All bids must be in writing and must be signed by a representative of the bidder having authority to submit such bids. Offers submitted in response to this solicitation shall be in terms of United States currency and in the English language. The bids should respond in an organized fashion to all the requirements of this Invitation for Bids. Bidders must submit along with their bid package, a fully completed Offer, Bid Bond, and other information pertaining to the responsibility of Bidder. Failure to submit any of these bid documents shall be grounds to declare a bid non-responsive.

3. Receipts, Registration of Bids and Confidentiality.

The sealed bids shall be opened publicly on _____, 2016, at 10:00 a.m. Chamorro Standard Time.

For the purposes of this solicitation and bid submission, the laws of Guam governing confidentiality shall govern. If the Bidder submits confidential data with their bid, the bidder must clearly label the information to be protected as "confidential" in each and every place the information is located. GWA reserves the right to determine whether such information is in fact able to be protected from public review under the laws of Guam. Information deemed confidential and approved by GWA for such protection, shall be used only by GWA for bid evaluation purposes; provided however, that if a Contract is awarded to this bidder as a result of, or in connection with the submission of

this data, the GWA shall have the right to duplicate, use, or disclose the data to the extent provided in the Contract. Moreover, this restriction does not limit the GWA's right to use information contained in the data if it is obtained from another source without restriction. The General Manager of GWA or his designee shall examine the bids and determine the validity of any requests for non-disclosure of data as requested. Bids and modifications shall be time-stamped upon receipt and held in a secure place by GWA Procurement Office until the established opening date.

4. Modification or Withdrawals of Bids.

Bids may be modified or withdrawn by written notice from a person authorized to sign the bid, received in the office of GWA Procurement at any time prior to the time and date set for the opening scheduled for _____, 2016 at 10:00 a.m. Chamorro Standard Time.

Facsimile or email written withdrawals shall also be accepted provided they are in fact received by GWA procurement division personnel and confirmed by such personnel. There shall be no modifications or withdrawals after the bid opening date.

5. Late Bids, Late Withdrawals and Late Modifications.

Any bid received after the time and date set for receipt of bids is late and shall not be considered. Any withdrawal or modification of a bid received after the time set for the opening of bids as specified herein is also late and shall not be considered.

6. Award.

The award of the Contract will be made by GWA to the lowest responsive and responsible bidder whose bid conforms to the Invitation for Bids and would be most advantageous to GWA, in terms of price and all other factors considered as determined by GWA as provided in the bid. GWA reserves the right to award the Contract to a vendor other than the lowest price offeror and to reject any or all offers if it is determined to be in the best interest of the Territory of Guam. A written Notice of Award (or acceptance of offer) will be mailed or otherwise furnished via facsimile transmittal to the successful bidder within the time for acceptance specified in the offer. GWA reserves the right to waive informalities and minor irregularities in bids received. In the evaluation process, the following factors will be considered:

- (a) Price;
- (b) Whether the bidder's ultimate offer meets and conforms to the announced requirements of GWA in all material respects (specifications);
- (c) Service rendering capability, status as producer, refiner, broker, or agent and his direct financial responsibility;
- (d) Overall clarity and presentation of bid;
- (e) Whether the bidder has:

- (1) the available appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all Contractual requirements;
- (2) a satisfactory record of performance;
- (3) a satisfactory record of integrity;
- (4) qualified legally to Contract with the territory and properly licensed to conduct such business on Guam; and
- (5) supplied all necessary information in connection with the inquiry concerning responsibility.

Bidder is responsible for providing adequate information on operating and petroleum supply experience and on financial status (i.e. annual report with audited financial statements) and references for use in evaluating its capabilities.

In addition to the evaluation criteria, GWA may require submission of descriptive literature, technical data, or other material. It may also require accomplishing any of the following prior to award:

- (a) Inspection or testing of a product sample prior to award for such characteristics, as quality, or workmanship;
- (b) Examination of such elements as appearance, grade, texture, or
- (c) Other examinations to determine whether it conforms to any other purchase description requirements.

7. Cancellation of Solicitation; Delays.

GWA reserves the right to cancel or to withdraw this Invitation for Bids, to delay determination on this Invitation, to reject all bids or any individual bid in whole or in part, at any time prior to the final award or to waive any minor informalities or irregularities of any bid. In case of cancellation or rejection, bid bonds will be concurrently returned. The reasons for the cancellation, delay or rejection shall be made a part of the procurement file and shall be available for public inspection.

- (a) **Rejection of all Bids.** Prior to the final award, all bids may be rejected in whole or in part when GWA determines in writing that such action is in the GWA's best interest for reasons including, but not limited to:

- (1) The supplies and services being procured are no longer required;
- (2) Ambiguous or otherwise inadequate specifications were part of the solicitation;
- (3) The solicitation did not provide for consideration of all factors of significance to the territory;
- (4) Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
- (5) All otherwise acceptable bids received are at clearly

- unreasonable prices;
- (6) There is reason to believe that the bids may not have been independently arrived at in open competition, may have been collusive, and may have been submitted in bad faith.

When a solicitation is canceled or rejected prior to final award, notice of cancellation or rejection shall be sent to all bidders and all bid bonds shall be returned. The reasons for cancellation or rejection shall be made part of the procurement file and shall be available for public inspection.

- (b) **Rejection of Individual Bids.** Any individual bid may be rejected in whole or in part when in the best interest of the Territory of Guam as determined by GWA in its sole discretion. Reasons for rejecting a bid include, but are not limited to:
 - (1) The bidder is non-responsive pursuant to Guam's procurement laws, rules and regulations;
 - (2) The bid is not responsive, as it does not conform, in all material respects, to the Invitation for Bids;
 - (3) The quantity and/or quality supply or service offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications set forth in the Invitation for Bids or other acceptability criteria set forth in the Invitation for Bids. Upon request, unsuccessful bidders shall be advised of the reasons for rejection;
 - (4) The bid is not the lowest responsive bidder, which meets the requirements, criteria set forth in the Invitation for Bids;
 - (5) The bidder has failed to submit to the GWA procurement office, the necessary licenses, permits and authorizations when requested by the Procurement Officer prior to the award.
 - (6) Any changes as initiated by the bidder to the attached Contract form constitute a basis to declare the bid submittal as non-conforming.

8. Fuels To Be Supplied.

Bidder agrees to furnish and GWA agrees to accept and pay for all of Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded (both fuels referred to in the solicitation as Fleet Fuels) requirements for the Authority's transportation fleet for the term of the Contract. **Estimated** total quantity for the fleet's fuel shall be:

- (a) *Diesel Fuel Oil No. 2: approximately 50,000 gallons per year (estimated).*
- (b) *Automotive Gasoline, Regular Unleaded: approximately 115,000 gallons per year (estimated).*

The fleet fuels supply shall be provided from Bidder's service stations (or from designated stations if so agreed upon between the Contractor and GWA Procurement/Supply Administrator). The commencement of the Fleet's fuel procurement shall be as soon as possible following award of bid and signing of Contract.

9. Contract Term.

The Contract Term shall be for three (3) years, with an option to extend for two (2) additional one (1) year renewal terms upon mutual agreement of both parties. The contract price for each year shall be at the *same price as contract price offer and all other terms remain unchanged* unless other terms are agreed upon between the parties. The contractual obligation of GWA to the successful bidder is subject to the availability of funds. In the event funds are not available for any succeeding months under a valid contract term, the remainder of such Contract shall be cancelled and the Contractor shall be reimbursed for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to the termination. The Authority shall notify Contractor in writing within sixty (60) days if funds are unavailable.

10. Contract Price.

The total price per U.S. gallon delivered TO GWA site shall be inclusive of all costs, insurance, freight and liabilities incurred prior to delivery to GWA.

11. Warranty and Claims.

Contractor shall provide both express and implied warranties of merchantability and warrants that the diesel fuel oil no. 2 and automotive gasoline, regular unleaded, shall meet the specifications as prescribed in the pertinent sections of the Contract. Claims against the Contractor on account of quality, defects in, loss or damage to product shall be given in writing by GWA within thirty (30) days from date of fleet's fuels procurement.

12. Product and Quality of Fleet's Fuels:

The Fleet fuels delivered hereunder shall have the physical and chemical characteristics as described in Section 2.01 of this bid.

13. Contract Principals.

It is important that Bidder fully identify persons and entities having any interest in the Contract. GWA reserves the right to require Bidder for complete disclosures of owners or stockholders of any entity having an interest in the Contract.

14. Insurance.

The responsible bidder shall be required to provide proof of insurance, to include coverage for Public General Liability, Workmen's Statutory Compensation Insurance, and Employer's Liability Insurance.

15. Contract Controlling.

The comments contained herein are for the use of the bidders and to the extent there is any conflict between the items set forth in this solicitation instruction and the Contract, the Contract language, including any amendments thereto, shall govern.

Section III. BID & PERFORMANCE BOND REQUIREMENTS.

A. BID BOND REQUIREMENT:

All bidders are required to submit a bid security in the amount of **15%** of their total bid amount. Failure to submit a proper bid bond will cause the bid to be rejected. The bid bond amount is to be determined by using the total estimated gallons used by GWA for each fuel type multiplied by the per gallon bid amount then add the individual totals for each fuel type together.

The performance bond form that is attached hereto must be used by the bidder and may not be modified without the written consent of GWA.

THE BID GUARANTEE MAY BE IN THE FORM OF:

- a. Cashier's Check or Certified Check
- b. Surety Bond – Valid only if accompanied by:
 - i. Current Certificate of Authority;
 - ii. Power of Attorney issued by the Surety to the Resident General Agent;
 - iii. Power of Attorney issued by two (2) major officers of the Surety to whoever is signing on their behalf

B. PERFORMANCE BOND REQUIREMENT

The successful bidder will be required to submit a performance bond in the amount equal to 100% of the total bid price established under the bid bond process above and it shall be made payable to GWA in the form of a surety issued by a company licensed to conduct business in Guam. The performance bond must be submitted not later than 15 days after the Notice of Award is issued. The performance bond shall continue in full force and effect until after delivery of the supplies or services required by the contract awarded to the Contractor under the associated Invitation for Bid is completed.

The performance bond form that is attached hereto must be used by the bidder and may not be modified without the written consent of GWA.

PART B

BID SUBMITTAL DOCUMENTS

- I. **PROPOSED GWA FLEET FUELS SUPPLY CONTRACT (DIESEL FUEL OIL No. 2 and AUTOMOTIVE GASOLINE, REGULAR UNLEADED)**
- II. **BID OFFER**
- III. **BID BOND**
- IV. **MAJOR SHAREHOLDERS OF DISCLOSURE AFFIDAVIT AND NON-COLLUSION AFFIDAVIT**

NOTICE

Please find the Bid Submittal documents, Proposed Contract and Bid Offer. The following Proposed Sample Contract is intended to provide the bidder with sample terms that GWA intends to use as part of the final contract to be used in conjunction with this bid. Any final contract under this bid shall contain terms and conditions that are acceptable to GWA. The submission of a bid by any vendor is proof of each bidder's acceptance of the terms and conditions contained in the Proposed Sample Contract and that they will not challenge said terms and conditions. Please be advised of the requirement of furnishing the bid bond in the designated amount and other data or information pertaining to responsibility and other requirements specified in the Solicitation that must be submitted together with the aforementioned documents.

PROPOSED SAMPLE CONTRACT
FOR
GWA FLEET FUEL SUPPLY DIESEL FUEL OIL No. 2
AND
REGULAR UNLEADED AUTOMOTIVE GASOLINE

P R E A M B L E

This Contract, by and between Guam Waterworks Authority (“GWA”), a Guam public corporation whose business address is Gloria B. Nelson Public Service Building 688 Route 15 Mangilao, GU 96913, and _____ (“Contractor”) whose business address is _____ and having Guam Business License No. _____.

W I T N E S S E T H:

RECITALS

WHEREAS, the Authority has publicly issued an Invitation for Bid, for a three (3) year Fleet Fuel Supply Contract, Invitation For Bid, IFB GWA 2016-09, for the supply of the Authority’s Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded, for the Authority’s Transportation Fleet; and

WHEREAS, the Authority will award a Contract to the lowest responsible bidder whose bid conforms to the material aspects of the Invitation; and

WHEREAS, GWA finds that the aforementioned Contractor has submitted the lowest responsible bid for the products and/or services required hereunder.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the parties hereto do hereby agree as follows:

SECTION 1

SECTION 1.01: FLEET FUELS TO BE SUPPLIED - DIESEL FUEL OIL NO. 2 AND AUTOMOTIVE GASOLINE, REGULAR UNLEADED:

Contractor agrees to furnish and deliver all the required Fleet Fuels: Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded, for the Authority’s Transportation Fleet and GWA agrees to accept and pay for all Fleet Fuels delivered to GWA, meeting the specifications requirements for the term of the Contract.

The estimated requirement of Diesel Fuel Oil No. 2 is approximately Fifty thousand gallons per year (50,000 gal/yr) and Automotive Gasoline, Regular Unleaded is estimated at about One hundred Fifteen thousand gallons per year (115,000 gal/yr) for the Authority’s

Transportation Fleet. Notwithstanding any estimated quantity set forth herein, the Contractor shall be responsible in supplying all the Fleet Fuels (diesel and unleaded gasoline), reasonably required by GWA, even if such quantities exceed the estimates provided above.

