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

GWA RESOLUTION NO. 31-FY2019

RELATIVE TO APPROVING THE LIQUID CHLORINE SUPPLY CONTRACT FOR WATER PRODUCTION AND TREATMENT FACILITIES ISLAND-WIDE

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, on February 27, 2019, GWA issued an Invitation for Bid No. 2019-05 (IFB) for an Indefinite Quantity/Indefinite Delivery (ID/IQ) requirements contract (see Exhibit A); and

WHEREAS, five (5) interested parties registered to download a bid package from GWA's website and on April 17, 2019, GWA received one (1) bid proposal from Island Equipment Company; and

WHEREAS, on April 22, 2019, the IFB 2019-05 offer was evaluated by GWA's review committee and determined that the best and only offer was made by Island Equipment Company (see Exhibit B); and

WHEREAS, GWA Management seeks CCU approval of the IDQ/ID contract for Liquid Chlorine 150lb. Cylinder for a quantity of One Thousand Two Hundred Sixty (1,260) at a cost of Six Hundred Eighteen Dollars (\$618.00) each, for an annual cost of Seven Hundred Seventy



Eight Thousand Six Hundred Eighty Dollars (\$778,680.00) and Liquid Chlorine One (1) Ton for a quantity of twelve (12) at a cost of Six Thousand Ninety Seven Dollars and Seventy Eight (\$6,097.78) each, for an annual cost of Seventy Three Thousand One Hundred Seventy Three Dollars and Thirty Six Cents (\$73,173.36), for a combined annual cost of Eight Hundred Fifty One Thousand Eight Hundred Fifty Three Dollars and Thirty Six Cents, (\$851,853.36) for a total amount of Two Million Five Hundred Fifty Five Thousand Five Hundred Sixty Dollars and Eight Cents (\$2,555,560.08) for the initial three (3) year contract term.

WHEREAS, GWA has determined that the issuance of the bid will allow GWA to continue to purchase liquid chlorine used for disinfecting GWA's drinking water for the protection of public health and safety, and as required under the Safe Drinking Water Act and federal and local regulations; and

WHEREAS, a multiple year contract term of three (3) years with the option to renew for an additional two (2) one (1) year term is in the best interest of GWA due to the fact that it provides fixed prices over a longer period of time and economies of scale may result in a lower bid price than what GWA would otherwise receive for a shorter contract term; and

NOW BE IT THEREFORE RESOLVED; the Consolidated Commission on Utilities does hereby approve the following:

- 1. The recitals set forth above hereby constitute the findings of the CCU.
- 2. The CCU finds that cost proposal submitted by Island Equipment Company are fair and reasonable.
- The CCU hereby authorizes the management of GWA to accept the bid offer from Island Equipment Company (Exhibit B).
- 4. The CCU hereby further authorizes the funding amount for this project to a maximum of Two Million Five Hundred Fifty-Five Thousand Five Hundred Sixty Dollars and Eight Cents (\$2,555,560.08) for the initial three (3) year term with the option to renew for an additional two (2) one (1) year terms.

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



DULY AND REGULARLY ADOPTED, this 28th day of May, 2019. Certified by: Attested by: **JOSEPH T. DUENAS** MICHAEL T. LIMTIACO Chairperson Secretary SECRETARY'S CERTIFICATE I, Michael T. Limtiaco, 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: NAYS: **ABSTENTIONS:** ABSENT: ///



EXHIBIT A

INVITATION TO BID

The GUAM WATERWORKS AUTHORITY, will receive sealed bids for Liquid Chlorine, in GWA IFB. NO. 2019-05. Bids will be accepted until 10:00 a.m. Chamorro Standard Time, March 20 _____, 2019 at the GWA Procurement Office, first floor located at the Gloria B. Nelson Public Services Building in Mangilao at which time and place all bids will be publicly opened and read aloud. All bids must be accompanied by a Bid / Performance Bond, in the amount of 15 percent (15%) of the total bid price. Bid security may be bid/performance bond, Surety Bond, certified check or cashier check made payable to Guam Waterworks Authority. A non-refundable amount of \$15.00 is required for the purchase price of every set of bidding documents which are available at the GWA Procurement Office. Bidders can download a bid package at www.guamwaterworks.org without charge, although vendors are strongly encouraged to contact or visit GWA Procurement Office to register to ensure that updated information, notices or bid amendments are distributed to you.

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

Miguel C. Bordallo, P.E. General Manager

GWA STAMP ISSUE DATE:

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AS REQUIRED UNDER 5 G.C.A. § 5212

(This form must be used, failure to utilize this form is subject to rejection of bid)

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Guam Waterworks Authority Invitation for Bid Number: GWA IFB 2019-05 For Liquid Chlorine

Indefinite Quantity Bid

Any reference in the Solicitation to a manufacturer brand name or product number is solely due to need by GWA to provide minimum satisfactory product specifications. Thus, all references to a brand name is solely intended to provide a description of the type of products or services sought by GWA and not to limit bids nor restrict a vendor from providing equivalent products or services. Bids on comparable items will be considered provided the bidder clearly states in his bid the exact articles he is offering and clearly indicates how it differs from the original specification. Approved equivalents will be acceptable.

I. BID ITEM(s)

Item No	Description	Min Qty	Unit Cost	Total Cost
1,0	Liquid Chlorine 150 lb. Cylinders	1,260 each	****	
2.0	Liquid Chlorine One (1) Ton	12 each		
			Grand Total S	
BIDDING O	N:			
MFG:				
Brand:				
Place of Orig	in			
Date of Deliv	ery: After Receipt of	Purchase Order		

TECHNICAL SPECIFICATIONS ON ITEM 1.0

A. GENERAL: The Guam Waterworks Authority ("GWA") uses liquid chlorine in 150 lbs. and One (1) Ton. Cylinders in order to disinfect drinking water at approximately 100 well sites and one (1) water treatment plant. GWA intends to enter into a three (3) year contract with the option to renew for two (2) additional one-year terms for the purchase of liquid chlorine in 150-pound cylinders. All extensions of the contract are subject to the availability of funding. Price modifications for the extensions may be made if the contractor provides proof of changes in their invoice price as required under 2 G.A.R. Section 3118. This specification describes the requirements for the provision of liquid chlorine under this solicitation.

The product described herein shall be manufactured, packaged, shipped, and stored in accordance with the latest additions of the following codes and standards as well as any applicable referenced standards within.

