



CONSOLIDATED COMMISSION ON UTILITIES

Guam Power Authority | Guam Waterworks Authority
P.O. Box 2977 ~~Hagatna~~, Guam 96932 | (671) 648-3002 | guamccu.org

GPA RESOLUTION NO. FY2024-14

**AUTHORIZING THE MANAGEMENT OF THE GUAM POWER AUTHORITY TO
PROCURE SUPPLY OF ULTRA LOW SULFUR DIESEL (ULSD) FOR THE VARIOUS
POWER GENERATING PLANT SITE LOCATIONS**

WHEREAS, the current contract for the Supply of Diesel Fuel Oil No.2 under GPA-008-18 will expire on December 31, 2024; and

WHEREAS, GPA intends to issue an Invitation for Bid (IFB) for the procurement of a contractor for the Supply of Diesel Fuel Oil No.2 for four (4) site locations as follows: **Site Location 1** (Yigo CT and Yigo Diesel), **Site Location 2** (Dededo CT and Macheche CT), and **Site Location 3** (Cabras 1&2 and Piti 7), **Site Location 4** (Manengon and Talofof); and

WHEREAS, the new contract for the Supply of Diesel Fuel Oil No.2 shall be for a base period of three (3) years, to commence on or about January 01, 2025 through December 31, 2027, with two (2) additional one-year extension options; and

WHEREAS, the draft bid solicitation documents for the procurement of a new Diesel Fuel Oil No.2 supply contract is hereby attached as **Volume I and Volume II**; and

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

WHEREAS, GPA is requesting the approval of the CCU to petition the PUC for the issuance of an Invitation for Bid for the Diesel Fuel Oil No.2 Bulk Supply Contract.

1 **NOW THEREFORE, BE IT RESOLVED**, by the Consolidated Commission on
2 Utilities, subject to the review and approval of the Guam Public Utilities Commission, as follows:

- 3
4 1. GPA is authorized to issue a bid for Diesel Fuel Oil No.2 Supply contract for Site
5 Locations 1, 2, 3, and 4 through a Multi-Step Bid process as it is reasonable, prudent
6 and beneficial to its customers.

7
8 **RESOLVED**, that the Vice Chairman certified and the Board Secretary attests to the
9 adoption of this Resolution.

10 **DULY AND REGULARLY ADOPTED**, this 23rd day of January 2024.

11
12
13 Certified by:

14 

15 **FRANCIS E. SANTOS**

16 Vice Chairperson

17
18 Attested by:

19 

20 **PEDRO ROY MARTINEZ**

21 Secretary

22
23 I, Peter Roy Martinez, Board Secretary of the Consolidated Commission on Utilities as
24 evidenced by my signature above do hereby certify as follows:

25
26 The foregoing is a full, true and accurate copy of the resolution duly adopted at a regular
27 meeting by the members of the Guam Consolidated Commission on Utilities, duly and
28 legally held at a place properly noticed and advertised at which meeting a quorum was
29 present and the members who were present voted as follows:

30
31 AYES:

32 4

NAYS:

0

ABSTAIN:

0

ABSENT:

1



Invitation For Multi-Step Bid

GPA- -24

Supply of Diesel Fuel Oil No.2 To Various GPA Plant Site Locations



Volume I

Commercial Terms and Conditions

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1. INTRODUCTION

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

GPA is inviting interested Firms to participate in a Multi-Step Bid for the Supply of Diesel Fuel Oil No.2.

The Supply Contract shall be for THREE (3) years to commence on or about **Three (3) months after the Guam Public Utilities Commission (PUC) approval**. GPA has the option to extend the Contract for TWO (2) years renewable annually upon mutual agreement of both parties.

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

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

Table 1: Bid Milestones

Bid Process Milestones		From	To
Bid Announcement		03/04/2024	04/05/2024
Pre-Bid Conference (Non-mandatory)		03/21/2024	(10:00 am)
Site Visit (Non-mandatory)		02/21/2024	(1:30 pm)
Submit Questions		03/05/2024	04/05/2024
Cut Off Date for Receipt of Questions		04/05/2024	
GPA Review and Answer Questions		03/06/2024	04/19/2024
Vendor Prepare Bids		03/05/2024	05/03/2024
Cut Off Date for Receipt of Proposals (Technical and Price Proposals)		05/03/2024 2:00 PM Guam Time	
EVALUATION Step One:	Technical Proposal (Bid) Evaluation	05/20/2024	05/24/2024
	Notify Qualified Bidders	05/22/2024	06/07/2024
Price Proposal Opening		06/24/2024 2:00 PM Guam Time	
EVALUATION Step Two:	Price Proposal Evaluation	06/25/2024	06/28/2024
Approvals		TBD	
Notice of Intent To Award		TBD	
Contract Signing		TBD	
Contract Mobilization		TBD	
Contract Commencement		01/01/2025	

1.1. Invitation for Bid (IFB) Document Organization

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

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

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

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

1.2. Overview and Scope

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

The estimated total Diesel Fuel Oil No.2 requirement is provided in of Volume II (CONTRACT)- Section 2 and Schedule B of the solicitation package.

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

1.2.1. CONTRACT TERM

The Contract Term for the base period shall be for THREE (3) years and shall commence on or about after 0:00 hour on Three (3) months after the Guam Public Utilities Commission (PUC) approval. GPA has the option to extend the Contract for TWO (2) years renewable annually upon mutual agreement of both parties.

1.2.2. CONTRACT PRICE

The total contract price in U.S. Dollars per U.S. Gallon for all Diesel Fuel Oil No.2 supplied to GPA shall be inclusive of all costs and liabilities incurred prior to supply. The contract price structure is described in detail in Volume II (Contract) – Section 4 of the solicitation package.

2. INSTRUCTIONS TO BIDDERS

2.1. Introduction

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

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

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

2.2. Language and Correspondence

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

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

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

FAX: 1 (671) 646-3054 / 55

Attention: Supply Management Administrator

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

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

2.3. Technical and Functional Requirements Examination

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

2.4. Facility Tours

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

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

2.5. Solicitation Amendment

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

Announcements regarding any Amendment shall also be posted at the GPA Website at http://www.guampowerauthority.com/gpa_authority/procurement/gpa_current_rfps.php. BIDDERS shall acknowledge receipt of the amendment by a signature on one copy, which is to be returned to the GPA Supply Management Administrator. Acknowledgement may also be made by fax or e-mail.

2.6. Familiarity With Laws

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

2.7. Cost of Bidding

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

2.8. Price/Cost Data

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

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

2.9. Documents Executed Outside of Guam

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

2.10. Proposal Submittal

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

2.10.1. Technical Proposal Requirements

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

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

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

2.10.1.1 Technical Proposal

Each BIDDER's Technical Proposal shall include the following:

a. Business Structure and Business Approach

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

b. Experience and Qualification

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

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

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

c. Statement of Qualification/ Organizational Structure

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

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

d. Financial Information

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

Contractor shall submit Audited Financial Reports or Financial Statements (by Certified Public Accountant(s) or a qualified auditing/reviewing firm) on BIDDER'S firm for the last 3 years.

e. Federal and Regulatory Compliance

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

f. Client references

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

g. Mobilization Capability

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

2.10.1.2. Qualitative Proposal Scoring Workbook

The bidder shall submit copies of the Qualitative Proposal Scoring Workbook, prepared as instructed in the **Proposal Instructions** tab. Quantities shall follow the requirements specified in [Section 2.10.1.5](#) of this Volume. For each checklist item, the bidder shall provide references on the responses and supporting documents.

