



CONSOLIDATED COMMISSION ON UTILITIES
Guam Power Authority | Guam Waterworks Authority
P.O. Box 2977 Hagatna, Guam 96932 | (671)649-3002 | guamccu.org

RESOLUTION NO. 06-FY2019

RELATIVE TO APPROVAL OF A TWO-YEAR EXTENSION OF THE CONTRACT WITH TOTAL CHEMICAL RESOURCES INC. FOR THE PURCHASE OF ANIONIC POLYMER AND ALUMINUM CHLOROHYDRATE (ACH) FOR THE HÅGATÑA AND NORTHERN DISTRICT WASTEWATER TREATMENT PLANTS

WHEREAS, under 12 G.C.A. § 14105, the Consolidated Commission on Utilities (“CCU”) has plenary authority over financial, contractual and policy matters relative to the Guam Waterworks Authority (“GWA”); and

WHEREAS, the Guam Waterworks Authority (“GWA”) is a Guam Public Corporation established and existing under the laws of Guam; and

WHEREAS, GWA remains under the 2011 Court Order (“CO”) Projects which requires, among many other things, the operation of the Northern and Hagåtña District Wastewater Treatment Plants (WWTPs) to use Chemically Enhanced Primary Treatment as specified in § II A Paragraph 2 of the CO; and

WHEREAS, the Chemically Enhanced Primary Treatment at the Northern and Hågatña District WWTP requires the purchase of chemicals for the application of the treatment process; and

WHEREAS, on July 30, 2015, GWA filed a Petition with the Guam Public Utilities Commission (“PUC”) for approval to issue a bid for chemicals for the Northern and Hågatña District WWTP facilities; and the GWA Petition was approved by the PUC on August 27, 2015; and

1 **WHEREAS**, GWA issued Bid Number 2015-10 to solicit bid proposals from
2 experienced and responsive bidders to provide the chemicals needed to continue to operate the
3 Northern District WWTP and the Hågatña District WWTP in compliance with § II A Paragraph
4 3(a) of the CO; and

5
6 **WHEREAS**, there were two responsive and responsible bidders who offered chemicals
7 meeting the requirements of IFB 2015-10 (see Exhibit A); and

8
9 **WHEREAS**, upon approval by the CCU and the PUC in early FY2016, GWA entered
10 into a contract for Anionic Polymer and Aluminum Chlorohydrate (ACH) with Total Chemical
11 Resources, Inc. ("Total Chemicals") containing a three (3) year initial term with a two (2) year
12 option clause (see Exhibit A); and

13
14 **WHEREAS**, GWA negotiated a \$1.98 per pound for Anionic Polymer at an estimated
15 usage of 72,096 pounds per month at an annual cost of One Million Seven Hundred Thirteen
16 Thousand and 96/100 Dollars (\$1,713,000.96) and for Aluminum Chlorohydrate (ACH) at \$1.25
17 per pound at an estimated usage of 97,146 pounds per month at an annual cost of One Million
18 Four Hundred Fifty-Seven Thousand One Hundred Ninety Dollars (\$1,457,190.00) for a one
19 year term with a grand total of Three Million One Hundred Seventy Thousand One Hundred
20 Ninety and 96/100 Dollars (\$3,170,190.96) to supply both Anionic Polymer and Aluminum
21 Chlorohydrate (ACH) for the Northern and Hagatna District Wastewater Treatment Plants as
22 specified in IFB 2015-10; and

23
24 **WHEREAS**, GWA Management seeks CCU approval of a two (2) year contract
25 extension with Total Chemical, in an amount not to exceed Six Million Three Hundred Forty
26 Thousand Three Hundred Eighty-One and 92/100 Dollars (\$6,340,381.92) for the Anionic
27 Polymer and Aluminum Chlorohydrate (ACH) chemical, with a 10% contingency of Six
28 Hundred Thirty-Four Thousand Thirty-Eight and 19/100 Dollars (\$634,038.19), for a total
29 funding amount of Six Million Nine Hundred Seventy-Four Thousand Four Hundred Twenty
30 and 11/100 Dollars (\$6,974,420.11); and

1 **WHEREAS**, GWA seeks CCU approval to Petition the PUC to approve the two (2) year
2 Contract option plus a 10% contingency in the total amount not to exceed Six Million Nine
3 Hundred Seventy-Four Thousand Four Hundred Twenty and 11/100 Dollars (\$6,974,420.11);
4 and

5
6 **WHEREAS**, the source of funding for the chemical purchases will be from the FY2019
7 GWA Wastewater Operations Budget.