Fleet Fuel Cards. Contractor shall provide gas station fleet cards at no cost to GWA. Only employees carrying valid fleet cards shall be allowed to refuel at the gas stations. Contractor shall be responsible for all costs associated with providing fuel to unauthorized individuals. The Authority shall provide a list of employees and may add or delete names of employees authorized to use the gas station fleet card and GWA shall be responsible for all costs associated with its failure to provide updated employee listings to Contractor. Fleet cards shall be limited and restricted only for use in refueling of GWA official vehicles and Contractor shall be responsible for all costs associated with providing fuel to vehicles that are not official vehicles of GWA. The GWA General Manager may designate other vehicles which are allowed to be fueled in writing and GWA is responsible for all costs associated with its failure to maintain a proper vehicle listing.

1. GWA will require the vendor to issue fleet fuel cards for transacting fuel purchases.
2. Fleet card shall have electronically imprinted on it, name of driver or vehicle id, card no., and company name.
3. Assign cards by individual drivers or vehicles description, or both, as authorized by GWA.
4. Card is restricted to fuel purchases only and fuel grade per bid.
5. The use of the fuel card is restricted to GWA owned or leased vehicles only.

Point of Sale Controls:

1. Require drivers to show valid vehicle ID or driver ID numbers at time of purchase.
2. Ability to set variable spending controls by amount of purchase.
3. Ability to restrict transactions for number of uses per day, week, or month
4. Ability to require Driver PIN or Odometer prompt for purchase
5. Provide printed sales invoice or slip with the point of sale data below, with the signature of driver on the invoice/slip transacting the sale.
6. Point of sale data: card number, fuel quantity (gallons purchased), type of fuel, name of driver or vehicle id, date of purchase and location, price per gallon, time of day.
7. Provide point of sale data in electronic form, Microsoft Office Excel 2007 or later version.

SECTION 1.02: TERM.

The Contract Term shall be for three (3) years to commence when the contract is signed by the GWA General Manager, and shall continue until midnight of, _____2019, with an option to extend for two (2) additional one (1) year renewal terms upon mutual agreement of both parties. The contractual obligation of GWA and Contractor is subject to the availability of funds. In the event funds are not available for any succeeding months, the remainder of such contract shall be cancelled and the Contractor shall be notified within sixty (60) days if funds are unavailable.

SECTION 1.03: CONTRACT PRICE.

The total contract BID PRICE per gallon delivered to GWA Fleet point of delivery is (in U.S. Dollars, inclusive of all costs and liabilities, please provide three (3) decimal places):

1. Bid Price Offer:

(a) Diesel Fuel Oil No. 2: \$ _____ per gallon

(b) Automotive Gasoline, Regular Unleaded: \$ _____ per gallon

The **BID PRICE** is the sum of the fixed service fee (per gallon) and the bid reference prices as of January 18, 2016 posting in Platt's' Asia-Pacific Market Scan Oil Prices are as shown:

Bid Reference prices:

<u>Fleet Fuels</u>	<u>Reference Product Code</u>	<u>Reference Price</u>
(a) Diesel Fuel Oil No. 2 gallon	Gasoil 10 ppm	\$0.820 per
(b) Automotive Gasoline gallon (Regular Unleaded)	Gasoline 92 unleaded	\$1.073 per

PRICE DETERMINATION:

The invoice price for the fuel delivered in any month shall be the average of the effective prices reported for Gasoil 10ppm (for Diesel Fuel Oil No. 2) and Gasoline 89 unleaded (for Automotive Gasoline, Regular Unleaded), for all the daily postings of the previous month in the Platt's Asia-Pacific Market scan, for Singapore cargoes, plus the Service Fee as calculated.

The gas stations should be properly labeled to indicate the product grade at its pump. In the event that the gas station pump has not fully converted to Ultra-low Sulfur Diesel (ULSD) as set forth in Section 2.01, then the invoice price for Diesel Fuel Oil No. 2 delivered in any month shall be reduced and shall be based on the average of the effective prices reported for Gasoil Reg 0.5% Sulfur.

INVOICE PRICE CALCULATION FORMULA:

INVOICE PRICE = Previous Month daily postings average + Premium Fee

Sample data:

(a) Diesel Fuel Oil No. 2:

Sample Bid Price Offer = \$1.020 per gallon
Premium Fee = \$1.020 - \$0.820 = \$0.200 per gallon

(b) Automotive Gasoline, Regular Unleaded:

Sample Bid Price Offer = \$2.996 per gallon
Premium Fee = \$1.273 - \$1.073 = \$0.200 per gallon

Sample Invoice Price Calculation:

Delivery Month: January 2016

Diesel Fuel Oil No. 2:

Invoice Price = previous month average price + service fee
Previous Month's (December 2015) daily postings average * = \$48.109/barrel
= \$1.145/gal
Premium Fee (per sample data) = \$0.200 per gallon

Invoice Price = (\$1.145 + \$0.200) per gallon

Invoice Price = \$1.345 per gallon

This is the invoice price (in three decimal places) for Diesel Fuel Oil No. 2 purchases by GWA for the sample month of January 2016.

Remarks:

1. The same calculation procedure shall apply for Automotive Gasoline, Regular Unleaded pricing calculations.
2. The Contractor is required to submit to the Authority a monthly invoice price calculation report within the first five days of each report month. Reports must include the detailed pricing data comprising of the price postings.

The invoice price for the fuels (a) and (b), shall be the actual gallons received into GWA's fleet multiplied by the unit price as calculated and determined on a monthly basis in reference to Platts' Asia-Pacific Market Scan Oil Price. All invoices submitted must be accompanied by the product delivery receipts signed by the duly authorized personnel and the service station representative.

The contract price is effective and shall remain the same for the term of the CONTRACT in effect.

SECTION 1.04: FLEET FUELS TO BE PURCHASED-DESIGNATED SERVICE STATIONS:

All Fleet fuel purchases shall be at any of the Contractor's Service Stations unless otherwise agreed to by GWA. Fuel refilling shall be limited and restricted to GWA official and leased

vehicles, and authorized personnel only. GWA agrees to provide and maintain a list of authorized vehicles and authorized personnel and provide Contractor with at least 72 hours written notice of any changes.

SECTION 1.05: TERMS OF PAYMENT.

Invoices for Fleet Fuels purchased pursuant to quantity (receipts) and quality prescribed under the terms of this Contract, shall be submitted on a monthly basis, based on the amount of gallons of fuels purchased by GWA. The payment term is thirty days (net) and the Authority shall promptly make payments within a reasonable time not to exceed a period of THIRTY (30) calendar days from the receipt of the invoice. All payments shall be based upon the received (invoiced) quantity.

SECTION 1.06: WARRANTY AND CLAIMS.

Contractor shall provide both express and implied warranties of merchantability and warrants that the Fleet Fuels shall meet the specifications prescribed herein under Section 2 of Article I and other pertinent sections. Claims against the Contractor on account of quality and contaminations (defects), loss or damage to product shall be given in writing by GWA within thirty days (30) from date of purchase (delivery) of fuels as specified herein. If the fuel oil fails to meet the required specifications, Contractor shall be liable for any direct damages including, but not limited to, compensation and such damages shall not affect other remedies provided for in the Contract.

SECTION 2

SECTION 2.01: PRODUCT AND QUALITY

The typical characteristics of the Fleet Fuels to be supplied under this contract shall be as follows:

A. DIESEL FUEL Oil No.2^A

Typical Characteristics:

Property	ASTM Test Method ^B	Alternate Method ASTM	Unit of Measure	Limits
Flash Point	D93		°C	52 Min
Water & Sediment	D2709		% vol	0.05 Max
Distillation Temp, °C 90%, recovered	D86		% vol	282 Min 360 Max
Kinematic Viscosity	D-445		mm ² at 40°C	1.9 Min 4.1 Max
Ash	D482		% mass	0.01 Max

Sulfur	D5453	D7039-13	ppm (µg/g)	15 Max
Copper Strip Corrosion Rating (3hrs min at 50°C)	D130			No.1 Max
Cetane Index	D 613	D976-80 D 4737		46 Min
Aromaticity	D1319		% vol	35 Max
Carbon Residue on 10% distillation residue	D524	D4530 D6371	% mass	0.20 Max
Lubricity, HFRR @ 60°C	D6079		Micron	460 Max
Conductivity	D2624	D4308	pS/m	25 Min
Density @ 15°C	D1298	D4052	Kg/m ³	820 Min 850 Max
Gravity, API @ 60°F	D1295	D4052		35 Min 41 Max
Color	D1500		ASTM	2.0 Max
Strong Acid No.	D974		mg KOH/g	NIL
Total Acid No.	D974		mg KOH/g	0.5 Max
Stability (Oxidation), 16Hrs	D2274		mg/L	25 Max
Appearance @ ambient temp	Visual			Report
Guaranteed Heating Value (HHV)	D240		MMBTU/bbl	5.70 Min

^A 1. Follows the minimum requirements for Ultra-Low Sulfur Diesel (ULSD) Fuel Oil listed under ASTM 975-10.

2. Guam Public Law 30-184 mandates compliance to ULSD standards for Diesel Fuel Oil No.2

B. AUTOMOTIVE GASOLINE, REGULAR UNLEADED

Typical characteristics:

Property	ASTM Test Method	Alternate Method	Unit of Measure	Limits
Appearance @ Ambient Temp.			VISUAL	Clear & Bright
Color			ASTM	Report
Gravity, API @ 60 deg. F.		D - 1298		Report
DISTILLATION IBP, °C		D-86		Report
10% Evaporation				70 Max
20% Evaporation				Report
50% Evaporation				115 Max
90% Evaporation				180 Max
FBP				215 Max
Residue				2 Max
Reid Vapor Pressure @ 100°F,	D-5191	D-6378	psi	9 Max
SULFUR Content	D-2622	D-5453	Wt. ppm	300 Max.

Existent Gum	D-381		mg/100 ml	4 Max
Doctor Test	D-4952	IP30		Negative
Induction Period @100°C	D-525		minutes	480 Min
Research Octane No. (RON)	D-2885	D-2699MOD		91 Min
Motor Octane No. (MON)	D-2700MOD			Report
Anti-Knock Index (RON +MON)/2			Calculated	87 Min
Copper Corrosion @3 hrs @ 50°C	D-130			1 Max
Lead Content	D-3237	IP-224	g Pb/ USG	NIL
Phosporus	D-3231		g/USG	0.005 Max
Benzene	UOP 744MOD	JM63	Wt%	Report
EthlyBenzene	UOP 744 MOD	JM63	Wt%	Report
Toluene	UOP 744 MOD	JM63	Wt%	Report
Total Aromatics	UOP 744 MOD	JM63	Wt%	Report
Xylene	UOP 744 MOD	JM63	Wt%	Report

Note: GWA may require the supplier to conduct additional tests as may be necessary.

SECTION 2.02: QUANTITY AND QUALITY ASSURANCE

The Contractor shall ensure that any of the designated service stations have metered quantity at the pump, the metering device has to be calibrated or had been calibrated at a frequency of six (6) months minimum and to be effected with the presentation of calibration certificate as performed by the third party certifying company. GWA will require submittals by the successful awardee.

(a) FLEET FUELS ON-STOCK INVENTORY.

The Contractor is required to maintain at its own storage facility, a minimum inventory of 20-days' supply requirement, approximately 20,000 gallons for each fuel grade.

(b) FLEET'S FUELS QUALITY TESTING.

The Fleet fuel delivered to GWA shall have the physical and chemical characteristics as described in **Section 2.01.**

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 GWA.

Quality determination shall be performed and certified by an independent third party laboratory facility acceptable to GWA. Certificate of Quality (COQ) shall be representative of the product in the Contractor's storage facility in Guam.

The Contractor shall provide, at no cost to GWA, laboratory services and quality certification of the Fleet Fuels.

SECTION 3

SECTION 3.01: SECURITY.

For security of supply, Contractor reserves the right to supply the Fleet Fuels meeting GWA specifications from any lawful source. In the event that supplies are taken from such other places, then the price as invoiced to GWA will remain the same as established in Section 1.03.

SECTION 3.02: GOVERNMENT LAWS AND REGULATIONS

This Contract as executed shall be governed and construed in accordance with the laws, statutes, and regulations of the Territory of Guam. 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. The Contractor waives all rights against GWA to claim consequential, special or punitive damages.

SECTION 3.03: TAXES and OTHER GOVERNMENT CHARGES

All forms of taxes, fees, charges, duty, or other form of amount equivalent thereto, now or hereafter imposed, levied, or assessed by the United States Government, the Government of Guam, or any instrumentality or agency thereof, in connection with and as a result of the sale of such goods herein provided for, if collectible or payable, shall be the responsibility of the Contractor.

SECTION 3.04: SPECIFICATIONS.

Should GWA wish to alter any of the specifications set out under Section 2.01 of Article I,

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 GWA shall, in good faith, negotiate an equitable adjustment pursuant to the change in specifications. If Contractor and GWA 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 agree to subject themselves to the terms of the "Disputes" clause herein. However, nothing in this clause shall excuse the Contractor from proceeding with the Contract specifications as changed.

SECTION 3.05: PERMITS AND RESPONSIBILITIES.

The Contractor shall, without additional expense to GWA, 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 by Contractor.

SECTION 3.06: FORCE MAJEURE.