2.10.1.3. Required Forms

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

1. A copy of the BIDDER's Articles of Incorporation or other applicable forms concerning business organization (i.e. partnership, sole proprietorship, etc.) and By-Laws;
2. Certificate of Good Standing to conduct business in jurisdiction of residence;
3. Information regarding outstanding claims against the BIDDER;
4. Affidavit of Disclosure of Major Shareholder (Appendix C);
5. Non-collusion Affidavit (Appendix D);
6. No Gratuities or Kickbacks Affidavit (Appendix E);
7. Ethical Standards Affidavit (Appendix F);

8. Declaration of Compliance with the Iran Sanctions Act or ISA and Other US-Sanction Entities (Appendix G);
9. Declaration of Compliance with US DOL's Wage Determination (Appendix H);
10. Restriction Against Sex Offenders (Appendix I);
11. Bid Bond Form (Appendix J);
12. Local Procurement Preference Application (Appendix K);
13. Bidders Proposal (Appendix L); and,
14. A valid business license.

2.10.1.4. Marking and Packaging of Technical Proposal

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

- 1) "TECHNICAL PROPOSAL";
- 2) "SUPPLY OF DIESEL FUEL OIL NO.2"
- 3) The BIDDER's Name;
- 4) Invitation for Bid Number;
- 5) Closing Date and Time (Guam Standard Time);
- 6) Addressed to, as follows:

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

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

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

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

2.10.1.5. Technical Proposal Submittal Quantity

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

2.10.2. Price Proposal Requirements

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

- (1) "PRICE PROPOSAL";
- (2) "SUPPLY OF DIESEL FUEL OIL NO.2"
- (3) The BIDDER's Name;
- (4) Invitation for Bid Number;
- (5) Closing Date and Time (Guam Standard Time);
- (6) Addressed to, as follows:

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

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

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

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

2.10.3. Non-Repudiation Issues

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

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

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

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

2.10.4. Signature of Bidder

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

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

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

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

2.10.5. Cut-Off Date for Receipt of Proposals

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

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

2.10.6. Receipt and Handling of Proposals

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

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

2.10.7. Proposal Changes During Bid Process

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

2.11. STEP ONE PROCEDURES

2.11.1. Evaluation of Technical Proposals

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

2.11.2 Scoring of Technical Proposals

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

- a. **Acceptable;**
- b. **Potentially Acceptable**, that is reasonable susceptible of being made acceptable; or
- c. **Unacceptable or Not Acceptable.** GPA shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

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

2.11.3. Discussions of Proposals

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

GPA may conduct discussions or request for additional information or documentation with any BIDDER to determine such BIDDER's qualifications for further consideration and explore with the BIDDER the scope and nature of the required services, method of performance and the relative utility of alternative methods of approach. BIDDERS are required to provide the responses within the time period specified at that time by GPA. **If GPA does not receive any response by the deadline specified, GPA shall consider the lack of a response as the BIDDER's response.** During the course of such discussions, the Procurement Officer shall not disclose any information derived from a technical offer to any other BIDDER.

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

2.11.4. Notice of Unacceptable Proposal

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

2.12. STEP TWO PROCEDURES

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

2.12.1. Opening of Price Proposals

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

2.12.2. Proposal Changes During Bid Process

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

2.12.3. Proposal Validity

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

2.12.4. Preliminary Examination of Price Proposal

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

Arithmetical errors will be rectified on the following basis:

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

2.12.5. Evaluation Criteria and Comparison of Priced Offers

GPA will evaluate and compare the Priced Offers for Bidder's Technical Proposals that were determined during Step One to be responsive to the tender document requirements. The Scoring Mechanism is further explained in [Section 4](#).

2.13. Award of Contract

The contract will be awarded to the BIDDER evaluated as being qualified and with the best-priced proposal for the THREE (3) year contract base period.

The successful BIDDER will be notified by GPA through official written correspondence of the intent to award the contract (Notice of Intent to Award). The written correspondence may be sent by GPA either via official letter, e-mail and fax.

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

CONTRACTOR shall not commence work until all insurance required under Section 23 (Contractor's Insurance) in Volume II (Contract) has been submitted and approved by **GPA**

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

Failure on the part of the successful BIDDER to provide a Performance Bond and/or other requirements to enter into a contract with GPA within the prescribed period shall be sufficient grounds for the annulment

of the award. GPA may determine the bidder to be non-responsive to the bid, and may proceed with sending a Notice of Intent to Award to the next most qualified BIDDER.

2.14. Bid Bond and Performance Bond Requirements

2.14.1. Performance Bond Form, Amount and Duration

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

2.14.2. Performance Bond Execution by a Guam Licensed Surety Company

The CONTRACTOR shall provide a Performance Bond executed by a surety company licensed to do business on Guam.

2.14.3. Bid Bond Form and Amount

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

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

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

2.15. General Proposal Guidelines and Requirements

2.15.1. Amendments to the Bid Documents

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

2.15.2. Proprietary Data

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

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

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

2.15.3. Acceptance of Proposals

GPA reserves the right to reject any or all proposals and to waive minor informalities if it appears in GPA's best interest to do so. Any effort by a BIDDER to influence GPA in the proposal evaluation, proposal comparison or contract award decisions may result in the rejection of the proposal. Once GPA has arrived at a decision regarding the award of the contract, it will notify promptly the successful BIDDER through official written correspondence, and shall include information advising the proponents of the timing of the

bid milestones such as Contract Finalization, Awarding and Mobilization. Potential Bid Awardees shall await this notification from GPA prior to commencement of any Contract Terms Finalization.

2.15.4. Solicitation Cancellation or Delay

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

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

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

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

2.15.5. Disqualification of BIDDER

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

2.15.6. False Statements In Proposal

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

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

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

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

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

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

- (1) warranties that no person providing services on behalf of the contractor has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry; and
- (2) that if any person providing services on behalf of the contractor is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry, that such person will be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.

3. REQUIRED FORMS AND SUPPLEMENTAL INFORMATION

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

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

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

- Appendix A: Proposal Checklists
- Appendix B: Performance Bond
- Appendix C: Major Shareholders Disclosure Affidavit
- Appendix D: Non-collusion Affidavit
- Appendix E: No Gratuities or Kickbacks Affidavit
- Appendix F: Ethical Standards Affidavit
- Appendix G: Declaration of Compliance with Iran Sanctions Act (ISA) and Other U.S.-Sanctioned Entities
- Appendix H: Declaration of Compliance with U.S. DOL's Wage Determination
- Appendix I: Restriction Against Sex Offenders
- Appendix J: Bid Bond Form and Instructions
- Appendix K: Local Procurement Preference Application

- Appendix L: Bidders Proposal
- Qualitative Proposal Worksheet.xls
- Price Proposal

3.1. Technical Proposal Forms

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

3.1.1. Proposal Checklists

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

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

3.1.2. Major Shareholders Disclosure Affidavit

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

3.1.3. Non-collusion Affidavit

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

3.1.4. No Gratuities or Kickbacks Affidavit

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

3.1.5. Ethical Standards Affidavit

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

3.1.6. Declaration of Compliance with The Iran Sanctions Act (ISA) and Other U.S.-Sanctioned Entities

The BIDDER shall provide a Declaration of Compliance with the Iran Sanctions Act (ISA) and Other U.S.-Sanctioned Entities using its own Affidavit Form under Appendix G and submit it with its Proposal.