8
9 **NOW BE IT THEREFORE RESOLVED**, the Consolidated Commission on Utilities
10 does hereby approve and authorize the following:

- 11
12 1. The recitals set forth above hereby constitute the findings of the CCU.
13 2. The CCU finds that the terms of the negotiated contract option price agreed to by
14 Total Chemical Resources Inc. is fair and reasonable.
15 3. The CCU finds that the terms of the conditions set by GWA relative to providing
16 necessary chemicals are fair and reasonable.
17 4. The CCU hereby authorizes the management of GWA to exercise the one (1) year
18 option period allowed in the contract with Total Chemical at the negotiated price.
19 5. The CCU hereby further approves the funding total of
20 Six Million Nine Hundred Seventy-Four Thousand Four Hundred Twenty and
21 11/100 Dollars (\$6,974,420.11) for the Total Chemical contract option to supply
22 Anionic Polymer and Aluminum Chlorohydrate (ACH).
23 6. The CCU hereby further authorizes GWA Management to petition the PUC for
24 approval of the Total Chemical contract option.

25 **RESOLVED**, that the Chairman certified and the Board Secretary attests to the
26 adoption of this Resolution.

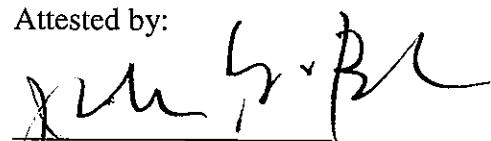
27
28 **DULY AND REGULARLY ADOPTED**, this 27th day of November 2018.

29 Certified by:

Attested by:

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32 **JOSEPH T. DUENAS**
Chairperson

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32 **J. GEORGE BAMBA**
Secretary

SECRETARY'S CERTIFICATE

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

The foregoing is a full, true and accurate copy of the resolution duly adopted at a regular meeting by the members of the 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: 5
NAYS: 0
ABSTENTIONS: 0
ABSENT: 0



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EXHIBIT A

TRACKING NO. FY 2016-00003
FORMAL CONTRACT

THIS AGREEMENT is made and entered into this 20th day of JANUARY, 2015^{6/14/13} by and between the **GUAM WATERWORKS AUTHORITY** ("GWA"), whose business address is: Gloria B. Nelson Public Services Building, 688 Route 15 Mangilao, Guam 96913, and **TOTAL CHEMICAL RESOURCES, INC.**, ("**Bidder**"), whose mailing address is: PO Box 20730, Barrigada, GU 96921 licensed to conduct business on Guam and having Guam business license No. 1608013.

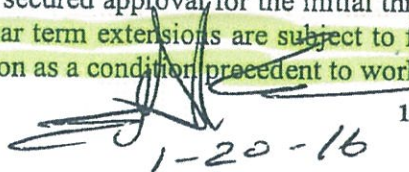
WITNESSETH, that whereas, GWA intends to purchase inorganic coagulant ("ACH") and anionic polymer for the purpose of using at GWA's Northern District and Hågatña Wastewater Treatment Plants to ensure regulatory compliance as identified in GWA Bid No. 2015-10.