No failure or omission 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 if the same shall be caused by or arise out of:

- (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 or regulation or by voluntary cooperation of industry at the insistence or request of any governmental authority or person purporting to act therefore;
- (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 for Tankers. Loss of tanker tonnage due to sinking by belligerents or

to governmental taking whether or not by formal requisition;

- (h) Strikes. Epidemics, quarantine, strikes or combination of workmen, lockouts, or other labor disturbances;
- (i) Explosions. Explosion, accidents by fire or otherwise to wells, pipes, storage facilities, refineries, installations, machinery;
- (j) Taking by Government. Unavailability of fuel because of the election of the government of the country of its origin to take royalty product in kind;

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.

SECTION 3.07: NOTICE TO OTHER PARTY.

Either party whose obligations may be affected by any of the forces or causes set out in Section 3.06, 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 3.08: PAYMENT REQUIRED.

Notwithstanding the provisions of Section 3.06, GWA shall not be relieved of any obligation to make payments for any Fleet Fuels delivered to/ purchased by GWA, however, during the force majeure condition the obligation shall be suspended, except for all fuels purchased prior to the force majeure condition.

SECTION 3.09: ALTERNATE SUPPLY.

In the event Contractor is unable to fulfill its obligations under this Contract as a result of any negligence on part of the Contractor or failure to meet GWA's requirement, GWA may at its sole discretion seek an alternative source for the fleet's fuels from other petroleum suppliers. If the cost of fuels during such period exceeds the Contract price as provided in Section 1.03, the Contractor shall be liable to GWA for the difference in cost and GWA must be reimbursed for said amount proven by GWA to be the difference in cost and based upon proven use by GWA official vehicles during this period.

SECTION 3.10: RESUMPTION OF PERFORMANCE.

If Contractor is prevented from delivering or GWA is prevented from receiving all or any of the Fleet Fuels, to be purchased under the Contract for the reasons which fall within the provisions of Section 3.06, then the party so prevented shall, as to the remainder of the

Fleet Fuels not affected thereby, promptly resume performance of the Contract. No curtailment or suspension of deliveries or payment under the causes listed in Section 3.06, 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 3.11: DISPUTES.

- (a) All controversies between GWA 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 GWA 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) Contractor shall comply with any decision of GWA 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 GWA has made a written determination that continuation of work under the Contract is essential to the welfare of the territory.

SECTION 3.12: INDEMNITY.

Contractor agrees to hold the Consolidated Commission on Utilities, its employees, GWA, and GWA's employees 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 or for other performance required under this Contract.

SECTION 3.13: INSURANCE.

A. INSTRUCTIONS:

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 GWA, 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. All policies shall name GWA as an additional insured and contain a waiver of subrogation in favor of GWA.

B. 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.

C. PUBLIC LIABILITY INSURANCE:

1. The Contractor shall maintain, during the life of this Contract, all necessary insurance as needed to protect Contractor 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:

- (a) Bodily Injury Limits: \$500,000 each person, each occurrence.
- (b) Property Damage Limits: \$2,000,000 maximum each occurrence.

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

- (a) The coverage shall be provided under a Comprehensive General Liability form of policy or similar thereto.
- (b) The property damage coverage shall include a Broad Form Property Damage Endorsement.
- (c) Contractual Liability coverage shall be included.
- (d) Protective Liability coverage shall be included to protect the Contractor against claims arising out of operations performed by his subcontractors.
- (e) Products Liability and/or Completed Operations coverage shall be included.

D. 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. The minimum acceptable limits of liability to be provided by such Automobile Liability Insurance shall

be as follows:

- (a) Bodily Injury Limits: \$300,000 Each Person and \$500,000 Each Occurrence
- (b) Property Damage Limits: \$300,000 Each Occurrence

E. CERTIFICATE OF INSURANCE:

The Contractor shall furnish GWA with two (2) copies of a Certificate of Insurance evidencing policies required in Paragraphs B., C., and D. above. Such certificates shall specifically indicate that the Public 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 GWA 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 Certificates of Insurance evidencing renewal of such coverage to GWA. The Certificates of Insurance shall clearly show this Contract number.

F. 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., and D. above, including the extensions of coverage required under Paragraph C., Subparagraph 2, above. Each subcontractor shall furnish to the Contractor two (2) copies of the Certificates of Insurance and such certificates shall contain the same information required in Paragraph C. above. The Contractor shall furnish one (1) copy of the certificates to GWA.

G. INSURANCE COMPANY AND AGENT:

All insurance policies herein required of the Contractor shall be written by a company duly authorized and licensed to sell the policy types required hereunder on Guam where supply under this Contract is being performed and be executed by an agent thereof duly licensed as an agent in said State or Territory.

H. INDEMNITY:

The Contractor shall indemnify and hold GWA free and harmless from all injuries and damages to persons or properties as a result of and relative to Fleet Fuel deliveries, including the cost of enforcement of the indemnity, actually and proximately caused by the Contractor or its agents and employees in the performance of the terms of the Contract.

I. OIL SPILL RESPONSIBILITIES:

The Contractor shall be responsible for any and all oil spills caused by or as a result of the performance of fuel deliveries. The Contractor shall recover or remove, or cleanup as appropriate, any fuels spilled by the Contractor, its agents or assigns upon the performance of this Contract.

SECTION 3.14: RESTRICTION AGAINST SEX OFFENDERS.

The Contractor shall fill out a Certification of Non-Employment of Convicted Sex Offenders that is attached to this Bid.

SECTION 4

SECTION 4.01: FAILURE TO SUPPLY.

Should Contractor fail to perform any of the terms, provisions or conditions of this Contract, the Contractor shall be in default. In this event, GWA will provide a written notice to the Contractor of such default, and provide the Contractor an opportunity to cure the default within thirty (30) calendar days after the notice of default. During this period, GWA, at its discretion and in accordance with whatever action, reserves the right to secure similar Fleet Fuels from other sources; in such event, the Contractor shall be responsible for any costs, expenses, fees, and monetary amounts of any nature whatsoever, including but not limited to handling fees, administrative, labor, and operations costs, and all other amounts associated with or related to the securing of such Fleet Fuels by the Authority. Should the Contractor fail to cure such default within thirty (30) calendar days after the notice of default thereof, GWA may terminate the Contract in whole or in part. In the event that GWA terminates the Contract by default, then the provisions of the performance bond shall be in effect.

SECTION 4.02: 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 after notice of default, Contractor may, at its option, do either of the following:

- (a) terminate the Contract effective thirty (30) days after receipt by GWA of written notice if not first cured; or
- (b) continue to supply Fleet Fuels and bring suit in the Superior Court of Guam for amounts past due and as they become due for any amount more than sixty (60) days past due.

SECTION 4.03: 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, GWA may at its sole discretion terminate this Contract upon 30 days written notice.

SECTION 4.04: DEFAULT.

(a) Default.

In addition to default under the provision of Section 4.01, if the Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure the timely delivery of Fleet Fuel supply or commits any other substantial breach of this contract, GWA 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, GWA may terminate the contract in whole or such part or parts of the contract as to which there has been a delay or a failure to properly perform. In the event of termination in whole or in part, GWA may procure the Fleet Fuels supply from another source whenever it deems appropriate.

(b) Compensation.

GWA shall pay for Fleet Fuels delivered to GWA provided such fuel is received at the time of receipt of GWA's notice of termination for default.

(c) 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.

SECTION 4.05: TERMINATION FOR CONVENIENCE.

(a) Termination.

The delivery of Fleets Fuels supply under this Contract may be terminated by GWA in accordance with this clause in whole, or from time to time in part, whenever GWA shall determine that such termination is in the best interest of GWA, or whenever GWA because of technological developments ceases to use the said Fleet Fuels, as described in the specifications contained in this Contract and the bid.

Any such termination shall be effected by delivery to the Contractor of a written Notice of Termination specifying the extent to which the Contract is terminated, and the Contract shall be terminated effective sixty (60) days after receipt of notice

by Contractor.

(b) Contractor's Obligations.

The Contractor shall incur no further obligations in connection with the terminated fuel supply delivery and on the date set in the Notice of Termination the Contractor will stop delivery of fuels to the extent specified. The Contractor shall also terminate outstanding orders and contracts, if any, as they relate to the portion/s or part of the contract of the terminated Contract.

(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, GWA may pay the Contractor, if at all, an amount set in accordance with subparagraph (3) of this paragraph.

(2) GWA 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 2 G.A.R. § 3118 (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 GWA, the proceeds of any sales of supplies and manufacturing materials under the Guam Uniform Commercial Code, and the Contract price of the Fleet Fuel not terminated.

(3) Absent complete agreement under subparagraph (1) of this paragraph, GWA may pay the Contractor the following amounts, provided payments agreed to under subparagraph (2) shall not duplicate payments under this subparagraph:

- (i) Fleet Fuels Contract prices for supplies or services accepted under the contract by GWA;
- (ii) Costs incurred in preparing to perform and performing the terminated portion of the delivery of Fleet Fuels 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 fuels 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 hereunder, 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 the Uniform Commercial clause.

SECTION 4.06: REMEDIES CUMULATIVE.

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 5

SECTION 5.01: 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, except 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, GWA 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 5.02: 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 first class of priority 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:

GWA: General Manager
 Guam Waterworks Authority
 Post Office Box 3010
 Hagatna, Guam 96932
 Facsimile: (671) 646-2335

CONTRACTOR: _____

Facsimile: _____

SECTION 5.03: INTEREST OF OTHER PARTIES.

Contractor warrants that no member of the Consolidated Commission on Utilities, GWA, and no other officer, employee, or agent of GWA 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 5.04: 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 GWA. 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 GWA's written consent which may be given or refused at GWA's absolute discretion.

SECTION 5.05: TIME.

Time is of the essence in the contract and in every part hereof.

SECTION 5.06: 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 of the Consolidated Commission on Utilities is required to bind the Authority. 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, 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.

GWA reserves the right to add (via Change Order or Contract Amendment) any and all fleet vehicles and heavy equipment from the Guam Power Authority ("GPA") as vehicles that will be eligible to receive fuel under this bid. If such an event occurs, GWA will notify the Contractor of the persons and vehicles that are eligible to receive fuel under this bid on behalf of GPA. Any fuel used by GPA will be billed directly to GPA under the same terms and conditions in this Bid and the Contract. GWA, on behalf of, and in cooperation with GPA, reserves the right to renegotiate a reduction in price due to volumetric changes in the fuel to be consumed by GWA and GPA jointly.

SECTION 5.07: 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 5.08: GOVERNING LAW.

This Contract is made under, and shall be governed and construed in accordance with, the laws, statutes and regulations 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.

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 GWA to claim consequential, special or punitive damages.

SECTION 5.09: DEFINITIONS.

- (a) "Barrel" shall mean 42 U.S. gallons.
- (b) "Day" and "Month" shall mean a calendar day and month respectively.
- (c) "Fleet Fuels" shall mean Diesel Fuel Oil No. 2 or Automotive Gasoline, Regular Unleaded, consistent with the specifications set forth in the bid and this contract.

- (d) "Gallon" or "gallon" shall mean a U.S. standard gallon of 231 cubic inches at sixty degrees Fahrenheit.
- (e) "Receiving facility" means GWA or at the vendors stations (depending on use).
- (f) "Fleet" or "Transportation fleet" shall mean the vehicles or equipment authorized by GWA.
- (g) "GWA" or "Authority" shall mean the Guam Waterworks Authority.
- (h) "Ton" shall mean a metric ton of 2204.62 English pounds.
- (i) "\$" refers to United States Dollars.

SECTION 5.10: 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 GWA, and no provisions contained in the contract nor any acts of the parties shall be deemed to create any relationship between GWA and Contractor, other than the relationship of buyer and seller.

SECTION 5.11: 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 5.12: SUCCESSORS IN INTEREST, SUBCONTRACTING AND ASSIGNMENT.

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 and any approved subcontractor. This agreement, nor any performance thereunder may be assigned nor sublet by Contractor to any other party without the express written consent of GWA.

SECTION 5.13: 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 full 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 parts or portions which may, for any reason, be hereafter declared invalid.

SECTION 5.14: 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. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the GWA 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 6

SECTION 6.01: BINDING EFFECT.

This Contract is binding upon the Contractor only if Contractor has been awarded the Contract in response to the IFB GWA-2016-15. This procurement is subject to the approval of the Consolidated Commission on Utilities (CCU), and shall be binding only upon such approval is made as evidenced by the signatories below.

IN WITNESS WHEREOF, the parties have entered into this Contract on the dates indicated by their respective names.

Contractor:

Guam Waterworks Authority:

By: _____

By: _____

Miguel C. Bordallo, P.E.
General Manager

Date: _____

Date: _____

Certified Funds Available:

Approved as to Form:

By: _____
Certifying Officer
Guam Waterworks Authority

By: _____
Samuel J. Taylor
Staff Attorney, GWA

Date: _____

Date: _____

Guam Business License or Certificate of Authorization No.: _____.

Contract No.: _____

Vendor No.: _____

Contract Amount: _____

CORPORATE CERTIFICATION AS TO AUTHORIZATION TO BIND

I, _____ certify that I am the Secretary of the corporation named as Contractor herein; that _____ who signed this contract on behalf of the Contractor, was then _____ of said corporation by authority of said corporation of its governing body, and is within the scope of its corporate powers to bind said corporation to the terms and conditions of this Contract.