3.1.7. Declaration of Compliance with U.S. DOL's Wage Determination

The BIDDER shall fill out the Declaration of Compliance with U.S. DOL's Wage Determination Affidavit Form in Appendix H and submit it as part of the Technical Proposal .

3.1.8. Restriction Against Sex Offenders

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

3.1.9. Bid Bond Form

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

3.1.10. Local Procurement Preference Application

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

3.1.11. Bidders Proposal

The BIDDER shall fill out and sign the Bidders Proposal in Appendix L and submit it with the Technical Proposal.

3.2. Qualitative Proposal Workbook

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

3.3. Price Proposal Form

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

4. PROPOSAL SCORING MECHANISM

4.1. Overview

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

4.2. Qualitative Proposal Evaluation

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

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

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

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

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

- Acceptable: Score $\geq 80\%$
- Potentially Acceptable, that is reasonably susceptible of being made Acceptable: $80\% > \text{Score} \geq 75\%$
- Unacceptable: Score $< 75\%$.

A percent score of less than 75% indicates that a GPA evaluator has determined that the BIDDER has not supplied sufficient evidence of qualifications and should not be allowed to participate in Step 2 – Price Proposal.

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

- Acceptable
- Potentially Acceptable
- Unacceptable.

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

If the Procurement Officer or his designee finds that such is not the case, the Procurement Officer or his designee shall issue an amendment to this Invitation for Bid or engage in technical discussions with BIDDERS

who are rated by a majority of the GPA evaluators as Acceptable or Potentially Acceptable. During the course of such discussions, the Procurement Officer or his designee shall not disclose any information derived from one Technical Proposal to any other BIDDER.

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

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

Table 1. Final Evaluation of Bidder Qualification

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

4.3. Price Proposal Evaluation

The contract will be awarded to the BIDDER evaluated as being qualified and with the best-priced proposal for the THREE (3) year contract base period. GPA reserves the right to make multiple awards, partial awards, award by site location, or award in whole, whichever may be most advantageous to the Authority.

5. CONDITIONS OF CONTRACT

5.1. Definitions

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

5.2. Accounting

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

5.3. Documentation

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

5.4. Language and Trade Terms

All communications, documents, and execution of services hereunder, unless otherwise designated, shall be in the English language. INCOTERMS (International Rules for the Interpretation of Trade Terms) published

by the International Chamber of Commerce in 1980 and any subsequent revisions thereto shall govern interpretation of trade terms in the Contract Documents

5.5. Release of Information

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

5.6. Limitations of Clause

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

Invitation For Multi-Step Bid

No. GPA- -24

**SUPPLY OF DIESEL FUEL OIL NO.2
TO VARIOUS GPA PLANT SITE LOCATIONS**



Volume II

CONTRACT

(CONTRACTOR)

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CONTRACT

(CONTRACTOR)

GUAM POWER AUTHORITY

2024

IFB No. GPA- -24

SUPPLY OF DIESEL FUEL OIL NO.2 TO VARIOUS GPA PLANT SITE LOCATIONS

FORMAL CONTRACT

This Agreement and Formal Contract (“Contract”), is made and entered into on the ____ day of _____, 2024 by and between:

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

- And -

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

RECITALS

WHEREAS, GPA desires to maintain uninterrupted supply of Diesel Fuel Oil No.2 to its Power Plant site locations;

WHEREAS, the Third (3rd) year and final extension of the current contract for the supply of Diesel will expire on December 31, 2024; and

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

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

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

WHEREAS, **GPA** has issued an Invitation For a Multi-Step Bid for the Supply of Diesel Fuel Oil No.2 under IFB GPA- -24 for Site Location 1 (Yigo CT and Yigo Diesel); Site Location 2 (Macheche CT and Dededo CT); Site Location 3 (Cabras 1&2 and Piti 7); and Site Location 4 (Manenggon Diesel Plant and Talofoto Diesel Plant) on "As Needed" basis; and

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

WHEREAS, **GPA**, upon evaluation of the submitted bid proposals, determined that **CONTRACTOR** is the lowest responsive and responsible bidder for (Site Location); and

WHEREAS, the Guam Consolidated Commission on Utilities (CCU) and the Guam Public Utilities Commission (PUC) has determined that the **CONTRACTOR** is the preferred option for **GPA** to supply the Diesel Fuel Oil No.2 requirements for the Authority.

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

SECTION 1. DEFINITIONS

"Diesel Fuel Oil No.2" or "Diesel Fuel Oil" or "Fuel Oil" or "Diesel" or "ULSD" means a liquid hydrocarbon product satisfying the specifications in Schedule A

"\$" shall refer to currency in U.S. dollars.

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

“API” shall mean the American Petroleum Institute.

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

“Barrel” shall mean a volume equivalent to 42 U.S. gallons.

“Contract” shall mean the Diesel Fuel Oil No.2 Supply Contract executed as a result of this IFB.

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

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

“Contracting Officer” shall mean the General Manager of the Guam Power Authority and shall include his authorized representatives.

“CONTRACTOR” shall mean the party or parties who or which shall have duly entered into a contract with the Guam Power Authority to perform the work herein contemplated or his or their authorized assignee.

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

“Delivery Time” shall mean the total number of days or the dates stated in the Agreement for furnishing the product.

“General Manager” shall mean the General Manager is the Chief Executive Officer of the Guam Power Authority. The office and title of General Manager shall apply to

any person acting in a regular or in an acting capacity as the Chief Executive Officer of the Guam Power Authority.

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

“Procurement Officer” shall mean the General Manager of the Guam Power Authority or the General Manager’s designee.

“PURCHASER” shall mean the Guam Power Authority with whom CONTRACTOR has entered into the Contract Agreement.

“Seller” shall mean the CONTRACTOR.

“Territory” shall mean the Territory of Guam.

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

“Platt’s Asia-Pacific/ Arab Gulf Marketscan” shall mean the reference source document for the fuel Contract pricing.

“Receiving facility” shall mean the **GPA** plant receiving facility at the site location identified in [Schedule B](#).

SECTION 2. FUEL OIL TO BE SUPPLIED

GPA has installed a new pipeline network to some of the plants for receiving Diesel Fuel Oil No.2 by pipeline transfer from the GPA bulk storage facility(ies). In the event that such pipeline or facility is not available or becomes unavailable, Diesel Fuel Oil must be supplied and delivered by the CONTRACTOR on an “As Needed” basis.

CONTRACTOR agrees to furnish and **GPA** agrees to accept and pay for all of **GPA's** diesel fuel oil requirements for power generating plants in Guam for the term of the Contract.

Fuel Oil to be supplied to **GPA** shall conform to the product quality requirements specified in [Schedule A](#) and shall come from reputable sources not sanctioned by the United States government.

Fuel Oil must be delivered from the **CONTRACTOR** storage to the various **GPA** plant sites covered in this Contract. The **CONTRACTOR** shall be available to deliver the Fuel Oil to the point of delivery as designated by **GPA** within twelve (12) hours of receiving a request. **CONTRACTOR** must be available to receive and accept delivery requests daily, including weekends and holidays.

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

CONTRACTOR must also be able to provide sufficient fleet to deliver the quantities as required by **GPA**.