NOW THEREFORE, GWA and the Bidder for the considerations hereinafter set forth herein and in other documents associated with the performance hereunder, agree as follows:

SECTION 1. THE BIDDER AGREES:

To provide ACH manufactured by Gulbrandsen Technologies (India) Pvt Inc. at a cost to GWA of \$1.06 cents per pound and anionic polymer manufactured by NALCO (an Ecolab Company) at a cost to GWA of \$1.40 cents per pound as specified in GWA IFB No. 2015-10 at CIF delivered pursuant to the bid on an "as-needed basis." Bidder agrees to maintain all time all licenses, labor, insurance, material, equipment, tools and services necessary to perform and comply with this Contract and the Contract Documents as defined in Section 3 herein. Bidder also understands that it is responsible for all taxes and fees which may be due relative to payment or performance hereunder (including but not limited to, all employee, corporate and gross receipt taxes). GWA reserves the right to amend this Agreement or request a change order, but the right is subject to the mutual agreement of both parties and all amendments or change orders shall be in writing signed by both parties.

- (a) **CONTRACT TIME:** The Bidder agrees to commence work under this contract upon written notice to proceed and to provide the goods and services at the price specified above for a period of three years (3) from the date of the Notice to Proceed and as specified in the Bid Documents relative to the time, place and manner provided in the Bid Documents (as amended). Bidder agrees by placing their signature hereto that they have been placed on notice that the provision of the goods and services hereunder is necessary to protect the public health and that time is always of the essence.
- (b) The Bidder understands that this procurement was not an "all or nothing bid" and that GWA could award a portion of the work called for under the bid to another party, and that in this case, GWA has done so.
- (c) Bidder further understands that all the work called for under this bid is subject to the requirements of the Guam Public Utility Commission's Contract Review Protocol, and while GWA has secured approval for the initial three (3) year contract term, the additional two (2) one (1) year term extensions are subject to further approval from the Guam Public Utilities Commission as a condition precedent to work being performed under said extensions.


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- (d) SUB-CONTRACTORS: The Bidder agrees to bind every sub-contractor to the terms of the Contract Documents. Bidder further agrees that no sub-contractor Bidder may be allowed to perform in any fashion whatsoever under this contract until such time as the express written approval of GWA is obtained. The Contract Documents shall not be construed as creating any contractual relation between a sub-contractor and the Guam Waterworks Authority.
- (e) Bidder further understands that the price specified in this section shall remain fixed for the initial three (3) year term regardless of the amount of chemicals ordered by GWA.

SECTION 2. GWA AGREES:

To pay, and the Bidder agrees to accept in full payment for the performance of this Contract, ACH manufactured by Gulbrandsen Technologies (India) Pvt Inc. at a cost to GWA of \$1.06 cents per pound and anionic polymer manufactured by NALCO (an Ecolab Company) at a cost to GWA of \$1.40 cents per pound CIF delivered pursuant to the bid on an "as-needed basis."

Any adjustment in contract price pursuant to clauses in this contract shall be made in one or more of the following ways:

- (a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- (b) by unit prices specified in the contract or subsequently agreed upon;
- (c) by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract or subsequently agreed upon;
- (d) in such other manner as the parties may mutually agree; or
- (e) in the absence of an agreement between the parties, by a unilateral determination by the GWA General Manager of costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the GWA General Manager in accordance with generally accepted accounting principles and applicable sections under Chapter 7 (Cost Principles) of the Guam Procurement Regulations and subject to the provisions under Title 5, Chapter 5 of the Guam Code Annotated (Legal and Contractual Remedies).

For the purposes of this contract, no price adjustment shall be made unless the vendor can prove that their cost for the chemical specified in this bid has increased more than 50%.

For any request for a price adjustment, the Bidder shall submit cost or pricing data for any price adjustments subject to the provisions of 2 G.A.R. § 3118 of the Guam Procurement Regulations. Information that may be required under this provision include, but is not limited to, invoices from the vendor's supplier for goods, proof of payment for such goods from the supplier or other proof as GWA may require which proves that the price has risen substantially enough to warrant a price modification.

