



**GWA RESOLUTION NO. 24-FY2024**

**RELATIVE TO THE APPROVAL OF THE PROCUREMENT OF  
LABORATORY SERVICES WITH EUROFINS EATON INC.**

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

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

**WHEREAS**, in January 01, 2019, GWA entered into a three-year indefinite quantity agreement with Eurofins Eaton Inc. for a U.S. Environmental Protection Agency certified lab to analyze water and wastewater samples provided by the Guam Waterworks Authority (“GWA”) in a manner that meets the “Standardized Monitoring Requirements” established by the Guam Environmental Protection Agency as provided under the Safe Drinking Water Act and the Guam Primary and Secondary Safe Drinking Water Regulations; and

**WHEREAS**, the Eurofins Agreement expired in January of this year, and GWA issued GWA IFB 2024-09 to procure new services.

**WHEREAS**, in response to IFB 2024-05 seven (7) bidders picked up bid packets as listed on GWA’s Bidder Register but only one (1) bidder submitted a bid. The single bid submission was submitted by Eurofins Eaton Analytical, LLC.

**WHEREAS**, Eurofins Eaton Analytical, LLC was deemed responsive and responsible complying with all term and conditions of the bid.

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1           **WHEREAS**, GWA now wishes to move forward with a new Laboratory Services  
2 Agreement based on the accepted bid and because the services required are regulated,  
3 reasonable, prudent and necessary; and  
4

5           **WHEREAS**, the IFB for this procurement (attached as Exhibit A) contains an initial  
6 term of three years and considering that the average annual expenditures for GWA laboratory  
7 services over the past three years has been Five Hundred Ninety-Two Thousand Eight Hundred  
8 Twenty-Eight Dollars and Thirty-Three Cents (\$592,828.33) per year or One Million Seven  
9 Hundred Seventy-Eight Thousand Four Hundred Eighty-Five Dollars (\$1,778,485.00) for three  
10 (3) years, the requisite contract now requires the CCU approval.  
11

12           **NOW BE IT THEREFORE RESOLVED**, the Consolidated Commission on Utilities  
13 does hereby approve the following:  
14

- 15           1. The recitals set forth above hereby constitute the findings of the CCU.
- 16           2. The CCU finds that the Laboratory Services Procurement (Exhibit A) at this  
17           time is reasonable, prudent and necessary.  
18

19           **RESOLVED**, that the Chairman certified, and the Board Secretary attests to the  
20 adoption of this Resolution.  
21

22           **DULY AND REGULARLY ADOPTED**, this 23<sup>rd</sup> day of July, 2024.  
23

24           Certified by:

25           

26           JOSEPH T. DUENAS  
27           Chairperson

24           Attested by:

25           

26           PEDRO ROY MARTINEZ  
27           Secretary

28           //

29           //

30           //  
31  
32

**SECRETARY'S CERTIFICATE**

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

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

AYES: 5  
NAYS: 0  
ABSENT: 0  
ABSTAIN: 0



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## **INVITATION TO BID**

The GUAM WATERWORKS AUTHORITY, will receive sealed bids for **Laboratory Services IFB. NO. 2024-09**. Bids will be accepted until 10:00 a.m. Chamorro Standard Time, December 29, 2023 at the GWA Procurement Office first floor located at the Gloria B. Nelson Public Services Building in Mangilao at which time and place all bids will be publicly opened and read aloud. All bids must be accompanied by a Bid / Performance Bond in the amount of 15 percent (15%) of the total bid price. Bid security may be bid/performance bond, Surety Bond, certified check or cashier's check made payable to Guam Waterworks Authority. A non-refundable amount of \$15.00 is required for the purchase price of every set of bidding documents which are available at the GWA Procurement Office. Bidders can download a bid package at [www.guamwaterworks.org](http://www.guamwaterworks.org) without charge, although vendors are strongly encouraged to contact or visit GWA Procurement Office to register to ensure that updated information, notices or bid amendments are distributed to you.