(CORPORATE SEAL)

******* END OF CONTRACT *******

**CERTIFICATION OF NON-EMPLOYMENT OF CONVICTED SEXUAL
OFFENDERS**

Pursuant to Guam Public Law 28-24, as amended by Guam Public Law 28-98, if a contract for services is awarded to the bidder or offeror, then the service provider must warrant that no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated or of an offense defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated, or who has been convicted in any other jurisdiction of an offense with the same elements as heretofore defined, or who is listed on the Sex Offender Registry, shall provide services on behalf of the service provider while on government of Guam property, with the exception of public highways. If any employee of a service provider is providing services on government property and is convicted subsequent to an award of a contract, then the service provider warrants that it will notify the Government of the conviction within twenty-four hours of the conviction, and will immediately remove such convicted person from providing services on government property. If the service provider is found to be in violation of any of the provisions of this paragraph, then the Government will give notice to the service provider to take corrective action. The service provider shall take corrective action within twenty-four hours of notice from the Government, and the service provider shall notify the Government when action has been taken. If the service provider fails to take corrective steps within twenty-four hours of notice from the Government, then the Government in its sole discretion may suspend temporarily any contract for services until corrective action has been taken.

I, _____ being a duly authorized representative acknowledge
the

(print name)

directive as describe above and ensure the Bid Proposal as submitted addresses the directive.

(Company Name)

(Title)

(Signature)

(Date)

MAJOR SHAREHOLDER DISCLOSURE AFFIDAVIT

TERRITORY OF GUAM }
 }
HAGATNA, GUAM }

I, the undersigned _____, being first duly sworn, depose and says:

1. That the persons who have held more than ten percent (10%) of the company's share during the past twelve months preceding the submission of the bid are as follows:

<u>NAME</u>	<u>ADDRESS</u>	<u>PERCENTAGE OF SHARES HOLD</u>

TOTAL NUMBER OF SHARES _____

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

<u>NAME</u>	<u>ADDRESS</u>	<u>AMOUNT OF COMMISSIONS, GRATUITY OR OTHER COMPENSATION</u>

Further, affiant sayeth naught.

Date: _____

Signature of individual if bidder is a sole proprietorship;
Partner, if the bidders is a partnership; Officer, if the
bidder is a corporation.

Subscribed and sworn to before me this ____ day of _____, 201__.

Notary Public
In and for the Territory of Guam
My commission expires

BID AND PERFORMANCE BOND FOR GOODS AND SERVICES
AS REQUIRED UNDER 5 G.C.A. § 5212

KNOW ALL MEN BY THESE PRESENTS, that

_____ (Name of Contractor)
as Principal, herein after called the Principal and

_____ (Name of Surety)
as duly admitted insurer under the laws of the Territory of Guam, as Surety, hereafter called the Surety, are held and firmly bound unto the Guam Waterworks Authority 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 and is anticipated to enter into a contract in the amount specified below,

NOW, THEREFORE, if the Guam Waterworks Authority shall accept the bid and the Principal shall not withdraw said bid within sixty (120) calendar days after the opening of bids, and shall within twenty one (21) calendar days after the prescribed forms are presented to him for signature, enter into a Contract with the Guam Waterworks Authority in accordance with the terms of such bid. This bond shall also be held by the Guam Waterworks Authority to secure the faithful performance of such Contract and for the prompt payment of labor, goods, services and materials furnished in the prosecution thereof. In the event of the failure of the Principal to enter into such Contract, or if the Principals (Contractor) fails to perform in accordance with the requirements set out under the Bid or any other written instrument requirement performance thereunder, the Surety, on behalf of the Principals shall pay to the Guam Waterworks Authority the differences not to exceed the penalty hereof between the amounts specified in said bid and such larger amount for which the Guam Waterworks Authority 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 in full force and effect.

NOW, THEREFORE, THE CONDITIONS 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 Authority provided the same is within the scope of the Contract or any modification thereto.
- B. Whenever the contractor shall be and is declared in default by the Authority to be in default under the Contract, the Authority having performed its obligations hereunder, 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 Authority and the Surety of the lowest 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 or 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 Authority to Contractor under the Contract and any amendments thereto, less the amount properly paid by the Authority to Contractor. No right of action shall accrue on this bond to or for use of any person or corporation other than the Authority or successors of the Authority.
- C. A claimant is defined as one having a direct contract with the Contractor or with a subcontractor 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 Authority that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date of 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 to final judgment for such sum or sums as may be justly due the claimant, and have execution thereon. The 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 any claimant:
 - 1. Unless claimant, other than one having a direct contract with the contractor, shall have given written notice to any two (2) of the following:

The Contractor, the Authority, or the Surety above named, within ninety (90) days after such claimant did or performed the 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 the Territory of Guam.

F. The amount of the bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder.

SIGNED AND SEALED THIS _____ day of _____, 20____, A.D.

IN THE PRESENCE OF:

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

(WITNESS)

(CONTRACTOR) (SEAL)

(TITLE)

(TITLE)

(MAJOR OFFICER OF SURETY)

(MAJOR OFFICER OF SURETY)

(TITLE)

(TITLE)

(RESIDENT GENERAL AGENT)

EXHIBIT B

"Recommendation of Award"



GUAM WATERWORKS AUTHORITY

“Better Water. Better Lives.”
Gloria B. Nelson Public Services Building
688 Route 15, Mangilao, Guam 96913

Date: SEP 14 2016

MEMORANDUM

TO: General Manager
VIA: Supply Management Administrator
FROM: Evaluation Committee Members
SUBJECT: Invitation to Bid No. GWA 2016-09
Ref: Fuel Bid “Recommendation of Award”

Invitation for Bid No: GWA 2016-09 was officially announced and advertised in the Pacific Daily News, Marianas Variety and Guam Waterworks Authority Website on August 8, 2016 and open as scheduled on September 7, 2016 @ 10:00 am. Three (3) submitted proposal, they are as follows:

Bidders Register:

- Mobil Oil Guam
- South Pacific Petroleum Corp
- IP&E Holding, LLC

An evaluation committee was formally assembled and gathered on September 8, 2016 @ 2:30 pm in the Procurement’s office.

Committee members consist of:

- Paul Lujan, FMES Superintendent
- Tony Camacho, Buyer II
- Stephan Mondina, Buyer Supervisor II

Bidders Cost as follows:

<u>Mobile Oil Guam cost submission:</u>	<u>Cost Per Gallon:</u>	<u>Cost Per Gallon:</u>
Diesel Fuel Oil No. 2	\$1.335	
Automotive Gasoline, Regular Unleaded		\$1.523
 <u>IP&E Holding, LLC</u>		
Diesel Fuel Oil No. 2	\$1.3200	
Automotive Gasoline, Regular Unleaded		\$1.5280
 <u>South Pacific Petroleum Corp</u>		
Diesel Fuel Oil No. 2	\$1.710	
Automotive Gasoline, Regular Unleaded		\$1.923

The committee members have determined based on the cost analysis (cost analysis attached) provided, Mobil Oil Guam submitted the lowest cost overall thereby being most advantageous to GWA in terms of fuel usage stated in the cost analysis provided herein. This determination will best serve GWA during the term of the contract and in the best interest of the Territory of Guam. As price and all other factors were considered in overall cost for Automotive Gasoline, Regular Unleaded and Diesel Fuel Oil No. 2, the committee members hereby recommend to proceed issuing the award to **Mobil Oil Guam** for Diesel Fuel Oil No. 2 at a cost per gallon of \$1.335 and Automotive Gasoline, Regular Unleaded at a cost of \$1.523, the basis of award as a whole, is applicable as mentioned in the bid provision below.

Section II: INSTRUCTIONS, PROCEDURES AND REQUIREMENTS FOR BIDDERS.


6. Award.

The award of the Contract will be made by GWA to the lowest responsive and responsible bidder whose bid conforms to the Invitation for Bids and would be most advantageous to GWA, in terms of price and all other factors considered as determined by GWA as provided in the bid. GWA reserves the right to award the Contract to a vendor other than the lowest price offeror and to reject any or all offers if it is determined to be in the best interest of the Territory of Guam. A written Notice of Award (or acceptance of offer) will be mailed or otherwise furnished via facsimile transmittal to the successful bidder within the time for acceptance specified in the offer. GWA reserves the right to waive informalities and minor irregularities in bids received. In the evaluation process, the following factors will be considered:

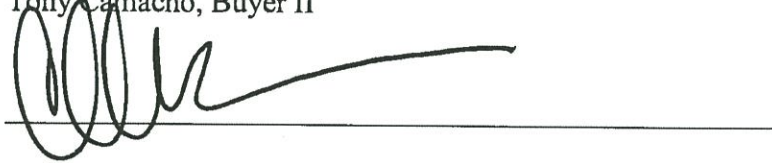
Therefore, the evaluation committee hereby recommends award for Mobile Oil Guam.

Concurred and accepted by the committee members:

Stephan Mondina, Buyer Supervisor II



Tony Camacho, Buyer II




Paul Lujan, FMES Superintendent



Your approval is greatly appreciated.

In consideration of the foregoing, please indicate your approval of this recommendation by your signature below.

CONCURRED UNCONCURRED



Vincent Ed. Guerrero, SMA

APPROVED DISAPPROVED



Miguel C. Bordallo, P.E. General Manager

Cc: Procurement file

Table with 10 columns: Date, Value, Unit, Value, Unit, Value, Unit, Value, Unit, Value, Unit. Rows include Oct-18, Nov-18, Dec-18, etc.

Table with 10 columns: Date, Value, Unit, Value, Unit, Value, Unit, Value, Unit, Value, Unit. Rows include Oct-18, Nov-18, Dec-18, etc.

Table with 10 columns: Date, Value, Unit, Value, Unit, Value, Unit, Value, Unit, Value, Unit. Rows include Oct-18, Nov-18, Dec-18, etc.

Based on projected FY 2018 outlook.
Furniture Monthly Index: For FY18: based on FY 2018
Furniture Monthly Index: For FY17: based on FY 2017
Furniture Monthly Index: For FY16: based on FY 2016

Commodity price
1.22 31.27%
1.00 0.00%
1.00 0.00%

Commodity based on projected supply of demand and related risks to respective % of total floor purchase projected to need of FY2018.

Table with 3 columns: Value, Unit, Value, Unit. Rows include 1.22, 31.27%, 1.00, 0.00%.

EXHIBIT C

Mobil Oil Guam Proposal

Mobil Oil Guam Inc.

Proposal

Diesel Fuel Oil No. 2 and Automotive

Gasoline, Regular Unleaded

GWA IFB No. 2016-09

Guam Waterworks Authority



GUAM WATERWORKS AUTHORITY

September 7, 2016

contract shall be cancelled and the Contractor shall be notified within sixty (60) days if funds are unavailable.

SECTION 1.03: CONTRACT PRICE.

The total contract BID PRICE per gallon delivered to GWA Fleet point of delivery is (in U.S. Dollars, inclusive of all costs and liabilities, please provide three (3) decimal places):

1. Bid Price Offer:

- (a) Diesel Fuel Oil No. 2: \$ 1.335 per gallon
(b) Automotive Gasoline, Regular Unleaded: \$ 1.523 per gallon

The **BID PRICE** is the sum of the fixed service fee (per gallon) and the bid reference prices as of January 18, 2016 posting in Platt's' Asia-Pacific Market Scan Oil Prices are as shown:

Bid Reference prices:

<u>Fleet Fuels</u>	<u>Reference Product Code</u>	<u>Reference Price</u>
(a) Diesel Fuel Oil No. 2	Gasoil 10 ppm	\$0.820 per gallon
(b) Automotive Gasoline (Regular Unleaded)	Gasoline 92 unleaded	\$1.073 per gallon

PRICE DETERMINATION:

The invoice price for the fuel delivered in any month shall be the average of the effective prices reported for Gasoil 10ppm (for Diesel Fuel Oil No. 2) and Gasoline 89 unleaded (for Automotive Gasoline, Regular Unleaded), for all the daily postings of the previous month in the Platt's Asia-Pacific Market scan, for Singapore cargoes, plus the Service Fee as calculated.

The gas stations should be properly labeled to indicate the product grade at its pump. In the event that the gas station pump has not fully converted to Ultra-Low Sulfur Diesel (ULSD) as set forth in Section 2.01, then the invoice price for Diesel Fuel Oil No. 2 delivered in any month shall be reduced and shall be based on the average of the effective prices reported for Gasoil Reg 0.5% Sulfur.

INVOICE PRICE CALCULATION FORMULA:

INVOICE PRICE = Previous Month daily postings average + Premium Fee

Sample data:

- (a) Diesel Fuel Oil No. 2:
Sample Bid Price Offer = \$1.020 per gallon

EXHIBIT D

**NOTICE OF CONDITIONAL AWARD FOR
Mobil Oil Guam Inc.**



GUAM WATERWORKS AUTHORITY

Gloria B. Nelson Public Service Building
688 Route 15, Mangilao GU, 96913

NOTICE OF CONDITIONAL AWARD

Date SEP 14 2018

Mobil Oil Guam Inc.
P.O. Box EU
Hagåtña, Guam 96932

Re: Invitation for Bid Number: GWA 2016-09
Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded, for the GWA
Transportation Fleet. in GWA IFB. NO. 2016-09.