SECTION 3. CONTRACT DOCUMENTS:

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

- a. Invitation to Bid
- b. Instructions to Bidders
- c. Bid
- d. Form of Non-Collision Affidavit
- e. Bid Bond
- f. Certification of Bidders Regarding Equal Employment Opportunity
- g. Formal Contract (which shall control in the event of conflict between this and any other contract or bid document)
- h. Performance Bond
- i. Payment Bond
- j. General Provisions
- k. Special Provisions
- l. Technical Specifications
- m. Plans
- n. Addenda/Amendments
- o. Answers to Questions (if GWA determines they are applicable).

SECTION 4. LIQUIDATED DAMAGES:

The Bidder further agrees to pay to GWA the amounts stated in the bid (or the minimum specified in Guam law) for failing, neglecting or refusing to complete the work within the time herein specified and said sum shall be paid for each consecutive calendar day therefore that the Bidder shall be in default after the time stipulated in the Contract for completing the work, ready for use and/or operations. Sundays and legal holidays will be excluded in determining the number of days in default.

SECTION 5. COVENANT AGAINST CONTINGENT FEES:

The Bidder warrants that he has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warrant shall give GWA the right to terminate the contract, or at its direction, deduct from the contract price or consideration the amount of such commission, percentage, brokerage or contingent fee. This warranty shall not apply to commission's payable by Contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Bidder for the purpose of securing business.

SECTION 6. OTHER CONTRACTS:

GWA may award other contracts for additional work, and the Bidder shall fully cooperate with such other contractors and carefully fit his own work to that provided under other contracts as

may be directed by the Contracting Officer. The Bidder shall not commit or permit any act which will interfere with the performance of work by any other contractor.

SECTION 7. DISPUTES:

Except as otherwise specifically provided in this contract, all disputes concerning questions of fact arising under this contract shall be decided by the GWA General Manager whose decision shall be final and conclusive upon the parties thereto. In the meantime, the Bidder shall diligently proceed with the work as directed. However, the final decision of the GWA General Manager is appealable to the Guam Public Auditor as provided under 5 G.C.A. § 5427(e).

SECTION 8. CONTRACT BINDING:

It is agreed that this Contract and all the Covenants hereof shall insure to the benefit of and binding upon GWA and the Bidder respectively and his parties, successors, assignees and legal representative. Neither GWA nor the Bidder shall have the right to assign, transfer or sublet his interests or obligations hereunder without written consent of the other party.

It is hereby mutually agreed by and between the parties hereto that no mechanic, contractor, subcontractor, material man or other person can or will contract for or in any other manner have or acquire any lien upon the binding or works covered by this contract, or the land upon which the same is situated.

SECTION 9. GWA NOT LIABLE:

A. GWA, its officers, agents, employees and governing board assumes no liability for any accident or injury that may occur to the Contractor, Contractor's agents, employees, or to Contractor's property while on the job or otherwise en route to or from the job during any travel required by the terms of this agreement.

B. GWA, its officers, agents, employees and governing board shall not be liable to Bidder for any work performed by the Bidder prior to the written and signed approval of this Contract by the General Manager for GWA and the Bidder hereby expressly waives any and all claims for service performed in expectation of this agreement prior to its signature of the General Manager.

SECTION 10. NOTICES:

All notices between the parties shall be in writing and shall be deemed served when personally delivered or when deposited in the mail, registered or certified, first-class postage prepaid, addressed as follows:

To: **GUAM WATERWORKS AUTHORITY**

Greg P. Cruz
Interim General Manager
Gloria B. Nelson Public Services Building
688 Route 15, Mangilao, 96913

To: **BIDDER**

Jerry A. Flores
Chief Financial Officer
Total Chemical Resources
PO Box 20730
Barrigada, GU 96921
Tel: 646-4742
Fax: 649-0447

SECTION 11. TERMINATION:

Section 11.1 – Termination For Default:

(1) Default. If the Bidder refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, GWA may notify the Bidder in writing of the delay or non-performance and if not cured in five (5) working days or any longer time specified in writing by the GWA, GWA may terminate the Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part the GWA may procure similar services in a manner and upon terms deemed appropriate by the GWA. The Bidder shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar services.