- 1. AWWA B301-04: Standard for Liquid Chlorine.
- 2. ANSI/NSF Standard 60: Drinking Water Chemicals.
- 3. Chlorine Institute, Pamphlet 17 Cylinder and Ton Container Procedures for Chlorine Packaging.
- Compressed Gas Association, Pamphlet C6: Standards for Visual Inspection of Steel Compressed Gas Cylinders.
- 5. US Department of Transportation, Hazardous Materials Regulations 49 C.F.R. § 100-177 (Chapter 1, Subchapter C).
- B. MATERIAL SPECIFICATION: Liquid Chlorine for disinfection of potable water supplies must meet the requirements of AWWA Standard B-301-04, Section 4.

The supplier under this contract shall be responsible for providing certified analysis from the manufacturer demonstrating compliance with the requirements set forth in this bid.

CONTAINERS: The supplier shall be responsible for providing, inspecting, testing and cleaning of cylinders in accordance with all referenced standards.

- GWA currently has an inventory of 280 each 150 lbs. and 12 each One Ton GWA-owned cylinders that are currently being used by GWA. These cylinders shall be used by the successful bidder upon exchange on an empty 150 lbs. or 1-ton cylinder. GWA shall have the right to certify whether or not said cylinders are in good useable condition.
- Cylinders shall be inspected, tested, and cleaned in accordance with AWWA Standard B301-04, Section 5. The supplier must maintain at all times documentation of compliance with these requirements at the supplier's facility.
- 3. GWA reserves the right to reject any cylinders that do not meet the chemical, physical, or safety requirements of this specification. In the event that a cylinder is rejected, the supplier shall replace it with a like amount of satisfactory liquid chlorine in an acceptable container.
- 4. No cylinder deposit or cleaning charge shall be separately levied. All fees for the maintenance of 150 lb and One Ton. cylinders in accordance with applicable codes shall be included in the unit cylinder price.

C. STORAGE AND MINIMUM INVENTORY REQUIREMENTS:

Due to the potential for interruption of shipping networks to Guam due to typhoons and other causes, it is necessary to maintain a minimum inventory (backup reserve) of chlorine in order to insure availability at all times. The minimum backup reserve has been established for GWA by the USEPA as noted below.

- The supplier shall maintain a sufficient inventory of 150 pound and one-ton chlorine cylinders such that a backup reserve of at least 200 150 lbs. cylinders and three (3) one ton shall be available at any and all times. This reserve shall be exclusive of any reserve required by other customers.
- 2. The supplier shall provide an inventory plan (along with bid), based on the quantities described above, illustrating compliance with these backup reserve provisions.
- 3 The supplier shall responsible for maintaining a storage facility in compliance with OSHA and other applicable law, codes and standards regarding the receiving, handling, storage, delivery, and emergency response to chlorine gas. The supplier shall maintain documentation of compliance to be provided at the request of GWA.
- 4. No additional facility maintenance or storage charges (or any other charge) shall be separately levied. All fees for shipping storage and facility maintenance shall be included in the unit cylinder price.

D. SPECIAL CONDITIONS:

- The contract for the supply of liquid chlorine shall be for a period of three (3) years. GWA reserves the right to renew this contract for two (2) additional one-year terms with both parties so agree in writing. All extensions of the contract are subject to the availability of funding. Price modifications for the extensions may be made if the contractor provides proof of changes in their invoice price as provided under 2 G.A.R. Section 3118.
- 2 Cost data pursuant to 2 G A.R. § 3118 to support any proposed increase must be submitted to the Purchasing Director no less than 90 days prior to the effective date of any such requested price increase. Any adjustment allowed shall consist of verifiable material cost increases which may be passed on to the consumer.
- 3. No adjustment shall be made to compensate a supplier for inefficiency in operation, or for additional profit.
- 4. Bids indicating price in effect at time of shipment will be considered invalid
- Bidder shall respond to a GWA facility should an emergency situation develop, with the
 appropriate tools necessary to deal with a leak; said response shall be no longer than two hours
 from the time of notification. Emergency numbers for this procedure shall accompany the bid.
- 6. If the products proposed in the response to this bid vary in any way from the requirements contained in this specification or other solicitation documents, the bidder is responsible to clearly identify by specification section number, all such differences in writing at the time of bid. Otherwise, it will be assumed that bidder's offer is in total compliance with all aspects of the specification and bid.

II. GENERAL TERMS AND CONDITIONS

A. AUTHORITY.

This Invitation for Bids is issued subject to all of the provisions of the Guam Procurement Act and the Guam Procurement Regulations. The bid requires all parties involved in the preparation, negotiation, performance, or administration of contracts to act in good faith. Failure on the part of any bidder to act in good faith shall serve as a basis for voiding a bid or shall constitute a material breach of any contract entered into between GWA and any bidder which shall allow GWA to immediately terminate the contract.

B. EXPLANATION TO BIDDERS.

Except as otherwise provided herein, no oral explanation in regard to the meaning of any provision of this Bid will be made and no oral instructions will be given before the award of the bid. Discrepancies, omissions, or doubts as to the meaning of any provision of this Bid shall be communicated in writing to the named individual of GWA.

C. QUESTIONS.

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

Guam Waterworks Authority
Procurement Section
Gloria B. Nelson Public Service Building
688 Route 15
Mangilao, GU 96913
Fax. No.: (671) 649-3750
psabids@guamwaterworks.org

D. METHOD OF AWARD.

GWA intends to review the bids immediately upon the opening of the bids as provided herein. The bids submitted will be the primary documents for evaluation. GWA reserves the right to waive any minor information or irregularity in bids received. GWA shall have the prerogative to award, amend or reject bids in whole or in part. GWA is not responsible for any and all costs incurred by any person or party incurred in preparing any bid. GWA reserves the right to retain all bids submitted regardless of whether a firm is selected. Submission of a bid indicates acceptance of all terms and conditions by the bidder.

E. REJECTION.

GWA has the right to reject all bids or offers which have been submitted in response to this Bid, at any time, including after delivery if goods are determined to be non-conforming, if GWA

determines such to be in the best interest of GWA. All bids and contractual obligations are subject to the availability of funding.

F. TAXES.

Bidders are cautioned that they may be subject to Guam Business Privilege Taxes, including Gross Receipt Tax and Guam Income Taxes on Guam transactions. GWA shall not be responsible for paying any taxes owed by any vendor. Specific information of taxes may be obtained from the Director of the Guam Department of Revenue and Taxation.

G. LICENSING.

Bidders are cautioned that GWA will not consider for award any bid offer submitted by a bidder who has not complied with Guam Licensing Laws. Specific information on heenses may be obtained from the Director of Revenue and Taxation.

