RESOLUTION NO. 2017-33

AUTHORIZING MANAGEMENT TO CHANGE BID AND
RE-SOLICIT FOR THE SUPPLY AND DELIVERY OF DIESEL FUEL OIL NO.2
FOR THE BASELOADS AND PEAKING UNITS

WHEREAS, the three (3) year base period for the current contract (GPA-029-14) for the Supply of Diesel Fuel Oil No.2 for the Baseloads (Cabras 1&2 and MEC 8&9), and the Peaking Units (Tenjo Vista, Fast Tracks: Manenggon and Talofofo, TEMES CT and the Northern Diesel Plants: Dededo CT, Macheche CT, and Yigo CT) will expire on December 31, 2017; and

WHEREAS, the aftermath of the Cabras 3&4 incident in August 2015 drastically increased GPA’s diesel consumption, overly exceeding the estimated quantities provided in Schedule B of the current contract (Exhibit A); and

WHEREAS, through Resolution 2017-05 and PUC Docket 17-18 GPA (Exhibit B) issued an Invitation For Bid for the procurement of diesel fuel oil for the Baseload and Peaking Units for a base period of two (2) years, to commence on January 01, 2018 through December 31, 2019, with three (3) additional one-year extension options; and

WHEREAS, changing operational requirements and dispatching for the next 3-5 years, as well as inquiries raised by prospective bidders has necessitated major changes in the structure of the current bid; and

WHEREAS, GPA is requesting authorization to change bid and re-solicit with revised structure and requirements; and

WHEREAS, the draft bid solicitation documents for the procurement of a new diesel fuel oil supply contract is hereby attached as (Exhibit C); and

WHEREAS, the total cost for the new contract is anticipated to exceed $1.5M requiring GPA to seek authorization for this procurement from the PUC; and

WHEREAS, GPA is requesting the approval of the CCU to petition the PUC to change and re-issue an Invitation for Bid for a new diesel fuel oil supply contract; and

WHEREAS, GPA’s re-issued bid will separate Diesel Fuel Supply and Diesel Fuel Delivery, as this structure would be in the best interests of the Authority.
NOW THEREFORE, BE IT RESOLVED, by the Consolidated Commission on Utilities, subject to the review and approval of the Public Utilities Commission, as follows:

1. The General Manager is authorized to change bid requirements and re-issue an Invitation for Bid for a new Diesel fuel supply contract through a Multi-Step Bid process that is reasonable, prudent and necessary for GPA.

2. GPA is authorized to petition the Public Utilities Commission for approval to re-issue an Invitation for Bid to procure a Contractor for the supply of Diesel Fuel Oil No. 2 for the Baseloads and Peaking Units.

RESOLVED, that the Chairman of the Commission certifies and the Secretary of the Commission attests the adoption of this Resolution.

DULY and REGULARLY ADOPTED AND APPROVED THIS 29th day of AUGUST, 2017.

Certified By:

[Signature]

JOSEPH T. DUEÑAS
Chairperson

Attested By:

[Signature]

J. GEORGE BAMBA
Secretary

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

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

AYES: 4

NAYS: 0

ABSENT: 0

ABSTAIN: 1
Invitation For Re-Bid

Multi-Step IFB No. GPA-057-17

DIESEL FUEL OIL NO.2

A. SUPPLY TO GPA BULK STORAGE

Volume II

CONTRACT
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>SECTION 1.</td>
<td>DEFINITIONS</td>
<td>7</td>
</tr>
<tr>
<td>SECTION 2.</td>
<td>FUEL OIL TO BE SUPPLIED</td>
<td>9</td>
</tr>
<tr>
<td>SECTION 3.</td>
<td>CONTRACT TERM</td>
<td>9</td>
</tr>
<tr>
<td>SECTION 4.</td>
<td>CONTRACT PRICE</td>
<td>9</td>
</tr>
<tr>
<td>SECTION 5.</td>
<td>INVOICE PRICE DETERMINATION</td>
<td>11</td>
</tr>
<tr>
<td>SECTION 6.</td>
<td>TITLE, CUSTODY AND RISK OF LOSS</td>
<td>12</td>
</tr>
<tr>
<td>SECTION 7.</td>
<td>TERMS OF PAYMENT</td>
<td>12</td>
</tr>
<tr>
<td>SECTION 8.</td>
<td>PAYMENT O TAXES AND OTHER GOVERNMENT CHARGES</td>
<td>14</td>
</tr>
<tr>
<td>SECTION 9.</td>
<td>WARRANTY AND CLAIMS</td>
<td>14</td>
</tr>
<tr>
<td>SECTION 10.</td>
<td>PRODUCT AND QUALITY</td>
<td>15</td>
</tr>
<tr>
<td>SECTION 11.</td>
<td>QUANTITY AND QUALITY ASSURANCE</td>
<td>15</td>
</tr>
<tr>
<td>SECTION 12.</td>
<td>QUANTITY DETERMINATION</td>
<td>16</td>
</tr>
<tr>
<td>SECTION 13.</td>
<td>SECURITY OF SUPPLY</td>
<td>17</td>
</tr>
<tr>
<td>SECTION 14.</td>
<td>GOVERNMENT LAWS AND REGULATIONS</td>
<td>17</td>
</tr>
<tr>
<td>SECTION 15.</td>
<td>PERMITS AND RESPONSIBILITIES</td>
<td>18</td>
</tr>
<tr>
<td>SECTION 16.</td>
<td>FORCE MAJEURE</td>
<td>18</td>
</tr>
<tr>
<td>SECTION 17.</td>
<td>NOTICE TO OTHER PARTY</td>
<td>19</td>
</tr>
<tr>
<td>SECTION 18.</td>
<td>PAYMENT REQUIRED</td>
<td>20</td>
</tr>
<tr>
<td>SECTION 19.</td>
<td>PRORATION OR EQUITABLE ALLOATION</td>
<td>20</td>
</tr>
<tr>
<td>SECTION 20.</td>
<td>ALTERNATE SUPPLY</td>
<td>20</td>
</tr>
<tr>
<td>SECTION 21.</td>
<td>RESUMPTION OF PERFORMANCE</td>
<td>20</td>
</tr>
<tr>
<td>SECTION 22.</td>
<td>GOVERNING LAW AND DISPUTES</td>
<td>21</td>
</tr>
<tr>
<td>SECTION 23.</td>
<td>CONTRACTOR'S INSURANCE</td>
<td>22</td>
</tr>
<tr>
<td>SECTION 24.</td>
<td>INDEMNITY</td>
<td>22</td>
</tr>
<tr>
<td>SECTION 25.</td>
<td>TRANSPORTATION</td>
<td>22</td>
</tr>
<tr>
<td>SECTION 26.</td>
<td>COORDINATION – AMMUNITION LOADING</td>
<td>26</td>
</tr>
<tr>
<td>SECTION 27.</td>
<td>FAILURE TO SUPPLY</td>
<td>26</td>
</tr>
<tr>
<td>SECTION 28.</td>
<td>FAILURE TO PAY</td>
<td>26</td>
</tr>
<tr>
<td>SECTION 29.</td>
<td>FAILURE TO COMPLY WITH LAWS</td>
<td>27</td>
</tr>
<tr>
<td>SECTION 30.</td>
<td>PENALTY CLAUSES</td>
<td>27</td>
</tr>
<tr>
<td>SECTION 31.</td>
<td>DEFAULT</td>
<td>28</td>
</tr>
<tr>
<td>SECTION 32.</td>
<td>ATTORNEYS FEES</td>
<td>29</td>
</tr>
<tr>
<td>SECTION 33.</td>
<td>TERMINATION FOR CONVENIENCE</td>
<td>29</td>
</tr>
<tr>
<td>SECTION 34.</td>
<td>REMEDIES CUMMULATIVE</td>
<td>31</td>
</tr>
<tr>
<td>SECTION 35.</td>
<td>COVENANT AGAINST CONTIGENT FEES</td>
<td>31</td>
</tr>
</tbody>
</table>
SECTION 36. NOTICE ........................................................................................................... 32
SECTION 37. INTEREST OF OTHER PARTIES ................................................................. 32
SECTION 38. ASSIGNMENT ............................................................................................. 32
SECTION 39. TIME ............................................................................................................ 33
SECTION 40. AMENDMENT AND WAIVER ................................................................. 33
SECTION 41. DESCRIPTIVE HEADINGS ....................................................................... 33
SECTION 42. RELATIONSHIP OF PARTIES .................................................................. 33
SECTION 43. NUMBER AND GENDER ............................................................................ 34
SECTION 44. SUCCESSORS IN INTEREST ...................................................................... 34
SECTION 45. PARTIAL INVALIDITY ............................................................................... 34
SECTION 46. EQUAL OPPORTUNITY CLAUSE .............................................................. 34
SECTION 47. PROHIBITION AGAINST GRATUITIES, KICKBACKS, AND FAVORS TO THE TERRITORY ......................................................................................................................... 35
SECTION 48. RESTRICTION AGAINST CONTRACTOR EMPLOYING CONVICTED SEX OFFENDERS FROM WORKING AT GOVERNMENT OF GUAM VENUES ...................................................................................... 35
SECTION 49. CONTRACT BINDING EFFECT .................................................................. 36
SCHEDULE A: PRODUCT QUALITY SPECIFICATION .................................................. 42
CONTRACT

CONTRACTOR

GUAM POWER AUTHORITY

2017

Re-Bid IFB No. GPA-057-17

SUPPLY OF DIESEL FUEL OIL NO.2
FORMAL CONTRACT

This Agreement and Formal Contract ("Contract"), is made and entered into on the ____ day of _____, 2017 by and between:

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

- and -

GUAM POWER AUTHORITY, hereinafter referred to as the "Authority" or "GPA", a Public Corporation with its office located at the Gloria Nelson Public Service Complex, Fadian Mangilao Guam;

RECEITALS

WHEREAS, GPA desires to maintain uninterrupted supply of Diesel Fuel Oil No.2 to its Baseload Power Plants;

WHEREAS, the three (3) year base period the current contract for the supply if Diesel Fuel Oil No.2 will expire on December 31, 2017; and
WHEREAS, the current contract for the supply of Diesel Fuel Oil No.2 will be extended for six (6) months to expire on June 30, 2018; and

WHEREAS, GPA seeks to procure a new Diesel Fuel Oil No.2 Supply Contractor; and

WHEREAS, the Consolidated Commission on Utilities has determined that the CONTRACTOR is a preferred option for GPA to supply the Diesel Fuel Oil No.2 requirements for the Authority;

WHEREAS, the Guam Public Utilities Commission has, through stipulation, ordered GPA to proceed with the procurement of a CONTRACTOR for the Supply of Diesel Fuel Oil No.2;

WHEREAS, GPA has issued an Invitation For a Multi-Step Bid for the Supply of Diesel Fuel Oil No.2 under Re-bid IFB GPA-057-17; and

WHEREAS, CONTRACTOR submitted a bid in response to the Invitation for Bid for the Supply of Diesel Fuel Oil No.2;

WHEREAS, GPA, upon evaluation of the submitted bid proposals, determined that CONTRACTOR is the lowest responsive and responsible bidder;

NOW, THEREFORE, in consideration of the above premises and the mutual promises set forth herein and the terms and conditions hereinafter set forth and for other good and valuable consideration, receipt of which is hereby acknowledged; CONTRACTOR and GPA hereby agree as follows:
SECTION 1. DEFINITIONS

"Fuel oil" means a liquid hydrocarbon product satisfying the specifications in Schedule A.

"$" The term "$" refers to currency in U.S. dollars.

"ASTM" The term "ASTM" shall mean the American Society for Testing and Materials.

"API" The term "API" shall mean the American Petroleum Institute.

"Gallon" shall mean a U.S. standard gallon of 231 cubic inches at sixty degrees Fahrenheit.

"Barrel" The term "Barrel" means a volume equivalent to 42 U.S. gallons.

"Contract" The term "Contract" means the Diesel Fuel Oil No.2 Supply Contract executed as a result of this IFB.

"Contract Agreement (Agreement)" The written agreement between GPA and CONTRACTOR covering the Supply of Diesel Fuel Oil No.2 any other Contract Documents either attached to the Agreement or made a part thereof by reference therein.

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

"Contracting Officer" The term "Contracting Officer" as used herein means the General Manager of the Guam Power Authority and shall include his authorized representatives.

"CONTRACTOR" The term "CONTRACTOR" as used herein means the party or parties who or which shall have duly entered into a contract with the Guam Power Authority to perform the work herein contemplated or his or their
authorized assignee.

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

"Delivery Time" The total number of days or the dates stated in the Agreement for furnishing the product.

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

"Notice" The term "Notice" as used herein shall mean and include all written notice demands, instructions, claims, approvals and disapprovals required to obtain compliance with contract requirements. Any written notice by either party to the contract shall be sufficiently given if delivered to or at the last known business address of the person, firm, or corporation constituting the other party to the contract, or to his, their, or its duly authorized agent, representative, or officers, or when enclosed in a postage prepaid envelope addressed to such last known business address and deposited in a United States mail box. The CONTRACTOR must provide and maintain a post office address within Guam and file the same with the Contracting Officer.

"Procurement Officer" The General Manager of the Guam Power Authority or the General Manager’s designee.

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

"Seller" The CONTRACTOR.

"Territory" The Territory of Guam.

"OPA’90" means the Oil Pollution Act of 1990 by the U.S. Congress.
“Platt’s Asia-Pacific/ Arab Gulf Marketscan” refers to the source document for the fuel Contract pricing.

“D.E.S.” means Delivered Ex-Ship.

“Receiving facility” means any wharf, dock, jetty, pier, quay, sea terminal, buoy, lighter, barge, vessel, or other suitable apparatus capable of receiving fuel oil in bulk.

SECTION 2. FUEL OIL TO BE SUPPLIED

CONTRACTOR agrees to furnish and GPA agrees to accept and pay for all of GPA’s diesel fuel oil requirements for power generating plants in Guam for the term of the Contract. Fuel Oil to be supplied to GPA shall conform to the product quality requirements specified in Schedule A and shall come from reputable sources not sanctioned by the United States government. The estimated total fuel oil requirement is about ONE MILLION BARRELS PER YEAR (1,000,000 bbls/yr). The Minimum Purchase under the Contract is estimated at FIVE HUNDRED THOUSAND BARRELS PER YEAR (500,000 bbls/yr). The first delivery of fuel oil pursuant to the Contract is anticipated to be on or about July 01, 2018.

SECTION 3. CONTRACT TERM

The Contract Term shall be for TWO (2) years and shall commence on or about after 0:00 hour on July 01, 2018, and shall continue until midnight of June 30, 2020. GPA has the option to extend the contract for THREE (3) years renewable annually with mutual consent of parties.

SECTION 4. CONTRACT PRICE

The total contract price in U.S. Dollars per barrel for all Diesel Fuel Oil No.2 delivered D.E.S. Guam (discharge port) to GPA shall be inclusive of all costs and liabilities incurred prior to delivery at discharge port, Cabras Island, Guam.

DES (Delivered Ex-Ship) PROVISIONS:
Under this term, the CONTRACTOR quotes a price including the cost of the goods, the marine insurance, and all transportation charges to the designated point of destination (GPA). Under this quotation, the CONTRACTOR must:

(1) provide and pay for transportation to named point of destination (GPA);
(2) pay applicable taxes or charges levied on the cargo outside Guam;
(3) provide and pay for marine insurance;
(4) provide war risk insurance;
(5) obtain and dispatch promptly to GPA, or its agent, copies from the original document of a clean bill of lading, and also insurance policy or negotiable insurance certificate;
(6) provide GPA with copies from the original document of certificates of origin, or any documents issued in the country of origin, or of shipment, or both, which GPA may require for importation of goods and, where necessary, for their passage in transit into another country.
(7) where received-for-shipment ocean bill of lading may be tendered, be responsible for any loss or damage, or both, and other charges until the goods have been delivered into the custody of the ocean carrier to GPA;
(8) where on-board ocean bill of lading is required, be responsible for any loss or damage, or both, and other charges until the goods have been delivered on board the vessel to GPA;

The CONTRACT PRICE shall be the BID PRICE OFFER calculated as the BID REFERENCE PRICE plus the Contractor’s FIXED SERVICE FEE in U.S. dollars per barrel for all fuel oil delivered to GPA at the Port of Guam.

**BID REFERENCE PRICE:**

The BID REFERENCE PRICE shall be based on the Platt’s Singapore Products Assessment for Fuel Oil Cargoes “Gasoil 10 ppm” for July 21, 2017.