(2) Contractor's Duties. Notwithstanding termination of the contract and subject to any directions from the GWA, the Bidder shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Bidder in which GWA has an interest.

(3) Compensation. Payment for completed services delivered and accepted by the government and GWA shall be at the contract price. GWA may withhold from amounts due the Bidder such sums as the GWA deems to be necessary to protect GWA against loss because of outstanding liens or claims of former lien holders and to reimburse the GWA for the excess costs incurred in procuring similar goods and services (including the provision of these goods and services by GWA personnel). In the event that the Bidder fails to complete the work called for in the bid, fails to provide the goods or services in the allotted time, then Bidder shall pay to GWA $\frac{1}{4}$ of 1% of the total bid price per day as liquidated damages for the non-performance as specified by the Guam Code Annotated. The liquidated damages herein are not a penalty, but rather a reasonable estimate by GWA of the loss it would suffer as a result of non-performance.

(4) Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of sub-contractor(s) of Contractor, the Bidder shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Bidder to make progress in the prosecution of the work hereunder which endangers such performance) if the Bidder has notified the GWA within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; fires; floods;

epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform or to make progress due to such causes similar to those set forth above, the Bidder shall not be deemed to be in default, unless the services to be furnished by the Bidder (or sub-contractor) were reasonably obtainable from other sources in sufficient time to permit the Bidder to meet the contract requirements. Failure of the Bidder (or sub-contractor) to perform for reasons other than cited above shall constitute a default of the Bidder unless cured by Bidder with a reasonable time. Upon request of the Contractor, GWA shall ascertain the facts and extent of such failure, and, if GWA determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the GWA and the government of Guam under the laws of Guam.

(5) Erroneous Termination for Default. If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Bidder was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Subsection C, below.

(6) Additional Rights and Remedies. The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

Section 11.2 – Termination For Convenience:

(1) Termination. GWA may, when the interest of the government so requires, terminate this contract in whole or in part, for the convenience of the government or GWA (including the provision of services by any sub-bidder of the Contractor). GWA shall give 30 days advance written notice of the termination to the Bidder specifying the part of the contract terminated and when termination becomes effective.

(2) Contractor's Obligations. The Bidder shall incur no further obligations in connection with the terminated work (except in the case of Subcontractors where the Bidder is solely liable to GWA for their acts and/or non-performance or breach under this agreement) and on the date set in the notice of termination the Bidder will stop work to the extent specified. The Bidder shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Bidder shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. GWA may direct the Bidder to assign the Contractor's right, title, and interest under terminated orders or subcontracts to GWA. The Bidder must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

(3) Right to Work Product. Upon termination of the contract for the convenience of the government or GWA or for any other reason, Bidder shall transfer title and deliver to GWA all documents and reports, plans, drawings, information and other material produced by Bidder or any of its sub-contractors in connection with the performance of this contract. The Bidder shall protect and preserve property in its possession or in the possession of any of its sub-contractors in which the GWA or the Government of Guam has an interest.

(4) Compensation.

(a) The Bidder shall submit a termination claim specifying the amount due because of the termination for convenience together with cost or pricing data to the extent required by § 3118 (Cost or Pricing Data) of the Guam Procurement Regulations bearing on such claim. If the Bidder fails to file a termination claim within one year from the effective date of termination, GWA may pay the Contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.

(b) GWA and the Bidder may agree to a settlement provided the Bidder has filed a termination claim supported by cost or pricing data to the extent required by § 3118 (Cost or Pricing Data) of the Guam Procurement Regulations and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the GWA and the contract price of the work not terminated.

(c) Absent complete agreement under Subparagraph (2) of this Paragraph, GWA shall pay the Bidder the following amounts, provided payments agreed to under Subparagraph (2) shall not duplicate payments under this Subparagraph:

- (i) contract prices for services accepted under the contract;
- (ii) costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted supplies or services; provided, however, that if it appears that the Bidder would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
- (iii) costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph (b) of this clause;
- (iv) the reasonable settlement costs of the Bidder including accounting, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract for the termination and settlement of subcontracts hereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract. The total sum to be paid the Bidder under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the Bidder reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph (b) of this Paragraph, and the contract price of work not terminated.