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



Miguel C. Bordallo, P.E.  
General Manager

GWA STAMP ISSUE DATE:

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# TABLE OF CONTENTS

<b>I.</b>	<b>BID ITEMS -----</b>	<b>4-8</b>
<b>II.</b>	<b>SCOPE OF WORK-----</b>	<b>8-10</b>
<b>III.</b>	<b>GENERAL TERMS AND CONDITIONS-----</b>	<b>10-17</b>
	A. AUTHORITY.	
	B. EXPLANATION TO BIDDERS.	
	C. QUESTIONS.	
	D. METHOD OF AWARD.	
	E. DESCRIPTIVE LITERATURE / (BROCHURES)	
	F. REJECTION.	
	G. TAXES.	
	H. LICENSING.	
	I. COVENANT AGAINST CONTINGENT FEES.	
	J. JUSTIFICATION OF DELAY.	
	K. DISCLOSURE OF MAJOR SHAREHOLDERS.	
	L. EQUAL EMPLOYMENT OPPORTUNITY.	
	M. DETERMINATION OF RESPONSIBILITY OF OFFERORS.	
	N. STANDARD FOR DETERMING WHETHER BIDDER IS QUALIFIED.	
	O. PRE-BID CONFERENCES.	
	P. BIDS.	
	Q. COMPETENCY OF BIDDERS.	
	R. REQUEST FOR BID FORMS.	
	S. BID ENVELOPE.	
	T. FORM OF BID.	
	U. MODIFICATION / ALTERATION.	
	V. MODIFICATION OR WITHDRAWAL OF BIDS.	
	W. CONTACT FOR CONTRACT NEGOTIATION.	
	X. AWARD OF CONTRACT AND NEGOTIATION (IF APPLICABLE).	
	Y. NOTICE OF AWARD.	
	Z. CERTIFICATION AGAINST THE EMPLOYMENT OF CONVICTED SEX OFFENDERS.	
	AA. TERMINATION OF BID.	
	BB. LOCAL PROCUREMENT PREFERENCE.	
<b>IV.</b>	<b>SPECIAL TERMS AND CONDITIONS-----</b>	<b>17-26</b>
	A. GENERAL COMPLIANCE WITH LAWS.	
	B. ACCESS TO RECORDS AND OTHER REVIEW.	
	C. OWNERSHIP OF DOCUMENTS.	
	D. INDEMNITY.	
	E. CHANGES.	
	F. TERMINATION.	
	• TERMINATION FOR DEFAULT.	
	• TERMINATION FOR CONVENIENCE.	
	G. SEVERABLE PROVISIONS.	
	H. GOVERNING LAW AND VENUE.	
	I. EFFECTIVE DATE OF AGREEMENT.	
	J. GOVERNEMENT NOT LIABLE.	
	K. LIQUIDATED DAMAGES.	
	L. ASSIGNMENT.	
	M. ALL OR NONE BID.	
	N. CONTRACT DOCUMENTS.	
	O. DISPUTES.	
	P. CONTRACT ISSUED UNDER THIS BID IS BINDING.	
	Q. BIDDER'S RESPONSIBILITES.	
	R. SCOPE OF AGREEMENT.	
	S. CHANGE ORDERS.	
	T. STOP WORK ORDERS.	
	U. CLAIMS BASED ON ACTS OR OMISSIONS BY GWA.	
	V. PRICE ADJUSTMENT CLAUSE.	

**V. SPECIAL PROVISIONS-----26-27**

1. BID AND PERFORMANCE BOND REQUIREMENTS:
2. PERFORMANCE BOND: SEE SECTION 1 ABOVE.
3. CONTRACT TERMS:
4. FAILURE TO SUBMIT REQUIRED DOCUMENTATION
5. SHIPPING AND COST
6. DELIVERY:

**NON-COLLUSION AFFIDAVIT-----28**

**CERTIFICATION OF NON-EMPLOYMENT OF CONVICTED SEXUAL  
OFFENDERS-----29**

**SPECIAL PROVISION FOR OWNERSHIP DISCLOSURE AFFIDAVIT-----30-31**

**OWNERSHIP & INTEREST DISCLOSURE AFFIDAVIT-----32-33**

**BID AND PERFORMANCE BOND FOR GOODS AND SERVICES-----34-36  
AS REQUIRED UNDER 5 G.C.A. § 5212**

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

**WAGE AND BENEFIT DETERMINATION-----37**

**NON-GRATUITY or KICKBACKS AFFIDAVIT-----38**

**ETHICAL STANDARD AFFIDAVIT-----39**

**GOOD STANDING AFFIDAVIT-----40**

**DRAFT FORMAL CONTRACT -----41-53**

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

**Guam Waterworks Authority  
Invitation for Bid Number: GWA 2024-09  
For Laboratory Services**

**ALL OR NONE BID**

**I. BID ITEM(S)**

**WATER SAMPLES\***

**(A) MONTHLY TEST:**

<u>Item No</u>	<u>Description</u>	<u>QTY</u>	<u>Cost Per Test</u>	<u>Total</u>
1.0	Pesticides EPA 505	1	_____	_____