Hafa Adai

The Guam Waterworks Authority ("GWA") has considered the bid submitted by Mobile Oil Guam LLC. for the above described reference in response to its Advertisement for Bids, you are hereby notified that the bid price of \$1.523 for Automotive Gasoline, Regular Unleaded and 1.335 for Diesel Fuel Oil No. 2 has been accepted by GWA. Please be advised that you must now deliver all other documents required by the bid, including, but not limited to, proof of insurance and the Performance and Payment Bond (which must remain in full force and effect until all performance has ended, which includes all warranty periods).

You are also advised that any obligation incurred by your firm prior to execution of the contract is entirely at your own risk and GWA shall have no obligation to reimburse costs incurred prior to execution of the contract.


Please note this Notice of Award is conditional on obtaining the approval of the Guam Consolidated Commission on Utilities for any award over \$250,000 and the approval of the Guam Public Utilities Commission where the total value over the life of the contract could exceed \$1M. Also, award is conditional upon providing any documents such as proof of licensure, proof of insurance or other documents required to be submitted to GWA under the Bid or Guam law.

/

/


You are required to return an acknowledged copy of this Conditional Notice of Award to the GWA Procurement Office.

Sincerely,


Miguel Bordaño P.E.
General Manager

ACCEPTANCE OF CONDITIONAL NOTICE OF AWARD

Receipt of the above Notice of Conditional Award for GWA IFB No. GWA 2016-09 is hereby acknowledged

By:  Title: President
signature (please print)

Dated this 20 day of September, 2016.

***** END OF CONDITIONAL NOTICE OF AWARD *****

EXHIBIT E

IP&E Protest Letter



Miguel Bordallo, P.E.
 General Manager
 Guam Waterworks Authority
 Gloria B. Nelson Public Service Building
 688 Route 15
 Mangilao, Guam 96913
 Email: mcbordallo@guamwaterworks.org
 PH: (671) 300-6845



RE: Formal Bid Protest

IFB 2016-09 Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded

Dear Mr. Bordallo,

IP&E Guam received the above referenced facsimile at 3:25pm September 14, 2016. The document advised IP&E was not successful in the bid due to high price. Please see calculation below based on IFB volumes listed on Part A., Solicitation, Fuels to Be Supplied, Items a & b, Page 10 and Bid Abstract dated September 7, 2016 10:00 am:

Company	Product	IFB Quantity	Total Price	Total IFB Annual Cost	Total IFB Term Cost
SPPC	Diesel	50,000.00	\$ 1.71	\$ 85,500.00	\$ 256,500.00
SPPC	Mogas	115,000.00	\$ 1.96	\$ 225,745.00	\$ 677,235.00
				\$ 311,245.00	\$ 933,735.00
Mobil Oil Guam	Diesel	50,000.00	\$ 1.34	\$ 66,750.00	\$ 200,250.00
Mobil Oil Guam	Mogas	115,000.00	\$ 1.52	\$ 175,145.00	\$ 525,435.00
				\$ 241,895.00	\$ 725,685.00
IP&E Guam	Diesel	50,000.00	\$ 1.32	\$ 66,000.00	\$ 198,000.00
	Mogas	115,000.00	\$ 1.53	\$ 175,720.00	\$ 527,160.00
				\$ 241,720.00	\$ 725,160.00
				\$ (175.00)	\$ (525.00)

IP&E Holdings, LLC.
dba: IP&E Guam
 Suite 100, 643 Chalan San Antonio
 Tamuning, Guam 96913-3644
 Tel: 671-647-0000 | Fax: 671-649-4353
 Email: corporate@ipehq.com



Shell Licensee

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Per bid abstract IP&E conformed to all other bid requirements and is the lowest bidder. Therefore, IP&E should be awarded GWA IFB 2016-09. Please retract intent to award immediately.

For IP&E Guam,

A handwritten signature in black ink, appearing to read 'David Wisler', written over a horizontal line.

David Wisler, Chief Financial Officer

CC: Vince Guerrero, Supply Management Administrator, Kelly Clark, GWA Legal Counsel, Steven Carrara, IP&E Legal Counsel

Attachments

- 1). IFB 2016-09 Page 10
- 2). GWA Bid Abstract for IFB 2016-09 dated September 7, 2016 10:00am
- 3). GWA Facsimile Transmittal dated September 14, 2016

independently arrived at in open competition, may have been collusive, and may have been submitted in bad faith.

When a solicitation is canceled or rejected prior to final award, notice of cancellation or rejection shall be sent to all bidders and all bid bonds shall be returned. The reasons for cancellation or rejection shall be made part of the procurement file and shall be available for public inspection.

(b) **Rejection of Individual Bids.** Any individual bid may be rejected in whole or in part when in the best interest of the Territory of Guam as determined by GWA in its sole discretion. Reasons for rejecting a bid include, but are not limited to:

- (1) The bidder is non-responsive pursuant to Guam's procurement laws, rules and regulations;
- (2) The bid is not responsive, as it does not conform, in all material respects, to the Invitation for Bids;
- (3) The quantity and/or quality supply or service offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications set forth in the Invitation for Bids or other acceptability criteria set forth in the Invitation for Bids. Upon request, unsuccessful bidders shall be advised of the reasons for rejection;
- (4) The bid is not the lowest responsive bidder, which meets the requirements, criteria set forth in the Invitation for Bids;
- (5) The bidder has failed to submit to the GWA procurement office, the necessary licenses, permits and authorizations when requested by the Procurement Officer prior to the award.
- (6) Any changes as initiated by the bidder to the attached Contract form constitute a basis to declare the bid submittal as non-conforming.

8. **Fuels To Be Supplied.**

Bidder agrees to furnish and GWA agrees to accept and pay for all of Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded (both fuels referred to in the solicitation as Fleet Fuels) requirements for the Authority's transportation fleet for the term of the Contract. **Estimated** total quantity for the fleet's fuel shall be:

- (a) ***Diesel Fuel Oil No. 2: approximately 50,000 gallons per year (estimated).***
- (b) ***Automotive Gasoline, Regular Unleaded: approximately 115,000 gallons per year (estimated).***

The fleet fuels supply shall be provided from Bidder's service stations (or from designated stations if so agreed upon between the Contractor and GWA Procurement/ Supply Administrator). The commencement of the Fleet's fuel procurement shall be as soon as possible following award of bid and signing of Contract.

**GUAM WATERWORKS AUTHORITY
BID ABSTRACT**

BID OPENING FOR: IFB 2016- 09 / **DATE:** SEPTEMBER 07, 2016 / **TIME:** 10:00 AM

VENDOR#1 *SPPC*

BID GUARANTEE:

- CASHIER'S CHECK or CERTIFIED CHECK
- LETTER OF CREDIT \$
- BID BOND 15% OF TOTAL BID AMOUNT
- SUERTY BOND: CURRENT CERTIFICATE OF AUTHORITY(POWER OF ATTORNEY)
- NON-COLLUSION AFFIDAVIT
- STATEMENT OF QUALIFICATIONS
- LITERATURES
- AFFIDAVIT OF DISCLOSURE OF MAJOR SHAREHOLDERS
- CERTIFICATION OF NON-EMPLOYMENT OF CONVICTED SEX OFFENDERS
- CD PROVIDED

1.0 BID PRICE PER GALLON			
ITEM#	DESCRIPTION	PRICE	PER GALLON
A.	DIESEL FUEL OIL NO. 2	\$ 1.710	PER GALLON
B.	AUTOMOTIVE GASOLINE, REGULAR UNLEADED	\$ 1.963	PER GALLON

BID ABSTRACT

BID OPENING FOR: IFB 2016- 09 / **DATE:** SEPTEMBER 07, 2016 / **TIME:** 10:00 AM

VENDOR#2 *Mobil oil Guam*

BID GUARANTEE:

- CASHIER'S CHECK or CERTIFIED CHECK
- LETTER OF CREDIT \$
- BID BOND 15% OF TOTAL BID AMOUNT
- SUERTY BOND: CURRENT CERTIFICATE OF AUTHORITY(POWER OF ATTORNEY)
- NON-COLLUSION AFFIDAVIT
- STATEMENT OF QUALIFICATIONS
- LITERATURES
- AFFIDAVIT OF DISCLOSURE OF MAJOR SHAREHOLDERS
- CERTIFICATION OF NON-EMPLOYMENT OF CONVICTED SEX OFFENDERS
- CD PROVIDED *fundred*

1.0 BID PRICE PER GALLON			
ITEM#	DESCRIPTION	PRICE	PER GALLON
A.	DIESEL FUEL OIL NO. 2	\$ 1.335	PER GALLON
B.	AUTOMOTIVE GASOLINE, REGULAR UNLEADED	\$ 1.523	PER GALLON

**GUAM WATERWORKS AUTHORITY
BID ABSTRACT**

BID OPENING FOR: IFB 2016- 09 / **DATE:** SEPTEMBER 07, 2016 / **TIME:** 10:00 AM

VENDOR# 3 *IP4E*

BID GUARANTEE:

- CASHIER'S CHECK or CERTIFIED CHECK
- LETTER OF CREDIT \$
- BID BOND 15% OF TOTAL BID AMOUNT
- SUERTY BOND: CURRENT CERTIFICATE OF AUTHORITY (POWER OF ATTORNEY)
- NON-COLLUSION AFFIDAVIT
- STATEMENT OF QUALIFICATIONS
- LITERATURES
- AFFIDAVIT OF DISCLOSURE OF MAJOR SHAREHOLDERS
- CERTIFICATION OF NON-EMPLOYMENT OF CONVICTED SEX OFFENDERS
- CD PROVIDED

1.0	BID PRICE PER GALLON		
ITEM#	DESCRIPTION	PRICE	PER GALLON
A.	DIESEL FUEL OIL NO. 2	\$ 1.3200	PER GALLON
B.	AUTOMOTIVE GASOLINE, REGULAR UNLEADED	\$ 1.5280	PER GALLON

BID ABSTRACT

BID OPENING FOR: IFB 2016- 09 / **DATE:** SEPTEMBER 07, 2016 / **TIME:** 10:00 AM

VENDOR# 4

BID GUARANTEE:

- CASHIER'S CHECK or CERTIFIED CHECK
- LETTER OF CREDIT \$
- BID BOND 15% OF TOTAL BID AMOUNT
- SUERTY BOND: CURRENT CERTIFICATE OF AUTHORITY (POWER OF ATTORNEY)
- NON-COLLUSION AFFIDAVIT
- STATEMENT OF QUALIFICATIONS
- LITERATURES
- AFFIDAVIT OF DISCLOSURE OF MAJOR SHAREHOLDERS
- CERTIFICATION OF NON-EMPLOYMENT OF CONVICTED SEX OFFENDERS
- CD PROVIDED

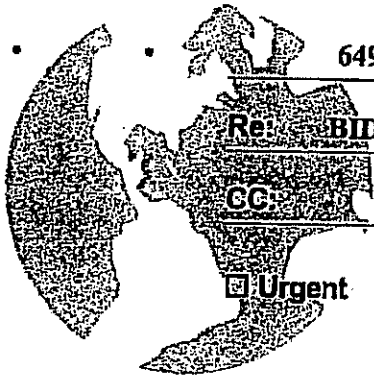
1.0	BID PRICE PER GALLON		
ITEM#	DESCRIPTION	PRICE	PER GALLON
A.	DIESEL FUEL OIL NO. 2	\$ 1.3200	PER GALLON
B.	AUTOMOTIVE GASOLINE, REGULAR UNLEADED	\$ 1.5280	PER GALLON

Guam
Waterworks
Authority

facsimile transmittal

To: IP&E Holdings, LLC Fax: 649-4353
Attn: Tasi Peddicord PH: 647-0000

From: Stephen Mondina Date: September 14, 2016
300-6027 (PH)
649-3750 (FX)



Re: BID STATUS Pages: 02

Urgent For Review Please Comment Please Reply Please Recycle

REF: IFB 2016-09
Diesel Fuel Oil No.2 and Automotive Gasoline,
Regular Unleaded

Please sign the bid status form and forward back to me.

Thank you,
Stephen Mondina



GUAM WATERWORKS AUTHORITY

"Better Water. Better Lives."
Gloria B. Nelson Public Services Building
688 Route 15, Mangilao, Guam 96913

BID STATUS

Date: SEP 14 2018

IP&E Holding, LLC
Suite 100, 643 Chalan San Antonio
Tamuning, Guam 96913-3644
Tel: 671-647-0000
Fax: 671-649-4353

Bid Invitation No. GWA IFB 2016-09

Description: Invitation for Bid No2016-09 Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded, for GWA Transportation Fleet. in GWA IFB. NO. 2016-09.

The following is the result of the above-mentioned bid. Refer to the items checked below.

Cancelled (in its entirety), or partially cancelled due to:

- Insufficient funds
- Change of specifications
- Insufficient number of bidders

Not Awarded base on the following:

- Late submission of bid
- No bid security or insufficient bid security amount submitted as required by Section 11 of the General Terms and Conditions
- Not meeting the delivery requirement as stated in the IFB
- Non-conformance with the specifications
- Inability to provide future maintenance and services to the equipment
- High price

Bid is recommended for award to:

Mobil Oil Guam

For Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded.

Remarks:

Thank You for your interest!


Miguel Bordinglo, PE
General Manager

EXHIBIT F

GWA Notice of Decision to IP&E



GUAM WATERWORKS AUTHORITY

"Better Water. Better Lives."