Reference date: July 21, 2017
The following is a sample calculation of the mean price for “Gasoil 10 ppm” published in the Platt’s Marketscan, Singapore Products Assessments for Fuel Oil Cargoes for July 21, 2017.

\[
\text{Mean Singapore Spot} = \frac{\text{Low + High Price Assessments}}{2} = \frac{\$62.26 + \$62.30}{2} = \$62.280 \text{ per barrel}
\]

**BID REFERENCE PRICE** = \$62.280 per barrel

<table>
<thead>
<tr>
<th>Diesel Fuel Oil No. 2 Supply</th>
<th>1st year $/bbl (in 3 decimals)</th>
<th>2nd year $/bbl (in 3 decimals)</th>
<th>3rd yr $/bbl (in 3 decimals)</th>
<th>4th yr $/bbl (in 3 decimals)</th>
<th>5th yr $/bbl (in 3 decimals)</th>
</tr>
</thead>
<tbody>
<tr>
<td>BID PRICE</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CONTRACT</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FIXED SERVICE FEE</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**SECTION 5. INVOICE PRICE DETERMINATION**

Price shall be based on the arithmetic average of the mean of the high/low quotations for “Gasoil 10 ppm” as published in Platts Asia Pacific/Arab Gulf Marketscan under the heading “FOB Singapore” priced for five (5) valid consecutive quotations immediately prior to B/L date and five (5) immediately after the B/L date plus the FIXED SERVICE FEE.

In case of “No Posting” on the B/L date, no price will be used and the remaining 10-days average will be used. All price postings are at the prices effective dates.
Sample Calculation:

B/L date = July 8, 2017

Marketscan Postings, Gasoil 10 ppm ($/bbl)

<table>
<thead>
<tr>
<th>Date</th>
<th>Low</th>
<th>High</th>
<th>Avg</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>60.34</td>
<td>60.98</td>
<td>60.96</td>
</tr>
<tr>
<td>4</td>
<td>62.16</td>
<td>62.20</td>
<td>62.18</td>
</tr>
<tr>
<td>3</td>
<td>62.84</td>
<td>62.88</td>
<td>62.86</td>
</tr>
<tr>
<td>2</td>
<td>61.80</td>
<td>61.84</td>
<td>61.82</td>
</tr>
<tr>
<td>1</td>
<td>59.93</td>
<td>59.97</td>
<td>59.95</td>
</tr>
<tr>
<td>B/L</td>
<td>No Posting</td>
<td>No Posting</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>58.92</td>
<td>58.96</td>
<td>58.94</td>
</tr>
<tr>
<td>2</td>
<td>58.97</td>
<td>59.01</td>
<td>58.99</td>
</tr>
<tr>
<td>3</td>
<td>60.62</td>
<td>60.66</td>
<td>60.64</td>
</tr>
<tr>
<td>4</td>
<td>59.14</td>
<td>59.18</td>
<td>59.16</td>
</tr>
<tr>
<td>5</td>
<td>60.30</td>
<td>60.34</td>
<td>60.32</td>
</tr>
</tbody>
</table>

Mean Arithmetic Average ($/bbl) = 60.582

Invoice Reference Price: $60.582/bbl
Sample Fixed Service Fee: $8.000/bbl

Invoice Price Calculation = Invoice Reference Price + Fixed Service Fee = $68.582/bbl

For invoice calculation purposes, quantity shall be reported in barrels at standard sixty degrees Fahrenheit (60°F) as declared in the Bill of Lading.

SECTION 6. TITLE, CUSTODY AND RISK OF LOSS

Title to the fuel oil and custody thereof shall pass from CONTRACTOR to GPA when the fuel oil has passed the vessel's permanent flange hose connection at the discharge port.

SECTION 7. TERMS OF PAYMENT

Payment shall be made in U.S. Dollars Funds without off-set, deduction, or counter-claim within THIRTY (30) calendar days (30-days net term) after the Bill of Lading date provided vessel tenders its NOR within TWELVE (12) days after the B/L date, otherwise it extends day by day (B/L date inclusive). In case payment due date falls on a Bank holiday or Saturday in Guam, payment shall be made immediately preceding banking day. However, should payment due falls
on Sunday or Monday bank holiday in Guam, payment shall be made on the immediately following banking day.

Payment shall be available at Seller’s account on Maturity Date. If Buyer fails to pay on the maturity date, Seller shall be reimbursed for the interests related to the time of delay. Interest Rate shall be calculated based on the one month London Interbank Offered Rate (LIBOR) for US Dollar Deposits offered by Bloomberg Publication at 11:00 A.M. London Time, as quoted on page BBAM in effect on the date buyer’s payment was due, plus one and one-half percent (1.5%) per annum.

In the event that a duly executed Documentary Letter of Credit (L/C) is amended or cancelled due to error or adjustments caused by the CONTRACTOR, the CONTRACTOR shall reimburse GPA for any penalties for the amendment or cancellation of the LC.

The CONTRACTOR shall endeavor to assist GPA to revise the payment due dates if requested by GPA accordingly. GPA has the right to request for revision of the payment due dates and Contractor has the right to reject it at its sole discretion.

CONTRACTOR may provide GPA a Line of Credit, but it is not a requirement in the contract. If the amount due under this contract exceeds the GPA’s credit line of:

(Amount in Words ________________________________________)

(US$_______).

available at CONTRACTOR system, then as a loading condition, for the amount not covered under the credit line, GPA shall:

(i) Make advance payment not later than one day before the cargo is loaded; OR

(ii) Open a DOCUMENTARY LETTER OF CREDIT (L/C) at a first class international bank mutually agreeable to both GPA and the CONTRACTOR
SECTION 8. PAYMENT OF TAXES AND OTHER GOVERNMENT CHARGES

All fuels under the terms of this Contract are exempt from the Government of Guam Liquid Fuel Tax and the Government of Guam Gross Receipts Tax as provided by 12 G.C.A., Section 8115.

CONTRACTOR shall be responsible for filing appropriate tax returns or other filings and requesting rebates, credits, drawbacks or exemptions.

In the event any liquid fuel tax or gross receipts tax or other tax including, but not limited to, excise tax, duty, toll, fee, charge for other exaction or the amount equivalent thereto, and any increase thereof, now or hereafter imposed, levied or assessed by the United States Government, the Government of Guam, the Port Authority of Guam, or other instrumentality or agency thereof in connection with and as a result of the sale of fuel oil herein provided for is collectible or payable by CONTRACTOR, (except taxes, penalties, fees or other charges that may be imposed on CONTRACTOR because of CONTRACTOR's failure to make proper tax filings including requests for credits, exemptions, drawbacks or rebates) it shall be paid by GPA as part of the fuel price set forth herein, on demand by CONTRACTOR. Any such payment shall be in addition to the price otherwise herein provided for.

Notwithstanding these provisions, should the payment of any such charges described in this section be unduly burdensome to GPA, it shall be grounds for renegotiation for an equitable adjustment in price.

CONTRACTOR shall be solely responsible for filings and payment of income tax or taxes measured on net income.

SECTION 9. WARRANTY AND CLAIMS

CONTRACTOR warrants that the fuel oil shall meet the specification prescribed herein under Schedule A, and other pertinent sections. If the fuel oil fails to meet the specifications herein, CONTRACTOR shall be liable for any direct damages resulting therefrom.

CONTRACTOR shall be solely responsible for any damages caused by the CONTRACTOR or its agents during the process of oil shipment and delivery.
Claims against the CONTRACTOR for direct costs incurred on account of their negligent actions shall be given in writing together with all supporting documents, invoices and correspondence by GPA within thirty days (30) from date of delivery of fuel oil as specified in Section 4.

SECTION 10. PRODUCT AND QUALITY

The fuel oil delivered hereunder shall have the physical and chemical characteristics as described in Schedule A.

The Authority reserves the right to require the supplier to add and to conduct additional tests as may be required.

SECTION 11. QUANTITY AND QUALITY ASSURANCE

(a) Inspection of fuel oil cargo loading and discharge to determine quantity and quality shall be witnessed and or conducted by the appointed third party independent Inspector mutually acceptable to GPA and the CONTRACTOR. Such independent inspector shall also perform or witness the required sampling, gauging, and inspection of vessel and shore tanks before and after loading at load port as well as discharge port, Guam. Final determination shall be based on the discharge port findings. All quantity calculations and correction to volume at sixty (60) degree (Fahrenheit) shall be in accordance with the ASTM-IP Petroleum Measurement Tables, Table 6- the latest edition published shall be applicable. All costs and charges for the inspections for the load port shall be borne by the CONTRACTOR, and costs at the discharge port shall be equally shared by GPA and the CONTRACTOR.

(b) Load port samples from each individual shore loading tanks shall be sampled by the independent inspector who shall perform or witness the required tests for quality certification prior to loading. Shore tank composite from each individual shore loading tanks shall be separately tested and the quality must conform to the specifications under Schedule A of the contract. Vessel's composite samples from all vessel's cargo compartments shall also be obtained by the inspector for the consignee, GPA, in care of the ship's master. All Samples shall be equally divided into THREE (3) parts, sealed, properly identified, and designated with the required "Chain of Custody of Samples" documentations.
(c) The quality of the cargo to be delivered shall be determined by an independent inspector mutually acceptable to GPA and the CONTRACTOR and is to be based on the ship composite samples taken at the port of discharge in such a manner as to secure samples which are representative of the entire cargo delivery. Discharge tanks samples and ship's composite samples shall be divided into THREE (3) parts. One part shall be for CONTRACTOR and TWO (2) parts shall be for GPA, and GPA shall utilize one sample for recertification and reserve the other sample as a retained referee sample. All discharge port samples shall be presented by the inspector for GPA in care of the Master of the ship. All samples shall be retained for not less than ONE HUNDRED TWENTY (120) days after delivery. In the event of dispute as to quality, analysis of the samples taken at the discharge port shall be made by an independent inspector, which analysis shall be final and binding upon both parties.

GPA reserves the right to reject any or all deliveries that fail to conform to the quality requirements specified in Schedule A.

GPA has the right to reject any cargo outside the specifications limits, as these are agreed in the context of this contract. In this respect, the quality analysis certificate together with the other shipping documents (B/L, certificate of origin, cargo manifest, certificate of origin, certificate of quantity with shore tank measurement report, certificate of quantity, etc) must be transmitted by fax or e-mail to GPA upon completion of loading.

Original/copy of the quality analysis certificates and ship’s “certificate of cleanliness” issued before loading to be handed over with the other shipping documents (B/L, Certificate of Origin, Cargo Manifest, Certificate of Quality, Certificate of Quantity with shore tank measurement report, etc.) upon arrival of vessel at discharge port.

It is understood that any delay as may be incurred in discharge due to unavailability of copy of the Bill of Lading will be for CONTRACTOR’s account. Furthermore, the correct documentation in original format is required in order to establish to the full satisfaction of GPA.

SECTION 12. QUANTITY DETERMINATION

Quantity determination shall be performed by a third party independent inspector mutually acceptable to GPA and the CONTRACTOR. Quantity shall be based from the load port shore tanks gauges as to be reflected as Bill of Lading quantity NET barrels at sixty degrees Fahrenheit (60 °F). The Certificate of Quantity shall separately use the density from each individual shore
loading tanks. All quantities shall be corrected to volume at sixty degrees Fahrenheit (60 °F) in accordance with the ASTM-IP Petroleum Measurement Table, Table 6B, the latest edition published shall be applicable. A copy of the load port shore tank measurements shall be included as supplemental documents.

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

In the event of the variances between the B/L quantity and the discharge port (shore tanks) receipts, The AUTHORITY shall pay (absorb) a quantity shortfall up to ONE-FOURTH PERCENT (0.25 %) of the barrel established quantity; shortages beyond the 0.25% shall be covered by the CONTRACTOR.

SECTION 13. SECURITY OF SUPPLY

For security of supply, CONTRACTOR reserves the right to supply fuel oil meeting GPA specifications from any source. In the event that supplies are taken from such other places, then the price to Guam will remain the same as established in Section 4 above.

SECTION 14. GOVERNMENT LAWS AND REGULATIONS

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

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

SECTION 15. PERMITS AND RESPONSIBILITIES

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

SECTION 16. FORCE MAJEURE

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

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

(b) Restraints. Arrest or restraint of princes, rulers or peoples;

(c) Confiscation. Expropriation, requisition, confiscation or nationalization;

(d) Rationing. Embargoes, export or import restrictions or rationing or allocation, whether imposed by law, decree or regulation or by voluntary cooperation of industry at the insistence or request of any governmental authority or person purporting to act 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) Accidents. Accidents to or adjuncts of shipping navigation;

(i) Strikes. Epidemics, quarantine, strikes or combination of workmen, lockouts, or other labor disturbances;

(j) Explosions. Explosion, accidents by fire or otherwise to wells, pipes, storage facilities, refineries, installations, machinery;

(k) Taking by Government. Unavailability of fuel because of the election of the government of the country of its origin to take royalty product in kind;

(l) Other Events. Any event, matter or thing wherever occurring and whether or not of the same class or kind as those set forth, which shall not be reasonably within the control and without the fault or negligence of the party affected thereby.

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

SECTION 17. NOTICE TO OTHER PARTY

Either party whose obligations may be affected by any of the forces or causes set out in Section 16, supra, shall promptly notify the other party in writing, giving full particulars thereof as soon as possible after the occurrence of such force or cause. Such party shall exercise due diligence to remove such cause with all reasonable dispatch and to resume performance at the earliest practicable time.
SECTION 18. PAYMENT REQUIRED

Notwithstanding the provisions of Section 16, supra, GPA shall not be relieved of any obligation to make payments for any fuel delivered to Guam dock/GPA tanks hereunder; however, during the force majeure condition the obligation shall be suspended, except for fuel oil deliveries made prior to the force majeure condition.

SECTION 19. PRORATION OR EQUITABLE ALLOCTION

If any of the events enumerated in Section 16, supra, have occurred, CONTRACTOR shall prorate or otherwise allocate in a fair and equitable manner among its customers, including GPA, the supplies of fuel oil CONTRACTOR has available for delivery at the time of the occurrence or for the duration of such event taking into account GPA’s unique situation as Guam’s total dependence on fuel oil. CONTRACTOR shall also seek an alternative source of fuel oil to fulfill its contractual obligations.

SECTION 20. ALTERNATE SUPPLY

In the event CONTRACTOR is unable to fulfill its obligations under this Contract as a result of Section 16, supra, GPA may at its sole discretion seek an alternative source of fuel oil so long as such condition shall exist.

In the event CONTRACTOR is unable to fulfill its obligations under this Contract as a result of any negligence on the part of the Contractor, GPA may at its sole discretion seek an alternative source of fuel oil so long as such condition of negligence shall exist. If the cost of fuel during such period of negligence shall exceed the Contract price as provided in Section 4, the CONTRACTOR shall be liable to GPA for the difference, which may be taken from the Performance Bond.

SECTION 21. RESUMPTION OF PERFORMANCE

If CONTRACTOR is prevented from delivering or GPA is prevented from receiving all or any fuel to be sold under the Contract for the reasons which fall within the provisions of Section 16, supra, then the party so prevented shall, as to the remainder of the fuel not affected thereby, promptly resume performance of the Contract. No curtailment or suspension of
deliveries or payment under the causes listed in Section 16, supra, shall operate to extend the term of or terminate the Contract unless the occurrence of force majeure will materially impair, for an indefinite period of time, the parties' ability to perform the Contract.

SECTION 22. GOVERNING LAW AND DISPUTES

This CONTRACT shall in all respects be governed by the Laws of Guam. The provisions of the United Nations Convention on Contracts for the International Sale of Goods are expressly excluded.

This CONTRACT shall not be construed to confer any benefit on any person not being a party to this Contract nor shall it provide any rights to such person to enforce any of its provisions. The provisions of the English Contracts (Rights of Third Parties) Act 1999 are expressly excluded.