Total Cost: \_\_\_\_\_

**(B) QUARTERLY TEST:**

<u>Item No</u>	<u>Description</u>	<u>QTY</u>	<u>Cost Per Test</u>	<u>Total</u>
2.0	Organic Chemicals			
	EPA 505	21	_____	_____
	EPA 524	10	_____	_____
2.1	Trihalomethanes	12	_____	_____
	EPA 551.1			
2.2	Haloacetic Acids	12	_____	_____
	EPA 552.2/SM 6251B			
2.3	Total Organic Carbon (TOC)	2	_____	_____
	SM 5310C			
2.4	PFAS	140	_____	_____
	EPA 537.1			
	EPA 533			

Total Cost: \_\_\_\_\_

**(C) ANNUAL TEST:**

<u>Item No</u>	<u>Description</u>	<u>QTY</u>	<u>Cost Per Test</u>	<u>Total</u>
3.0	Organic Chemicals			
	EPA 505	2	_____	_____
	EPA 515.4	1	_____	_____
	EPA 524	6	_____	_____
	EDB/DBCP	1	_____	_____
3.1	Nitrates	240	_____	_____
3.2	Radionuclides			
	Gross Alpha	2	_____	_____
	Radium 226	2	_____	_____
			Total Cost:	_____

**(D) TRIENNIAL TEST:**

<u>Item No</u>	<u>Description</u>	<u>QTY</u>	<u>Cost Per Test</u>	<u>Total</u>
4.0	Inorganic Chemicals Sb, As, Ba, Be, Cd, Cr, Cu, Pb, Hg, Se, Na, Tl, CN, F <sup>-</sup> , NO <sub>3</sub> <sup>-</sup>	124	_____	_____
4.1	Organic Chemical EPA 505, EPA 515.4, EPA 524.2, EPA 525.2, EPA 531.2, EPA 547, EPA 548.1, EPA 549.2, EPA 551.1, EPA 1613B	124	_____	_____
4.2	Radionuclides			
	Gross Alpha	124	_____	_____
	Gross Beta	124	_____	_____
	Radium 226	124	_____	_____
4.3	Lead and Copper	100	_____	_____
			Total Cost:	_____



**WASTEWATER SAMPLES\***

**(A) MONTHLY TEST:**

<b><u>Item No</u></b>	<b><u>Description</u></b>	<b><u>QTY</u></b>	<b><u>Cost Per Test</u></b>	<b><u>Total</u></b>
5.0	Metals (Al)	1	_____	_____
			Total Cost:	_____

**(B) QUARTERLY TEST:**

<b><u>Item No</u></b>	<b><u>Description</u></b>	<b><u>QTY</u></b>	<b><u>Cost Per Test</u></b>	<b><u>Total</u></b>
6.0	Metals			
	(Cu, Zn)	10	_____	_____
	(Ag)	1	_____	_____
	(Al, As, Ni)	3	_____	_____
			Total Cost:	_____

**(C) ANNUAL TEST:**

<b><u>Item No</u></b>	<b><u>Description</u></b>	<b><u>QTY</u></b>	<b><u>Cost Per Test</u></b>	<b><u>Total</u></b>
7.0	Whole Effluent Toxicity ( <i>Strongylocentrotus purpuratus</i> Method 1008.0)	3	_____	_____
7.1	Pesticides (Chlordane, Dieldrin)	1	_____	_____
7.2	Priority Pollutant Scan	3	_____	_____
			Total Cost:	_____

**(D) BIANNUAL TEST:**

<b><u>Item No</u></b>	<b><u>Description</u></b>	<b><u>QTY</u></b>	<b><u>Cost Per Test</u></b>	<b><u>Total</u></b>
8.0	Whole Effluent ( <i>Ceriodaphnia dubia</i> , Method 1002.0, <i>Pimephales promelas</i> , Method 1000.0, <i>Selenastrum capricornutum</i> , Method 1003.0)	1	_____	_____
8.1	Heavy Metals (As, Cd, Cr <sup>3+</sup> , Cr <sup>6+</sup> , Cu, Hg, Pb, Ni, Se, Ag, and Zn)	1	_____	_____