- i. Estimated annual consumption based on historical data is provided in [Schedule B](#). Actual delivery quantities may vary from day to day depending on the dispatching of the plants.
- ii. Consumption at maximum plant capacities is listed [Schedule C](#). Actual delivery quantities may vary from day to day depending on the dispatching of the plants.

GPA reserves the right to nominate quantities each month and will not guarantee equal amounts of volume every month. Fuel oil deliveries may be low or not needed one month and increase the next month.

SECTION 3. CONTRACT TERM

The Contract Term shall be for THREE (3) years and shall commence on or about after 0:00 hour on **January 01, 2025**, and shall continue until midnight of **December 31, 2027**. **GPA** shall have the right to extend the Contract **for additional TWO (2) years, renewable annually, with mutual agreement of both parties.**

Extension.

Prior to the expiration of the three-year Contract term, GPA may, at its election, extend the Contract for up to two additional one-year terms. GPA and CONTRACTOR may renew this agreement upon the mutual agreement of the parties.

Notice of Extension.

GPA shall notify CONTRACTOR in writing or by email its intent to extend the Contract for any extension no later than six months before the contract termination date. GPA shall give appropriate notice of its intentions regarding its option to exercise contract extension. The notification will include the number of years GPA intends to extend the Contract, not to exceed two (2) years.

At the beginning of the 3rd Contract year GPA and the CONTRACTOR shall negotiate the Contract extension terms based on the optimum requirements of GPA. These requirements shall be considered as starting negotiation points between GPA and the CONTRACTOR, should GPA elect to exercise the optional Contract extension. Final confirmation by mutual agreement between GPA and the CONTRACTOR for Contract extension shall be given after completion of negotiation no later than six months before Termination Date. However, GPA may elect to reverse its decision without penalty at any time within six months of the end of the Contract period based on the CONTRACTOR's poor performance during this period and Contractor's failure to cure.

SECTION 4. CONTRACT PRICE

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

The **CONTRACT PRICE** is the sum of the **REFERENCE PRICE** plus the **FIXED SERVICE FEE**.

The **CONTRACT PRICE** shall increase or decrease on a cent-for-cent basis with the **REFERENCE PRICE**.

The **REFERENCE PRICE** for the Fuel Oil supplied and delivered by CONTRACTOR from the **CONTRACTOR's** storage into the GPA Plants shall be the mean average of the previous month's daily Mid-of-Platts (MOPS) price postings. MOPS is the average of high and low price assessments reported in the Platt's Asia-Pacific/Arab Gulf Marketscan FOB Singapore Price Assessment for Gasoil 10 ppm.

The **FIXED SERVICE FEE** for all Fuel Oil supplied and delivered by **CONTRACTOR** to the **GPA Plants** at the site locations and estimated quantities identified on [Schedule B](#) hereto shall be as follows:

CONTRACT FIXED SERVICE FEE	THREE (3) YEAR BASE PERIOD			TWO (2) YEAR EXTENSION OPTION	
	1 st year \$/gal (in 3 decimals)	2 nd year \$/gal (in 3 decimals)	3 rd year \$/gal (in 3 decimals)	1 st yr Extn \$/gal (in 3 decimals)	2 nd yr Extn \$/gal (in 3 decimals)
SITE LOCATION 1: Yigo CT and Yigo Diesel					
SITE LOCATION 2: Macheche CT and Dededo CT					
SITE LOCATION 3 : <u>Cabras 1&2 and</u> <u>Piti 7</u>					
SITE LOCATION 4 : Manengon and Talofofo					

SECTION 5. INVOICE PRICE DETERMINATION

Sample Delivery Month: **August 2023**

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

REFERENCE PRICE= Average of Previous Month's Daily MOPS

Previous Month: July 2023

Average of the Daily MOPS for July 2023: \$101.756 per Barrel

Average Price: \$2.4228 per Gallon (rounded to four decimal places)

REFERENCE PRICE for August 2023: \$2.4228 per Gallon

(2) Sample **FIXED SERVICE FEE**:

FIXED SERVICE FEE= \$0.2000 per Gallon (sample price)

(3) **CONTRACT PRICE**

CONTRACT PRICE = Reference Price + Fixed Service Fee

CONTRACT PRICE = (\$2.4228 + \$0.2000) per gallon

CONTRACT PRICE = \$2.6228 per gallon

This is the **CONTRACT PRICE** for fuel oil supplied and delivered by **CONTRACTOR** to GPA for the sample month.

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

SECTION 6. TITLE, CUSTODY AND RISK OF LOSS

Title and custody to the Fuel Oil supplied by **CONTRACTOR** and delivered to the **GPA** plants thereof shall pass from the **CONTRACTOR** to **GPA** when:

- a. The Fuel Oil has passed the GPA pipeline flange at the GPA plant storage tanks connecting the **CONTRACTOR**'s hose if delivered by tanker truck.
- b. The Fuel Oil has passed the **GPA** meter flange or pipeline flange at the **GPA** plant storage tanks connecting the **CONTRACTOR**'s pipeline flange if delivered by pipeline.

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

SECTION 7. TERMS OF PAYMENT

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

SECTION 8. PAYMENT OF TAXES AND OTHER GOVERNMENT CHARGES

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

In the event that any cargoes shall be liable to the payment of Import Duty, such Import Duty shall be to the CONTRACTOR's account.

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

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

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

SECTION 9. WARRANTY AND CLAIMS

CONTRACTOR warrants that it has the facilities and resources sufficient to meet CONTRACTOR's obligations under this Contract. Cost for the use of such resources shall be borne by the CONTRACTOR.

CONTRACTOR agrees, represents and warrants as follows:

a. Ability to Supply.

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

b. Ability to Deliver to the GPA Plants

CONTRACTOR shall own, lease, sub-lease, or have the right to use tanker trucks, storage tanks, loading racks and gantries and other facilities sufficient to meet CONTRACTOR's obligations for delivering the fuel oil to the GPA plants under this Contract.

CONTRACTOR shall be solely responsible for any damages caused by the CONTRACTOR or its agents during the process of oil shipment and delivery.

Claims against the CONTRACTOR for direct costs incurred on account of their non-performance or negligent actions shall be given in writing together with all supporting documents, invoices and

correspondence by GPA within thirty days (30) from date of delivery of fuel oil as specified in Section 4.

SECTION 10. PRODUCT AND QUALITY

The fuel oil delivered hereunder shall have the physical and chemical characteristics as described in [Schedule A](#).

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

SECTION 11. QUANTITY AND QUALITY ASSURANCE

GPA has installed a new pipeline network to some of the plants for transferring fuel from the GPA bulk storage facility(ies). In the event that such pipeline or facility is not available or becomes unavailable, Fuel Oil must be supplied by the CONTRACTOR on an "As Needed" basis either by roadtanker deliveries or by pipeline transfer from the CONTRACTOR storage to the various GPA plant sites covered in this Contract.

a. Delivery by Tanker Truck.

CONTRACTOR, at its sole expense, shall utilize its terminal truck loading rack and metering system to determine the quantity of Diesel Fuel Oil No.2 delivered by tanker truck to GPA. Quantity of product delivered by CONTRACTOR at CONTRACTOR's nominated tanker truck(s) to the GPA plants shall be determined at the time of each delivery by CONTRACTOR, converted in each instance to volume at 60 degrees Fahrenheit by the automated rack control system and shall be the basis for the Bill of Lading (BOL).

Contractor at its sole expense, shall provide a pump and unload the product from the tanker truck into the GPA fuel receiving facility.