In the event of any controversies, dispute or difference of any nature (a "Dispute") between the parties arising from or in connection with this Contract, either party may give notice to the other in writing of the existence of such dispute specifying its nature and the points at issue. If the dispute shall not have been amicably resolved within thirty (30) days from the date of the said notice, then the same shall be exclusively and definitely resolved through final and binding arbitration in New York, by the AMERICAN ARBITRATION ASSOCIATION ("AAA"), in accordance with the rules of arbitration of such institution in effect as of the date the existence of the controversy is notified by one of the parties. The arbitration shall be conducted by three arbitrators, unless all parties to the dispute agree to a sole arbitrator within thirty (30) days after the filing of the arbitration. Each party to the dispute shall appoint one arbitrator within thirty (30) days of the filing of the arbitration, and the two arbitrators so appointed shall select the presiding arbitrator within thirty (30) days after the latter of the two arbitrators have been appointed by the parties to the dispute. If a party to the dispute fails to appoint its party-appointed arbitrators or if the two party-appointed arbitrators cannot reach an agreement on the presiding arbitrator within the applicable time period, then LCIA shall appoint the remainder of the three arbitrators. The arbitration proceedings shall be conducted in English and the arbitrator(s) shall be fluent in the English language. The award of the arbitral tribunal shall be final and binding. Judgment on the award of the arbitral tribunal may be entered and enforced in any court having jurisdiction thereof. The cost of the arbitration proceedings, including attorneys' fees, shall be borne in the manner determined by the arbitral tribunal. Any right to appeal or challenge any arbitral decision or award is hereby waived. The parties may seek a preliminary injunction or other preliminary
judicial relief, if in its judgment such action is necessary to avoid irreparable damage. It is expressly agreed that indirect, special, punitive and consequential damages shall not be awarded.

SECTION 23. CONTRACTOR’S INSURANCE

The CONTRACTOR shall maintain an insurance policy or ensure that vessel nominated have in place an insurance policy for oil pollution (throughout the entire period of the voyage to and from the discharge port) with coverage consistent with the provisions in compliance to the requirements of the U.S. Oil Pollution Act of 1990 (OPA 90) and any amendments thereto. This includes, but is not limited to, compliance with oil spill clean up plan, financial responsibility, and all other provisions of OPA 90.

SECTION 24. INDEMNITY

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

SECTION 25. TRANSPORTATION

The Authority shall nominate and advise the CONTRACTOR of the 10-day delivery date range not later than 30 days before the 1st calendar day of the delivery date range. The AUTHORITY and CONTRACTOR shall mutually agree to narrow down to a 5-day delivery date range 21 days prior to the 1st day of the 5-day delivery date range.

(a) CONTRACTOR shall arrange for the transportation of the fuel oil from loading port to the Guam dock, and give GPA at least FIFTEEN (15) days prior notice of the approximate arrival date of each tanker.
All risk of loss, cost and liabilities prior to the time of passage of title of the fuel oil to shall be on the CONTRACTOR. CONTRACTOR or its agents shall further arrange for the use of pier receiving facilities' Manager (Tristar), U.S. Coast Guard, U.S. Custom and Immigration inspections, Guam Commercial Port authorities, Guam tug services, Port Stevedores services, and others as necessary for the safe berthing of fuel tankers.

GPA shall exercise due diligence and make its best effort to assist the CONTRACTOR in arranging for safe berthing facilities to accommodate vessels at the F-1 dock with the following information:

- Maximum LOA: 237 meters
- Maximum breadth: 45 meters
- Maximum vessel draft alongside: 14.8 meters
- Maximum displacement: 120,000 tonnes

GPA shall provide the CONTRACTOR an estimated total cargo quantity to be delivered approximately THIRTY (30) days from estimated 10-day delivery date range.

GPA shall provide notification to the CONTRACTOR as to the final split cargo delivery quantity approximately TWENTY-ONE (21) days prior to the first (1st) day of the estimated 5-day delivery date range which will also be specified in this final notice. GPA estimates a single delivery requirement in the range of FORTY THOUSAND TO ONE HUNDRED TWENTY THOUSAND BARRELS (40,000 -120,000 bbls).

For each delivery CONTRACTOR will have an operational tolerance of five-ONE-FOURTH PERCENT (0.25%) on the cargo size, as well as the obligation to deliver the shipment within defined delivery date range, as has been notified by GPA.

GPA shall have the right to cancel or change the previously notified cargo size and/or delivery date within twenty one (21) calendar days prior to the first day of the delivery range without penalty.

(b) Tanker nomination procedures:

The AUTHORITY shall advise the contractor of projected "tankers' schedule and quantities per slate" THIRTY (30) days before the commencement of the contract, and CONTRACTOR agrees to provide all fuel requirements of GPA as advised and all succeeding cargo requirements thereafter.
(i) **Vessel Specification:**

All vessels nominated by the CONTRACTOR for fuel oil deliveries to GPA shall meet Tristar’s vessel vetting requirements and be pre-approved by the F-1 dock facility manager (Tristar), having its registered office at:

414 West Soledad Avenue  
GCIC Building, Suite 500P  
Hagatna, Guam 96910  
Tel: (671) 565-2300/565-9021  
Fax: (671) 565-3909

The CONTRACTOR or its agents shall be responsible in seeking vessel clearance from Tristar. In the event that vessels owned or chartered by the CONTRACTOR do not meet the Tristar specification, CONTRACTOR shall have the vessel shortfalls corrected or have another vessel nominated and ensure that a suitable vessel is cleared for timely delivery of cargo to GPA. The CONTRACTOR or its agents shall be responsible for the scheduling and reservation of the dock with Tristar.

The CONTRACTOR shall ensure that the vessel assigned to perform the voyage should be rid of any slop before reaching the designated port and have adequate slops – storage capacity to ensure that unloading of any slops is avoided.

(c) **Ship Lay time and Demurrage:**

Ship lay time of thirty-six (36) hours at the discharge port shall commence six (6) hours after the tender of Notice of Readiness (NOR) or when the vessel berths whichever occurs first, and to cease upon last cargo hoses disconnection. Official NOR shall be tendered/ re-tendered after completion of inspection and clearance for conducting cargo discharging operations is granted by the Port Authorities.

However, if the vessel arrives before the first day of the agreed arrival date range, lay time shall not commence until 06:00 AM on the first day of the agreed arrival date range or the time discharge commences whichever is earlier. If the vessel arrives after the last day of the agreed arrival date range lay time shall commence at the time discharge commences.

If regulations of the Port Authorities prohibit the discharge of cargo at night, the time so lost shall not count as used lay time.
(i) **Ship Demurrage:**

If lay time allowed is exceeded, GPA shall be liable to pay the CONTRACTOR for applicable demurrage. However, any delay due to vessel inspection and clearance by Local and Federal Authorities, breakdown of the vessel’s equipment, or failure by vessel to comply with the requirements of the discharge port with respect to equipment aboard, shall not be counted in the lay time used for calculating demurrage. Waiting period for berthing, port formalities, product sampling and testing for quality conformance shall be deducted in the lay time calculation.

The vessel must be able to attain a minimum discharge rate of four thousand barrels per hour (4,000 bbls/hr) and a discharge pressure of up to one hundred (100) psi measured at the F-1 Dock manifold. Time lost for slow discharging shall be deducted from the lay time used for calculating demurrage.

Demurrage cost if payable by GPA shall be at the single voyage demurrage rate specified in the single voyage Charter Party of the vessel loading the cargo in question and the CONTRACTOR shall furnish GPA with a copy of such Charter Party. Such charges must be submitted to GPA within 90 days after Bill of Lading date.

**CONTRACTOR**’s and GPA’s rights and duties under Section 24 and Section 25 do not supersede or control the provisions of Section 16 Force Majeure.

(d) **Dock Use Lay time Charges:**

Dock lay time of thirty-six (36) hours at the discharge port, to commence upon commencement of cargo discharging, and to cease upon last cargo hose disconnection. Dock lay time charges in excess of the first thirty-six (36) hours are paid by GPA to the dock facility manager, Tristar.

In the event that the allowable lay time of thirty-six (36) hours is exceeded due to delays caused by the vessel, the Contractor shall reimburse GPA for any charges in excess of the allowable lay time. Calculation for reimbursement shall be based on the Letter of Protest issued to the Vessel’s Officer converted to time units multiplied by the dock excess lay time charge and dock operator overtime cost.
SECTION 26. COORDINATION – AMMUNITION LOADING

(a) The CONTRACTOR is hereby advised and agrees that the unloading of fuel oil is not permitted during the time that the unloading or loading of ammunition is taking place at the U.S. Navy's ammunition wharf.

(b) Coordination to prevent conflict in unloading between ammunition and fuel oil will be effected jointly by responsible parties representing the U.S. Navy, the Port Authority, GPA and the CONTRACTOR. Any charges that may result because of demurrage caused by delay in discharge of fuel oil related to ammunition unloading or loading will be borne by the GPA, provided that notice of arrival of tanker is given to GPA by the CONTRACTOR at least FIFTEEN (15) days prior to ETA Guam. In absence of such notice any delay costs shall be borne solely by the CONTRACTOR.

SECTION 27. FAILURE TO SUPPLY

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 fuel oil supply or commits any other substantial breach of this Contract, GPA may notify the CONTRACTOR in writing of the delay or non-performance and if not cured within THIRTY (30) days of the date of notification, GPA may terminate the Contract in whole or such part of the Contract as to which there has been a delay or a failure to properly perform. In the event of termination in whole or in part, GPA reserves the right to procure fuel oil supply from another source immediately upon issuance of such notification or whenever it deems appropriate.

SECTION 28. FAILURE TO PAY

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

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

SECTION 29. FAILURE TO COMPLY WITH LAWS

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

SECTION 30. PENALTY CLAUSES

(a) Late Deliveries

(1) In case of five (5) delayed deliveries beyond the last day of the stipulated delivery date range on the discharge port, after the stipulated delivery date as set out in the nomination procedure, GPA reserves the right to terminate the present contract by his written notification, without obligation to indemnify the CONTRACTOR.

(2) CONTRACTOR accepts to pay GPA for every delayed delivery beyond the last day of the five (5) days stipulated delivery date range as set out in the nomination procedure, a penalty equivalent to:
   - $0.10/bbl multiplied by the Bill of Lading quantity for every day of delay if delivery is less than five days late.
   - $0.20/bbl multiplied by the Bill of Lading quantity for every day of delay if delivery is more than five days late.

In case of delay due to GPA’s fault or Force Majeure, the time of delivery shall be correspondingly extended, the CONTRACTOR waiving any respective claim against GPA.

(b) Quality Outside Contractual Specifications
In the event that any fuel, according to the analysis results of either the composite vessel sample or the “Umpire” sample has one or more quality characteristics outside the contractual specifications set in Schedule A, then in addition to any other rights or remedies available to the GPA under this contract a penalty will be imposed according to the following:

(1) If the bottom sediment and water exceeds the specification limit, then a price reduction shall be made for all water and non-petroleum sediment in excess of maximums specified in Schedule A multiplied by the Bill of Lading Quantity.

(2) If the heating value is less than the specification limit, then there will be a price reduction calculated as the ratio of the Out-of-Specification Heating value and the Guaranteed Heating Value specified in Schedule A, multiplied by the Bill of Lading Quantity.

If any other quality parameter (besides the ones stated in) exceeds the specifications’ limits, then a penalty will be agreed between GPA and CONTRACTOR.

It is expressly agreed that the present penalty clauses shall be imposed regardless of whether damages were or not suffered by the GPA due to the delay in delivering the fuel and fuel quality outside contractual specifications, and that the GPA reserves the right to claim cumulatively both the amount of the penalty clauses and indemnification for every direct damage suffered by him due to CONTRACTOR non-contractual actions or omissions. If during the period of this contract the GPA is forced to purchase fuel oil in order to maintain the GPA’s Power Stations on full commercial load as a result of failure on the part of the CONTRACTOR to deliver fuel oil in accordance with the terms of this contract (save for events of Force Majeure) any additional cost borne by the GPA over and above the price provided for in this Contract will be liable to be refunded to the GPA either by payment from the CONTRACTOR or by way of reduction from his debts to the CONTRACTOR or from the Good Performance Bond of the Contract, or partially from both.

GPA reserves the right to retain the amount of the penalty clauses from his debts to the CONTRACTOR or from the Good Performance Bond of the Contract, or partially from both.

SECTION 31. DEFAULT

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

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

The CONTRACTOR shall be liable for the difference between the contract price and the prevailing market price at the time of termination.”

SECTION 32. ATTORNEYS FEES

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

SECTION 33. TERMINATION FOR CONVENIENCE

(a) **Termination.**

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

Any such termination shall be effected by delivery to the CONTRACTOR of a written Notice of Termination specifying the extent to which supply of fuel oil under the Contract is terminated, and the Contract shall be terminated effective THREE HUNDRED SIXTY (360) days after receipt of notice by CONTRACTOR.

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

(b) **CONTRACTOR’s Obligations.**

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

(c) Right to Supplies.

GPA may require the CONTRACTOR to transfer title of fuel oil cargo in transit to Guam at the time of receipt by Contractor of GPA's Notice of Termination.

(d) Compensation.

(1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience. If the CONTRACTOR fails to file a termination claim within ONE (1) year from effective date of termination, GPA may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph (3) of this paragraph.

(2) GPA and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data to the extent required by Section 3-403 (Cost or Pricing Data) of the Guam Procurement Regulations and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by GPA, the proceeds of any sales of supplies and manufacturing materials under the Guam Uniform Commercial Code, and the Contract price of the fuel supply not terminated.

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

(i) Fuel oil Contract prices for supplies or services accepted under the Contract by GPA;

(ii) Costs incurred in preparing to perform and performing the terminated portion of the delivery of fuel oil plus a fair and reasonable profit on such portion of the delivery (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted fuel oil supplies or services; provided, however, that if it appears that the CONTRACTOR would
have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

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

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

SECTION 34. REMEDIES CUMMULATIVE

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

SECTION 35. COVENANT AGAINST CONTINGENT FEES

The CONTRACTOR warrants no person or selling agency has been employed or retained to solicit or secure the Contract upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agency maintained by the CONTRACTOR for the purpose of securing business. For breach or violation of this warranty, GPA shall have the right to annul the Contract without liability or, in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
SECTION 36. NOTICE

Except as otherwise expressly specified herein, any notice to be given hereunder by either party to the other shall be deemed sufficiently given if in writing and enclosed in an envelope properly stamped and addressed to the party at the address set forth in this section, and deposited in the United States mail. Either party may change its address by giving FIFTEEN (15) days prior written notice to the other party. Such address until further notice shall be:

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

CONTRACTOR: __________________________

____________________

____________________

SECTION 37. INTEREST OF OTHER PARTIES

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

SECTION 38. ASSIGNMENT

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

SECTION 39. TIME

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

SECTION 40. AMENDMENT AND WAIVER

Neither the Contract nor any provision hereof may be changed, waived, altered, amended, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, alteration, amendment, discharge or termination is sought. For purposes of this Contract, the signature of the Chairman or his designee, of the Consolidated Commission on Utilities is required to bind 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, or estoppel against, the right of such party to require such performance by the other. Nor shall any such failure to object constitute a waiver or estoppel with respect to any succeeding failure of performance.

SECTION 41. DESCRIPTIVE HEADINGS

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

SECTION 42. RELATIONSHIP OF PARTIES

Nothing contained in the Contract shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between CONTRACTOR and GPA, and no provisions contained in the Contract
nor any acts of the parties shall be deemed to create any relationship between GPA and CONTRACTOR, other than the relationship of buyer and seller.

SECTION 43. 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 44. SUCCESSORS IN INTEREST

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

SECTION 45. PARTIAL INVALIDITY

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

SECTION 46. EQUAL OPPORTUNITY CLAUSE

During the performance of the Contract the CONTRACTOR agrees as follows:

(a) The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, political opinion or affiliation, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, political opinion or affiliation, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demoting, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in
conspicuous places, available to employees and applicants for employment, notices to be provided by the GPA setting forth the provisions of this equal opportunity clause.

(b) The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, political opinion or affiliation, or national origin.

SECTION 47. PROHIBITION AGAINST GRATUITIES, KICKBACKS, AND FAVORS TO THE TERRITORY

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

SECTION 48. RESTRICTION AGAINST CONTRACTOR EMPLOYING CONVICTED SEX OFFENDERS FROM WORKING AT GOVERNMENT OF GUAM VENUES

GCA 5 §5253(b) restricts the CONTRACTOR against employing convicted sex offenders from working at Government of Guam venues. It states:

(b) All contracts for services to agencies listed herein shall include

the following provisions: (1) warranties that no person providing services

on behalf of the CONTRACTOR has been convicted of a sex offense under the

provisions of Chapter 25 of Title 9 GCA or an offense as defined in

Article 2 of Chapter 28, Title 9 GCA, or an offense in another

jurisdiction with, at a minimum, the same elements as such offenses, or

who is listed on the Sex Offender Registry; and (2) that if any person

providing services on behalf of the CONTRACTOR is convicted of a sex

offense under the provisions of Chapter 25 of Title 9 GCA or an offense

as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in

another jurisdiction with, at a minimum, the same elements as such

offenses, or who is listed on the Sex Offender Registry, that such person

will be immediately removed from working at said agency and that the
administrator of said agency be informed of such within twenty-four (24) hours of such conviction.