Total Cost: \_\_\_\_\_

**(E) TRIENNIAL TEST:**

<b><u>Item No</u></b>	<b><u>Description</u></b>	<b><u>QTY</u></b>	<b><u>Cost Per Test</u></b>	<b><u>Total</u></b>
9.0	Whole Effluent ( <i>Ceriodaphnia dubia</i> , Method 1002.0, <i>Pimephales promelas</i> , Method 1000.0, <i>Selenastrum capricornutum</i> , Method 1003.0)	1	_____	_____
9.1	Priority Pollutant Scan	1	_____	_____

Total Cost: \_\_\_\_\_

**UCMR 5 SAMPLES\***

<u>Item No</u>	<u>Description</u>	<u>QTY</u>	<u>Cost Per Test</u>	<u>Total</u>
10.0	Assessment Monitoring EPA 533 EPA 537.1 EPA 200.7	83	_____	_____
10.1	UCMR Field Blanks EPA 533 EPA 537.1	83	_____	_____

Total Cost: \_\_\_\_\_

**II. SCOPE OF WORK**

Bidders will analyze samples under the Standardized Monitoring Requirements of the Guam Environmental Protection Agency (“GEPA”) in compliance with the Safe Drinking Water Act and the Guam Primary and Secondary Safe Drinking Water Regulations.

1. Samples to be tested will be obtained from approximately 120 potable water sources by GWA personnel to be analyzed for the parameters listed under the GEPA approved Standardized Monitoring Plan.
  2. Samples obtained by GWA personnel from distribution points in the system as required by the GEPA approved Standardized Monitoring Plan within the required time frames.
- A. Analyze samples under the National Pollutant Discharge Elimination System (NPDES) requirements by NELAC certified GEPA/EPA approved methods in compliance with the Clean Water Act and the Guam Water Quality Standards.
1. Samples to be obtained from **four (4)** wastewater treatment plants and from the Ugum Surface Potable Water Treatment Plant by GWA personnel for the parameters required by each plant's NPDES permit.

- B. Provide sample bottles with preservatives as needed to GWA, appropriate packing containers with ice packs, and the necessary arrangements for transporting samples to laboratory within QA/QC requirements. Sampling bottles to be available to GWA at least ten (10) days before the required sampling scheduled. Include at least ten percent (10 %) additional sampling bottles to allow for breakages and for quality assurance duplicates.
- C. Provide chain-of-custody forms with sampling protocols for GWA personnel to follow, with specific instructions for the obtaining, preserving, storing, and transporting of all samples.
- D. Provide original certified written results of analyses in a form suitable for submission to GEPA and/or USEPA. Analysis results may be submitted electronically to GWA no later than five (5) working days after completion of analysis.
- E. Notify GWA immediately upon failure of samples to be received by the laboratory within the QA/QC required parameters or on determining any sample exceedance of any of a GEPA/USEPA's Maximum Contaminant levels (MCL's) and immediately provide additional sample bottles with preservative to GWA for resampling (including appropriate packing containers, with the necessary arrangements for transporting to the laboratory within QA/QC requirements).
- F. Analyze additional samples, within laboratory's capability, as requested by GWA due to potential regulatory changes or unanticipated special needs. GWA will add or amend funding for these special conditions/testing, as needed.

## **INFORMATION REQUIRED**

### **A. Capability, Prior Experience, and Certification**

GWA is required by the USEPA to have the samples included in this bid tested by a firm who has achieved TNI (NELAC) National Environmental Laboratory Accreditation Program ("NELAP") certification. All labs are subject to the approval of the Guam Environmental Protection Agency. Bidders must provide proof of the firm's capability, prior experience in drinking water and wastewater analyses, and documents pertaining to laboratory certification. Given these requirements, all bidders **must** provide a copy of current TNI (NELAC) National Environmental Laboratory Accreditation Program ("NELAP") certification and **UCMR 5 USEPA Approval Letter** for the testing parameters to be analyzed under this bid. Bidders must also include method detection levels for each parameter certified. Failure to submit the above-mentioned documentation will be grounds for disqualification.