Gloria B. Nelson Public Service Building | 688 Route 15, Mangilao, Guam 96913
P.O. Box 3010, Hagatna, Guam 96932
Tel. No. (671) 300-6846/48 Fax No. (671) 648-3290

September 16, 2016

Mr. David Wisher
Chief Financial Officer
IP&E Guam
643 Chalan San Antonio, Ste 100
Tamuning, Guam 96913

RE: Notice of Decision relative to GWA IFB 2016-09 Diesel Fuel Oil No. 2 and
Automotive Gasoline, Regular Unleaded

Dear Mr. Wisher,

The award of contract for this IFB is based on the Authority's procurement committee analysis of actual use calculations as shown in attachment "A". Based on the actual use of diesel and gasoline for FY 2016 and future use trending down or remaining flat, the committee determined that the pricing submitted by Mobil was the most advantageous to GWA and in the best interest of the Territory of Guam.

Your company has the right to administrative and judicial review.

Sincerely,



Miguel C. Bordallo, P.E.
General Manager

MCB/ada

ATTACHMENT A

Transportation

Month	Regular		Premium		Prepaid		Prepaid		Prepaid		Prepaid		Prepaid		Prepaid		Prepaid		Prepaid		Prepaid	
	Revenue	Expenses	Revenue	Expenses	Revenue	Expenses	Revenue	Expenses	Revenue	Expenses	Revenue	Expenses	Revenue	Expenses	Revenue	Expenses	Revenue	Expenses	Revenue	Expenses	Revenue	Expenses
Oct-13	\$ 37,188	\$ 10,222	\$ 3,64	\$ 2,016	\$ 5,471	\$ 3,84	\$ 61	\$ 16	\$ 3,79	\$ 58,265	\$ 15,710	\$ 58,265	\$ 15,710	\$ 3,64	\$ 2,016	\$ 5,471	\$ 3,84	\$ 61	\$ 16	\$ 3,79	\$ 58,265	\$ 15,710
Nov-13	\$ 31,314	\$ 8,764	\$ 3,57	\$ 7,839	\$ 2,053	\$ 3,82	\$ -	\$ -	\$ 3,79	\$ 39,152	\$ 10,817	\$ 39,152	\$ 10,817	\$ 3,57	\$ 7,839	\$ 2,053	\$ 3,82	\$ -	\$ -	\$ 3,79	\$ 39,152	\$ 10,817
Dec-13	\$ 33,109	\$ 9,215	\$ 3,59	\$ 8,956	\$ 2,329	\$ 3,85	\$ 31	\$ 8	\$ 3,70	\$ 42,097	\$ 11,552	\$ 42,097	\$ 11,552	\$ 3,59	\$ 8,956	\$ 2,329	\$ 3,85	\$ 31	\$ 8	\$ 3,70	\$ 42,097	\$ 11,552
Jan-14	\$ 33,970	\$ 9,228	\$ 3,68	\$ 9,617	\$ 2,488	\$ 3,87	\$ -	\$ -	\$ -	\$ 43,587	\$ 11,715	\$ 43,587	\$ 11,715	\$ 3,68	\$ 9,617	\$ 2,488	\$ 3,87	\$ -	\$ -	\$ -	\$ 43,587	\$ 11,715
Feb-14	\$ 31,754	\$ 8,719	\$ 3,64	\$ 10,338	\$ 2,744	\$ 3,77	\$ -	\$ -	\$ -	\$ 42,091	\$ 11,462	\$ 42,091	\$ 11,462	\$ 3,64	\$ 10,338	\$ 2,744	\$ 3,77	\$ -	\$ -	\$ -	\$ 42,091	\$ 11,462
Mar-14	\$ 35,139	\$ 9,510	\$ 3,70	\$ 7,710	\$ 2,032	\$ 3,79	\$ -	\$ -	\$ -	\$ 42,848	\$ 11,542	\$ 42,848	\$ 11,542	\$ 3,70	\$ 9,510	\$ 2,032	\$ 3,79	\$ -	\$ -	\$ -	\$ 42,848	\$ 11,542
Apr-14	\$ 37,385	\$ 10,131	\$ 3,69	\$ 9,013	\$ 1,997	\$ 3,80	\$ -	\$ -	\$ -	\$ 46,397	\$ 12,536	\$ 46,397	\$ 12,536	\$ 3,69	\$ 9,013	\$ 1,997	\$ 3,80	\$ -	\$ -	\$ -	\$ 46,397	\$ 12,536
May-14	\$ 38,774	\$ 10,409	\$ 3,72	\$ 7,592	\$ 2,405	\$ 3,75	\$ -	\$ -	\$ -	\$ 46,366	\$ 12,406	\$ 46,366	\$ 12,406	\$ 3,72	\$ 10,409	\$ 2,405	\$ 3,75	\$ -	\$ -	\$ -	\$ 46,366	\$ 12,406
Jun-14	\$ 34,495	\$ 9,258	\$ 3,73	\$ 8,715	\$ 2,314	\$ 3,77	\$ -	\$ -	\$ -	\$ 43,210	\$ 11,572	\$ 43,210	\$ 11,572	\$ 3,73	\$ 9,258	\$ 2,314	\$ 3,77	\$ -	\$ -	\$ -	\$ 43,210	\$ 11,572
Jul-14	\$ 36,657	\$ 9,602	\$ 3,82	\$ 24,517	\$ 6,532	\$ 3,75	\$ -	\$ -	\$ -	\$ 61,175	\$ 16,133	\$ 61,175	\$ 16,133	\$ 3,82	\$ 24,517	\$ 6,532	\$ 3,75	\$ -	\$ -	\$ -	\$ 61,175	\$ 16,133
Aug-14	\$ 36,357	\$ 9,640	\$ 3,77	\$ 10,634	\$ 2,870	\$ 3,70	\$ 270	\$ 70	\$ 3,85	\$ 47,261	\$ 12,580	\$ 47,261	\$ 12,580	\$ 3,77	\$ 9,640	\$ 2,870	\$ 3,70	\$ 270	\$ 70	\$ 3,85	\$ 47,261	\$ 12,580
Sep-14	\$ 33,980	\$ 9,625	\$ 3,53	\$ 19,230	\$ 5,263	\$ 3,65	\$ -	\$ -	\$ -	\$ 53,211	\$ 14,888	\$ 53,211	\$ 14,888	\$ 3,53	\$ 19,230	\$ 5,263	\$ 3,65	\$ -	\$ -	\$ -	\$ 53,211	\$ 14,888
	\$ 420,122	\$ 114,322	\$ 3,67	\$ 146,177	\$ 38,497	\$ 3,78	\$ 362	\$ 95	\$ 3,78	\$ 565,661	\$ 162,914	\$ 565,661	\$ 162,914	\$ 3,67	\$ 146,177	\$ 38,497	\$ 3,78	\$ 362	\$ 95	\$ 3,78	\$ 565,661	\$ 162,914

Month	Regular		Premium		Prepaid		Prepaid		Prepaid		Prepaid		Prepaid		Prepaid		Prepaid		Prepaid		Prepaid	
	Revenue	Expenses	Revenue	Expenses	Revenue	Expenses	Revenue	Expenses	Revenue	Expenses	Revenue	Expenses	Revenue	Expenses	Revenue	Expenses	Revenue	Expenses	Revenue	Expenses	Revenue	Expenses
Oct-14	\$ 32,390	\$ 9,857	\$ 3,29	\$ 9,440	\$ 2,079	\$ 4,54	\$ -	\$ -	\$ -	\$ 41,830	\$ 11,936	\$ 41,830	\$ 11,936	\$ 3,29	\$ 9,440	\$ 2,079	\$ 4,54	\$ -	\$ -	\$ -	\$ 41,830	\$ 11,936
Nov-14	\$ 23,066	\$ 7,085	\$ 3,26	\$ 4,811	\$ 1,479	\$ 3,25	\$ 108	\$ 32	\$ 3,35	\$ 27,986	\$ 8,597	\$ 27,986	\$ 8,597	\$ 3,26	\$ 7,085	\$ 1,479	\$ 3,25	\$ 108	\$ 32	\$ 3,35	\$ 27,986	\$ 8,597
Dec-14	\$ 23,144	\$ 7,827	\$ 2,96	\$ 6,904	\$ 2,253	\$ 3,06	\$ -	\$ -	\$ -	\$ 30,047	\$ 10,080	\$ 30,047	\$ 10,080	\$ 2,96	\$ 7,827	\$ 2,253	\$ 3,06	\$ -	\$ -	\$ -	\$ 30,047	\$ 10,080
Jan-15	\$ 19,515	\$ 8,005	\$ 2,44	\$ 6,261	\$ 2,435	\$ 2,57	\$ 24	\$ 9	\$ 2,54	\$ 25,800	\$ 10,449	\$ 25,800	\$ 10,449	\$ 2,44	\$ 8,005	\$ 2,435	\$ 2,57	\$ 24	\$ 9	\$ 2,54	\$ 25,800	\$ 10,449
Feb-15	\$ 17,510	\$ 7,758	\$ 2,26	\$ 5,909	\$ 2,475	\$ 2,39	\$ 33	\$ 14	\$ 2,37	\$ 23,452	\$ 10,247	\$ 23,452	\$ 10,247	\$ 2,26	\$ 7,758	\$ 2,475	\$ 2,39	\$ 33	\$ 14	\$ 2,37	\$ 23,452	\$ 10,247
Mar-15	\$ 21,292	\$ 8,311	\$ 2,56	\$ 14,941	\$ 5,744	\$ 2,60	\$ -	\$ -	\$ -	\$ 36,232	\$ 14,055	\$ 36,232	\$ 14,055	\$ 2,56	\$ 8,311	\$ 5,744	\$ 2,60	\$ -	\$ -	\$ -	\$ 36,232	\$ 14,055
Apr-15	\$ 20,166	\$ 7,759	\$ 2,60	\$ 4,704	\$ 1,837	\$ 2,56	\$ -	\$ -	\$ -	\$ 24,870	\$ 9,596	\$ 24,870	\$ 9,596	\$ 2,60	\$ 7,759	\$ 1,837	\$ 2,56	\$ -	\$ -	\$ -	\$ 24,870	\$ 9,596
May-15	\$ 21,655	\$ 8,148	\$ 2,66	\$ 22,199	\$ 8,607	\$ 2,58	\$ -	\$ -	\$ -	\$ 43,854	\$ 16,756	\$ 43,854	\$ 16,756	\$ 2,66	\$ 8,148	\$ 8,607	\$ 2,58	\$ -	\$ -	\$ -	\$ 43,854	\$ 16,756
Jun-15	\$ 20,647	\$ 7,262	\$ 2,84	\$ 6,623	\$ 2,420	\$ 2,74	\$ -	\$ -	\$ -	\$ 27,270	\$ 9,682	\$ 27,270	\$ 9,682	\$ 2,84	\$ 7,262	\$ 2,420	\$ 2,74	\$ -	\$ -	\$ -	\$ 27,270	\$ 9,682
Jul-15	\$ 19,690	\$ 7,243	\$ 2,83	\$ 13,656	\$ 5,143	\$ 2,65	\$ -	\$ -	\$ -	\$ 34,118	\$ 12,385	\$ 34,118	\$ 12,385	\$ 2,83	\$ 7,243	\$ 5,143	\$ 2,65	\$ -	\$ -	\$ -	\$ 34,118	\$ 12,385
Aug-15	\$ 16,693	\$ 7,427	\$ 2,65	\$ 5,159	\$ 2,096	\$ 2,46	\$ -	\$ -	\$ -	\$ 24,848	\$ 9,523	\$ 24,848	\$ 9,523	\$ 2,65	\$ 7,427	\$ 2,096	\$ 2,46	\$ -	\$ -	\$ -	\$ 24,848	\$ 9,523
Sep-15	\$ 256,228	\$ 69,979	\$ 2,73	\$ 30,086	\$ 13,213	\$ 2,28	\$ 165	\$ 56	\$ 2,75	\$ 387,086	\$ 143,499	\$ 387,086	\$ 143,499	\$ 2,73	\$ 69,979	\$ 13,213	\$ 2,28	\$ 165	\$ 56	\$ 2,75	\$ 387,086	\$ 143,499

EXHIBIT G

Public Auditor (Docket OPA-PA-16-013)



OFFICE OF PUBLIC ACCOUNTABILITY

DORIS FLORES BROOKS, CPA, CGFM

Public Auditor

BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEALS
TERRITORY OF GUAM

IN THE MATTER OF

IP&E Holdings LLC,

Appellant.

And

Guam Waterworks Authority,

Purchasing Agency.

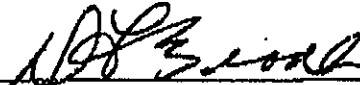
Docket OPA PA-16-013

NOTICE OF APPOINTMENT OF
HEARING OFFICER

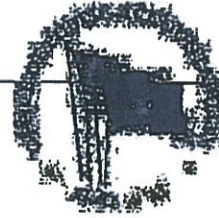
The Public Auditor appoints Delia Lujan Wolff, Esq., Hearing Officer in this matter.

Any objection to the appointment shall be filed within ten days of the date of this notice of appointment.