H. COVENANT AGAINST CONTINGENT FEES.

The bidder warrants that it has not employed any person to solicit or secure any resultant contract upon agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give GWA the right to terminate the contract, or in its discretion, deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commissions payable by the bidder upon contracts or sales secure or made through bona fide established commercial or selling agencies maintained by the bidder for the purpose of securing business.

I. JUSTIFICATION OF DELAY.

The bidder who is awarded the bid guarantees that performance will be completed within the agreed upon completion date. If, however, the selected bidder cannot comply with the completion requirement, it is the selected bidder's responsibility to advise GWA in writing explaining the cause and reasons of the delay.

J. DISCLOSURE OF MAJOR SHAREHOLDERS.

As a condition of bidder, any partnership, sole proprietorship or corporation doing business with GWA shall submit an affidavit executed under oath that list the name address of any person who has held more than ten percent (10%) of the outstanding interest or shares in said partnership, sole proprietorship or corporation at any time during the twelve (12) month period immediately preceding submission of a bid. The affidavit shall contain the number of shares or the percentage of all assets of such partnership, sole proprietorship or corporation, which have held by each such person during the twelve (12) month period. In addition, the affidavit shall contain the name and address of any person who has received or is entitle to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the bid for the bidder and shall also contain the amounts of any such commission, gratuity or other compensation. A bid from any firm that has person on the list 10% or more affidavit that is a member of the CCU or a GWA

or Guam Power Authority officer that reports directly to the Board will not be evaluated and will be rejected. The affidavit shall be open and available to the public inspection and copying.

K. EQUAL EMPLOYMENT OPPORTUNITY.

Section 3.01(1) of Presidential Executive Order No. 10935 dated March 7, 1965, that was adopted on Guam, requires that the bidder not discriminate against any employee or applicant for employment because of race, creed, color or national origin. The bidder will take whatever steps are necessary to ensure that its employees are treated equally during employment without regard to their race, creed, color or national origin.

L. <u>DETERMINATION OF RESPONSIBILITY OF OFFERORS.</u>

GWA reserves the right to secure information necessary to assess the competency and qualifications of the bidder, in accordance with the "Standard for Determination of the most Qualified bidder" section of the General Terms and Conditions. The competency of bidders, includes, but is not limited to testing of goods and/or services provided by the bidder.

M. STANDARD FOR DETERMING WHETHER BIDDER IS QUALIFIED.

In determining whether a bidder is qualified, GWA shall be guided by the following:

- 1. the ability, capacity, and skill of the bidder to perform (i.e., is bidder qualified);
- 2. whether GWA believes that the bidder can perform promptly or within the specified time;
- 3. the character, integrity, reputation, judgment experience, and efficiency of the bidder;
- 4. the sufficiency of the financial resources and ability of the bidder to perform;
- 5. whether the bidder has submitted all documents required under this Bid; and
- 6. whether the bidder can meet the terms and conditions of the Bid.

N. PRE-BID CONFERENCES.

Pre-bid conferences may be held at any time prior to the date established herein for submission of bids to explain the procurement requirements for this Bid. GWA will notify all bidders of any substantive clarification provided in response to any inquiry. GWA may extend the due date if such information significantly amends the solicitation or makes compliance with the original proposed due date impractical.

O. BIDS.

The Bidder is required to read each and every page of the bid and by the act of submitting a bid shall be deemed to have accepted all conditions contained therein except as noted elsewhere in the bid. In no case will failure to inspect constitute grounds for a claim or for the withdrawal of a bid after opening. Bids shall be filled out in ink or typewritten and signed in ink. Erasures or other changes in a bid must be explained or noted over the signature of the bidder. Bids containing any conditions, omissions, unexplained erasures or alterations or items not called for in the bid or irregularities of any kind may be rejected by GWA in whole or in part.

P. COMPETENCY OF BIDDERS.

Bids will be considered only from such bidders who, in the sole opinion of GWA, can show evidence of their ability, experience, equipment, and facilities to render satisfactory performance of the terms and conditions herein (see item "N" above for standards). GWA reserves the right to take all reasonable steps to determine the competency of bidders, including asking questions, testing or any other act deemed prudent by GWA based on the circumstances.

Q. REQUEST FOR BID FORMS.

Each bidder shall be provided with one (1) set of the Bid packet at a cost of \$15.00. If the bidder wishes to download a bid packet on GWA website www.guamwaterworks.org, the fee will not be charged and be automatically registered with GWA procurement office. All payments shall be by eash, certified check, credit card or money order and shall be made payable to GWA. Prospective bidders are encouraged to visit our website or visit/contact GWA Procurement section located on the first floor of Gloria B. Nelson Public Service Building, 688 Route 15. Mangilao, GU 96913 @ 300-6027/6030 to ensure that updated information, for obtaining answers to questions, bid amendments and notices are distributed.

R. BID ENVELOPE.

Bid envelopes shall be sealed and marked with the bidder's name and GWA's Invitation for Bid Number

S. FORM OF BID.

One (1) original hard copy, two (2) complete hard copies and one (1) electronic copy of the bid <u>must</u> be submitted. The original bid must be signed in ink by a person authorized to submit bids on behalf of the bidder. All bids shall be submitted entirely in English (including brochures).

The electronic copy of the bid shall be submitted on a compact disk ("CD"). All documents shall be in ".pd1" format. Electronic bids shall constitute an exact replica of the original hard copy of the bid that is being submitted.

Bidders may declare portions of their bid as being confidential. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. However, prices and makes and models or catalogue numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary. GWA may review the material declared to be confidential to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. If the parties do not agree as to the disclosure of data, GWA shall inform the bidders in writing what portions of the bids will be disclosed. All bids shall be opened to public inspections subject to any continuing prohibition on the **confidential** data.

T. MODIFICATION / ALTERATION.

After the opening of bids, GWA or its designee(s) may conduct discussions with bidders that have submitted valid bids for the purpose of clarification to provide GWA with a full understanding as to the responsiveness and capabilities of the proposed bidder in meeting the requirements of the bid. In conducting discussions there shall be complete confidentiality of any information derived from bids submitted by competing bidders.

U. MODIFICATION OR WITHDRAWAL OF BIDS.

Bids may be modified or withdrawn at any time prior to submission, as otherwise provided herein or by the Guam Procurement Code.