SECTION 49. CONTRACT BINDING EFFECT

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

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

For the Guam Power Authority (GPA):

John M. Benavente, P.E.
General Manager

DATE

For (CONTRACTOR):

(Company Name and Seal)

DATE

CONTRACTOR, Duly Authorized
REPRESENTATIVE OF COMPANY

DATE

APPROVED AS TO FORM:

Graham Botha, Legal Counsel
GUAM POWER AUTHORITY

DATE
PERFORMANCE AND PAYMENT BONDS

KNOW ALL MEN BY THESE PRESENTS that ____________________________

____________________

_________

(Name of CONTRACTOR)

herein after called the CONTRACTOR and ____________________________

____________________

_________

(Name of Surety)

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

_____

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

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

WHEREAS, the CONTRACTOR has by written agreement dated ________________, 20
_______, entered into a Contract with the Guam Power Authority for the Supply of Diesel Fuel
Oil No.2 in accordance with the Specifications prepared by the Guam Power Authority, which
Contract is by reference made a part hereof, and is hereafter referred to as the Contract.
NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the CONTRACTOR shall promptly and faithfully perform said Contract, and shall promptly make payment to all claimants as hereinafter defined for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

A. The Surety hereby waives notice of any alteration or extension of the time made by the Guam Power Authority provided the same is within the scope of the Contract.

B. Whenever CONTRACTOR shall be and is declared to be in default under the Contract by the Guam Power Authority, and the Guam Power Authority has performed its Contract obligations, the Surety may promptly remedy the default or shall promptly:
   
   1. Complete the Contract in accordance with its terms and conditions; or
   
   2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by the Guam Power Authority and the Surety of the lowest responsive, responsible bidder, arrange for a Contract between such bidder and the Authority, and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less than balance of the Contract price, but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price", as used in this paragraph shall mean the total amount payable by the Guam Power Authority to CONTRACTOR under the Contract and any amendments thereto, less the amount properly paid by the Guam Power Authority to CONTRACTOR. No right of action shall accrue on this bond to or
for the use of any person or corporation other than the Guam Power Authority or successors of the Authority.

C. A claimant is defined as one having a direct contract with the CONTRACTOR, or with a sub-CONTRACTOR of the CONTRACTOR for labor, material, or both, used or reasonably required for use in the performance of the Contract labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

D. The above-named CONTRACTOR and Surety hereby jointly and severally agree with the Guam Power Authority that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) calendar days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Guam Power Authority shall not be liable for the payment of any costs or expenses of any such suit.

E. No suit or action shall be commenced hereunder by a claimant:

1. Unless claimant, other than one having a direct contract with the CONTRACTOR, shall have given written notice to any two of the following: The CONTRACTOR, the Guam Power Authority, or the Surety above named, within ninety (90) calendar days after such claimant did or performed that last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was
done or performed. Such notice shall be personally served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the CONTRACTOR at any place the principal maintains an office or conducts its business.

2. After the expiration of one (1) year following the date on which the last of the labor was performed or material was supplied by the party bringing suit.

3. Other than in a court of competent jurisdiction in and for Guam.

F. The amount of the payment bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens, which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

SIGNED AND SEALED THIS __________ day of __________ 20__.

IN THE PRESENCE OF:

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

_________________________  __________________________
(WITNESS)                      (CONTRACTOR)               (SEAL)

_________________________
(TITLE)
## SCHEDULE A: PRODUCT QUALITY SPECIFICATION

### DIESEL FUEL Oil No. 2

<table>
<thead>
<tr>
<th>Property</th>
<th>ASTM Test Method</th>
<th>Alternate Method ASTM</th>
<th>Unit of Measure</th>
<th>Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flash Point</td>
<td>D93</td>
<td></td>
<td>°C</td>
<td>60 Min</td>
</tr>
<tr>
<td>Water &amp; Sediment</td>
<td>D2709</td>
<td></td>
<td>% vol</td>
<td>0.05 Max</td>
</tr>
<tr>
<td>Distillation Temp, °C</td>
<td>D86</td>
<td></td>
<td>% vol</td>
<td>282 Min</td>
</tr>
<tr>
<td>90%, recovered</td>
<td></td>
<td></td>
<td></td>
<td>360 Max</td>
</tr>
<tr>
<td>Kinematic Viscosity</td>
<td>D-445</td>
<td></td>
<td>mm² at 40°C</td>
<td>1.9 Min</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>4.1 Max</td>
</tr>
<tr>
<td>Total Aromatic Hydrocarbons</td>
<td>IP 391</td>
<td></td>
<td>% mass</td>
<td>15 Min</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>35 Max</td>
</tr>
<tr>
<td>Polycyclic Aromatic Hydrocarbons</td>
<td>IP 391</td>
<td></td>
<td>% mass</td>
<td>11 Max</td>
</tr>
<tr>
<td>Ash</td>
<td>D482</td>
<td></td>
<td>% mass</td>
<td>0.01 Max</td>
</tr>
<tr>
<td>Sulfur</td>
<td>D5453</td>
<td>D-7039</td>
<td>ppm (µg/g)</td>
<td>14 Max</td>
</tr>
<tr>
<td>Copper Strip Corrosion Rating (3hrs min at 50°C)</td>
<td>D130</td>
<td></td>
<td></td>
<td>No.1 Max</td>
</tr>
<tr>
<td>Cetane Index</td>
<td>D 613</td>
<td>D976-80</td>
<td></td>
<td>46 Min</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D 4737</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aromaticity</td>
<td>D1319</td>
<td></td>
<td>% vol</td>
<td>15 Min</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>35 Max</td>
</tr>
<tr>
<td>Micro Carbon Residue</td>
<td>D524</td>
<td>D4530</td>
<td>% mass</td>
<td>0.20 Max</td>
</tr>
<tr>
<td>on 10% distillation residue</td>
<td>D6371</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lubricity, HFRR @ 60°C</td>
<td>D6079</td>
<td></td>
<td>Micron</td>
<td>400 Max</td>
</tr>
<tr>
<td>Conductivity</td>
<td>D2624</td>
<td>D4308</td>
<td>pS/m</td>
<td>100 Min</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>600 Max</td>
</tr>
<tr>
<td>Density @ 15°C</td>
<td>D1298</td>
<td>D4052</td>
<td>Kg/m³</td>
<td>820 Min</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>850 Max</td>
</tr>
<tr>
<td>Gravity, API @ 60°F</td>
<td>D1295</td>
<td>D4052</td>
<td></td>
<td>35 Min</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>41 Max</td>
</tr>
<tr>
<td>Color</td>
<td>D1500</td>
<td></td>
<td>ASTM</td>
<td>2.0 Max</td>
</tr>
<tr>
<td>Hydrogen Sulfide in Liquid</td>
<td>IP 570A</td>
<td></td>
<td>Mg/kg</td>
<td></td>
</tr>
<tr>
<td>Strong Acid No.</td>
<td>D974</td>
<td></td>
<td>mg KOH/g</td>
<td>NIL</td>
</tr>
<tr>
<td>Total Acid No.</td>
<td>D974</td>
<td></td>
<td>mg KOH/g</td>
<td>0.25 Max</td>
</tr>
<tr>
<td>Stability (Oxidation), 16Hrs</td>
<td>D2274</td>
<td></td>
<td>mg/L</td>
<td>25 Max</td>
</tr>
<tr>
<td>Appearance @ ambient temp</td>
<td>Visual</td>
<td></td>
<td>Report</td>
<td></td>
</tr>
<tr>
<td>Haze Rating</td>
<td>D4176</td>
<td></td>
<td>Haze Rating</td>
<td>1 Max</td>
</tr>
<tr>
<td>Fatty Acid Methyl Ester (FAME)</td>
<td>D 7371-14</td>
<td>EN 14078</td>
<td>% vol</td>
<td>0.1 Max</td>
</tr>
<tr>
<td>Guaranteed Heating Value (HHV)</td>
<td>D240</td>
<td></td>
<td>MMBTU/bbl</td>
<td>5.70 Min</td>
</tr>
<tr>
<td>Stadis 450</td>
<td>Declared</td>
<td></td>
<td>Mg/L</td>
<td></td>
</tr>
<tr>
<td>Lubricity Additive</td>
<td>Declared</td>
<td></td>
<td>Mg/kg</td>
<td></td>
</tr>
</tbody>
</table>

The Authority may require the supplier to conduct additional test as necessary for plant’s performance/efficiency evaluation.
Invitation For Re-Bid

Multi-Step IFB No. GPA-057-17

DIESEL FUEL OIL NO.2

GUAM POWER AUTHORITY

B. DELIVERY TO GPA PLANTS

Volume II

CONTRACT
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>SECTION 1.</td>
<td>DEFINITIONS</td>
<td>7</td>
</tr>
<tr>
<td>SECTION 2.</td>
<td>CONTRACT TERM</td>
<td>9</td>
</tr>
<tr>
<td>SECTION 3.</td>
<td>CONTRACT PRICE</td>
<td>9</td>
</tr>
<tr>
<td>SECTION 4.</td>
<td>FUEL OIL DELIVERY</td>
<td>10</td>
</tr>
<tr>
<td>SECTION 5.</td>
<td>TITLE, CUSTODY AND RISK OF LOSS</td>
<td>11</td>
</tr>
<tr>
<td>SECTION 6.</td>
<td>TERMS OF PAYMENT</td>
<td>11</td>
</tr>
<tr>
<td>SECTION 7.</td>
<td>WARRANTY AND CLAIMS</td>
<td>11</td>
</tr>
<tr>
<td>SECTION 8.</td>
<td>PRODUCT AND QUALITY</td>
<td>12</td>
</tr>
<tr>
<td>SECTION 9.</td>
<td>QUANTITY AND QUALITY ASSURANCE</td>
<td>12</td>
</tr>
<tr>
<td>SECTION 10.</td>
<td>QUANTITY DETERMINATION</td>
<td>14</td>
</tr>
<tr>
<td>SECTION 11.</td>
<td>GOVERNMENT LAWS AND REGULATIONS</td>
<td>14</td>
</tr>
<tr>
<td>SECTION 12.</td>
<td>PERMITS AND RESPONSIBILITIES</td>
<td>14</td>
</tr>
<tr>
<td>SECTION 13.</td>
<td>FORCE MAJEURE</td>
<td>14</td>
</tr>
<tr>
<td>SECTION 14.</td>
<td>NOTICE TO OTHER PARTY</td>
<td>16</td>
</tr>
<tr>
<td>SECTION 15.</td>
<td>PAYMENT REQUIRED</td>
<td>16</td>
</tr>
<tr>
<td>SECTION 16.</td>
<td>ALTERNATE DELIVERY</td>
<td>16</td>
</tr>
<tr>
<td>SECTION 17.</td>
<td>RESUMPTION OF PERFORMANCE</td>
<td>17</td>
</tr>
<tr>
<td>SECTION 18.</td>
<td>GOVERNING LAW AND DISPUTES</td>
<td>17</td>
</tr>
<tr>
<td>SECTION 19.</td>
<td>CONTRACTOR'S INSURANCE</td>
<td>18</td>
</tr>
<tr>
<td>SECTION 20.</td>
<td>INDEMNITY</td>
<td>21</td>
</tr>
<tr>
<td>SECTION 21.</td>
<td>TRANSPORTATION</td>
<td>21</td>
</tr>
<tr>
<td>SECTION 22.</td>
<td>FAILURE TO DELIVER</td>
<td>22</td>
</tr>
<tr>
<td>SECTION 23.</td>
<td>FAILURE TO PAY</td>
<td>22</td>
</tr>
<tr>
<td>SECTION 24.</td>
<td>FAILURE TO COMPLY WITH LAWS</td>
<td>22</td>
</tr>
<tr>
<td>SECTION 25.</td>
<td>DEFAULT</td>
<td>23</td>
</tr>
<tr>
<td>SECTION 26.</td>
<td>ATTORNEYS FEES</td>
<td>23</td>
</tr>
<tr>
<td>SECTION 27.</td>
<td>TERMINATION FOR CONVENIENCE</td>
<td>23</td>
</tr>
<tr>
<td>SECTION 28.</td>
<td>REMEDIES CUMMULATIVE</td>
<td>25</td>
</tr>
<tr>
<td>SECTION 29.</td>
<td>COVENANT AGAINST CONTIGENT FEES</td>
<td>26</td>
</tr>
<tr>
<td>SECTION 30.</td>
<td>NOTICE</td>
<td>26</td>
</tr>
<tr>
<td>SECTION 31.</td>
<td>INTEREST OF OTHER PARTIES</td>
<td>27</td>
</tr>
<tr>
<td>SECTION 32.</td>
<td>ASSIGNMENT</td>
<td>27</td>
</tr>
<tr>
<td>SECTION 33.</td>
<td>TIME</td>
<td>28</td>
</tr>
<tr>
<td>SECTION 34.</td>
<td>SPECIFICATIONS</td>
<td>28</td>
</tr>
</tbody>
</table>
SECTION 35. AMENDMENT AND WAIVER.................................................................28
SECTION 36. DESCRIPTIVE HEADINGS..............................................................29
SECTION 37. RELATIONSHIP OF PARTIES..........................................................29
SECTION 38. NUMBER AND GENDER.................................................................29
SECTION 39. SUCCESSORS IN INTEREST.............................................................29
SECTION 40. PARTIAL INVALIDITY....................................................................29
SECTION 41. EQUAL OPPORTUNITY CLAUSE.....................................................30
SECTION 42. PROHIBITION AGAINST GRATUITIES, KICKBACKS, AND FAVORS TO THE TERRITORIAL........................................................................30
SECTION 43. RESTRICTIONS AGAINST CONTRACTOR EMPLOYING CONVICTED SEX OFFENDERS FROM WORKING AT GOVERNMENT OF GUAM VENUES.................30
SCHEDULE A: PRODUCT QUALITY SPECIFICATION...........................................32
SCHEDULE B: ESTIMATED ANNUAL FUEL OIL REQUIREMENTS............................33
SCHEDULE C : PLANT CONSUMPTION AT MAXIMUM CAPACITIES ....................34
CONTRACT

(CONTRACTOR)

GUAM POWER AUTHORITY

2017

Re-Bid
Multi-Step IFB No. GPA-057-17
DELIVERY OF DIESEL FUEL OIL NO.2
FORMAL CONTRACT

This Agreement and Formal Contract ("Contract"), is made and entered into on the ____ day of
_____________________, 2017 by and between:

_____________________, hereinafter referred to as "CONTRACTOR", with its
principal address at ________________________________;

- and -

GUAM POWER AUTHORITY, hereinafter referred to as the "Authority" or "GPA", a Public
Corporation with its office located at the Gloria Nelson Public Service Complex, Fadian Mangilao
Guam;

RECITALS

WHEREAS, the current services contract for the delivery of Diesel Fuel Oil No.2 will expire on
December 31, 2017; and

WHEREAS, the current services contract for the delivery of Diesel Fuel Oil No.2 is extended by six
(6 months) until June, 2018; and
WHEREAS, GPA sought to procure a new CONTRACTOR for the delivery of Fuel Oil to the with the following Baseload Plants and Peaking Units site locations: (1) Cabras 1&2 and MEC 8&9; (2) Tenjo Vista; (3) Manenggon and Talofofo; (4) TEMES CT; (5) Dededo CT and Macheche CT; and (6) Yigo CT, and Aggreko; and

WHEREAS, GPA issued an Invitation For a Multi-Step Bid for the Delivery of Diesel Fuel Oil No.2 under re-bid IFB GPA-057-17; and

WHEREAS, CONTRACTOR submitted a bid in response to the Invitation for Bid for the Delivery of Diesel Fuel Oil No.2; and

WHEREAS, GPA, upon evaluation of the submitted bid proposals, determined that CONTRACTOR. is the lowest responsive and responsible bidder for the following GPA plant locations: ______________________________ ; and

WHEREAS, the Guam Consolidated Commission on Utilities (CCU) and the Guam Public Utilities Commission (PUC) has determined that the CONTRACTOR is the preferred option for GPA to delivery the Fuel oil requirements for the Authority for those plant locations.

NOW, THEREFORE, in consideration of the above premises and the mutual promises set forth herein and the terms and conditions hereinafter set forth and for other good and valuable consideration, receipt of which is hereby acknowledge; CONTRACTOR and GPA hereby agree as follows:
SECTION 1. DEFINITIONS

"$" refers to currency in U.S. dollars.

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

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

"Barrel" means a volume equivalent to 42 U.S. Gallons.

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

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

"Contracting Officer" means the General Manager of the GPA and shall include his authorized representatives.

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

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

"Month" means a calendar month.

"Year" means a calendar year.