**B. Cost**

All costs submitted in this bid will be fixed for the duration of the contract under this bid. Cost of sampling bottles with preservative, shipping containers with appropriate ice packs, and the cost of shipping the samples to the laboratory and results back to GWA must be included in the bid cost,

**C. Completion Time**

Provide the completion time for analyses from receipt of samples to submission of results. Analyses must be completed within holding time of samples.

**D. Number of Analyses**

Provide the maximum number of samples per week that can be analyzed by the laboratory for compliance under the GEPA approved Standardized Monitoring Requirements and the NPDES Regulations and within the QA/QC requirements for the analyses.

**GWA RESPONSIBILITIES**

1. GWA will provide the personnel to obtain, preserve, store, and transport water samples to selected firm for the required analyses as directed by the analytical laboratory.
2. GWA will provide a sampling schedule for all the analyses required for compliance under the Standardized Monitoring Plan and the NPDES permits for all plants.

**GENERAL RESPONSIBILITIES OF SELECTED LABORATORY(S)**

1. The laboratory will provide the sample bottles with preservative, shipping containers with the necessary ice packs, and specific instructions for the obtaining, preserving, and transportation of the water samples within QA/QC parameters.
2. The laboratory will perform analyses of samples in accordance with methods prescribed by USEPA.
3. The laboratory shall channel all requests, reports, and all other communications concerning this endeavor through the contact persons noted below.
4. The laboratory will provide an analysis schedule to meet GEPA compliance requirements. Transmittal of original results to GWA must be no later than five (5) working days after completion of analysis.

5. The laboratory shall provide Chain-of-Custody forms to GWA for proper transmittal of all samples to meet QA/QC requirements.
6. The laboratory must submit reports in SDWIS electronic deliverable format and submit with their bid an example of the file format of the SDWIS deliverable.

### **III. GENERAL TERMS AND CONDITIONS**

#### **A. AUTHORITY.**

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

#### **B. EXPLANATION TO BIDDERS.**

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

#### **C. QUESTIONS.**

Only written comments or questions regarding this bid will be accepted. No oral representation made by any employee or agent of GWA shall bind GWA. All questions or requests for clarifications must be submitted **no later than five (5) business days prior to the bid opening** schedule. Any questions submitted after that date shall not be responded to except at the discretion of the GWA General Manager.

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

GWA Procurement Office  
Guam Waterworks Authority  
Gloria B. Nelson Public Service Building  
688 Route 15  
Mangilao, GU 96913  
E-mail: [psbids@guamwaterworks.org](mailto:psbids@guamwaterworks.org)  
Fax. No.: (671) 649-3750

Bids are to be submitted at the issuing offices not later than the time and date set for bid opening. Bidders may submit their bid to the Guam Waterworks Procurement Section located on the first floor of the Gloria B. Nelson Public Service Building.

#### **D. METHOD OF AWARD.**

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

#### **Policy in Favor of Disabled Veteran Owned**

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

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

**WOMEN-OWNED BUSINESSES:** P.L. 36.26. 5 Guam Code Annotated §5013.

#### **§5013. Policy In Favor of Women-Owned Businesses.**

- (a.) Notwithstanding any other provision of law, if any entity of the government of Guam or any entity expending governmental funds intends to procure any supply or service which is offered by a business concern that is at least fifty-one percent (51%) owned by women, that entity *shall* procure such supply or service from that business concern, if the supply or service is available within the period required by procuring entity and the price for the supply or service *does not* exceed one hundred five percent (105%) of the lowest bidder, and *shall* be in addition to any other procurement benefit the women-owned business may qualify for under Guam Law. The procuring entity shall determine the lowest price to the entity in the case of more than one (1) women-owned business, or a women-owned business and a service-disabled veteran owned business, who are competing for the same government contract

(b.) Qualifications of a Women-Owned Business. A business concern is qualified under Subsection (a) of the Section if:

- (1) the business concern is licensed to business on Guam;
- (2) the business concern maintains its headquarters on Guam;
- (3) the business concern is at least fifty-one percent (51%) owned by women, who manage day-to-day operations and make long-term decisions;
- (4) the business concern is certified as a Women-Owned Small Business (WOSB) or an Economically Disadvantaged Women-Owned Small Business (EDWOSB) by the U.S. Small Business Administration; and
- (5) the owner(s) of the business concern has (have) filed individual tax returns on Guam for a period of at least three (3) consecutive years

**E. DESCRIPTIVE LITERATURE / (BROCHURES).**

Descriptive literature (s) as specified in this solicitation must be furnish as part of the bid and must be received at the date and time set for opening bids. The literature furnished must clearly identify the item (s) in the bid. The descriptive literature is required to establish, for the purpose of evaluation and award, details of the product (s) the bidder proposes to furnish including design, materials, components, performance characteristics, methods of the manufacturer, construction, assembly or other characteristics which are considered appropriate. Rejection of the bid will be required if the descriptive literature (s) do not show that the product (s) offered confirm (s) to the specifications and other requirement of this solicitation. Failure to furnish the descriptive literature(s) by the time specified in the solicitation will require rejection of the bid.