V. CONTACT FOR CONTRACT NEGOTIATION.

All vendors are required to desi	ignate a person whom GWA may contact for pa	rompt negotiation.
NAME:	TITLE:	
ADDRESS:	TELEPHONE:	

W. AWARD OF CONTRACT AND NEGOTIATION (IF APPLICABLE).

The lowest responsible bidder may be required to enter into a contract with GWA on terms and conditions acceptable to GWA. If the services are to be secured via Purchase Order, the bidder must still comply with all applicable laws, bid requirements and directives from GWA regardless of whether or formal "contract" has been issued.

The bidder who submits the lowest responsible bid for the required services or supplies may be required to enter into a contract within twenty (20) days following Bidder's receipt of the Notice of Award of Bid. Contract negotiations will be directed toward: (1) making certain that the bidder has a clear understanding of the scope of work, specifically, the essential requirements involved in providing the required services; and (2) determining that the bidder will make available the necessary personnel and facilities to perform the services within the required time. Bidders will be required to follow all laws applicable to this bid at all times and the Bidder is responsible for ascertaining what laws are applicable to this bid.

X. NOTICE OF AWARD.

Written notice of award will be public information and made a part of the procurement file.

Y. CERTIFICATION AGAINST THE EMPLOYMENT OF CONVICTED SEX

OFFENDERS.

All vendors must complete and fill out a Certification Against the Employment of Convicted Sex Offenders (part of bid packet – if not present, make sure you ask for one).

Z. TERMINATION OF BID.

After opening, but prior to award, GWA may terminate the bid in whole, or in part if:

- I. It is in the best interest of GWA to do so.
- 2. The goods or services being sought are no longer required.
- 3. Bid amounts exceed available funding.
- 4. No bidder is qualified.

HL SPECIAL TERMS AND CONDITIONS

Note, these special terms and conditions apply in the event that GWA uses a purchase order. However, in the event a formal contract is entered into, the terms of the Contract shall control in the event of a conflict between these terms and conditions and the contract.

A. GENERAL COMPLIANCE WITH LAWS.

The Bidder agrees that they shall 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). Bidder agrees that they have and will continue to familiarize themselves with the requirements of all laws and rules applicable to this procurement. Failure on the part of the bidder to familiarize themselves with the law and rules shall not excuse Bidder in any way.

B. All OR NONE BIDS

If applicable to this bid, GWA is requesting all of the bid items to be bidded or none at all, GWA will not award on an itemize basis.

C. BIDDERS PRICE

GWA will consider not more than (2) (Basic and Alternate Bids) item prices and the bidder shall explain fully each price if supplies, materials, equipment, and/or specified services offered comply with specifications and the products origin. Where basic or alternate bid meets the minimum required specification, cost and other factors will be considered. Failure to explain the requirements will result in rejection of the bid.

D. ACCESS TO RECORDS AND OTHER REVIEW.

The bidder, 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 entered into by Bidder pursuant to this agreement shall include a provision containing the conditions of this Section.

E. 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.

F. INDEMNITY.

Bidder agrees to save and hold harmless the CCU, GWA, its 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 to the extent arising or growing out of the negligent acts or omissions of the Bidder, Bidder's officers, agents (including subcontractors), servants or employees under this agreement.

G. CHANGES.

By written order, at any time, and without notice to bidder'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 followings:

- 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 bidder'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 Bidder'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 given under this bid.

In the absence of such a change order, nothing in this clause shall be deemed to restrict the bidder'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.

H. TERMINATION.

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 as determined by GWA, then GWA may notify the Bidder in writing of the delay or non-performance and if not cured in ten days or any longer time specified in writing by GWA. GWA may terminate the Bidder'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 GWA may procure similar services in a manner and upon terms deemed appropriate by 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) Bidder's Duties. Notwithstanding termination of the contract and subject to any directions from 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 GWA shall be at the contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by the Bidder and GWA; if the parties fail to agree, GWA shall set an amount subject to the Bidder's rights under Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations. GWA may withhold from amounts due the Bidder such sums as GWA deems to be necessary to protect GWA against loss because of outstanding liens or claims of former lien holders and to reimburse GWA for the excess costs incurred in procuring similar goods and services.
- (4) Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of sub-contractor(s) of Bidder, 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 GWA within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the government of Guam and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics:

quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform 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 sub-contractor were reasonably obtainable from other sources in sufficient time to permit the Bidder to meet the contract requirements. Failure of the 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 Bidder, 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 Bidder's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of GWA and the government of Guam under the laws of Guam.

- (5) Erroneous Termination for Default. If, after notice of termination of the Bidder'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

TERMINATION FOR CONVENIENCE:

- (1) <u>Termination</u>. GWA may, when the interest of GWA so requires, terminate this contract in whole or in part, for the convenience of GWA. GWA shall give written notice of the termination to the Bidder specifying the part of the contract terminated and when termination becomes effective.
- (2) <u>Bidder's Obligations</u>. The Bidder shall incur no further obligations in connection with the terminated work and on the dated 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 Bidder'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 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 subcontractors 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 GWA 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 2 G.A.R. § 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 Bidder, 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 2 G.A.R. § 3118 (Cost or Pricing Data) of the Guam Procurement Regulations and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by GWA and the contract price of the work not terminated
- (c) Absent complete agreement under Subparagraph 4(b) of this Section. GWA shall pay the Bidder the following amounts, provided payments that are agreed upon under Subparagraph 4(b) 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;
 - the reasonable settlement costs of the Bidder including accounting, derical, 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. Attorney's fees it for any reason it files suit against the government must be paid by the Bidder. 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.

I. 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 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.

J. GOVERNING LAW AND VENUE.

The validity of any agreement entered into under this bid and any of its terms or provisions, 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 either the Guam Superior Court or the Guam District Court if applicable.

K. EFFECTIVE DATE OF AGREEMENT.

Any agreement under this Bid shall take effect upon the date said agreement is signed by the GWA General Manger (who shall sign last). Agreements under this provision includes Purchase Orders in the absence of a formal written contract.

L. GOVERNMENT NOT LIABLE.

- 1. GWA, its officers, agents, employees and governing board assumes no Liability for any accident or injury that may occur to the bidder, bidder's agents, employees, or to bidder'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.
- 2. 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 by submitting a bid, the bidder expressly waives any and all claims for service performed in expectation of this agreement prior to its signature of the General Manager.

M. ASSIGNMENT.

An assignment of any portion of the performance required under this Bid is not valid unless written approval is first obtained from GWA. Requests for approval of the right to assign any portion of the contract or obligation, if awarded, must be made in writing and submitted with the bid. No other requests for assignment will be accepted.