"Delivery Time" means the total number of hours or days or the dates stated in this Agreement for furnishing the Fuel Oil.
"General Manager" means the Chief Executive Officer of GPA. The office and title of General Manager shall apply to any person acting in a regular or in an acting capacity as the Chief Executive Officer of GPA.

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

"Procurement Officer" means the General Manager or the General Manager's designee.

"PURCHASER" means GPA.

"Seller" means the CONTRACTOR.

"Territory" means the Territory of Guam.

"OPA'90" means the Oil Pollution Act of 1990 enacted by the U.S. Congress.

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

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

"Fuel Oil" means a liquid hydrocarbon product satisfying the specifications in Section 8 and Schedule A.

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

"CCU" means the Guam Consolidated Commission on Utilities.

"PUC" means the Guam Public Utilities Commission.
“COA” means Certificate of Analysis or Quality Certificate, a formal document recording the CONTRACTOR's laboratory determination of quality of a particular sample which represents a specific delivery, said laboratory determinations having been performed in accordance with the test methods specified in Schedule A.

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

“Receiving Facility” means any of GPA's generating facilities, storage facilities and/or other facilities used to receive, transport, store, or otherwise handle the Diesel, and/or ULSD located on the island of Guam as designated by GPA.

“ULSD” means Ultra-Low Sulfur Diesel produced in conformity with the provisions of the quality in the Specification which are set forth in Schedule A.

SECTION 2. CONTRACT TERM

The Contract term shall be for FIVE (5) years to commence on or about July 01, 2018 and shall continue until midnight of June 30, 2023.

SECTION 3. CONTRACT PRICE

The CONTRACT PRICE shall be the FIXED SERVICE FEE in U.S. dollars per Gallon ($/gal) for all deliveries of Fuel Oil to the GPA plants shall be inclusive of all costs and liabilities required to fulfill the contract.

The FIXED SERVICE FEE for all deliveries of Fuel Oil to certain GPA Plants identified on Schedule B hereto shall be as follows:

<table>
<thead>
<tr>
<th>CONTRACT PRICE</th>
<th>1st year $/gallon</th>
<th>2nd year $/gallon</th>
<th>3rd yr $/gallon</th>
<th>4th yr $/gallon</th>
<th>5th yr $/gallon</th>
</tr>
</thead>
</table>

IFB GPA- -17 (DELIVERY OF DIESEL, FUEL OIL NO. 2 TO BASELOADS AND PEAKING PLANTS)
SECTION 4. FUEL OIL DELIVERY

CONTRACTOR agrees to deliver and GPA agrees to accept and pay for all of GPA’s Fuel Oil delivery requirements for the power generating plants in Guam identified in Schedule B on an “As Needed Basis” as determined by GPA for the term of the Contract.

CONTRACTOR shall own, lease or have the right to use tanker trucks, storage tanks, loading racks, and other facilities sufficient to meet CONTRACTOR’s obligations under this Contract. Cost for the use of such resources shall be borne by the CONTRACTOR.

The estimated total Fuel Oil delivery requirement is listed in Schedule B. This information is provided as reference material only. Although every attempt has been made to ensure its accuracy, GPA makes no guarantees that these quantities will be achieved but they may be exceeded. GPA expressly disclaims any liability whatsoever arising from reliance or non-reliance of the data provided.

Actual quantities may vary depending on the dispatching of the plants. The estimated Fuel Oil requirement provided herein are only approximate values and is subject to change. GPA shall reasonably notify the Contractor for any changes in the estimated fuel oil requirements.

The first delivery of Fuel Oil pursuant to the Contract is anticipated to be on or about July 01, 2018.

The CONTRACTOR shall be available to deliver the Fuel Oil to the point of delivery as designated by GPA within twenty-four hours (24 hrs) notice or less of receiving a request. CONTRACTOR must be available to receive and accept delivery requests daily, including weekends and holidays.

The CONTRACTOR shall provide transfer pumps at its delivery trucks and/or whatever else may be necessary to deliver Fuel Oil to GPA plant storage tanks to the height of 45 feet. Fuel Oil deliveries shall be on an “on call” basis. CONTRACTOR must closely coordinate with the plants and shall
exercise its best efforts to deliver Fuel Oil to GPA to meet operational requirements regardless of the estimates provided by GPA.

SECTION 5. TITLE, CUSTODY AND RISK OF LOSS

Title to the Fuel Oil shall remain with GPA.

a. Pipeline transfer to CONTRACTOR’s Storage Tank.
   All risk of loss, cost and liabilities shall pass from GPA to the CONTRACTOR when the Fuel Oil has passed the GPA pipeline flange connecting the CONTRACTOR’s pipeline flange.

b. Delivery by Tanker Truck to GPA plants.
   All risk of loss, cost and liabilities shall pass from the CONTRACTOR to GPA when the Fuel Oil has passed the GPA pipeline flange at the GPA storage tanks connecting the CONTRACTOR’s tanker truck delivery hose.

SECTION 6. TERMS OF PAYMENT

Invoices for Fuel Oil delivery services pursuant to quantity (Fuel Oil receipts) and quality prescribed under the terms of this contract shall be submitted no more than 1 week after each delivery, based on the number of Gallons of Fuel Oil delivered to GPA. The invoices must be supported by Fuel Oil Bill of Lading (BOL) or delivery tickets including a receipt acknowledgement from a GPA representative. The payment terms are 30 days (net) beginning on the date the invoice is received by the GPA accounts payable section. All payments shall be based on the delivered quantity, corrected to volume (net) at 60 °F.

SECTION 7. WARRANTY AND CLAIMS

CONTRACTOR agrees, represents and warrants as follows:

CONTRACTOR warrants that it has the facilities sufficient to meet CONTRACTOR’s obligations under this Contract. Such facilities shall include, but not limited to: tanker trucks, storage tanks,
loading racks, and other resources. Cost for the use of such resources shall be borne by the CONTRACTOR.

If the Fuel Oil fails to meet the specifications herein, CONTRACTOR shall be liable for any direct damages resulting therefrom. CONTRACTOR shall be solely responsible for any damages caused by the CONTRACTOR or its agents during the process of Fuel Oil delivery.

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

SECTION 8. PRODUCT AND QUALITY

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

The Fuel Oil delivered to GPA shall have the physical and chemical characteristics as described in Schedule A.

SECTION 9. QUANTITY AND QUALITY ASSURANCE

a. Pipeline Transfer to CONTRACTOR's Storage Tank

In the event that CONTRACTOR shall use its storage tank to transfer product from the GPA bulk storage tank, quantity determination of product transferred by the CONTRACTOR by pipeline from the GPA bulk storage shall be determined at the time of each transfer by the Independent Inspector gauging the GPA bulk storage tank and CONTRACTOR receiving tanks before and after delivery. Cost shall be borne by the CONTRACTOR.

CONTRACTOR shall also test the product in its storage tank without additional cost to GPA.

Quantity shall be corrected to the volume at sixty degrees Fahrenheit. Conversion shall be made in accordance with the ASTM-IP Petroleum Measurement Tables (IP-200), Table 6B (latest edition). Quantity certification prepared by independent inspector shall be final and binding upon both parties.

b. Delivery to the GPA plants
CONTRACTOR'S calibrated load rack meters shall be utilized to determine the quantity of Fuel Oil delivered by tanker truck to GPA. Quantity of product delivered by CONTRACTOR at CONTRACTOR's nominated terminal to the CONTRACTOR's nominated tanker truck(s) to the GPA plants shall be determined at the time of each delivery by CONTRACTOR, converted in each instance to volume at 60 degrees Fahrenheit by the automated rack control system and shall be the basis for the Bill of Lading (BOL).

CONTRACTOR shall have such meters calibrated no less than annually or as required and agreed by CONTRACTOR and GPA. CONTRACTOR shall furnish GPA a copy of the certificate of newly calibrated meter(s) within 10 days after the calibration date. In the event of a dispute over the accuracy of the CONTRACTOR’s meters, an independent third party mutually agreeable to both parties will be brought in to perform a recalibration. In the event of a miscalibration, the costs shall be borne by the CONTRACTOR. Any loss incurred by GPA as a result of miscalibration of meters shall be negotiated and returned to GPA.

BOL quantities shall be deducted from the quantity of product withdrawn by the CONTRACTOR in the GPA bulk storage. Any undelivered product withdrawals shall be returned to GPA or issued a credit invoice equivalent to the cost of the undelivered product.

Appropriate Certificate of Analysis (COA) reports shall also accompany each delivery and must be presented to the GPA receiving facility. Quality must conform with the requirements specified under Section 8 and Schedule A as a condition for acceptance of delivery.

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

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

CONTRACTOR shall provide a comprehensive summary of the Fuel Oil delivery reports. CONTRACTOR shall tailor its reports to GPA’s needs. CONTRACTOR shall submit copy(ies) of all Certificates of Analysis (COA) for the delivery month. Reports shall be submitted to the GPA
within five (5) working days after each report month. CONTRACTOR shall also submit other reports and/or documentations that is relevant to the contract as may be required by the Authority.

SECTION 10. QUANTITY DETERMINATION

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

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

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

SECTION 11. GOVERNMENT LAWS AND REGULATIONS

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

SECTION 12. PERMITS AND RESPONSIBILITIES

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

SECTION 13. FORCE MAJEURE

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

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

(b) Restraints. Arrest or restraint of princes, rulers or peoples;

(c) Confiscation. Expropriation, requisition, confiscation or nationalization;

(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;

(i) Strikes. Epidemics, quarantine, strikes or combination of workmen, lockouts, or other labor disturbances;

(j) Explosions. Explosion, accidents by fire or otherwise to wells, pipes, storage facilities, refineries, installations, machinery;

(k) Taking by Government. Unavailability of Fuel Oil to deliver because of the election of the government of the country of its origin to take royalty product in kind;

(l) Other Events. Any event, matter or thing wherever occurring and whether or not of the same class or kind as those set forth, which shall not be reasonably within the control and without the fault or negligence of the party affected thereby.

No failure or omissions to carry out or to observe any of the terms, provisions or conditions of the Contract shall give rise to any claim by one party against the other, or be deemed to be a breach of the Contract from the time of and to the extent occasioned by the Force Majeure, not from the date of notice of the Force Majeure is received.
SECTION 14. NOTICE TO OTHER PARTY

Either party whose obligations may be affected by any of the forces or causes set out in Section 13, supra, shall promptly notify the other party in writing, giving full particulars thereof as soon as possible after the occurrence of such force or cause. Such party shall exercise due diligence to remove such cause with all reasonable dispatch and to resume performance at the earliest practicable time.

SECTION 15. PAYMENT REQUIRED

Notwithstanding the provisions of Section 13, supra, GPA shall not be relieved of any obligation to make payments for any Fuel Oil delivered to GPA tanks hereunder; however, during the force majeure condition the obligation shall be suspended, except for deliveries of Fuel Oil made prior to the force majeure condition.

SECTION 16. ALTERNATE DELIVERY

In the event CONTRACTOR is unable to fulfill its obligations under this Contract as a result of Section 13, supra, or if CONTRACTOR will be unable to deliver at the time needed, CONTRACTOR shall seek an alternative delivery source so long as such condition shall exist.

In the event CONTRACTOR is unable to fulfill its obligations under this Contract as a result of any negligence on the part of the CONTRACTOR, CONTRACTOR shall seek an alternative delivery source so long as such condition shall exist, without additional cost to GPA. GPA may at its sole discretion seek an alternative delivery source so long as such condition of negligence shall exist. If the cost of delivery during such period of negligence shall exceed the Contract price as provided in Section 4, the CONTRACTOR shall be liable to GPA for the difference, which may be taken from the Performance Bond.
SECTION 17. RESUMPTION OF PERFORMANCE

If CONTRACTOR is prevented from delivering or GPA is prevented from receiving all or any Fuel Oil to be delivered under the Contract for the reasons which fall within the provisions of Section 13, supra, then the party so prevented shall, as to the remainder of the Fuel Oil not affected thereby, promptly resume performance of the Contract. No curtailment or suspension of deliveries or payment under the causes listed in Section 13, supra, shall operate to extend the term of or terminate the Contract unless the occurrence of force majeure will materially impair, for an indefinite period of time, the parties' ability to perform the Contract.

SECTION 18. GOVERNING LAW AND DISPUTES

(a) All controversies between GPA and the CONTRACTOR which arise under, or are by virtue of, this Contract and which are not resolved by mutual agreement, shall be decided by GPA pursuant to Guam Procurement laws and regulations.

(b) CONTRACTOR may pursue applicable remedies under the Guam Procurement Law and regulations and the Government Claims Act.

(c) The CONTRACTOR shall comply with any decision of GPA and proceed diligently with performance of this Contract pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, this Contract; provided, however, that in any event the CONTRACTOR shall proceed diligently with the performance of the Contract where the General Manager of GPA has made a written determination that continuation of work under the Contract is essential to the welfare of the Territory.

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

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

SECTION 19. CONTRACTOR’S INSURANCE

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

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

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

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

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

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

$2,000,000 Aggregate

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

(a) The property damage coverage shall include a Broad Form Property Damage Endorsement.

(b) Contractual Liability coverage shall be included.

(c) Protective Liability coverage shall be included to protect the CONTRACTOR against claims arising out of operations performed by his Subcontractors.

(d) Products Liability and/or Completed Operations coverage shall be included.

(e) GPA shall be an additional insured on Commercial General Liability policy.

(f) CONTRACTOR shall grant Waiver of Subrogation in favor of GPA.

C. AUTOMOBILE LIABILITY INSURANCE:

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

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

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

D. POLLUTION LIABILITY INSURANCE:

The CONTRACTOR shall take out and maintain during the life of the Contract, Pollution Liability Insurance with minimum limits of $5,000,000 that provides coverage for third party bodily injury, third party property damage, and clean-up cost whether ordered by a government entity or not ordered by a government entity. Grant waiver of subrogation in favor of GPA. GPA is to be an additional insured.

E. EXCESS LIABILITY

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

F. CERTIFICATE OF INSURANCE:

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

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

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

H. INSURANCE COMPANY AND AGENT:

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

SECTION 20. INDEMNITY

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

SECTION 21. TRANSPORTATION

CONTRACTOR shall arrange for the transportation of the Fuel Oil to GPA. CONTRACTOR shall have the tanker truck fleet that is sufficient to meet CONTRACTOR’s obligations under this Contract. All risk of loss, cost and liabilities shall pass from the CONTRACTOR to GPA when the Fuel Oil has passed the GPA pipeline flange at the GPA storage tanks connecting the CONTRACTOR’s tanker truck delivery hose.
CONTRACTOR's and GPA's rights and duties under Section 20 and Section 21 do not supersede or control the provisions of Section 13 Force Majeure.

SECTION 22. FAILURE TO DELIVER

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 Fuel Oil or commits any other substantial breach of this Contract, GPA may notify the CONTRACTOR in writing of the delay or non-performance and if not cured within THIRTY (30) days of the date of notification, GPA may terminate the Contract in whole or such part of the Contract as to which there has been a delay or a failure to properly perform. In the event of termination in whole or in part, GPA reserves the right to procure Fuel Oil delivery services from another source immediately upon issuance of such notification or whenever it deems appropriate.

SECTION 23. FAILUE TO PAY

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

(a) Terminate the Contract forthwith or forthwith suspend delivery under the Contract until further notice, on notifying GPA orally or by notice in writing; or

(b) Continue to deliver Fuel Oil and bring suit in the Superior Court of Guam for amounts past due and as they become due.

SECTION 24. FAILURE TO COMPLY WITH LAWS

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

SECTION 25. DEFAULT

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

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

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

SECTION 26. ATTORNEYS FEES

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

SECTION 27. TERMINATION FOR CONVENIENCE

(a) Termination.

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

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

IFB GPA- 17 (DELIVERY OF DIESEL FUEL OIL NO. 2 TO BASELOADS AND PEAKING PLANTS)
VOLUME II: CONTRACT PAGE 23 OF 34
In the case of termination of this Contract, GPA shall reimburse the CONTRACTOR of all the expenses related to the period of the Performance Bond that were not used.

(b) CONTRACTOR’S OBLIGATIONS.

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

(c) Compensation.

(1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience. If the CONTRACTOR fails to file a termination claim within ONE (1) year from effective date of termination, GPA may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph (3) of this paragraph.

(2) GPA and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data to the extent required by Section 3-403 (Cost or Pricing Data) of the Guam Procurement Regulations and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by GPA, the proceeds of any sales of supplies and manufacturing materials under the Uniform Commercial Code of Guam, and the Contract price of the Fuel Oil delivery not terminated.