CONTRACTOR shall have such meters calibrated no less than annually and shall furnish GPA a copy of the certificate of newly calibrated meter(s) within 10 days after the calibration date.

In the event of a dispute over the accuracy of the CONTRACTOR's meters, an independent third party mutually agreeable to both parties will be brought in to perform a recalibration. In

the event of a miscalibration, the costs shall be borne by the CONTRACTOR. Any loss incurred by GPA as a result of miscalibration of meters shall be negotiated and returned to the AUTHORITY.

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

b. Delivery By Pipeline Transfer

Quantity of product delivered by the **CONTRACTOR** by pipeline transfer to **GPA** shall be determined utilizing the meter installed at the pipeline into the **GPA** plant storage tank.

- i. In the event that a meter is not installed or is defective, quantity of the product delivered by the **CONTRACTOR** shall be determined by the **CONTRACTOR** meter. **CONTRACTOR** shall have such meters calibrated no less than annually and shall furnish **GPA** a copy of the certificate of newly calibrated meter(s) within 10 days after the calibration date. In the event of a dispute over the accuracy of the meter, an independent third party mutually agreeable to both parties will be brought in to perform a recalibration. In the event of a miscalibration, the costs shall be borne by the **CONTRACTOR**. Any loss incurred by **GPA** as a result of miscalibration of meters shall be negotiated and returned to **GPA**.
- ii. In the event that the **CONTRACTOR** meter is defective or is not installed, quantity of the product delivered by the **CONTRACTOR** shall be determined by an Independent Third Party Inspector by gauging the receiving tanks before and after delivery. Cost shall be borne by the **CONTRACTOR**.

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

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

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

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

SECTION 12. QUANTITY DETERMINATION

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

Quantity certification prepared by independent inspector shall be final and binding upon both parties. Inspection report shall be submitted by **CONTRACTOR** to **GPA** no later than two (2) calendar days after completion of inspection and shall provide **GPA** unrestricted access to records or reports as may be required.

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

SECTION 13. SECURITY OF SUPPLY

CONTRACTOR reserves the right to supply fuel oil meeting **GPA** quality requirements specified in [Schedule A](#) and may come from any sources not sanctioned by the United States government. In the event that supplies are taken from such other places, then the price to Guam will remain the same as established in [Section 4](#) above.

CONTRACTOR is required to maintain a minimum of thirty (30) days inventory at the **CONTRACTOR**'s storage facility. A list of the **GPA** plant requirements is listed in [Schedule B](#).

For security of supply in the event of unexpected, unplanned or forced baseload outages, severe typhoon or other calamities. **CONTRACTOR** shall prioritize delivery to the **GPA** plants and guarantee uninterrupted supply and delivery of Fuel Oil during the recovery period. **CONTRACTOR** must also be able to provide sufficient fleet to deliver the quantities listed in [Schedule C](#) as may be required by **GPA**.

CONTRACTOR must submit weekly and monthly fuel inventory and delivery report to **GPA**.

GPA reserves the right to audit the **CONTRACTOR** for safety fuel inventory stock compliance. Such audit shall be in accordance with generally accepted accounting practices.

SECTION 14. GOVERNMENT LAWS AND REGULATIONS

(a) If at any time during the term of the Contract the Government of the United States or the Territory of Guam enacts laws or issues regulations which would prevent **GPA** from burning the type of fuel oil to be supplied hereunder, **GPA** shall use its best efforts to obtain an exemption. In the event **GPA** cannot obtain an exemption from such laws and regulations, **CONTRACTOR** shall use his best efforts to furnish **GPA** substitute fuel oil which complies with such governmental laws and regulations at the same price set out herein, or if unreasonable, at a price to be renegotiated by the parties. If the substitute fuel oil causes an increase or decrease in **CONTRACTOR**'s cost of performance of the Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly. Any claim of **CONTRACTOR** for adjustment under this section must be asserted in writing within thirty (30) days from date of receipt by **CONTRACTOR** of the notification of substitute fuel oil in compliance with Government laws, rules and regulations. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this Contract entitled "Governing Law and Disputes" ([Section 22](#)). However, nothing in this clause shall excuse the **CONTRACTOR** from proceeding with the Contract fuel oil specifications as changed in order to comply with Government laws, rules and regulations. Only in the event that the parties cannot mutually agree upon the price at which **CONTRACTOR** is to furnish such substitute fuel oil, and **CONTRACTOR** refuses to provide such substitute fuel oil at the Contract price set out herein shall **GPA** then have the option of purchasing from other sources fuel oil at a lower price than that offered

by **CONTRACTOR** in such negotiations which complies with such laws and regulations, but in any event, the **CONTRACTOR** shall have no recourse, other than those specified herein.

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

SECTION 15. PERMITS AND RESPONSIBILITIES

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

SECTION 16. FORCE MAJEURE

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

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

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

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

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

(e) Regulations. Interference by restriction or onerous regulations imposed by civil or military authorities, whether legal or de facto and whether purporting to act under some constitution, decree, law or otherwise;

(f) Acts of God. Acts of God, fire, frost or ice, earthquake, storm, lightning, tide, tidal wave, or peril of the sea, accident of navigation or breakdown or injury of vessels;

(g) Loss for Tankers. Loss of tanker tonnage due to sinking by belligerents or to governmental taking whether or not by formal requisition;

(h) Accidents. Accidents to or adjuncts of shipping navigation;

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

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

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

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

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

SECTION 17. NOTICE TO OTHER PARTY

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

SECTION 18. PAYMENT REQUIRED

Notwithstanding the provisions of [Section 16](#), supra, **GPA** shall not be relieved of any obligation to make payments for any fuel delivered to Guam dock/**GPA** tanks hereunder; however, during the

force majeure condition the obligation shall be suspended, except for fuel oil deliveries made prior to the force majeure condition.

SECTION 19. PRORATION OR EQUITABLE ALLOCATION

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

SECTION 20. ~~(INTENTIONALLY DELETED)~~ ALTERNATE SUPPLY

In the event **CONTRACTOR** is unable to fulfill its obligations under this Contract as a result the events enumerated in **Section 16**, supra or of any negligence on part of the Contractor, **GPA** may at its sole discretion seek an alternative source of fuel oil so long as such condition of force majeure or negligence shall exist. If the cost of fuel during such period of force majeure or negligence shall exceed the Contract price as provided in Section 4, the **CONTRACTOR** shall be liable to **GPA** for the difference.

SECTION 21. RESUMPTION OF PERFORMANCE

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

SECTION 22. GOVERNING LAW AND DISPUTES

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

This CONTRACT shall not be construed to confer any benefit on any person not being a party to this Contract not shall it provide any rights to such person to enforce any of its provisions. The provisions of the English Contracts (Rights of Third Parties) Act 1999 are expressly excluded.

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

SECTION 23. CONTRACTOR'S INSURANCE

CONTRACTOR shall not commence work under this Contract until he has obtained all insurance required under this section and such insurance has been approved by **GPA**, nor shall the

CONTRACTOR allow any Subcontractor to commence work on his subcontract until all similar insurance required of the Subcontractor has been so obtained and approved.