Date: September 27, 2016


DORIS FLORES BROOKS, CPA, CGFM
Public Auditor of Guam

Suite 401 DNA Building
 238 Archbishop Flores St.
 Hagåtña, Guam 96910



FAX

To:	Miguel Bordallo, P.E. General Manager Guam Waterworks Authority Gloria B. Nelson Public Service Building 688 Route 15 Mangilao, Guam 96913	From:	Doris Flores Brooks Guam Public Auditor Office of Public Accountability
Phone: Fax:	(671) 300-6846 (671) 648-3290	Pages:	2 (including cover page)
CC:	Steven Carrara (Attorney for Appellant IP&E Holdings LLC) P.O. Box 2881 Barrigada, Guam 96921	Date:	September 27, 2016
Phone: Fax:	(671) 646-1222 (671) 646-4723	Phone: Fax:	475-0390 x. 208 472-7951

Re: OPA-PA-16-013 Notice of Appointment of Hearing Officer

Urgent For Review Please Comment Please Reply Please Recycle

Comments:

Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

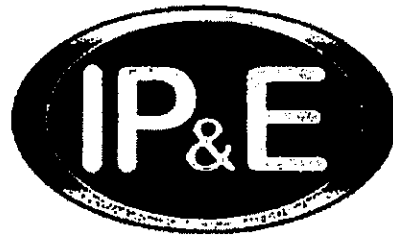
Thank you,
 Jerrick Hernandez
 Auditor
jhernandez@guamopa.org

This facsimile transmission and accompanying documents may contain confidential or privileged information. If you are not the intended recipient of this fax transmission, please call our office and notify us immediately. Do not distribute or disclose the contents to anyone. Thank you.



EXHIBIT H

IP&E Proposal



Fueling Excellence

PROPOSED CONTRACT

PROPOSED SAMPLE CONTRACT
FOR
GWA FLEET FUEL SUPPLY DIESEL FUEL OIL No. 2
AND
REGULAR UNLEADED AUTOMOTIVE GASOLINE

PREAMBLE

This Contract, by and between Guam Waterworks Authority ("GWA"), a Guam public corporation whose business address is Gloria B. Nelson Public Service Building 688 Route 15 Mangilao, GU 96913, and IP&E Holdings LLC dba IP&E Guam ("Contractor") whose business address is 643 Chalan San Antonio Suite 100 Tamuning, Guam 96913-3844 and having Guam Business License No. 30-201000279-018.

WITNESSETH:

RECITALS

WHEREAS, the Authority has publicly issued an Invitation for Bid, for a three (3) year Fleet Fuel Supply Contract, Invitation For Bid, IFB GWA 2016-09, for the supply of the Authority's Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded, for the Authority's Transportation Fleet; and

WHEREAS, the Authority will award a Contract to the lowest responsible bidder whose bid conforms to the material aspects of the Invitation; and

WHEREAS, GWA finds that the aforementioned Contractor has submitted the lowest responsible bid for the products and/or services required hereunder.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the parties hereto do hereby agree as follows:

SECTION 1

SECTION 1.01: FLEET FUELS TO BE SUPPLIED - DIESEL FUEL OIL NO. 2 AND AUTOMOTIVE GASOLINE, REGULAR UNLEADED:

Contractor agrees to furnish and deliver all the required Fleet Fuels: Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded, for the Authority's Transportation Fleet and GWA agrees to accept and pay for all Fleet Fuels delivered to GWA, meeting the specifications requirements for the term of the Contract.

The estimated requirement of Diesel Fuel Oil No. 2 is approximately Fifty thousand gallons per year (50,000 gal/yr) and Automotive Gasoline, Regular Unleaded is estimated at about One hundred Fifteen thousand gallons per year (115,000 gal/yr.) for the Authority's Transportation

Fleet. Notwithstanding any estimated quantity set forth herein, the Contractor shall be responsible in supplying all the Fleet Fuels (diesel and unleaded gasoline), reasonably required by GWA, even if such quantities exceed the estimates provided above.

Fleet Fuel Cards. Contractor shall provide gas station fleet cards at no cost to GWA. Only employees carrying valid fleet cards shall be allowed to refuel at the gas stations. Contractor shall be responsible for all costs associated with providing fuel to unauthorized individuals. The Authority shall provide a list of employees and may add or delete names of employees authorized to use the gas station fleet card and GWA shall be responsible for all costs associated with its failure to provide updated employee listings to Contractor. Fleet cards shall be limited and restricted only for use in refueling of GWA official vehicles and Contractor shall be responsible for all costs associated with providing fuel to vehicles that are not official vehicles of GWA. The GWA General Manager may designate other vehicles which are allowed to be fueled in writing and GWA is responsible for all costs associated with its failure to maintain a proper vehicle listing.

1. GWA will require the vendor to issue fleet fuel cards for transacting fuel purchases.
2. Fleet card shall have electronically imprinted on it, name of driver or vehicle id, card no., and company name.
3. Assign cards by individual drivers or vehicles description, or both, as authorized by GWA.
4. Card is restricted to fuel purchases only and fuel grade per bid.
5. The use of the fuel card is restricted to GWA owned or leased vehicles only.

Point of Sale Controls:

1. Require drivers to show valid vehicle ID or driver ID numbers at time of purchase.
2. Ability to set variable spending controls by amount of purchase.
3. Ability to restrict transactions for number of uses per day, week, or month
4. Ability to require Driver PIN or Odometer prompt for purchase
5. Provide printed sales invoice or slip with the point of sale data below, with the signature of driver on the invoice/slip transacting the sale.
6. Point of sale data in form of a sales invoice or slip to include information for the following: card number, fuel quantity (gallons purchased), type of fuel, name of driver and GWA employee number, vehicle id, date of purchase and location, price per gallon, time of day.
7. Provide point of sale data in electronic form, Microsoft Office Excel 2007 or later version.

SECTION 1.02: TERM.

The Contract Term shall be for three (3) years to commence when the contract is signed by the GWA General Manager, and shall continue until midnight of, SEP 2019, with an option to extend for two (2) additional one (1) year renewal terms upon mutual agreement of both parties. The contractual obligation of GWA and Contractor is subject to the availability of funds. In the event funds are not available for any succeeding months, the remainder of such

contract shall be cancelled and the Contractor shall be notified within sixty (60) days if funds are unavailable.

SECTION 1.03: CONTRACT PRICE.

The total contract BID PRICE per gallon delivered to GWA Fleet point of delivery is (in U.S. Dollars, inclusive of all costs and liabilities, please provide three (3) decimal places):

1. Bid Price Offer:

(a) Diesel Fuel Oil No. 2: \$ 1.3200 per gallon

(b) Automotive Gasoline, Regular Unleaded: \$ 1.5280 per gallon

The **BID PRICE** is the sum of the fixed service fee (per gallon) and the bid reference prices as of January 18, 2016 posting in Platt's' Asia-Pacific Market Scan Oil Prices are as shown:

Bid Reference prices:

<u>Fleet Fuels</u>	<u>Reference Product Code</u>	<u>Reference Price</u>
(a) Diesel Fuel Oil No. 2	Gasoil 10 ppm	\$0.820 per gallon
(b) Automotive Gasoline (Regular Unleaded)	Gasoline 92 unleaded	\$1.073 per gallon

PRICE DETERMINATION:

The invoice price for the fuel delivered in any month shall be the average of the effective prices reported for Gasoil 10ppm (for Diesel Fuel Oil No. 2) and Gasoline 89 unleaded (for Automotive Gasoline, Regular Unleaded), for all the daily postings of the previous month in the Platt's Asia-Pacific Market scan, for Singapore cargoes, plus the Service Fee as calculated.

The gas stations should be properly labeled to indicate the product grade at its pump. In the event that the gas station pump has not fully converted to Ultra-Low Sulfur Diesel (ULSD) as set forth in Section 2.01, then the invoice price for Diesel Fuel Oil No. 2 delivered in any month shall be reduced and shall be based on the average of the effective prices reported for Gasoil Reg 0.5% Sulfur.

INVOICE PRICE CALCULATION FORMULA:

INVOICE PRICE = Previous Month daily postings average + Premium Fee

Sample data:

(a) Diesel Fuel Oil No. 2:
Sample Bid Price Offer = \$1.020 per gallon

Premium Fee = \$1.020- \$0.820 = \$0.200 per gallon

(b) Automotive Gasoline, Regular Unleaded:

Sample Bid Price Offer = \$2.996 per gallon

Premium Fee = \$1.273 - \$1.073 = \$0.200 per gallon

Sample Invoice Price Calculation:

Delivery Month: January 2016

Diesel Fuel Oil No. 2:

Invoice Price = previous month average price + service fee

Previous Month's (December 2015) daily postings average * = \$48.109/barrel
= \$1.145/gal

Premium Fee (per sample data) = \$0.200 per gallon

Invoice Price = (\$1.145 + \$0.200) per gallon

Invoice Price = \$1.345 per gallon

This is the invoice price (in three decimal places) for Diesel Fuel Oil No. 2 purchases by GWA for the sample month of January 2016.

Remarks:

1. The same calculation procedure shall apply for Automotive Gasoline, Regular Unleaded pricing calculations.
2. The Contractor is required to submit to the Authority a monthly invoice price calculation report within the first five days of each report month. Reports must include the detailed pricing data comprising of the price postings.

The invoice price for the fuels (a) and (b), shall be the actual gallons received into GWA's fleet multiplied by the unit price as calculated and determined on a monthly basis in reference to Platts' Asia-Pacific Market Scan Oil Price. All invoices submitted must be accompanied by the product delivery receipts signed by the duly authorized personnel and the service station representative.

The contract price is effective and shall remain the same for the term of the CONTRACT in effect.

SECTION 1.04: FLEET FUELS TO BE PURCHASED-DESIGNATED SERVICE STATIONS:

All Fleet fuel purchases shall be at any of the Contractor's Service Stations unless otherwise agreed to by GWA. Fuel refilling shall be limited and restricted to GWA official and leased vehicles, and authorized personnel only. GWA agrees to provide and maintain a list of

EXHIBIT I

Public Auditor Decision(OPA-PA-16-013)



OFFICE OF PUBLIC ACCOUNTABILITY
Doris Flores Brooks, CPA, CGFM
Public Auditor
**BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEALS
TERRITORY OF GUAM**

IN THE APPEAL OF

Docket No. OPA-PA-16-013

IP&E HOLDINGS, LLC,

DECISION

Appellant.

I. INTRODUCTION

This is the Decision of the Public Auditor for appeal number OPA-PA-16-013 regarding IP&E Holdings, LLC's ("IP&E") Appeal of the Guam Waterworks Authority's ("GWA") denial of procurement protest dated September 16, 2016, concerning Invitation for Bid No. GWA-2016-09 ("the IFB"), which solicits bids for the supply of diesel fuel oil no. 2 and automotive gasoline (regular unleaded) for GWA's Transportation Fleet and Heavy Equipment.

The parties did not request a Hearing and agreed to submit this matter on the record. In reaching this Decision, the Public Auditor has considered and incorporates herein the procurement record and all documents submitted by IP&E, GWA, and Interested Party Mobil Oil Guam Inc. ("Mobil"). Based on the aforementioned record in this matter, the Public Auditor makes the following findings of fact:

II. FINDINGS OF FACT

1. On or about August 8, 2016, GWA issued the IFB which solicits bids for the supply of diesel fuel oil no. 2 and automotive gasoline (regular unleaded) for GWA's Transportation Fleet and Heavy Equipment. (Procurement Record, Tabs 3 & 13.)

1 2. On August 15, 2016, GWA issued Amendment No. 1 to the IFB, which rescheduled the
2 bid opening date to September 7, 2016, at 10:00 a.m. (Procurement Record, Tab 6.)

3 3. The IFB stated, in relevant part:

4 a. "The award of the Contract will be made by GWA to the lowest responsive and
5 responsible bidder whose bid conforms to the Invitation for Bids and would be most advantageous
6 to GWA, in terms of price and all other factors considered as determined by GWA as provided in
7 the bid. GWA reserves the right to award the Contract to a vendor other than the lowest price
8 offeror and to reject any or all offers if it is determined to be in the best interest of the Territory of
9 Guam. A written Notice of Award (or acceptance of offer) will be mailed or otherwise furnished
10 via facsimile transmittal to the successful bidder within the time for acceptance specified in the
11 offer. GWA reserves the right to waive informalities and minor irregularities in bids received. In
12 the evaluation process, the following factors will be considered: (a) Price;

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14 (b) Whether the bidder's ultimate offer meets and conforms to the announced requirements
15 of GWA in all material respects (specifications);

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17 (c) Service rendering capability, status as producer, refiner, broker, or agent and his direct
18 financial responsibility;

19 (d) Overall clarity and presentation of bid;

20 (e) Whether the bidder has:

21 (1) the available appropriate financial, material, equipment, facility, and personnel
22 resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all
23 Contractual requirements;

24 (2) a satisfactory record of performance;

25 (3) a satisfactory record of integrity;

1 (4) qualified legally to Contract with the territory and properly licensed to conduct
2 such business on Guam; and

3 (5) supplied all necessary information in connection with the inquiry concerning
4 responsibility," (Procurement Record, Tab 13 at 8);

5
6 b. "Bidder agrees to furnish and GWA agrees to accept and pay for all of Diesel
7 Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded (both fuels referred to in the
8 solicitation as Fleet Fuels) requirements for the Authority's transportation fleet for the term of the
9 Contract. Estimated total quantity for the fleet's fuel shall be:

10 (a) *Diesel Fuel Oil No. 2: approximately 50,000 gallons per year (estimated).*

11 (b) *Automotive Gasoline, Regular Unleaded: approximately 115,000 gallons per year*
12 *(estimated).*" (Procurement Record, Tab 13 at 10 (emphases in original).)