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

(i) Contract prices for delivery of Fuel Oil services accepted under the Contract by GPA;
(ii) Costs incurred in preparing to perform and performing the terminated portion of the delivery of Fuel Oil plus a fair and reasonable profit on such portion of the delivery (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted Fuel Oil delivery services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

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

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

SECTION 28. REMEDIES CUMMULATIVE

Each and all remedies available to a party in the event of the other party's failure to comply timely with any or all the terms and conditions of the Contract may be exercised independently or in combination (such rights being nonexclusive one with the other). The remedies set forth in the Contract are in addition to, and not in lieu of, all of the remedies available at law or in equity.
SECTION 29. COVENANT AGAINST CONTIGENT FEES

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

SECTION 30. NOTICE

Except as otherwise expressly specified herein, any notice to be given hereunder by either party to the other shall be deemed sufficiently given if in writing and enclosed in an envelope properly stamped and addressed to the party at the address set forth in this section, and deposited in the United States mail. Either party may change its address by giving fifteen (15) days prior written notice to the other party. Such address until further notice shall be:

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

CONTRACTOR:

______________________________

______________________________

______________________________

______________________________

______________________________
SECTION 31. INTEREST OF OTHER PARTIES

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

SECTION 32. ASSIGNMENT

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

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

CONTRACTOR and GPA shall not transfer or assign its rights and obligations under this contract, in whole or in part, without the prior written consent of the other party. Notwithstanding the foregoing, the CONTRACTOR may transfer or assign its rights and obligations under this contract, in whole or in part, to a US based affiliate (as defined hereinafter), with ninety (90) days prior notice to and at the consent of GPA. For the purpose of this contract, “US based affiliate” means any company or legal entity based in the United States of America which (a) controls either directly or indirectly a party hereto, or (b) is controlled directly or indirectly by such party, or (c) is directly or indirectly controlled by a company or entity which directly or indirectly controls such party. “Control” for purposes of the previous sentence means the ability to direct the management and policies of a company or legal entity, whether through ownership of securities, by contract or otherwise.
SECTION 33. TIME

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

SECTION 34. SPECIFICATIONS

Should GPA wish to alter any of the specifications set out in Section 8 and Schedule A, method and terms of delivery, for good cause, it shall give written notice to CONTRACTOR within thirty (30) days. If such changes cause an increase or decrease in CONTRACTOR's cost of performance of Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly. Any claim by CONTRACTOR for adjustment under this section must be asserted in writing within thirty (30) days from the date of receipt by CONTRACTOR of the notification of changed specifications. CONTRACTOR and GPA shall, in good faith, negotiate an equitable adjustment pursuant to the change in specifications. If CONTRACTOR and GPA fail to agree on the adjustment to be made within thirty (30) days after CONTRACTOR receives notice of altered specifications, or if CONTRACTOR is unwilling to meet the altered specifications, the parties shall be subject to the provisions under Section 18 (Governing Law and Disputes) clause. However, nothing in this clause shall excuse the CONTRACTOR from proceeding with the Contract Fuel Oil specifications as changed.

SECTION 35. AMENDMENT AND WAIVER

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

Failure by either party to object to any failure of performance by the other party of any provision of the Contract shall not constitute a waiver of, or estoppel against, the right of such party to require such performance by the other. Nor shall any such failure to object constitute a waiver or estoppel with respect to any succeeding failure of performance.
SECTION 36. 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 37. RELATIONSHIP OF PARTIES

Nothing contained in the Contract shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between CONTRACTOR and GPA, and no provisions contained in the Contract nor any acts of the parties shall be deemed to create any relationship between GPA and CONTRACTOR, other than the relationship of buyer and seller.

SECTION 38. 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 39. SUCCESSORS IN INTEREST

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

SECTION 40. PARTIAL INVALIDITY

Should any part of the Contract for any reason be declared to be invalid, such decision shall not affect the validity of any remaining portion thereof, which remaining portion shall remain in force and effect as if the Contract had been executed with the invalid portion thereof eliminated, and it is hereby declared the intention of the parties that they would have executed the remaining portion of the Contract without including any such part, parts, or portions which may, for any reason, be hereafter declared invalid.
SECTION 41. EQUAL OPPORTUNITY CLAUSE

During the performance of the Contract the CONTRACTOR agrees as follows:

(a) The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, political opinion or affiliation, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, political opinion or affiliation, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demoting, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the GPA setting forth the provisions of this equal opportunity clause.

(b) The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, political opinion or affiliation, or national origin.

SECTION 42. PROHIBITION AGAINST GRATUITIES, KICKBACKS, AND FAVORS TO THE TERRITORY.

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

SECTION 43. RESTRICTIONS AGAINST CONTRACTOR EMPLOYING CONVICTED SEX OFFENDERS FROM WORKING AT GOVERNMENT OF GUAM VENUES

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

SECTION 44. CONTRACT BINDING EFFECT

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

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

For the Guam Power Authority (GPA):

___________________________  DATE
John M. Benavente, P.E.
General Manager

___________________________
(Company Seal)

For (CONTRACTOR):

___________________________  DATE
CONTRACTOR, Duly Authorized
REPRESENTATIVE OF COMPANY

APPROVED AS TO FORM:

___________________________  DATE
Graham Botha, Legal Counsel
GUAM POWER AUTHORITY
### Schedule A: Product Quality Specification

#### Diesel Fuel Oil No. 2 \(^{A}\)

<table>
<thead>
<tr>
<th>Property</th>
<th>ASTM Test Method</th>
<th>Alternate Method ASTM</th>
<th>Unit of Measure</th>
<th>Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flash Point</td>
<td>D93</td>
<td></td>
<td>°C</td>
<td>60 Min</td>
</tr>
<tr>
<td>Water &amp; Sediment</td>
<td>D2709</td>
<td></td>
<td>% vol</td>
<td>0.05 Max</td>
</tr>
<tr>
<td>Distillation Temp, °C</td>
<td>D86</td>
<td></td>
<td>% vol</td>
<td>282 Min</td>
</tr>
<tr>
<td>90%, recovered</td>
<td></td>
<td></td>
<td></td>
<td>360 Max</td>
</tr>
<tr>
<td>Kinematic Viscosity</td>
<td>D-445</td>
<td></td>
<td>mm² at 40°C</td>
<td>1.9 Min</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>4.1 Max</td>
</tr>
<tr>
<td>Total Aromatic Hydrocarbons</td>
<td>IP 391</td>
<td></td>
<td>% mass</td>
<td>15 Min</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>35 Max</td>
</tr>
<tr>
<td>Polycyclic Aromatic Hydrocarbons</td>
<td>IP 391</td>
<td></td>
<td>% mass</td>
<td>11 Max</td>
</tr>
<tr>
<td>Ash</td>
<td>D482</td>
<td></td>
<td>% mass</td>
<td>0.01 Max</td>
</tr>
<tr>
<td>Sulfur</td>
<td>D5453</td>
<td>D-7039</td>
<td>ppm (µg/g)</td>
<td>14 Max</td>
</tr>
<tr>
<td>Copper Strip Corrosion Rating (3hrs min at 50°C)</td>
<td>D130</td>
<td></td>
<td></td>
<td>No.1 Max</td>
</tr>
<tr>
<td>Cetane Index</td>
<td>D 613</td>
<td>D976-80</td>
<td></td>
<td>46 Min</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D 4737</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aromaticity</td>
<td>D1319</td>
<td></td>
<td>% vol</td>
<td>15 Min</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>35 Max</td>
</tr>
<tr>
<td>Micro Carbon Residue on 10% distillation residue</td>
<td>D524</td>
<td>D4530</td>
<td>% mass</td>
<td>0.20 Max</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D6371</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lubricity, HFRR @ 60°C</td>
<td>D6079</td>
<td></td>
<td>Micron</td>
<td>400 Max</td>
</tr>
<tr>
<td>Conductivity</td>
<td>D2624</td>
<td>D4308</td>
<td>pS/m</td>
<td>100 Min</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>600 Max</td>
</tr>
<tr>
<td>Density @ 15°C</td>
<td>D1298</td>
<td>D4052</td>
<td>Kg/m³</td>
<td>820 Min</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>850 Max</td>
</tr>
<tr>
<td>Gravity, API @ 60°F</td>
<td>D1295</td>
<td>D4052</td>
<td></td>
<td>35 Min</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>41 Max</td>
</tr>
<tr>
<td>Color</td>
<td>D1500</td>
<td></td>
<td>ASTM</td>
<td>2.0 Max</td>
</tr>
<tr>
<td>Hydrogen Sulfide in Liquid</td>
<td>IP 570A</td>
<td></td>
<td>Mg/kg</td>
<td></td>
</tr>
<tr>
<td>Strong Acid No.</td>
<td>D974</td>
<td></td>
<td>mg KOH/g</td>
<td>NIL</td>
</tr>
<tr>
<td>Total Acid No.</td>
<td>D974</td>
<td></td>
<td>mg KOH/g</td>
<td>0.25 Max</td>
</tr>
<tr>
<td>Stability (Oxidation), 16Hrs</td>
<td>D2274</td>
<td></td>
<td>mg/L</td>
<td>25 Max</td>
</tr>
<tr>
<td>Appearance @ ambient temp</td>
<td>Visual</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Haze Rating</td>
<td>D4176</td>
<td></td>
<td>Haze Rating</td>
<td>1 Max</td>
</tr>
<tr>
<td>Fatty Acid Methyl Ester (FAME)</td>
<td>D 7371-14</td>
<td>EN 14078</td>
<td>% vol</td>
<td>0.1 Max</td>
</tr>
<tr>
<td>Guaranteed Heating Value (HHV)</td>
<td>D240</td>
<td></td>
<td>MMBTU/bbl</td>
<td>5.70 Min</td>
</tr>
<tr>
<td>Stadis 450</td>
<td>Declared</td>
<td></td>
<td>Mg/L</td>
<td></td>
</tr>
<tr>
<td>Lubricity Additive</td>
<td>Declared</td>
<td></td>
<td>Mg/kg</td>
<td></td>
</tr>
</tbody>
</table>

The Authority may require the supplier to conduct additional test as necessary for plant's performance/efficiency evaluation.
SCHEDULE B: ESTIMATED ANNUAL FUEL OIL REQUIREMENTS

This information is provided as reference material only. Although every attempt has been made to ensure its accuracy, GPA makes no guarantees that these quantities will be achieved but they may be exceeded. GPA expressly disclaims any liability whatsoever arising from reliance or non-reliance of the data provided.

<table>
<thead>
<tr>
<th>Plant Location</th>
<th>Estimated Annual Requirement (Gallons per Year)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Cabras 1&amp;2 and MEC 8&amp;9</td>
<td>100,000 - 200,000</td>
</tr>
<tr>
<td>2. Tenjo Vista</td>
<td>5,000,000 - 7,000,000</td>
</tr>
<tr>
<td>3. Manenggon and Talofofo</td>
<td>3,000,000 - 4,000,000</td>
</tr>
<tr>
<td>4. TEMES CT</td>
<td>1,700,000 - 2,500,000</td>
</tr>
<tr>
<td>5. Dededo CT and Macheche CT</td>
<td>3,000,000 - 4,000,000</td>
</tr>
<tr>
<td>6. Yigo CT and Aggreko</td>
<td>8,000,000 - 10,000,000</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>20,800,000 - 27,700,000</strong></td>
</tr>
</tbody>
</table>

Actual quantities may vary depending on the dispatching of the plants. The estimated Fuel Oil requirement provided herein are only approximate values and is subject to change. GPA shall reasonably notify the Contractor for any changes in the estimated fuel oil requirements.
<table>
<thead>
<tr>
<th>Plant Location</th>
<th>Max. Load per Plant (MW)</th>
<th>Plant Efficiency (kwh/gal)</th>
<th>Fuel Consumption per unit (gals/hr)</th>
<th>No. of Units</th>
<th>Total Fuel Consumption at Maximum Capacity (gals/day)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tenjo Vista</td>
<td>4.4</td>
<td>13.60</td>
<td>324</td>
<td>4</td>
<td>31,059</td>
</tr>
<tr>
<td>Talofono</td>
<td>4.4</td>
<td>14.34</td>
<td>307</td>
<td>2</td>
<td>14,728</td>
</tr>
<tr>
<td>Manengon</td>
<td>5.3</td>
<td>14.73</td>
<td>360</td>
<td>2</td>
<td>17,271</td>
</tr>
<tr>
<td>TEMES CT</td>
<td>40.0</td>
<td>9.16</td>
<td>4,367</td>
<td>1</td>
<td>104,803</td>
</tr>
<tr>
<td>Dededo CT</td>
<td>22.0</td>
<td>9.56</td>
<td>2,301</td>
<td>2</td>
<td>110,460</td>
</tr>
<tr>
<td>Macheche CT</td>
<td>22.0</td>
<td>10.45</td>
<td>2,105</td>
<td>1</td>
<td>50,526</td>
</tr>
<tr>
<td>Yigo CT</td>
<td>22.0</td>
<td>11.64</td>
<td>1,890</td>
<td>1</td>
<td>45,361</td>
</tr>
<tr>
<td>Aggreko</td>
<td>1.0</td>
<td>13.21</td>
<td>76</td>
<td>39</td>
<td>70,855</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td><strong>445,064</strong></td>
</tr>
</tbody>
</table>
Invitation For Multi-Step Re-Bid

GPA-057-17

Diesel Fuel Oil No.2

A. Supply to GPA Bulk Storage
B. Delivery to GPA Plants

Volume I

Commercial Terms and Conditions
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>1.1.</td>
<td>Invitation for Bid (IFB) Document Organization</td>
<td>2</td>
</tr>
<tr>
<td>1.2.</td>
<td>Overview and Scope</td>
<td>3</td>
</tr>
<tr>
<td>1.2.1.</td>
<td>CONTRACT TERM</td>
<td>3</td>
</tr>
<tr>
<td>1.2.2.</td>
<td>CONTRACT PRICE</td>
<td>3</td>
</tr>
<tr>
<td>2.</td>
<td>INSTRUCTIONS TO BIDDERS</td>
<td>3</td>
</tr>
<tr>
<td>2.1.</td>
<td>Introduction</td>
<td>4</td>
</tr>
<tr>
<td>2.2.</td>
<td>Language and Correspondence</td>
<td>4</td>
</tr>
<tr>
<td>2.3.</td>
<td>Technical and Functional Requirements Examination</td>
<td>5</td>
</tr>
<tr>
<td>2.4.</td>
<td>Facility Tours</td>
<td>5</td>
</tr>
<tr>
<td>2.5.</td>
<td>Solicitation Amendment</td>
<td>5</td>
</tr>
<tr>
<td>2.6.</td>
<td>Familiarity With Laws</td>
<td>6</td>
</tr>
<tr>
<td>2.7.</td>
<td>Cost of Bidding</td>
<td>6</td>
</tr>
<tr>
<td>2.8.</td>
<td>Price/Cost Data</td>
<td>6</td>
</tr>
<tr>
<td>2.9.</td>
<td>Documents Executed Outside of Guam</td>
<td>6</td>
</tr>
<tr>
<td>2.10.</td>
<td>Proposal Submittal</td>
<td>6</td>
</tr>
<tr>
<td>2.10.1.</td>
<td>Technical Proposal Requirements</td>
<td>6</td>
</tr>
<tr>
<td>2.10.2.</td>
<td>Price Proposal Requirements</td>
<td>10</td>
</tr>
<tr>
<td>2.10.3.</td>
<td>Non-Repudiation Issues</td>
<td>11</td>
</tr>
<tr>
<td>2.10.4.</td>
<td>Signature of Bidder</td>
<td>11</td>
</tr>
<tr>
<td>2.10.5.</td>
<td>Cut-Off Date for Receipt of Proposals</td>
<td>12</td>
</tr>
<tr>
<td>2.10.6.</td>
<td>Receipt and Handling of Proposals</td>
<td>12</td>
</tr>
<tr>
<td>2.10.7.</td>
<td>Proposal Changes During Bid Process</td>
<td>13</td>
</tr>
<tr>
<td>2.11.</td>
<td>STEP ONE PROCEDURES</td>
<td>13</td>
</tr>
<tr>
<td>2.11.1.</td>
<td>Evaluation of Technical Proposals</td>
<td>13</td>
</tr>
<tr>
<td>2.11.2.</td>
<td>Scoring of Technical Proposals</td>
<td>13</td>
</tr>
<tr>
<td>2.11.3.</td>
<td>Discussions of Proposals</td>
<td>13</td>
</tr>
<tr>
<td>2.11.4.</td>
<td>Notice of Unacceptable Proposal</td>
<td>14</td>
</tr>
<tr>
<td>2.12.</td>
<td>STEP TWO PROCEDURES</td>
<td>14</td>
</tr>
<tr>
<td>2.12.1.</td>
<td>Opening of Price Proposals</td>
<td>14</td>
</tr>
<tr>
<td>2.12.2.</td>
<td>Proposal Changes During Bid Process</td>
<td>14</td>
</tr>
<tr>
<td>2.12.3.</td>
<td>Proposal Validity</td>
<td>14</td>
</tr>
<tr>
<td>2.12.4.</td>
<td>Preliminary Examination of Price Proposal</td>
<td>15</td>
</tr>
<tr>
<td>2.12.5.</td>
<td>Evaluation Criteria and Comparison of Priced Offers</td>
<td>15</td>
</tr>
<tr>
<td>2.13.</td>
<td>Award of Contract</td>
<td>15</td>
</tr>
<tr>
<td>2.14.</td>
<td>Bid Bond and Performance Bond Requirements</td>
<td>16</td>
</tr>
<tr>
<td>2.14.1.</td>
<td>Performance Bond Form, Amount and Duration</td>
<td>16</td>
</tr>
<tr>
<td>2.14.2.</td>
<td>Performance Bond Execution by a Guam Licensed Surety Company</td>
<td>16</td>
</tr>
<tr>
<td>2.14.3.</td>
<td>Bid Bond Form and Amount</td>
<td>17</td>
</tr>
<tr>
<td>2.15.</td>
<td>General Proposal Guidelines and Requirements</td>
<td>17</td>
</tr>
<tr>
<td>2.15.1.</td>
<td>Amendments to the Bid Documents</td>
<td>17</td>
</tr>
<tr>
<td>2.15.2.</td>
<td>Proprietary Data</td>
<td>17</td>
</tr>
<tr>
<td>2.15.3.</td>
<td>Acceptance of Proposals</td>
<td>18</td>
</tr>
<tr>
<td>2.15.4.</td>
<td>Solicitation Cancellation or Delay</td>
<td>18</td>
</tr>
<tr>
<td>2.15.5.</td>
<td>Disqualification of BIDDER</td>
<td>19</td>
</tr>
<tr>
<td>2.15.6.</td>
<td>False Statements In Proposal</td>
<td>19</td>
</tr>
</tbody>
</table>