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

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

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

INSURANCE: The **CONTRACTOR** shall take out and maintain during the life of this Contract the applicable statutory Workmen's Compensation Insurance with an insurance company authorized to write such insurance and in the applicable State or Territory including the Territory of Guam covering all his employees, and in the case of any work sublet, the **CONTRACTOR** shall require the Subcontractor similarly to provide statutory Workmen's Compensation Insurance for the latter's employees. The **CONTRACTOR** shall secure and maintain, during the life of this Contract, Employer's Liability Insurance with a limit of \$1,000,000 with an insurance company authorized to write such insurance in all states or territories including the Territory of Guam where the Contractor will have employees located in the performance of this Contract. **CONTRACTOR** shall provide a Waiver of Subrogation in favor of **GPA** via endorsement to the Workers Compensation policy. This coverage shall be on a primary and non-contributory basis.

B. COMMERCIAL GENERAL LIABILITY:

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

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

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

\$ 2,000,000 Aggregate

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

- i. The property damage coverage shall include a Broad Form Property Damage Endorsement.
- ii. Contractual Liability coverage shall be included.
- iii. Protective Liability coverage shall be included to protect the **CONTRACTOR** against claims arising out of operations performed by his Subcontractors.
- iv. Products Liability and/or Completed Operations coverage shall be included.
- v. **GPA** shall be an additional insured on the Commercial General Liability policy.
- vi. This coverage shall be on a primary and non-contributory basis.
- vii. **CONTRACTOR** shall grant Waiver of Subrogation in favor of **GPA**.

C. AUTOMOBILE LIABILITY INSURANCE:

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

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

Property Damage Limits:	\$ 1,000,000 Each occurrence
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This coverage shall be on a primary and non-contributory basis.

D. POLLUTION LIABILITY INSURANCE:

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

This coverage shall be on a primary and non-contributory basis.

E. EXCESS LIABILITY

Excess Liability with limits of \$5,000,000 over the General Liability, Auto Liability, and workers compensation policies. **GPA** shall be named as an additional insured. **CONTRACTOR** shall grant Waiver of Subrogation in favor of **GPA**. This coverage shall be on a primary and non-contributory basis.

Cancellation Clause:

All policies above shall contain the following Cancellation clause:

The insurance company shall notify in writing the Guam Power Authority (insured) a minimum of 60 days prior to any material changes or cancellation of coverage.

F. CERTIFICATE OF INSURANCE:

The **CONTRACTOR** shall furnish **GPA** with two (2) copies of a Certificate of Insurance evidencing policies required in Paragraphs A, B, C, D, and E above. Such certificates shall specifically indicate that the Commercial General Liability Insurance includes all extensions of coverage required in Paragraph B., Subparagraph 2. above. Such certificate shall specifically state that the insurance company or companies issuing such insurance policies shall give **GPA** at least sixty (60) days written notice in the event of cancellation of or material change in any of the policies. If coverage on said certificate(s) is shown to expire prior to completion of all terms of this Contract, the **CONTRACTOR** shall furnish a Certificates of Insurance evidencing renewal of such coverage to **GPA**. The Certificates of Insurance shall clearly show this Contract number.

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

G. SUBCONTRACTOR'S INSURANCE:

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

required in Paragraph B. above. The **CONTRACTOR** shall furnish one (1) copy of the certificate to **GPA**.

H. INSURANCE COMPANY AND AGENT:

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

SECTION 24. INDEMNITY

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

SECTION 25. TRANSPORTATION

CONTRACTOR shall arrange for the transportation of the Fuel Oil to the **GPA** storage facilities. All risk of loss, cost and liabilities prior to the time of passage of title of the Fuel Oil shall be on the **CONTRACTOR**.

CONTRACTOR 's and **GPA**'s rights and duties under [Section 24](#) and [Section 25](#) do not supersede or control the provisions of [Section 16](#) Force Majeure.

SECTION 26. FAILURE TO SUPPLY

If the **CONTRACTOR** refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure the timely delivery of fuel oil supply or commits any other substantial breach or non-performance of this Contract, **CONTRACTOR** must provide **GPA** at least five (5) days prior notice of its inability to supply and/or deliver fuel to **GPA**. **GPA** reserves the right to procure fuel oil

supply from another source immediately upon issuance of such notification or whenever it deems appropriate for a period to be determined solely by GPA. If the cost of fuel supply and/or delivery during such period shall exceed the Contract price as provided in Section 4, the CONTRACTOR shall reimburse GPA for the difference and other damages, which may be taken from the Performance Bond or applied as a deduction to payments due from current and future invoices.

If not cured within THIRTY (30) days of the date of notification, GPA may terminate the Contract in whole or such part of the Contract as to which there has been a delay or a failure to properly perform. In the event of termination in whole or in part, GPA reserves the right to procure fuel oil supply from another source.

SECTION 27. FAILURE TO PAY

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

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

SECTION 28. FAILURE TO COMPLY WITH LAWS

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

SECTION 29. PENALTY CLAUSES

(a) Quality Outside Contractual Specifications

In the event that any fuel, according to the analysis results has one or more quality characteristics outside the contractual specifications set in Schedule A, then in addition to any other rights or remedies available to the GPA under this contract a penalty will be imposed according to the following:

- (1) If the bottom sediment and water exceeds the specification limit, then a price reduction shall be made for all water and non-petroleum sediment in excess of maximums specified in Schedule A multiplied by the Bill of Lading Quantity.
- (2) If the heating value is less than the specification limit, then there will be a price reduction calculated as the ratio of the Out-of-Specification heating value and the Guaranteed Heating Value specified in Schedule A, multiplied by the Bill of Lading Quantity. If any other quality parameter (besides the ones stated in) exceeds the specifications' limits, then a penalty will be agreed between GPA and CONTRACTOR.

It is expressly agreed that the present penalty clauses shall be imposed regardless of whether damages were or not suffered by the GPA due to the delay in delivering the fuel and fuel quality outside contractual specifications, and that the GPA reserves the right to claim cumulatively both the amount of the penalty clauses and indemnification for every direct damage suffered by him due to CONTRACTOR non-contractual actions or omissions.

If during the period of this contract the GPA is forced to purchase fuel oil in order to maintain the GPA's Power Stations on full commercial load as a result of failure on the part of the CONTRACTOR to supply and/or deliver fuel oil in accordance with the terms of this contract (save for events of Force Majeure) any additional cost borne by the GPA over and above the price provided for in this Contract, CONTRACTOR will be liable to refund GPA either by payment of the CONTRACTOR or by way of reduction from GPA debts to the CONTRACTOR or deduction from the CONTRACTOR's Good Performance Bond of the Contract, or partially from both.

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

(b) **Quality Outside Contractual Specifications**

In the event that any fuel, according to the analysis results has one or more quality characteristics outside the contractual specifications set in [Schedule A](#), then in addition to any other rights or remedies available to the GPA under this contract a penalty will be imposed according to the following:

- (1) If the bottom sediment and water exceed the specification limit, then a price reduction shall be made for all water and non-petroleum sediment in excess of maximums specified in [Schedule A](#) multiplied by the Bill of Lading Quantity.
- (2) If the heating value is less than the specification limit, then there will be a price reduction calculated as the ratio of the Out-of-Specification heating value and the Guaranteed Heating Value specified in [Schedule A](#), multiplied by the Bill of Lading Quantity.

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

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

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

SECTION 30. DEFAULT

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

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

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

SECTION 31. ATTORNEYS FEES

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

SECTION 32. TERMINATION FOR CONVENIENCE

(a) Termination.

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

Any such termination shall be effected by delivery to the **CONTRACTOR** of a written Notice of Termination specifying the extent to which supply of fuel oil under the Contract is terminated.