(d) Cost claimed, agreed to, or established under Subparagraph (b) and (c) of this Paragraph shall be in accordance with Chapter 7 (Cost Principles) of the Guam Procurement Regulations.

SECTION 12. SEVERABLE PROVISIONS:

If any provision of this agreement shall be deemed by a court of competent jurisdiction to be invalid, then such provision shall be deemed stricken from the agreement and the agreement

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shall be enforced according to its valid and subsisting terms and provisions. The terms of this Contract shall control in the event of any conflict between this Contract and any other document incorporated or referenced herein.

SECTION 13. GOVERNING LAW AND VENUE:

The validity of this agreement, as well as the rights and duties of the parties to this agreement, shall be governed by the laws of Guam. Moreover, any and all actions governing this agreement shall be brought in the Superior Court of Guam or the Guam District Court if applicable.

SECTION 14. OWNERSHIP OF DOCUMENTS:

All briefs, memoranda and other incidental Bidder work or materials furnished hereunder shall be and remain the property of GWA including all publication rights and copyright interests, and may be used by GWA without any additional cost to GWA.

SECTION 15. INDEMNIFY:

Bidder agrees to save and hold harmless GWA, its board members, officers, agents, representatives, successors and assigns and other governmental agencies from any and all suits or actions of every nature and kind, which may be brought for or on account of any injury, death, or damage arising or growing out of the acts or omissions of the Contractor, Contractor's officers, agents (including subcontractors), servants or employees under this Agreement.

SECTION 16. GENERAL COMPLIANCE WITH LAWS:

The Bidder agrees that Bidder is to comply with all Federal and territorial laws, rules, regulations and ordinances applicable to the work being performed hereunder. Bidder shall attach a copy of appropriate business license or an affidavit executed under penalty of perjury that indicates that Bidder is exempt under Guam law (must include legal citations proving exemption).

SECTION 17. ACCESS TO RECORDS AND OTHER REVIEW:

The Contractor, including his subcontractors, if any, shall maintain copies of all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of the final payment under the contract, for inspection by the Guam Waterworks Authority. All originals of any documents related to this Contract shall be provided to GWA as soon as possible, but not later than one day prior to the conclusion of this Agreement. Each subcontract by Bidder pursuant to this agreement shall include a provision containing the conditions of this Section.

SECTION 18. SCOPE OF AGREEMENT.

This Agreement supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to retaining the services of Bidder by the GWA and contains all of the covenants and terms between the parties with respect to such this project. Each party to this Agreement acknowledges that no representation, inducements, promises or agreements, orally or

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otherwise, have been made by any party, or anyone acting on behalf of any party which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement and addenda will be effective only if it is in writing signed by the party to be charged. For the purposes of this paragraph and of the entire agreement, the signature of the General Manager for the Guam Waterworks Authority (or his designee) is the only signature that will bind the GWA.

SECTION 19. RESPONSIBILITY OF CONTRACTOR.

In addition to the other requirements set forth in the bid and this Contract, the Bidder shall be responsible for the professional and technical accuracy of all work and goods furnished under this contract. The Bidder shall, without additional cost to GWA, correct or revise all errors or deficiencies in his/her work.

GWA's review, approval, acceptance of, and payment for goods, fee, or for services required under this contract, shall not be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the Contractor's failure of performance of this contract and the Bidder shall be and remain liable to the GWA for all costs of any kind which may be incurred by the GWA as a result of the Contractor's negligent or erroneous performance of any of the services performed under this contract. GWA shall continue to remain liable for its own negligent acts and those of its employees and its failure to perform as provided under this agreement.

SECTION 20. CHANGE ORDERS.

By written order, at any time, and without notice to Contractor's surety, GWA may, subject to all appropriate adjustments, make changes within the general scope of work of this Contract in any one or more of the following:

1. Drawings, designs or specifications, if the supplies or services to be furnished are to be specifically manufactured for GWA in accordance therewith;
2. Method of shipping or packing; or
3. Place of delivery.