Re:Bid IFB-GPA-057-17 DIESEL FUEL OIL NO.2: (A) SUPPLY TO BULK STORAGE; (B) DELIVERY TO GPA PLANTS
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.15.7.</td>
<td>Prohibition Against Gratuities, Kickbacks, and Favors to the Territory</td>
<td>19</td>
</tr>
<tr>
<td>2.15.8.</td>
<td>Restriction against Contractors Employing Convicted Sex Offenders from Working at Government of Guam Venues</td>
<td>19</td>
</tr>
<tr>
<td>3.</td>
<td>REQUIRED FORMS AND SUPPLEMENTAL INFORMATION</td>
<td>20</td>
</tr>
<tr>
<td>3.1.</td>
<td>Technical Proposal Forms</td>
<td>21</td>
</tr>
<tr>
<td>3.1.1.</td>
<td>Proposal Checklists</td>
<td>21</td>
</tr>
<tr>
<td>3.1.2.</td>
<td>Major Shareholders Disclosure Affidavit</td>
<td>21</td>
</tr>
<tr>
<td>3.1.3.</td>
<td>Non-collusion Affidavit</td>
<td>21</td>
</tr>
<tr>
<td>3.1.4.</td>
<td>No Gratuities or Kickbacks Affidavit</td>
<td>21</td>
</tr>
<tr>
<td>3.1.5.</td>
<td>Ethical Standards Affidavit</td>
<td>21</td>
</tr>
<tr>
<td>3.1.6.</td>
<td>Declaration of Compliance with U.S. DOL’s Wage Determination</td>
<td>21</td>
</tr>
<tr>
<td>3.1.7.</td>
<td>Restriction Against Sex Offenders</td>
<td>22</td>
</tr>
<tr>
<td>3.1.8.</td>
<td>Bid Bond Form</td>
<td>22</td>
</tr>
<tr>
<td>3.1.9.</td>
<td>Local Procurement Preference Application</td>
<td>22</td>
</tr>
<tr>
<td>3.2.</td>
<td>Qualitative Proposal Workbook</td>
<td>22</td>
</tr>
<tr>
<td>3.3.</td>
<td>Price Proposal Form</td>
<td>22</td>
</tr>
<tr>
<td>4.</td>
<td>PROPOSAL SCORING MECHANISM</td>
<td>22</td>
</tr>
<tr>
<td>4.1.</td>
<td>Overview</td>
<td>22</td>
</tr>
<tr>
<td>4.2.</td>
<td>Qualitative Proposal Evaluation</td>
<td>23</td>
</tr>
<tr>
<td>4.3.</td>
<td>Price Proposal Evaluation</td>
<td>25</td>
</tr>
<tr>
<td>5.</td>
<td>CONDITIONS OF CONTRACT</td>
<td>25</td>
</tr>
<tr>
<td>5.1.</td>
<td>Definitions</td>
<td>25</td>
</tr>
<tr>
<td>5.2.</td>
<td>Accounting</td>
<td>25</td>
</tr>
<tr>
<td>5.3.</td>
<td>Documentation</td>
<td>26</td>
</tr>
<tr>
<td>5.4.</td>
<td>Language and Trade Terms</td>
<td>26</td>
</tr>
<tr>
<td>5.5.</td>
<td>Release of Information</td>
<td>26</td>
</tr>
<tr>
<td>5.6.</td>
<td>Limitations of Clause</td>
<td>26</td>
</tr>
</tbody>
</table>
1. INTRODUCTION

The Guam Power Authority (GPA), hereinafter referred to as GPA, is a public utility corporation that provides electric power service throughout the entire island of Guam. GPA, in conjunction with Private Partners, operates and maintains power plants, with a total rated capacity of about 435 MW. The diesel-fueled power plants total capacity is about 215 MW.

GPA is inviting interested Firms to participate in a Multi-Step Bid for Diesel Fuel Oil No.2 as follows:

A. Supply to the GPA Bulk Storage
B. Delivery to the GPA Power Plants

The Supply Contract shall be for TWO (2) years to commence on or about July 01, 2018 with THREE (3) year extension options, renewable annually upon mutual agreement of both parties.

The Delivery Contract shall be for FIVE (5) years to commence on or about July 01, 2018.

All interested parties are hereby on notice that minority business enterprises will be afforded full opportunity to submit bids in response to the invitation and will not be discriminated against on the grounds of race, color and national origin in consideration for an award. The right is reserved to reject any or all bids and to waive any imperfection in the bids in the interest of the Guam Power Authority.

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

<table>
<thead>
<tr>
<th>Bid Process Milestones</th>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bid Announcement</td>
<td>10/23/2017</td>
<td>11/30/2017</td>
</tr>
<tr>
<td>Pre-Bid Conference (Non-mandatory)</td>
<td>11/08/2017</td>
<td>(10:00 am)</td>
</tr>
<tr>
<td>Site Visit (Non-mandatory)</td>
<td>11/08/2017</td>
<td>(1:30 pm)</td>
</tr>
<tr>
<td>Submit Questions</td>
<td>10/24/2017</td>
<td>11/24/2017</td>
</tr>
<tr>
<td>Cut Off Date for Receipt of Questions</td>
<td>11/24/2017</td>
<td></td>
</tr>
<tr>
<td>GPA Review and Answer Questions</td>
<td>10/24/2017</td>
<td>11/30/2017</td>
</tr>
<tr>
<td>Vendor Prepare Bids</td>
<td>10/24/2017</td>
<td>12/15/2017</td>
</tr>
<tr>
<td>Cut Off Date for Receipt of Proposals (Technical and Price Proposals)</td>
<td>12/15/2017 2:00 PM Guam Time</td>
<td></td>
</tr>
<tr>
<td>EVALUATION Step One: Technical Proposal (Bid) Evaluation</td>
<td>12/27/2017</td>
<td>01/05/2018</td>
</tr>
<tr>
<td>GM review and approval</td>
<td>01/08/2018</td>
<td>01/12/2018</td>
</tr>
<tr>
<td>Notify Qualified Bidders</td>
<td>01/15/2018</td>
<td>01/29/2018</td>
</tr>
<tr>
<td>Price Proposal Opening</td>
<td>01/31/2018</td>
<td></td>
</tr>
<tr>
<td>EVALUATION Step Two: Price Proposal Evaluation</td>
<td>02/05/2018</td>
<td>02/09/2018</td>
</tr>
<tr>
<td>GM Approval</td>
<td>02/12/2018</td>
<td>02/16/2018</td>
</tr>
<tr>
<td>Notice of Intent To Award</td>
<td>02/19/2018</td>
<td>03/04/2018</td>
</tr>
<tr>
<td>CCU Approval</td>
<td>03/15/2018</td>
<td>03/22/2018</td>
</tr>
<tr>
<td>PUC Approval</td>
<td>03/29/2018</td>
<td></td>
</tr>
<tr>
<td>Contract Signing</td>
<td>04/02/2018</td>
<td></td>
</tr>
<tr>
<td>Contract Mobilization</td>
<td>04/02/2018</td>
<td>06/30/2018</td>
</tr>
<tr>
<td>Contract Commencement</td>
<td>07/01/2018</td>
<td></td>
</tr>
</tbody>
</table>

1.1. Invitation for Bid (IFB) Document Organization

Invitation for Bid (IFB) documents are organized into three separate volumes, as follows:

Volume I — Commercial Terms and Conditions
Volume II — Contract
Volume III — Appendices

In addition, the IFB documents include two (2) sets of electronic spreadsheets (MS Excel Workbooks):

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

1.2. Overview and Scope
The CONTRACTOR shall provide GPA with Diesel Fuel Oil No.2 Supply and/or Delivery Services in compliance with the requirements specified in Volume II (CONTRACT) of this bid. The CONTRACTOR shall also provide qualified and trained personnel to safely, efficiently and legally supply and/or deliver the services required by the Authority under this IFB.

The estimated total diesel fuel oil requirement is provided in of Volume II (CONTRACT)- Section 2 and Schedule B of the solicitation package.

Product quality specification is prescribed in Volume II (Contract) - Section 9 and Schedule A of the solicitation package.

1.2.1. CONTRACT TERM

A. Supply to GPA Bulk Storage
The Contract Term for the base period shall be for TWO (2) years and shall commence on or about after 0:00 hour on July 01, 2018, and shall continue until midnight of June 30, 2020 with options to extend for THREE (3) additional One (1) year term, upon mutual agreement of both parties.

B. Delivery to GPA Plants
The Contract Term shall be for FIVE (5) years and shall commence on or about after 0:00 hour on July 01, 2018, and shall continue until midnight of June 30, 2023.

The first supply and/or delivery of fuel oil pursuant to the Contract is anticipated to be on or about July 01, 2018.

1.2.2. CONTRACT PRICE
The total contract price in U.S. Dollars per U.S. Gallon for all diesel fuel oil delivered to GPA shall be inclusive of all costs and liabilities incurred prior to supply and/or delivery. The contract price structure is described in detail in Volume II (Contract) – Section 4 of the solicitation package.

2. INSTRUCTIONS TO BIDDERS
2.1. Introduction

This is a Multi-step Bid Procurement. The Technical and Price Proposals should both be submitted on or before the Cut-off Date of Receipt of Proposals.

In Step One, only the submitted Technical Proposals will be evaluated and determined whether Acceptable or Unacceptable. BIDDERS whose Technical Proposals are determined to be Acceptable shall qualify for Step Two. BIDDERS whose Technical Proposals are Unacceptable shall be notified, and the unopened Price Proposal packages shall be returned.

In Step Two, the Price Proposals of the Bidders whose Technical Proposals that are determined to be Acceptable, either initially or as a result of discussions, will be considered for award.

2.2. Language and Correspondence

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

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

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

FAX: 1 (671) 646-3054 / 55
Attention: Supply Management Administrator

The written request may also be sent via-email by sending an electronic copy of the written request to the Procurement Officer handling the IFB.

Re: Bid IFB-GPA-057-17 DIESEL FUEL OIL NO.2: (A) SUPPLY TO BULK STORAGE; (B) DELIVERY TO GPA PLANTS
Any information given to a prospective BIDDER concerning a solicitation will be furnished promptly to all parties recorded by Procurement as having received the Invitation for Bid as an amendment to the solicitation if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective BIDDERs. Oral explanations or instructions given will not be binding.

2.3. Technical and Functional Requirements Examination

BIDDERs are required to carefully examine all tender documents inclusive of all technical and functional requirements and to inform themselves of all conditions and requirements of the solicitation in accordance with the laws and regulations of the Territory of Guam. Ignorance on the part of BIDDERs of any part of the tender documents and Technical and Functional Requirements will in no way relieve them of the obligations and responsibilities assumed under the contract.

2.4. Facility Tours

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

For the purpose of familiarizing BIDDERs with the fuel receiving facilities, BIDDERs may request GPA for a scheduled Facility Tour. All requests must be submitted as specified in Section 2.2. Upon approval and subject to the availability of the facility, GPA shall coordinate with the BIDDER regarding the tour details.

2.5. Solicitation Amendment

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

Announcements regarding any Amendment shall also be posted at the GPA Website at http://www.guampowerauthority.com/gpa_authority/procurement/gpa_current_rfps.php. BIDDERs

Re-Bid IF3-GPA-057-17 DIESEL FUEL OIL NO.2: (A) SUPPLY TO BULK STORAGE; (B) DELIVERY TO GPA PLANTS
shall acknowledge receipt of the amendment by a signature on one copy, which is to be returned to the GPA Supply Management Administrator. Acknowledgement may also be made by fax or e-mail.

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

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

2.8. Price/Cost Data
BIDDERs shall provide prices/costs in U.S. Dollars. BIDDERs are required to furnish a bid price for each year of the contract specified in the price proposal form of the IFB documents.

Technical and Price Proposals shall be submitted on or before the Cut-off Date for Receipt of Proposals, with the Price Proposal on a separate sealed envelope marked “PRICE PROPOSAL” and indicating the date and time of bid package remittance.

2.9. Documents Executed Outside of Guam
The Power of Attorney, performance bond guarantee, and documents defining the constitution of the joint venture, consortium, company or firm, if executed outside Guam, whether required to be submitted with the proposals or after the award of the contract, must be authenticated by a Notary Public or other official authorized to witness sworn statements.

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

2.10.1. Technical Proposal Requirements
Each BIDDER’s Technical Proposal Package shall include, but is not limited to, the following:

Re-Bid IFB-GPA-057-17 DIESEL FUEL OIL NO. 2: (A) SUPPLY TO BULK STORAGE; (B) DELIVERY TO GPA PLANTS
Volume I: Commercial Terms and Conditions

- Complete printed copies of the Technical Proposal;
- Complete printed responses and supporting information to the questions raised in the Qualitative Proposal Scoring Workbook;
- Complete printed and electronic copies of the Qualitative Proposal Scoring Workbook in a separate sealed envelope marked “TECHNICAL (UNPRICED) PROPOSAL”;
- Checklist forms defined in Volume III- Appendix A;
- All other required forms defined in Volume III Appendices; and
- Supplementary information as described below.

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

2.10.1.1 Technical Proposal

Each BIDDER’s Technical Proposal shall include the following:

a. Business Structure and Business Approach

The CONTRACTOR shall provide company information such as name, local address, corporate headquarters (if any) and affiliate company in support for the performance of its contractual obligations. The business structure and nature of services provided shall be provided together with the company information. A copy of the Articles of Incorporation and By-Laws or other applicable forms concerning the business organization is also requested. The CONTRACTOR shall outline business concepts to be used in order to perform, meet, and achieve the objectives of this solicitation.

b. Experience and Qualification

The contractor shall provide supporting information showing extensive and reliable experience in the supply or distribution of diesel fuel oil. The CONTRACTOR shall demonstrate its experience and expertise in the supply of Diesel Fuel Oil No.2 by providing the following:

- Supporting information outlining and/or illustrating past and current successful experience in the supply of Diesel Fuel Oil No.2. Include list of clients for the last five (5) years.

- Experience with Fuel Handling.

Contractor shall also provide documentary evidence of conformity with the Product Quality Specifications set in Volume II Section 9 and Schedule A for the types of fuel to be supplied.

c. Statement of Qualification/ Organizational Structure
The CONTRACTOR shall illustrate its approach in supplying Diesel Fuel Oil No.2 to GPA. The CONTRACTOR shall provide an organizational structure including the names and designations of personnel to be assigned in this contract, including a brief description of the qualifications and responsibilities of each personnel.

The contractor shall also provide its qualifications, and its affiliates' qualifications in the performance of the requirements of this contract.