N. LIQUIDATED DAMAGES.

By submitting a bid, the Bidder agrees to commence work on the date to be specified in a written "Notice to Proceed" from GWA and to fully complete the project within the allotted time

thereafter. 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 ¼ 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.

O. 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 any Agreement resulting from this bid as if they were set out verbatim and in full therein, and are designated as follows:

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

P. DISPUTES.

Except as otherwise specifically provided in this contract, all disputes concerning questions of fact arising under this bid 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).

Q. CONTRACT ISSUED UNDER THIS BID IS BINDING.

It is agreed that any contract under this bid 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 the contract, or the land upon which the same is situated.

R. BIDDER'S RESPONSIBILITIES.

The Bidder shall be responsible for the quality and workmanship of all services and materials furnished under this contract. The Bidder shall, without additional cost to GWA, correct or revise all errors or deficiencies in his/her products or 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 Bidder'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 Bidder's negligent or erroneous performance of any of the services performed under this Bid. 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.

S. SCOPE OF AGREEMENT.

Any Agreement issued under this bid and signed by the GWA General Manager (formal contract or Purchase Order) 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 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.

T. CHANGE ORDERS.

By written order, at any time, and without notice to Bidder'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 followings:

- 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 Bidder'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 Bidder'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 Bidder'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.

U. STOP WORK ORDERS.

GWA may by written order to the Bidder, 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 Bidder, 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 of Bidder only if: (a) the stop work order results in an increase in the time required for performance or the Bidder'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.

V. 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 Bidders 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.

W. PRICE ADJUSTMENT CLAUSE.

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).

X. SERVICE DISABLED VETERAN PREFERENCE.

Please note that in the event a bid is submitted by a bona-fide service disabled veteran where the bidder is at least fifty-one percent (51%) owned by a service-disabled veteran and the price for the supply or service *does not* exceed one hundred five percent (105%) of the lowest price bidder. GWA is required under 5 G.C.A. § 5011 to award the bid to the service-disabled owned business. A service-disabled veteran business must meet all of the following qualifications under 5 G.C.A. § 5012:

- (a) the business concern is licensed to do business on Guam:
- (b) the business concern maintains its headquarters on Guam;
- (c) the business concern is at least fifty-one percent (51%) owned by a service-disabled veteran(s) who served in the active U.S. military service, was discharged or released under honorable conditions and whose disability is service-connected as demonstrated by a DD214, and certified by an award letter from the U.S. Department of Veterans Affairs:
- (d) the DD214 and Disability award letter from the U.S. Department of Veterans. Affairs are submitted to the procuring entity for every service of supply offered, and:
- (e) the service-disabled veteran(s) owner of the business concern has filed individual tax returns on Guam for a period of *at least* three (3) consecutive years

For any request for a price adjustment, the contractor 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.

IV. ADDITIONAL SPECIAL TERMS AND CONDITIONS

This is an "Indefinite Quantity Bid" pursuant to the Guam Procurement Regulations. The quantities reflected in the bid are estimated requirements only and not guaranteed minimums. The amounts listed are GWA's best estimate of its average annual needs. Quantities may increase or decrease thru the duration of the contract and continued purchase is subject to the availability of funds. No commitment is made to vendors in terms of purchasing quantity.

- A. The purpose of this bid is to provide GWA with a sufficient quantity of 150 lbs. and one-ton liquid chlorine cylinders and to provide GWA with a sufficient supply of liquid chlorine to allow GWA to safely operate its water system and to comply with the terms and conditions of the USEPA / GWA Stipulated Order for Preliminary Relief (as amended) entered into on June 5, 2003. In addition, these specifications have been written to describe minimum performance requirements of the items to be supplied.
- B. GWA reserves the right to conduct a reasonable test following delivery and prior to acceptance to confirm that the products (both the cylinders and the chlorine) meet the minimum specifications set forth herein or otherwise performs as required.
- C. These specifications have been written to describe the minimum requirements to be supplied by the vendor bidding. This bid is subject to Guam's Procurement Laws.

GWA hereby notifies vendors that a reasonable test may be conducted upon delivery of each shipment and prior to acceptance, which may include, but is not limited to testing the goods to be provided under this Bid for quality, manufacturing defects, other irregularities and for compliance with these specifications. GWA also reserves the right to have any goods provided hereunder tested by an independent firm to ensure quality and compliance with requirements set forth in this bid. GWA also reserves the right to have the manufacturing process inspected for all goods provided hereunder.

- D. The Guam Waterworks Authority reserves the right to accept and/or reject any and all bids, to waive any defects, irregularities, or specification discrepancies and to award the bid as deemed to be the best interest to GWA.
- E. As required under Guam law, GWA reserves the right to cancel this bid if it is in the best interest of GWA to do so.
- F. The successful bidder shall warrant that all goods and services to be provided herein are fit for the intended purpose stated in this Bid, are manufactured in the United States and meet the standards set forth in this Bid. The bidder shall also warrant all goods provided under this Bid to have a useful product shelf life of a period of not less than one year. However, if the manufacturer of such goods provides a shelf life warranty for any period of time greater than one year for any item, that same warranty period shall be extended to GWA.
- G. In addition, the successful bidder will handle all warranty issues arising out of this agreement and shall act as the warranty administrator for the duration of any warranty provided under this Bid. Thus, if the vendor is not the manufacturer of the products provided under this Bid, GWA will not be required by the bidder to contact any manufacturer directly unless the bidder is the manufacturer of all goods provided hereunder and the bidder shall designate a delivery point on Guam for goods to be delivered or bidder shall pay all freight and handling charges associated with the return of the goods to the manufacturer and all costs for replacement.

- H. The successful bidder may be required to enter into a written contract on terms and conditions acceptable to GWA (also please note that a Purchase Order is a contract).
- I. Bidders are advised that they are required to follow all laws, rules and regulations relating to the provision of goods and services. Ignorance of any law, rule or regulation by the bidder at any time during the bidding process or performance under the bid shall not relieve the vendor from the applicability thereof.
- J. All Bidders shall maintain \$1,000,000 liability insurance policy throughout the duration of the performance of any contract entered into. Bidders shall provide a copy of the insurance policy to GWA as a condition for entering into the contract with GWA. Bidders shall also provide GWA with proof the policy has been renewed and kept in force throughout the contract term.
- K. Prior to entering into any contract with GWA, any and all successful bidders shall provide GWA with a valid and up-to-date copy of their Guam Business License which provides proof that they are able to engage in the type of business required for this bid.
- L. Bidders are also advised to use and fill out all forms attached to this Bid, including but not limited to the Affidavit of Non-Collusion, Certification Regarding Hiring Convicted Sex Offenders, Bid Bond, and any other form required to complete their bid.
- M. Bidders are reminded that submission of a bid constitutes an acknowledgement that they have read and understood all bid terms and agree to be bound by such an that failure to read the bid shall not excuse performance or otherwise give rise to any claim by bidder, including mistake, neglect or for any other reason.