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

(b) CONTRACTOR's Obligations.

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

(c) **Right to Supplies.**

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

(d) **Compensation.**

- (1) The **CONTRACTOR** shall submit a termination claim specifying the amounts due because of the termination for convenience. If the **CONTRACTOR** fails to file a termination claim within ONE (1) year from effective date of termination, **GPA** may pay the **CONTRACTOR**, if at all, an amount set in accordance with subparagraph (3) of this paragraph.
- (2) **GPA** and the **CONTRACTOR** may agree to a settlement provided the **CONTRACTOR** has filed a termination claim supported by cost or pricing data to the extent required by Section 3-403 (Cost or Pricing Data) of the Guam Procurement Regulations and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by **GPA**, the proceeds of any sales of supplies and manufacturing materials under the Guam Uniform Commercial Code, and the Contract price of the fuel oil supply not terminated.
- (3) Absent complete agreement under subparagraph (1) of this paragraph, **GPA** may pay the **CONTRACTOR** the following amounts, provided payments agreed to under subparagraph (2) shall not duplicate payments under this subparagraph:

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

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

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

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

SECTION 33. REMEDIES CUMMULATIVE

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

SECTION 34. COVENANT AGAINST CONTIGENT FEES

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

SECTION 35. NOTICE

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

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

CONTRACTOR: _____

SECTION 36. INTEREST OF OTHER PARTIES

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

SECTION 37. ASSIGNMENT

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

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

SECTION 38. TIME

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

SECTION 39. AMENDMENT AND WAIVER

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

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

SECTION 40. DESCRIPTIVE HEADINGS

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

SECTION 41. RELATIONSHIP OF PARTIES

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

SECTION 42. NUMBER AND GENDER

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

SECTION 43. SUCCESSORS IN INTEREST

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

SECTION 44. PARTIAL INVALIDITY

Should any part of the Contract for any reason be declared to be invalid, such decision shall not affect the validity of any remaining portion thereof, which remaining portion shall remain in force

and effect as if the Contract had been executed with the invalid portion thereof eliminated, and it is hereby declared the intention of the parties that they would have executed the remaining portion of the Contract without including any such part, parts, or portions which may, for any reason, be hereafter declared invalid.

SECTION 45. EQUAL OPPORTUNITY CLAUSE

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

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

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

SECTION 46. PROHIBITION AGAINST GRATUITIES, KICKBACKS, AND FAVORS TO THE TERRITORY

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

SECTION 47. RESTRICTION AGAINST CONTRACTOR EMPLOYING CONVICTED SEX OFFENDERS FROM WORKING AT GOVERNMENT OF GUAM VENUES

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

- (b) All contracts for services to agencies listed herein shall include the following provisions: (1) warranties that no person providing services

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

SECTION 48. CONTRACT BINDING EFFECT

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

This Contract is binding upon the **CONTRACTOR** only if **CONTRACTOR** has been awarded the Contract in response to the **IFB-GPA- -24**. This Contract is subject to the approval of **GPA** and the Public Utilities Commission and it shall not be binding on part of **GPA** until such approval is made as evidenced by the signatories below.

For the **Guam Power Authority (GPA)**:

John M. Benavente, P.E.
General Manager

DATE

For **CONTRACTOR**:

(Company Name and Seal)

Name of Authorized Representative
Title

DATE

APPROVED AS TO FORM:

General Counsel
GUAM POWER AUTHORITY

DATE

PERFORMANCE AND PAYMENT BONDS

KNOW ALL MEN BY THESE PRESENTS that _____

(Name of CONTRACTOR)

herein after called the CONTRACTOR and _____

(Name of Surety)

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

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

_____ Dollars (US\$ _____) for the payment whereof

the CONTRACTOR and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the CONTRACTOR has by written agreement dated _____, 20____, entered into a Contract with the Guam Power Authority for the **Supply of Diesel Fuel Oil No.2 to the Various GPA Plant Sites** in accordance with the Specifications prepared by the Guam Power Authority, which Contract is by reference made a part hereof, and is hereafter referred to as the Contract.

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

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

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

of action shall accrue on this bond to or for the use of any person or corporation other than the Guam Power Authority or successors of the Authority.

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

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

- E. No suit or action shall be commenced hereunder by a claimant:
 - 1. Unless claimant, other than one having a direct contract with the CONTRACTOR, shall have given written notice to any two of the following:

The CONTRACTOR, the Guam Power Authority, or the Surety above named, within ninety (90) calendar days after such claimant did or performed that last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed.

Such notice shall be personally served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the CONTRACTOR at any place the principal maintains an office or conducts its business.

2. After the expiration of one (1) year following the date on which the last of the labor was performed or material was supplied by the party bringing suit.
3. Other than in a court of competent jurisdiction in and for Guam.

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

SIGNED AND SEALED THIS _____ day of _____ 20__ .

IN THE PRESENCE OF:

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

(WITNESS)

(CONTRACTOR) (SEAL)

(TITLE)

(MAJOR OFFICER OF SURETY)

(MAJOR OFFICER OF SURETY)

(TITLE)

(TITLE)

SCHEDULE A: PRODUCT QUALITY SPECIFICATION

DIESEL FUEL OIL NO. 2

DESCRIPTION	ASTM TEST METHOD	UNIT OF MEASURE	LIMITS	
			Minimum	Maximum
Flash Point	D93	deg C	60	
Cloud Point	D2500 or D5771	deg C		5
Bottom Sediment & Water	D2709	vol %		0.05
Distillation Temp, 10% recovered	D86	degC	180	270
Distillation Temp, 50% recovered	D86	degC	230	310
Distillation Temp, 90% recovered	D86	degC	280	360
Distillation Temp, 95% recovered	D86	degC	300	370
Kinematic Viscosity	D445	mm ² /s at 40 degC	1.9	4.1
Total Aromatic Hydrocarbons	D6591 or IP391	wt%		30
Dicyclic Aromatic Hydrocarbons	D6591 or IP391	wt%		5
Tricyclic and higher Aromatic Hydrocarbons	D6591 or IP391	wt%		1
Olefin Content	D1319 or JPI-5S-49 2007	vol%		5
Ash	D482	wt%		0.01
Sulfur	D5453 or D7039	ppmw		10
Sulfur Mercaptan	D3227	ppmw		3
Copper Strip Corrosion Rating (3hrs min at 50oC)	D130			No. 1
Cetane Index	D976		46	
Carbon Residue on 10% distillation residue	D189 or D524 or D4530 or D6371	wt%		0.2
Lubricity, HFRR @ 60oC	D6079	micron		400
Conductivity	D2624 or D4308	pS/m	100	600
Density @ 15oC	D4052 or D1298	kg/m3	820	850
Gravity, API @ 60oF	D1298 or D4052		35	41
Color	D1500 or D6045			2.0
Hydrogen Sulfide in Liquid	IP 570A	mg/kg		2.0
Strong Acid No.	D974	mg KOH/g		Nil
Total Acid No.	D974	mg KOH/g		0.2
Odour	Indirect			Merchantable
Stability (Oxidation), 16Hrs	D2274	mg/L		20
Appearance @ ambient temp	D4176			Clear, bright and free from

				particulates and water
Haze Rating	D4176			1
Particulate Contamination	D6217	mg/L		8
Water content	D6304	mg/kg		100
Filter Blocking Tendency (FBT)	D2068 or IP387			1.35
Fatty Acid Methyl Ester (FAME)	D7371-14 or EN14078	vol%		0.1
Guaranteed Heating Value (HHV)	D240	MMBTU/bbl	5.70	
Static Dissipation Additives (Stadis 450)	Declared			Report
Lubricity Additive	Declared			Report
Biodiesel Content	Declared			NIL
Virgin Vegetable & Animal Oils	Declared			NIL
Unhydrotreated Cracked Components	Declared			NIL
Na	D7111	ppmw		0.3
K	D7111	ppmw		0.3
Ca	D7111	ppmw		Less than 0.1
V	D7111	ppmw		Less than 0.1
Pb	D7111	ppmw		Less than 0.1
Ni	D7111	ppmw		Less than 0.1
Zn	D7111	ppmw		Less than 0.1
Cu	D7111	ppmw		Less than 0.1
Ba	D7111	ppmw		Less than 0.1

The Authority may require the supplier to conduct additional test as necessary for plant's performance/efficiency evaluation.