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

e. Federal and Regulatory Compliance
The CONTRACTOR shall provide supporting documents showing knowledge and experience in complying with federal regulations and other applicable laws on Guam, such as OPA 90 and others, including documents showing compliance with all federal regulations and applicable laws.

f. Client references
At least three (3) client references for similar or larger contracts shall be submitted by the BIDDERs (include the Client Name, Position, Company and copies of contracts with the BIDDERs or AFFILIATES).
At least three (3) client reference letters shall be provided, along with a letter describing the relationship with the BIDDER, and the BIDDER's contract performance.

g. Mobilization Capability
The BIDDER shall provide proof of capability to mobilize full support services no later than 30 days after contract signing.

2.10.1.2. Qualitative Proposal Scoring Workbook
The bidder shall submit copies of the Qualitative Proposal Scoring Workbook, prepared as instructed in the Proposal Instructions tab. Quantities shall follow the requirements specified in Section 2.10.1.5 of this Volume. For each checklist item, the bidder shall provide references on the responses and supporting documents.
2.10.1.3. Required Forms

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

1. A copy of the BIDDER's Articles of Incorporation or other applicable forms concerning business organization (i.e. partnership, sole proprietorship, etc.) and By-Laws;
2. Certificate of Good Standing to conduct business in jurisdiction of residence;
3. Information regarding outstanding claims against the BIDDER;
4. Affidavit of Disclosure of Major Shareholder (Appendix D);
5. Non-collusion Affidavit (Appendix E);
6. No Gratuities or Kickbacks Affidavit (Appendix F);
7. Ethical Standards Affidavit (Appendix G);
8. Declaration of Compliance with US DOL’s Wage Determination (Appendix H);
9. Restriction Against Sex Offenders (Appendix I);
10. Bid Bond Form (Appendix J);
11. Local Procurement Preference Application (Appendix K); and,

2.10.1.4. Marking and Packaging of Technical Proposal

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

1) "TECHNICAL PROPOSAL";
2) "DIESEL FUEL OIL NO.2"
   A. SUPPLY TO GPA BULK STORAGE
   B. DELIVERY TO GPA PLANTS;
3) The BIDDER's Name;
4) Invitation for Bid Number;
5) Closing Date and Time (Guam Standard Time);
6) Addressed to, as follows:

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

Re-Bid 11B-GPA-057-17 DIESEL FUEL OIL NO.2: (A)Supply to Bulk Storage; (B) Delivery to GPA Plants
GUAM POWER AUTHORITY
POST OFFICE BOX 2977
HAGATNA, GUAM 96932-2977

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

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

2.10.1.5. Technical Proposal Submittal Quantity

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

2.10.2. Price Proposal Requirements

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

(1) “PRICE PROPOSAL”;
(2) “DIESEL FUEL OIL NO.2”
   A. SUPPLY TO GPA BULK STORAGE
   B. DELIVERY TO GPA PLANTS;
(3) The BIDDER’s Name;
(4) Invitation for Bid Number;
(5) Closing Date and Time (Guam Standard Time);
(6) Addressed to, as follows:

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

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

Re: Bid IFB-GPA-057-17 DIESEL FUEL OIL NO.2: (A) SUPPLY TO BULK STORAGE; (B) DELIVERY TO GPA PLANTS

- 10 -
If the BIDDER's proposal cannot fit within one box or chooses to submit more than one box, each box must be labeled with the following:

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

2.10.3. Non-Repudiation Issues
GPA has structured both its Manual and Electronic IFB submittal procedures to ensure non-repudiation of the submitted proposals. In this IFB, non-repudiation is strong and substantial evidence of the identity of the sender and owner of the proposal and of proposal's integrity in so far as it being unaltered from its original sent state, sufficient to prevent a party from successfully denying the origin, submission or delivery of the proposal and the integrity of its contents. Non-repudiation applies to both parties to this IFB transaction. It binds the sender as well as precludes the recipient from denying the exchange of information and material upon the receipt of secure acknowledgement from the recipient.

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

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

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

Associated companies or joint ventures shall jointly designate one Power-of-Attorney person authorized to oblige all the companies of the association or joint venture. A proposal submitted by a joint venture must be accompanied by the document of formation of the joint venture, duly registered and authenticated by a Notary Public, in which is defined precisely the conditions under which it will function,

Re:BID IFB-GPA-057-17 DIESEL FUEL OIL NO.2: (A) SUPPLY TO BULK STORAGE; (B) DELIVERY TO GPA PLANTS
its period of duration, the persons authorized to represent and obligate it, the participation of the several firms forming the joint venture, the principal member of the joint venture, and address for correspondence for the joint venture. BIDDERS are advised that the joint venture agreement must include a clause stating that the members of the joint venture are severally and jointly bound.

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

2.10.5. Cut-Off Date for Receipt of Proposals

The Technical and Price Proposals have to be submitted on or before the GPA Cut-off Date for Receipt of Proposals specified in Table 1 (Bid Milestones).

Price Proposals shall be returned, unopened, to the BIDDERS whose Technical Proposals are deemed Not Acceptable.

2.10.6. Receipt and Handling of Proposals

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

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

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

2.11. STEP ONE PROCEDURES

2.11.1. Evaluation of Technical Proposals

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

2.11.2 Scoring of Technical Proposals

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

a. Acceptable;

b. Potentially Acceptable, that is reasonable susceptible of being made acceptable; or

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

GPA shall evaluate and score each BIDDER using the methodology as described in Section 4 of this volume. At the conclusion of the evaluation, GPA shall establish a Qualified Bidders List (QBL), and the Procurement Officer or his designee may initiate Step Two if there are sufficient acceptable Technical (Unpriced) Proposals to assure effective price competition in the second phase without technical discussions. If the Procurement Officer or his designee finds that such is not the case, the Procurement Officer shall issue an amendment to this Invitation for Bid or engage in technical discussions with BIDDERS as set forth below.

2.11.3. Discussions of Proposals

The Procurement Officer or his designee may conduct discussions with any bidder who submits acceptable or potentially acceptable Technical Offer. During the course of such discussions, the Procurement Officer or his designee shall not disclose any information derived from one Unpriced Technical Proposal to any other BIDDER.
GPA may conduct discussions or request for additional information or documentation with any BIDDER to determine such BIDDER’s qualifications for further consideration and explore with the BIDDER the scope and nature of the required services, method of performance and the relative utility of alternative methods of approach. BIDDERs are required to provide the responses within the time period specified at that time by GPA. If GPA does not receive any response by the deadline specified, GPA shall consider the lack of a response as the BIDDER’s response. During the course of such discussions, the Procurement Officer shall not disclose any information derived from a technical offer to any other BIDDER.

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

2.11.4. Notice of Unacceptable Proposal
A notice of unacceptability will be forwarded to the BIDDER upon completion of the Technical Proposal evaluation and final determination of unacceptability. When the Procurement Officer or his designee determines a BIDDER’s Technical Proposal to be unacceptable, such BIDDER shall not be afforded an additional opportunity to supplement its technical offer.

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

2.12.1. Opening of Price Proposals
Each selected BIDDER from the Qualified Bidders list will be notified of the Price Proposal Opening date. BIDDERs may be present during the Bid Opening.

2.12.2. Proposal Changes During Bid Process
No changes may be made between Notification of Acceptable Proposal and Price Proposal Opening date.

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

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

Arithmetical errors will be rectified on the following basis:

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

2.12.5. Evaluation Criteria and Comparison of Priced Offers  
GPA will evaluate and compare the Priced Offers for Bidder's Technical Proposals that were determined during Step One to be responsive to the tender document requirements. The Scoring Mechanism is further explained in Section 4.

2.13. Award of Contract  
A. Supply to the GPA Bulk Storage  
The contract will be awarded to the BIDDER evaluated as being qualified and with the best-priced proposal for the TWO (2) year contract base period.

B. Delivery to the GPA Plants  
The contract will be awarded to the BIDDER evaluated as being qualified and with the best-priced proposal for the FIVE (5) year contract period. GPA reserves the right to make multiple awards, partial awards, award by site location, or award in whole, whichever may be most advantageous to the Authority.
The successful BIDDER will be notified by GPA through official written correspondence of the intent to award the contract (Notice of Intent to Award). The written correspondence may be sent by GPA via official letter, e-mail and fax.

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

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

2.14. Bid Bond and Performance Bond Requirements

2.14.1. Performance Bond Form, Amount and Duration
The required performance bond shall be in the form as prescribed in Volume III- Appendix B. At the beginning of the CONTRACT and at the beginning of each GPA Fiscal Year during which the CONTRACT is in effect, the CONTRACTOR shall provide and maintain a performance bond in the amount equivalent to fifteen percent (15%) of the annual contract cost for that full or partial fiscal year within the term of the contract. If the CONTRACTOR is declared by GPA to be in default under the CONTRACT, GPA may exercise any or all rights and remedies it possesses under the provisions of the performance bond. The GPA Fiscal Year begins on October 1 and ends on September 30 of the following calendar year.

2.14.2. Performance Bond Execution by a Guam Licensed Surety Company
The CONTRACTOR shall provide a Performance Bond executed by a surety company licensed to do business on Guam. A list of surety companies licensed to do business on Guam is provided in Volume III- Appendix C.
2.14.3. Bid Bond Form and Amount

A bid bond for an amount of **no less than Five Hundred Thousand Dollars (US$500,000.00)** is required and may be in the following form:

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

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

2.15. General Proposal Guidelines and Requirements

2.15.1. Amendments to the Bid Documents

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

2.15.2. Proprietary Data

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

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

The proposal shall be opened to public inspection subject to any continuing prohibition of the disclosure of confidential data.

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

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

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

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

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

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

2.15.6. False Statements In Proposal

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

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

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

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

GCA 5 §5253(b) restricts the PROPOSENT against employing convicted sex offenders from working at Government of Guam venues. It states:

All contracts for services to agencies listed herein shall include the following provisions:

(1) warranties that no person providing services on behalf of the contractor has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry; and

(2) that if any person providing services on behalf of the contractor is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry, that such person will be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.
3. REQUIRED FORMS AND SUPPLEMENTAL INFORMATION

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

- A copy of the BIDDER's Articles of Incorporation or other applicable forms concerning business organization (i.e. partnership, sole proprietorship, etc.) and By-Laws;
- Audited financial information on BIDDER's firm for the last 3 years.
- Certificate of Good Standing to conduct business in jurisdiction of residence;
- Information regarding outstanding claims against the BIDDER;
- Required affidavits (Major Shareholders Disclosure; Non-Collusion; No Gratuities or Kickbacks; Ethical Standards Affidavit)
- Proposal Checklist
- Bid Bond
- A current Business License. Although it is not required in order to provide a Bid for this engagement, obtaining a Business License is a pre-condition for entering into a contract with the Authority.

The following forms and workbooks will be available on the GPA Website's Procurement Page, in Volume III Appendices. Appendices A, D, E, F, G, H, I, J, and K and the MS EXCEL Workbooks Qualitative Proposal Worksheet.xls and Price Proposal must be completed:

- Appendix A: Proposal Checklists
- Appendix B: Performance Bond
- Appendix C: List of Surety Companies Licensed To Do Business in Guam
- Appendix D: Major Shareholders Disclosure Affidavit
- Appendix E: Non-collusion Affidavit
- Appendix F: No Gratuities or Kickbacks Affidavit
- Appendix G: Ethical Standards Affidavit
- Appendix H: Declaration of Compliance with U.S. DOL's Wage Determination
- Appendix I: Restriction Against Sex Offenders
- Appendix J: Bid Bond Form and Instructions
- Appendix K: Local Procurement Preference Application
- Qualitative Proposal Worksheet.xls
- Price Proposal
3.1. Technical Proposal Forms

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

3.1.1. Proposal Checklists

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

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

3.1.2. Major Shareholders Disclosure Affidavit

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

3.1.3. Non-collusion Affidavit

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

3.1.4. No Gratuities or Kickbacks Affidavit

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

3.1.5. Ethical Standards Affidavit

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

3.1.6. Declaration of Compliance with U.S. DOL’s Wage Determination

The BIDDER shall fill out the Declaration of Compliance with U.S. DOL’s Wage Determination Affidavit Form in Appendix H and submit it with its Proposal.
3.1.7. Restriction Against Sex Offenders

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

3.1.8. Bid Bond Form

As stated in Section 2.14.3, if a BIDDER desires to submit a bid bond with an acceptable bonding company, the BIDDER must submit original copies of Volume III- Appendix J.

3.1.9. Local Procurement Preference Application

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

3.2. Qualitative Proposal Workbook

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

3.3. Price Proposal Form

The qualified BIDDERs shall provide prices/costs in U.S. Dollars. BIDDERs are required to furnish a BID PRICE OFFER as specified in the PRICE PROPOSAL FORM. BID PRICE OFFER for optional contract years may also be provided; doing so allows GPA to calculate the cost of the contract should it be extended.

4. PROPOSAL SCORING MECHANISM

4.1. Overview

GPA will use the Proposal Scoring Mechanism described in this Section of the invitation for Bid (IFB) to qualify BIDDERs for the participation in the final bid stage. The Proposal Scoring Mechanism provides the BIDDERs the opportunity to highlight their qualifications to bid in terms of their resources, skills, operating philosophy and commitments to perform specific tasks and originality. The IFB proposal evaluation shall be based on such specifications and based on the relative ranking of each BIDDER’s qualifications.
4.2. Qualitative Proposal Evaluation

The qualitative proposal scoring is designed to assess the quality of the BIDDER's resources, skills, comprehensiveness and responses to specific questions or requirements. GPA may elect to have up to five (5) evaluators for this IFB. Each evaluator shall assess and review the Bidder's Technical Proposal documents. Each GPA evaluator shall score each BIDDER separately under a point system to determine the acceptability of each Proposal. The majority of the determinations of GPA evaluators shall prevail in the decision to Qualify or not Qualify a BIDDER for Step 2 — Price Proposal.

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

1) Each evaluator shall review BIDDER’s response to each question on the CONTRACTOR Checklist Items. The Evaluator shall be guided by information provided by the bidder regarding location of responses to each question in Part 1 — Qual Support References tab.

2) In Part 2 — Qual Eval Scoresheet tab, Evaluator shall assign a Raw Rating Score for each BIDDER’s response to each question. The Evaluator shall be guided by the Checklist Weight and Proposal Scoring Information provided in the Proposal Scoring Information tab.

3) Each evaluator shall determine BIDDER’s weighted average raw score using pre-specified weights for each question. Part 2 — Qual Eval Scoresheet tab has been formatted to automatically populate the Evaluated CONTRACTOR Qualifications Score.

The evaluators will use the supporting information on Price Proposal Worksheet. The Total Qualitative Points for a 100% Score is specified in the Proposal Scoring Information tab and CONTRACTOR Qualifications Checklist tab. Each GPA evaluator will analyze the contents of the Proposals and categorize the Proposals as:

- Acceptable: Score ≥ 80%
- Potentially Acceptable, that is reasonably susceptible of being made Acceptable: 80%> Score ≥75%
- Unacceptable: Score < 75%.
A percent score of less than 75% indicates that a GPA evaluator has determined that the BIDDER has not supplied sufficient evidence of qualifications and should not be allowed to participate in Step 2—Price Proposal.

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

- Acceptable
- Potentially Acceptable
- Unacceptable.

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

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

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

BIDDERs who are rated by the majority of the GPA evaluators as Unacceptable is determined to be Not Qualified and will not be allowed to participate in Step 2—Price Proposal. The Procurement Officer shall record in writing the basis for finding a Bidder Not Qualified and make it part of the procurement file.
### Table 1. Final Evaluation of Bidder Qualification

<table>
<thead>
<tr>
<th>GPA Evaluator</th>
<th>BIDDER 1</th>
<th>BIDDER 2</th>
<th>BIDDER 3</th>
<th>BIDDER 4</th>
<th>BIDDER 5</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### 4.3. Price Proposal Evaluation

A. Supply to the GPA Bulk Storage

The contract will be awarded by site location to the BIDDER evaluated as being qualified and with the best-priced proposal for the TWO (2) year contract base period.

B. Delivery to the GPA Plants

The contract will be awarded to the BIDDER evaluated as being qualified and with the best-priced proposal for the FIVE (5) year contract period. GPA reserves the right to make multiple awards, partial awards, award by site location, or award in whole, whichever may be most advantageous to the Authority.

#### 5. CONDITIONS OF CONTRACT

##### 5.1. Definitions

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

##### 5.2. Accounting

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

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

5.4. Language and Trade Terms

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

5.5. Release of Information

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

5.6. Limitations of Clause

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