V. SPECIAL PROVISIONS

1. Bid and Performance Bond Requirements:

All bidders are required to submit bid security in the amount of 15% of their total bid amount which must also indicate that the security is not only for a bid bond, but also for performance under this Bid as required by 5 G.C.A. 5312. Failure to submit a proper bid bond will cause the bid to be rejected. Bid amounts are based on the total cost for the total number of units specified.

As required by law, the bid security shall not be released upon award of the bid, but instead shall continue in full force and effect until after delivery of the supplies or services required by the contract awarded to the Bidder under the associated Invitation for Bid is completed to secure the faithful performance under this Bid (e.g., until warranty period has ended as any warranty is a service provided in conjunction with the delivery of goods).

THE BID/PERFORMANCE GUARANTEE MAY BE IN THE FORM OF:

a. Cashier's Check or Certified Check

- b. Letter of Credit
- c. Surety Bond Valid only if accompanied by:

i. Current Certificate of Authority;

ii. Power of Attorney issued by the Surety to the Resident General Agent;

- iii. Power of Attorney issued by two (2) major officers of the Surety to whoever is signing on their behalf
- 2. Performance Bond: see Section 1 above.

3. Failure To Submit Required Documentation.

Failure by Bidder to submit the required information or data will be cause to declare the bidder as non-compliant with the bid. Any declaration of non-compliance shall be at the sole discretion of the General Manager of the Guam Waterworks Authority.

4. Shipping and Cost:

Total cost must include CIF delivery to GWA's Ugum Water Treatment Facility located in Talafofo, Guam. Deliveries shall be made via flatbed truck or other means acceptable to GWA. If necessary, a forklift must be provided during deliveries by the successful vendor to unload the truck and place the chemicals at places at the Ugum facility designated by GWA staff. The contractor shall contact GWA's Procurement Division at least 72 hours in advance of each delivery to determine whether or not a forklift will need to be provided

5. Delivery and Payment

- a. The vendor will be responsible for all cost and all risks associated with the provision of these goods until delivery is made and the items are formally accepted by GWA. Formal acceptance under this bid shall not be deemed to be the mere delivery of the goods. Acceptance will only occur after delivery and inspection / testing is performed by GWA. Delivery time is 30 days from the date on the Notice to Proceed. GWA reserves the right to reject non-conforming goods at any time prior to use after the goods have been delivered.
- b. All goods shall be delivered CIF to GWA's Ugum Water Treatment Facility.
- c. The initial shipment shall be delivered to GWA within thirty days after the Notice to Proceed has been provided to the vendor. A Material Safety Data Sheet (MSDS) must be provided with <u>each</u> delivery, regardless of amount. Aside from the initial delivery, all goods must be delivered within 5 businesses from the date the vendor is notified of the need for goods and the amount of goods required to be delivered.
- d. Vendors must maintain at least a three (3) month supply of goods they are responsible for supplying on Guam at all times. Goods shall be stored in a manner to ensure that typhoons or other natural disasters do not make them unavailable to GWA when needed

since weather and natural disasters are exactly why the three (3) month supply is being required given the fact that water is a necessary element to ensuring public health.

e. Please note that usage of the chemicals is dependent upon many factors, including time of year, weather, etc.

Payment for all goods delivered shall be net 30 following the date that an invoice for goods delivered to GWA has been provided to GWA and verified by GWA. Verification shall take no longer than 10 business days. Vendors may not bill GWA for the inventory stock required to be maintained hereunder.

6. Quality:

All items to be delivered under this bid shall be of high quality and be of U.S. manufacture and they shall at all times conform to the specifications set out under this bid.

GWA reserves the right to reject items based on failure to meet the standards set forth herein or based upon quality.

GWA reserves the right to request samples from each bidder to test independently. If bidders do not provide a sample for testing if such a request is made, the bidder may not be deemed to be a qualified bidder and as such their bid may be rejected.

7. Contract Term:

The lowest responsive and responsible bidder for the item above will enter into a contract on terms acceptable to GWA. Form contracts from vendors shall not be used. The contract term shall commence on the date of the vendor's acknowledged receipt of a formal Notice to Proceed from GWA. The initial term is for three (3) years for chemicals to be used by GWA to operate the Ugum Surface Water Treatment Facility in compliance with the Long Term 2 Enhanced Surface Water Treatment Rule of the Safe Drinking water Act during the operation of a membrane water treatment facility. GWA finds that a multi-year fixed price contract will ensure the best price in the long-term to hedge against fluctuating prices which tend to increase over time and to increases efficiency in operations by not having to proceed through the bid process annually. This contract may be extended out annually for a maximum period of two (2) years subject to the consent of both parties. In the third-year price adjustments may be made subject to the provision of verified cost and pricing data from the vendor.

- 8. These specifications have been written to describe minimum performance requirements to be supplied by the manufacturers bidding.
- 9. The successful bidder shall furnish all necessary information and instructions for the proper operation / completion of all requirements in bid specifications.

10. GWA reserves the right to accept and/or reject any and all bids, to waive any defects, irregularities, or specification discrepancies and to award the bid in the best interest of Guam Waterworks Authority.

These specifications were approved and/or prepared by Miguel C. Bordallo, P.E. General Manager, and hereby constitute the findings and determinations of the General Manager.