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14 4. IP&E, Mobil, and South Pacific Petroleum Corp. ("SPPC") submitted bids in response
15 to the IFB.

16 5. On September 7, 2016, GWA conducted a bid opening.

17 6. IP&E bid a price offer of \$1.3200 per gallon for Diesel Fuel Oil No. 2 and \$1.5280 per
18 gallon for Automotive Gasoline, Regular Unleaded. (Procurement Record, Tab 14 at 16.)

19 7. Mobil bid a price offer of \$1.335 per gallon for Diesel Fuel Oil No. 2 and \$1.523 per
20 gallon for Automotive Gasoline, Regular Unleaded. (Procurement Record, Tab 16 at 16.)

21 8. SPPC bid a price offer of \$1.710 per gallon for Diesel Fuel Oil No. 2 and \$1.963 per
22 gallon for Automotive Gasoline, Regular Unleaded. (Procurement Record, Tab 15 at 16.)

23 9. On September 7, 2016, GWA prepared Bid Abstracts showing the bid prices offered by
24 IP&E, Mobil, and SPPC. (Procurement Record, Tab 18.)

1 10. In a Memorandum from the Evaluation Committee Members to the General Manager
2 of GWA, the Evaluation Committee stated that it determined based on the cost analysis attached
3 thereto that Mobil submitted the lowest cost overall, thereby being most advantageous to
4 GWA in terms of fuel usage stated in the cost analysis. The Evaluation Committee stated that,
5 “[a]s price and all other factors where [sic] considered in overall cost for Automotive Gasoline,
6 Regular Unleaded and Diesel Fuel Oil No. 2, the committee members hereby recommend to
7 proceed issuing the award to Mobil Oil Guam for Diesel Fuel Oil No. 2 at a cost per gallon of
8 \$1.335 and Automotive Gasoline, Regular Unleaded at a cost of \$1.523” The cost analysis
9 attached to the Memorandum shows the amount and price of actual gas purchased from October
10 2013 to July 2016. The cost analysis also shows IP&E’s and Mobil’s prices of diesel and unleaded
11 gas based on projected FY2016 actuals, and composite prices. The cost analysis shows 23,689.64
12 gallons of diesel based on projected FY2016 actuals and 104,477.90 gallons of unleaded based on
13 projected FY2016 actuals. (Procurement Record, Tab 24 at 3.)

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16 11. In a Bid Status dated September 14, 2016, GWA informed IP&E and SPPC they were
17 not awarded the contract based on “High price.” (Procurement Record, Tab 25.) The Bid Status
18 further informed that the Bid is recommended for award to Mobil for Diesel Fuel Oil No. 2 and
19 Automotive Gasoline, Regular Unleaded. (Id.)

20
21 12. On September 14, 2016, GWA issued a Notice of Conditional Award to Mobil, advising
22 that the bid price of \$1.523 for Automotive Gasoline, Regular Unleaded and 1.335 for Diesel Fuel
23 Oil No. 2 has been accepted by GWA. The Notice further stated that the Notice of Award is
24 conditional on obtaining the approval of the Guam Consolidated Commission on Utilities for any
25 award over \$250,000 and the approval of the Guam Public Utilities Commission where the total
26 value over the life of the contract could exceed \$1M. (Procurement Record, Tab 27.)
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1 13. On September 16, 2016, IP&E sent a Formal Bid Protest letter to GWA wherein it
2 requested that GWA retract the intent to award. The Protest letter showed that, based on the IFB
3 quantities of 50,000 diesel and 115,000 Mogas and the offered prices of the bidders, the total IFB
4 annual cost would be \$241,720.00 as to IP&E, \$241,895.00 as to Mobil, and \$311,245.00 as to
5 SPPC, and the total IFB term cost would be \$725,160.00 as to IP&E, \$725,685.00 as to Mobil, and
6 \$933,735.00 as to SPPC. (Procurement Record, Tab 28.)
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8 14. On September 16, 2016, GWA issued a letter to IP&E, wherein GWA stated that "[t]he
9 award of contract for this IFB is based on the Authority's procurement committee analysis of actual
10 use calculations as shown in attachment 'A' Based on the actual use of diesel and gasoline for
11 FY2016 and future use trending down or remaining flat, the committee determined that the pricing
12 submitted by Mobil was the most advantageous to GWA and in the best interest of the Territory of
13 Guam." (Procurement Record, Tab 29.)
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15 15. On September 16, 2016, GWA issued a Protest Notice informing that a protest has been
16 submitted and therefore that all procurement matters pertaining to the IFB will be on hold until
17 further notice (Procurement Record, Tab 30.)
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19 16. On September 21, 2016, IP&E filed an appeal to the OPA, with respect to GWA's
20 September 16, 2016, denial of IP&E's protest. IP&E's position is that GWA was required to use
21 the estimated quantities provided in the IFB for evaluation and award rather than unknown factors
22 which were stated in the agency response. (Procurement Appeal at 2)
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24 III. ANALYSIS

25 In this appeal of GWA's September 16, 2016, denial of IP&E's September 16, 2016, protest,
26 IP&E requests that the OPA overrule GWA's denial of IP&E's protest and direct GWA to make
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1 the award to IP&E as the lowest responsive and responsible bidder. Pursuant to 5 GCA § 5703 and
2 2 GAR 4 § 12103, the Public Auditor shall review and determine GWA's denial of IP&E's protest
3 de novo.

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5 In its procurement appeal, IP&E states that GWA was "required to use the estimated
6 quantities provided in the IFB for evaluation and award rather than unknown factors which were
7 stated in the agency response." (Notice of Procurement Appeal at 2.) IP&E argues that, "[b]y
8 failing to include rational estimates, GWA is making an awarded [sic] based on factors outside of
9 the IFB and in contravention of Guam procurement law and regulations." (Protestor Response to
10 Agency Report & Statement at 3.) The procurement regulation cited by IP&E is 2 GAR 4 §
11 3109(n)(1), which provides:

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13 The contract is to be awarded "to the lowest responsive and responsive bidder"
14 whose bid meets the requirements and criteria set forth in the Invitation for Bids.
15 See 5 GCA §5211(g) (Competitive Sealed Bidding, Award) of the Guam
16 Procurement Act. The Invitation for Bids shall set forth the requirements and
17 criteria which will be used to determine the lowest responsive bidder. No bid shall
18 be evaluated for any requirement or criterion that is not disclosed in the Invitation
19 for Bids. 2 GAR 4 § 3109(n)(1).

20 IP&E argues that the IFB stated an estimated requirement of 50,000 gallons of diesel and
21 115,000 gallons of MoGas, but that GWA's award evaluation quantities were instead 31,270.32
22 gallons of diesel and 159,000 gallons of MoGas. "The actual volumes used in determining award
23 were off by almost 50% on diesel and almost 45% on MoGas from the stated requirements."
24 (Protestor Response to Agency Report & Statement at 2.) Using the projected FY2016 actuals,
25 GWA determined that IP&E had a composite price of \$1.4896 while Mobil had a lower composite
26 price of \$1.4883.¹

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28 ¹ IP&E's reference for 31,270.32 gallons of diesel and 159,000 gallons of MoGas are actually projected costs.

1 GWA contends that the IFB contains no language indicating that the estimated quantities
2 will be used as part of the evaluation criteria. According to GWA, the IFB instead provides that
3 "the awarded contract will be made by GWA to the lowest responsive and responsible bidder
4 whose bid conforms to the invitation for bids and *would be most advantageous to GWA*' and that
5 'GWA reserves the right to award the Contract to a vendor *other than the lowest price offeror*."
6 (Agency Statement at 2 (quoting the IFB) (emphases added).)
7

8 GWA states that it did not use actual usage as the sole determining factor in its criteria, but
9 that it also used trends and how GWA's infrastructure changes over the next few years would
10 impact gasoline usage over the life of the Contract. Over the past three years, GWA's actual fuel
11 usage shows a trend down in diesel usage. Also, GWA's gasoline consumption decreased over the
12 last couple of years. GWA states that those trends appear to have leveled off, but gasoline usage is
13 expected to climb somewhat over the next several years due to expanded capital improvement
14 projects coming on-line. GWA concluded that "a lower gasoline price from a single provider is
15 more advantageous to GWA over the life of the contract and its potential extensions." "GWA
16 contends that to award the contract on the method it used is not arbitrary but, a reasonable and
17 rational approach entirely within its discretion." (Agency Statement at 2 and 3.)
18

19 Mobil has joined in the arguments posed by GWA, that there was no language in the IFB
20 explicitly stating that the estimated quantities would be used as part of the evaluation criteria, that
21 the IFB specifically provides that the awarded contract will be made by GWA to the lowest
22 responsive and responsible bidder whose bid conforms to the invitation for bids and would be most
23 advantageous to GWA, and that IP&E was privy to the actual figures used by GWA in determining
24 the lowest possible bidder and was therefore in a better position than Mobil to fashion its bid and
25 could therefore have not been prejudiced. Also, Mobil believes that the advantage of its fuel
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1 distribution network and the high-flow diesel dispensers present at Mobil's stations place it as the
2 most advantageous choice for GWA even if estimated quantities were used. Mobil requests that
3 IP&E's protest be denied so that GWA may proceed with awarding the contract to Mobil as the
4 lowest responsive and responsible bidder. (Mobil Br. at 1-3.)
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6 The Public Auditor finds that the IFB specifically includes "price" as a factor in the
7 evaluation process, and that the IFB required bidders to submit their prices based on the estimated
8 quantities of diesel and gasoline indicated therein. Nowhere in the IFB is it stated that GWA's
9 actual usage of diesel and gasoline is an evaluation criterion. Likewise, the quantities of 23,000-
10 plus diesel gallons and 104,000-plus gasoline gallons based on projected FY 2016 actuals are not
11 stated anywhere in the IFB. Further, the trends of GWA's usage and the impact that GWA's
12 infrastructure changes over the next few years would have on gasoline usage over the life of the
13 Contract were not included in the IFB as criteria in the evaluation process. Thus, the Public Auditor
14 finds that actual usage of diesel and gasoline, the trends of GWA's usage, and the impact that
15 GWA's infrastructure changes over the next few years would have on gasoline usage over the life
16 of the Contract are criteria not disclosed in the IFB. As the IFB was required to set forth the
17 requirements and criteria which would be used to determine the lowest responsive bidder and no
18 bid could be evaluated for any requirement or criterion not disclosed in the IFB, 2 GAR 4 §
19 3109(n)(1), the bids, including IP&E's bid, should not have been evaluated by using these
20 undisclosed criteria. Instead, GWA was limited to using only the requirements and criteria
21 disclosed in the IFB, including the price based on estimated quantities of diesel and unleaded
22 gasoline, to determine the lowest responsive bidder.
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25 It is also noteworthy that the projected FY 2016 actuals of 104,000-plus gallons for
26 unleaded gasoline, which are contained in the cost-analysis used by GWA, included diesel and
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1 premium gasoline usage. Accordingly, the cost analysis incorrectly projected the unleaded gasoline
2 usage for FY 2016. The cost analysis projected 104,477.90 gallons for FY 2016 unleaded gasoline
3 when it should have been 80,733 gallons. For this additional reason, the actual use figure was
4 improperly used by GWA to determine lowest responsive bidder.
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6 The Public Auditor finds that it is in the best interests of the Territory that GWA purchase
7 diesel and unleaded gasoline at the lowest prices offered. As IP&E was the lowest responsive
8 bidder as to diesel, bidding \$1.3200 per gallon, and Mobil was the lowest responsive bidder as to
9 unleaded gasoline, bidding \$1.523 per gallon, GWA should have awarded IP&E the contract for
10 diesel and should have awarded Mobil the contract for unleaded gasoline. GWA admits that
11 awarding two contracts is permissible under the IFB, as it considered splitting the contracts between
12 fuel types and having a supplier for diesel and another for gasoline. (Agency Statement at 2.)
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15 IV. CONCLUSION

16 Based on the foregoing, the Public Auditor hereby determines the following:

17 1. GWA was required to use the estimated quantities of gallons of diesel and unleaded
18 gasoline provided in the IFB for evaluation and award rather than unknown factors such as actual
19 usage of gasoline, trends of actual usage, and the impact that GWA's infrastructure changes over
20 the next few years would have on gasoline usage over the life of the Contract.
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22 2. IP&E was the lowest responsive bidder as to diesel and Mobil was the lowest responsive
23 bidder as to unleaded gasoline.

24 3. GWA shall award IP&E the contract for diesel and shall award Mobil the contract for
25 unleaded gasoline.
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1 4. Accordingly, IP&E's procurement appeal is hereby GRANTED IN PART and DENIED
 2 IN PART.

3 This is a Final Administrative Decision. The Parties are hereby informed of their right to
 4 judicial review in the Superior Court of Guam of a Decision of the Public Auditor under 5 G.C.A.
 5 Chapter 5, Article 9 (Legal and Contractual Remedies) of the Guam Procurement Law. In
 6 accordance with 5 G.C.A. § 5481(a), such action shall be initiated within fourteen (14) days after
 7 receipt of a Final Administrative Decision. A copy of this Decision shall be provided to the Parties
 8 and their respective attorneys, in accordance with 5 G.C.A. § 5702, and shall be made available for
 9 review on the OPA website at www.opaguam.org.

10 SO ORDERED this 23rd day of November, 2016.

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 15 _____
 16 DORIS FLORES BROOKS, CPA, CGFM
 17 Public Auditor of Guam
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