If any such change order increases or decreases the contractor's cost of, or the time required for performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this Contract.

Failure of the parties to agree to an adjustment shall not excuse the Bidder from proceeding with the Contract as changed, provided that GWA promptly and duly make such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the Bidder shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

Within 30 days after receipt of a written change order, unless such period is extended by GWA in writing, the Bidder shall file notice of intent to assert a claim for an adjustment. Later

notification shall not bar the contractor's claim unless GWA is prejudiced by the delay in notification. No claim by the Bidder for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this Contract.

In the absence of such a change order, nothing in this clause shall be deemed to restrict the Contractor's right to pursue a claim arising under the contract if pursued in accordance with the clause entitled "Claims Based on Acts or Omissions by GWA" of this Contract.

SECTION 21. STOP WORK ORDERS.

GWA may by written order to the Contractor, at any time, and without notice to any surety, require the Bidder to stop all or any part of the work called for in the Contract. This order shall be for a specified period not exceeding ninety (90) days after the order is received by the Contractor, unless the parties agree to any longer period. Upon receipt of the order, the Bidder shall comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties have agreed, GWA shall either cancel the work order or terminate the work covered by the order as provided under the Termination for Default or Termination for Convenience Clauses contained in this contract.

If a stop work order issued under this clause is cancelled at any time during the period specified in the order, of the period of the order or any extension thereof expires, the Bidder shall have the right to resume work. An appropriate adjustment shall be made to the delivery schedule or Bidder only if: (a) the stop work order results in an increase in the time required for performance or the contractor's cost; and (b) if the Bidder asserts a claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if GWA decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract. If a stop work order is not cancelled and the work covered by the order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed pursuant to the price adjustment clause of this Contract.

SECTION 22. CLAIMS BASED ON ACTS OR OMISSIONS BY GWA.

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

- (a) the Bidder shall have given written notice to GWA:
 - (i) prior to the commencement of the work involved, if at that time the Bidder knows of the occurrence of such action or omission;
 - (ii) within 30 days after the Bidder knows of the occurrence of such action or omission, if the Bidder did not have such knowledge prior to the commencement of the work; or

(iii) within such further time as may be allowed by the Procurement Officer in writing.

This notice shall state that the Bidder regards the act or omission as a reason which may entitle the Bidder to additional compensation, damages, or an extension of time. The Procurement Officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Procurement Officer or designee of such officer.

- (b) the notice required by Subparagraph (a) of this Paragraph describes as clearly as practicable at the time the reasons why the Bidder believes that additional compensation, damages, or an extension of time may be remedies to which the Bidder is entitled; and
- (c) the Bidder maintains and, upon request, makes available to the Procurement Officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

Nothing herein contained, however, shall excuse the Bidder from compliance with any rules of law precluding any GWA official or its Contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.


Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

SECTION 23. EFFECTIVE DATE OF THIS CONTRACT.

This agreement shall take effect upon the date it is signed by both the General Manger and the Bidder and the date of this agreement shall be when the General Manager affixes his signature.

GUAM WATERWORKS AUTHORITY:

CONTRACTOR:



Miguel Bordallo
General Manager




Jerry A. Flores
Authorized Representative

Date: 1.20.16


Date: 12/17/15

Certified Funds Available:

Approved as to Form and Legality:



Certifying Officer
Guam Waterworks Authority



Samuel J. Taylor
GWA Legal Counsel

Date: 1.8.16

Date: 1/20/16



Contract Amount: \$3,024,623.54

Certifying Officer: Greg P. Cruz, CFO

Amount Certified: \$ 1,348,310 ~~FF~~ 16 only

Date: _____

Source of funding: Revenue Funded

Special Note: The corporate authorization contained within the bid specifies that Jerry A. Flores is provided with the power to bind Total Chemical, Inc. relative to this bid.

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

Jca