NON-COLLUSION AFFIDAVIT

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t. That I am the	(Title)	10	me of Company or Person Bidding/RFP
	(Title)	CLARI	me of Company or Person Blading/RFP
collusive or sham, directly or indirectl submitting a propos collusion, or commo other bidder, or to s	that said bidder/ y, with any bidde sal and has not in unication or confe secure any overhic cure any advanta	offeror has not or person, to any manner, corrence, with aread, project or ge against the	that such proposal or bid is genuine and no of colluded, conspired, connived or agreed of put in a sham or to refrain from bidding of directly or indirectly, sought by agreement or my person, to fix the bid price of affiant or any recost element of said bid price, or of that or GUAM WATERWORKS AUTHORITY or
3. That all statements	s in said proposal	or bid are truc	e.
4. This affidavit is m	ade in compliance	e with 2 G.A.F	R. § 3126(b).
So saveth			
So sayeth(Dec	larant)		
Signed on this	that he executed the	he same as his	ore me a Notary Public in and for Guam, own to me to be the authorized representative subscribed to the foregoing instrument and a free and voluntary act and deed on behalf of oses therein set forth.
IN WITNESS WHE above written.	REOF. I have her	reunto set my l	hand and affixed my official seal the date last
) Seal (
Notary Public			

CERTIFICATION OF NON-EMPLOYMENT OF CONVICTED SEXUAL OFFENDERS

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

I,	being a duly authorized representative acknowledge the	
(print name)		
directive as describe above and ensure the Bid Proposal as submitted addresses the directive.		
	(Company Name)	
(Title)		
(Signature)	(Date)	

MAJOR SHAREHOLDER DISCLOSURE AFFIDAVIT

TER	RITORY OF G	UAM }		
HAĞ	ATNA, GUAN	1		
I, the says:				being first duly sworn, depose and
1=				ten percent (10%) of the company's share during bmission of the bid are as follows (if none, so
NA	<u>ME</u>	ADDRESS	<u>P</u> I	ERCENTAGE OF SHARES HOLD
	TOTAL N	UMBER OF SHAF		
2.	compensatio		issisting it	to receive a commission, gratuity or other obtaining business related to the bid for which
NA	ME	ADDR	<u>ESS</u>	AMOUNT OF COMMISSIONS, GRATUITY OR OTHER COMPENSATION
Furth	er, affiant saye	th naught.		
Date:			partner, if	of individual if bidder is a sole proprietorship; the bidders is a partnership, officer, if the corporation (or other authorized person).
Subsc	ribed and swor	n to before me this	day	of 201
				Notary Public In and for the Territory of Guam My commission expires

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

ANOW ALL MEN BY THESE PRESENTS	
(name of surety)	as Principal, herein after called the Principal and
of	Territory of Guam, as Surety, hereafter called the the Guam Waterworks Authority for the sum. Dollars will and truly to be made, the said Principal and the ors, administrators, successors and assigns, jointly
and severally firmly by these presents: WHEREAS, the Principal has submitted a bid the amount specified below,	I for and is anticipated to enter into a contract in

NOW, THEREFORE, if the Guam Waterworks Authority shall accept the bid and the Principal shall not withdraw said bid within one hundred twenty (120) calendar days after the opening of bids, and shall within twenty-one (21) calendar days after the prescribed forms are presented to him for signature, enter into a Contract with the Guam Waterworks Authority in accordance with the terms of such bid. This bond shall also be held by the Guam Waterworks Authority to secure the faithful performance of such Contract and for the prompt payment of labor, goods, services and materials furnished in the prosecution thereof. In the event of the failure of the Principal to enter into such Contract, or if the Principals (Bidder) fails to perform in accordance with the requirements set out under the Bid or any other written instrument requirement performance thereunder, the Surety, on behalf of the Principals shall pay to the Guam Waterworks Authority the differences not to exceed the penalty hereof between the amounts specified in said bid and such larger amount for which the Guam Waterworks Authority may in good faith contract with another party to perform work covered by said bid or an appropriate liquidated amount as specified in the Invitation for Bids then this obligation shall be null and void, otherwise to remain in full force and effect.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION is such that, if the Bidder shall promptly and faithfully perform said Contract, and shall promptly make payment to all claimants as hereinafter defined for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

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

- B. Whenever the Bidder shall be and is declared in default by the Authority to be in default under the Contract, the Authority having performed its obligations hereunder, the Surety may promptly remedy the default or shall promptly:
 - 1. Complete the Contract in accordance with its terms and conditions; or
 - 2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by the Authority and the Surety of the lowest responsible bidder, arrange for a Contract between such bidder and the Authority, and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts or completion arranged under this paragraph) sufficient funds to pay the cost of completion, less than balance of the Contract price, but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract Price," as used in this paragraph shall mean the total amount payable by the Authority to Bidder under the Contract and any amendments thereto, less the amount properly paid by the Authority to Bidder. No right of action shall accrue on this bond to or for use of any person or corporation other than the Authority or successors of the Authority.
- C. A claimant is defined as one having a direct contract with the Bidder or with a sub-bidder of the Bidder 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 Bidder and Surety hereby jointly and severally agree with the Authority that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date of which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for use of such claimant, prosecute the suit to final judgment to final judgment for such sum or sums as may be justly due the claimant, and have execution thereon. The Authority shall not be liable for the payment of any costs or expenses of any such suit.
- E. No suit or action shall be commenced hereunder by any claimant:
- 1. Unless claimant, other than one having a direct contract with the Bidder, shall have given written notice to any two (2) of the following entities named below:
 - (a) the Bidder: (b) the Guam Waterworks Authority, or (c) the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be personally served by mailing the same by registered mail or certified mail, postage

prepaid, in an envelope addressed to the Bidder at any place the principal maintains an office or conducts its business.

- 2. After the expiration of one (1) year following the date on which the last of the labor was performed or material was supplied by the party bringing suit.
- 3. Other than in a court of competent jurisdiction in and for the Territory of Guam.
- F. The amount of the bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder.

SIGNED AND SEALED THIS IN THE PRESENCE OF: (Note: If the Principals are Partners, each		, 20
(WITNESS)	(BIDDER)	(SEAL)
(TITLE)	Т)	TTLE)
MAJOR OFFICER OF SURETY)	(MAJOR OFFIC	ER OF SURETY
TITLE)	(TITLE)	_
	(RESIDENT GEN	JEDAL ACENTY

EXHIBIT B

GUAM

AUTHORITY

"Better Water, Botter Lives." Gloria B. Nelson Public Services Building 688 Route 15, Mangilab, Guem 96913

MEMORANDUM

TO:

General Manager

VIA:

Supply Management Administrator

SUBJECT:

Invitation to Bid No. GWA 2019-05

Ref. Liquid Chlorine

FROM:

Evaluation Committee Members

REF:

Recommendation of Award

DATE:

April 23, 2019

Invitation for Bid No: GWA 2019-05 was officially announced and advertised in the Pacific Daily News. Guam Daily Post and Guam Waterworks Authority Website on February 27, 2019 and open as scheduled on April 17, 2019 @ 10:00am Five (5) prospective bidders expressed their interests by acknowledging receipt of the bid package thru GWA's website.

Bidders Register:

- 1. M.D. Wholesale
- 2. Deltek
- 3. Island Equipment Company
- 4. Innovative Water Care
- 5. Martech Services, Inc.

Of the Five (5) One (1) submitted their bid package, namely:

Island Equipment Company

An evaluation committee was formally assembled and met on April 22, 2019 @ 10:30 am in GPWA conference room 1st floor to review/discuss and evaluate the bid.