SCHEDULE B: ESTIMATED ANNUAL FUEL OIL REQUIREMENTS

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

SITE LOCATION 1: YIGO CT AND YIGO DIESEL

Plant Site Location	Estimated Annual Requirement (Gallons per Year)
Yigo CT	3,000,000 – 5,000,000
Yigo Diesel	9,000,000 – 12,000,000
TOTAL	12,000,000 - 17,000,000

SITE LOCATION 2: DEDEDO CT AND MACHECHE CT

Plant Site Location	Estimated Annual Requirement (Gallons per Year)
Dededo CT	9,000,000 – 12,000,000
Macheche CT	3,000,000 – 7,000,000
TOTAL	12,000,000 - 19,000,000

SITE LOCATION 3: CABRAS 1&2 and PITI 7

Plant Site Location	Estimated Annual Requirement (Gallons per Year)
Cabras 1&2	100,000 - 200,000
Piti 7	10,000,000 – 16,000,000
TOTAL	10,100,000 - 18,000,000

SITE LOCATION 4: MANENNGON AND TALOFOFO

Plant Site Location	Estimated Annual Requirement (Gallons per Year)
Manenngon	100,000 – 500,000
Talofofo	500,000 – 1,000,000
TOTAL	600,000 - 1,500,000

GPA reserves the right to nominate quantities each month and will not guarantee equal amounts of volume every month. Fuel oil deliveries may be low or not needed one month and increase the next month. Provided below is the maximum daily fuel consumption by plant. Historically, GPA has consumed as little as 700 barrels per day of diesel and as high as 6,000 barrels a day of diesel. Usage levels are dependent on unit availability.

SCHEDULE C : PLANT CONSUMPTION AT MAXIMUM CAPACITIES

Maximum Fuel Consumption		gals/day	bbls/day
SITE LOCATION 1	Yigo CT	45,361	1,080
	Yigo Diesel	70,855	1,687
SITE LOCATION 2	Dededo CT	110,460	2,630
	Macheche CT	50,526	1,203
SITE LOCATION 3	Cabras 1&2 and Piti 7	104,803	2,495
SITE LOCATION 4	Manenngon	14,728	351
	Talofofo	17,271	411
TOTAL		414,004	9,857

The above information is provided for reference purposes only.

2-baseload outages for 10-day consecutive period is approximately 252,000 gallons per day (~6,000 bbls/day).

SCHEDULE D: HISTORICAL PLANT CONSUMPTION

Per Power Plant	FY 2019 Gallons	FY 2020 Gallons	FY 2021 Gallons	FY 2022 Gallons	FY 2023 Gallons
Yigo CT	4,511,682	4,295,508	3,333,582	8,634,948	4,763,934
Yigo Diesel	11,598,636	9,704,478	5,744,550	4,738,902	4,915,890
Dededo CT	1,596,462	703,878	4,906,104	12,242,958	11,190,312
Macheche CT	4,921,140	4,893,546	6,601,392	3,533,166	3,269,364
Piti 7	5,377,596	3,403,806	6,844,320	16,454,298	14,372,484
Baseloads	75,180	27,426	65,394	66,528	111,720
Manenggon	45,024	7,854	18,690	167,622	373,758
Talofof Diesel	653,688	80,850	597,324	408,870	409,962
TOTAL	28,779,408	23,117,346	28,111,356	46,247,292	39,407,424

Per Site Location	FY 2019 Gallons	FY 2020 Gallons	FY 2021 Gallons	FY 2022 Gallons	FY 2023 Gallons
1. Yigo CT & Yigo Diesel	16,110,318	13,999,986	9,078,132	13,373,850	9,679,824
2. Dededo CT & Macheche CT	6,517,602	5,597,424	11,507,496	15,776,124	14,459,676
3. Cabras 1&2 and Piti 7	5,452,776	3,431,232	6,909,714	16,520,826	14,484,204
4. Manengon & Talofof Diesel	698,712	88,704	616,014	576,492	783,720
TOTAL	28,779,408	23,117,346	28,111,356	46,247,292	39,407,424

Attachment A

Estimated Cost

Table 1: 3-Year Base Period

3-Yr Contract	Estimated Quantity ¹ (gal/yr)	Estimated Cost ²			
		Commodity Price (\$/gal)	Sample Premium Fee (\$/gal)	Unit Cost (\$/gal)	Total Cost (\$)
First (1 st) Year	55,500,000	\$2.4228	\$0.2000	\$2.6228	\$ 145,565,400.00
Second (2 nd) Year	55,500,000	\$2.4228	\$0.2000	\$2.6228	\$ 145,565,400.00
Third (3 rd) Year	55,500,000	\$2.4228	\$0.2000	\$2.6228	\$ 145,565,400.00
3-Year SUMMARY	166,500,000 (TOTAL)	\$2.4228 (AVG)	\$0.200 (AVG)	\$2.6228 (AVG)	\$ 436,696,200.00 (TOTAL)

Table 1: 2-Year Extension Option

2-Yr Contract Extension	Estimated Quantity ¹ (gal/yr)	Estimated Cost ²			
		Commodity Price (\$/gal)	Sample Premium Fee (\$/gal)	Unit Cost (\$/gal)	Total Cost (\$)
First (1 st) Year	55,500,000	\$2.4228	\$0.2000	\$2.6228	\$ 145,565,400.00
Second (2 nd) Year	55,500,000	\$2.4228	\$0.2000	\$2.6228	\$ 145,565,400.00
2-Year SUMMARY	111,000,000 (TOTAL)	\$2.4228 (AVG)	\$0.200 (AVG)	\$2.6228 (AVG)	\$ 291,130,800.00 (TOTAL)

Table 3: SUMMARY

Contract	Estimated Quantity ¹ (gal/yr)	Estimated Cost ²			
		Commodity Price (\$/gal)	Sample Premium Fee (\$/gal)	Unit Cost (\$/gal)	Total Cost (\$)
3-Year Base Period	166,500,000	\$2.4228	\$0.2000	\$2.6228	\$ 436,696,200.00
2-Year Extension Period	111,000,000	\$2.4228	\$0.2000	\$2.6228	\$ 291,130,800.00
5-Year SUMMARY	277,500,000 (TOTAL)	\$2.4228 (AVG)	\$0.200 (AVG)	\$2.6228 (AVG)	\$ 727,827,000.00 (TOTAL)

¹ Reference: Schedule B of the Contract

² Reference: Section 5 of the Contract