Upon further clarifications the committee members completed the evaluation process and have determined 'Island Equipment Company have been deemed a responsive bidder and respectfully submitted their bid proposal and is recommend to be awarded based on the lowest cost given on each line item below as follows:

I. BID ITEM(s)

Item No	Description	Min Oty	Unit Cost	Total Cost
1.0	Liquid Chlorine 150 lb. Cylinders	1,260 each	<u>\$618.00</u>	<u>\$778,680.00</u>
2.0	Liquid Chlorine One (1) Ton	12 each	\$6,097.78	<u>\$73,173.36</u>
			Grand Total \$	<u>\$851,853.36</u>

BIDDING ON:

MFG: Chemtrade Electrochem, Inc.

Brand: Chemtrade

Place of Origin: North Vancouver (BC Source)

Date of Delivery: 30-35 days ARO

After Receipt of Purchase Order

After a thorough evaluation the committee members agreed and accepts the bid offer from 'Island Equipment and have been determined complied with all specifications and requirements set forth in the IFB.

SUMMARY:

Shipping and Cost:

Total cost must include CIF delivery to GWA's Ugum Water Treatment Facility located in Talafofo, Guam. Deliveries shall be made via flatbed truck or other means acceptable to GWA. If necessary, a forklift must be provided during deliveries by the successful vendor to unload the truck and place the chemicals at places at the Ugum facility designated by GWA staff. The contractor shall contact GWA's Procurement Division at least 72 hours in advance of each delivery to determine whether or not a forklift will need to be provided

Delivery and Payment

- a. The vendor will be responsible for all cost and all risks associated with the provision of these goods until delivery is made and the items are formally accepted by GWA. Formal acceptance under this bid shall not be deemed to be the mere delivery of the goods. Acceptance will only occur after delivery and inspection / testing is performed by GWA. Delivery time is 30 days from the date on the Notice to Proceed. GWA reserves the right to reject non-conforming goods at any time prior to use after the goods have been delivered.
- b. All goods shall be delivered CIF to GWA's Ugum Water Treatment Facility.
- c. The initial shipment shall be delivered to GWA within thirty days after the Notice to Proceed has been provided to the vendor. A Material Safety Data Sheet (MSDS) must be provided with <u>each</u> delivery, regardless of amount. Aside from the initial delivery, all goods must be delivered within 5 businesses from the date the vendor is notified of the need for goods and the amount of goods required to be delivered.
- d. Vendors must maintain at least a three (3) month supply of goods they are responsible for supplying on Guam at all times. Goods shall be stored in a manner to ensure that typhoons or other natural disasters do not make them unavailable to GWA when needed since weather and natural disasters are exactly why the three (3) month supply is being required given the fact that water is a necessary element to ensuring public health.
- e. Please note that usage of the chemicals is dependent upon many factors, including time of year, weather, etc.

Payment for all goods delivered shall be net 30 following the date that an invoice for goods delivered to GWA has been provided to GWA and verified by GWA. Verification shall take no longer than 10 business days. Vendors may not bill GWA for the inventory stock required to be maintained hereunder.

Contract Term:

The lowest responsive and responsible bidder for the item above will enter into a contract on terms acceptable to GWA. Form contracts from vendors shall not be used. The contract term shall commence on the date of the vendor's acknowledged receipt of a formal Notice to Proceed from GWA. The initial term is for three (3) years for chemicals to be used by GWA to operate the Ugum Surface Water Treatment Facility in compliance with the Long Term 2 Enhanced Surface Water Treatment Rule of the Safe Drinking water Act during the operation of a membrane water treatment facility. GWA finds that a multi-year fixed price contract will ensure the best price in the long-term to hedge against fluctuating prices which tend to increase over time and to increases efficiency in operations by not having to proceed through the bid process annually. This contract may be extended out annually for a maximum period of two (2) years subject to the consent of both parties. In the third-year price adjustments may be made subject to the provision of verified cost and pricing data from the vendor.

NOTE: Subject to CCU's approval.

Concurred and accepted by the committee members:

1/st 1/stal
Paul Kemp, AGM Compliance and Safety
* Co
Ron Topasna, Operations and Maintenance Manager Water Productions
Mungo from.
Mary Torres, Buyer II
Poland I
Roland Lumongsud, Buyer II
Your approval is greatly appreciated.
Antonio Camacho
Reviewed by legal:

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

[JCONCURRED []UNCONCURRED

VINCENT ED. GUERRERO, SMA

[APPROVED [] DISAPPROVED

MMN// MIGUEL C. BORDALLO, P.E. GENERAL MANAGER



GUAM WATERWORKS AUTHORITY

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

NOTICE OF CONDITIONAL AWARD

Date: April 24, 2019

Island Equipment Company.
151 West Harmon Industrial Park Road, Unit A.
Tamuning Guam 96913
Phone-#671-646-5261
Fax-#671-646-5268

Re: Invitation for Bid Number: GWA IFB-2019-05

For: Island Equipment Company

Hafa Adai Ms. Bing Mejia,

The Guam Waterworks Authority ("GWA") has considered the bid submitted by Island Equipment Company, for the above described reference in response to its Advertisement for Bids dated February 27, 2019 you are hereby notified of your bid offer on Item Number (s) 1.0, 2.0 been accepted by GWA. Please be advised that you must now deliver all other documents required by the bid, including, but not limited to:

Proof of Insurance: (if applicable/required part of the bid requirements.)

• Performance and Payment Bond: (if applicable/required part of the bid requirements.)

(Which must remain in full force and effect until all performance has ended, which includes all warranty periods).

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

Please note this Notice of Award is conditional on obtaining the approval of the Guam Consolidated Commission on Utilities for any award over \$750,000 and the approval of the Guam Public Utilities Commission where the total value over the life of the contract could exceed \$1M. Also, award is conditional upon providing any documents such as proof of licensure, proof of insurance or other documents required to be submitted to GWA under the Bid or Guam law.

You are required to return an acknowledged copy of this Procurement Office.	Conditional Notice of Award to GWA
	Sincerely. Miguel C. Bordallo. P.E. General Manager

ACCEPTANCE OF CONDITIONAL NOTICE OF AWARD

Receipt of the above Notice of Conditional Award for GWA IFB No. GWA 2019-05 is hereby acknowledged

By:	Title:
Signature	(Please Print)
Dated this day of	. 2019.
****** END OF CO	ONDITIONAL NOTICE OF AWARD ******