**F. REJECTION.**

GWA has the right to reject all bids or offers which have been submitted in response to this Bid, at any time, including after delivery if goods are determined to be non-conforming, if GWA determines such to be in the best interest of GWA. All bids and contractual obligations are subject to the availability of funding.

**G. TAXES.**

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

**H. LICENSING.**

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



**I. COVENANT AGAINST CONTINGENT FEES.**

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

**J. JUSTIFICATION OF DELAY.**

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

**K. OWNERSHIP & INTEREST DISCLOSURE AFFIDAVIT.**

As a condition of bidder, any partnership, sole proprietorship or corporation doing business with GWA shall submit an affidavit executed under oath that list the name address of any person who has held more than ten percent (10%) of the outstanding interest or shares in said partnership, sole proprietorship or corporation at any time during the twelve (12) month period immediately preceding submission of a bid. The affidavit shall contain the number of shares or the percentage of all assets of such partnership, sole proprietorship or corporation, which have held by each such person during the twelve (12) month period. In addition, the affidavit shall contain the name and address of any person who has received or is entitled to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the bid for the bidder and shall also contain the amounts of any such commission, gratuity or other compensation. A bid from any firm that has person on the list 10% or more affidavit that is a member of the CCU or a GWA or Guam Power Authority officer that reports directly to the Board will not be evaluated and will be rejected. The affidavit shall be open and available to the public for inspection and copying.

**L. EQUAL EMPLOYMENT OPPORTUNITY.**

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

**M. DETERMINATION OF RESPONSIBILITY OF OFFERORS.**

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

**N. STANDARD FOR DETERMINING WHETHER BIDDER IS QUALIFIED.**

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

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

**O. PRE-BID CONFERENCES.**

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

**P. BIDS.**

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

**Q. COMPETENCY OF BIDDERS.**

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

## **R. REQUEST FOR BID FORMS.**

Each bidder shall be provided with one (1) set of the Bid packet at a cost of \$15.00. If the bidder wishes to download a bid packet on GWA website, the fee will not be charged. All payments shall be by cash, certified check, credit card or money order and shall be made payable to GWA. Prospective bidders are encouraged to notify GWA's Procurement section at 300-6026/6027 to be registered as a prospective bidder. **Failure to register as a bidder could result in not obtaining answers to questions or bid amendments, since GWA will send these types of documents to only those vendors we are aware of. GWA shall not be liable for any reason for the failure of any vendor to register with GWA and provide accurate and complete contact information.**

## **S. BID ENVELOPE.**

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

## **T. FORM OF BID.**

**One (1) original hard copy, two (2) complete hard copies and one (1) electronic copy of the bid must be submitted.** The original bid must be signed in ink by a person authorized to submit bids on behalf of the bidder. All bids shall be submitted entirely in English (including brochures if any). The electronic copy of the bid shall be submitted on a USB Drive but must follow GWA's requirements/guidelines: Product must be made in the USA or TAA compliant country, must be an encrypted USB thumb drive/External drive (like SanDisk, Data Traveler, Defender etc...) Encryption key must be provided upon submittal and USB must be free from viruses. All documents shall be in ".pdf" format. Electronic bids shall constitute an exact replica of the original hard copy of the bid that is being submitted.

Bidders may declare portions of their bid as being confidential. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. However, prices, makes and models or catalogue numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary.

GWA may review the material declared to be confidential to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. If the parties do not agree as to the disclosure of data, GWA shall inform the bidders in writing what portions of the bids will be disclosed. All bids shall be opened to public inspections subject to any continuing prohibition on **the** confidential data.

**U. MODIFICATION / ALTERATION.**

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

**V. MODIFICATION OR WITHDRAWAL OF BIDS.**

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

**W. CONTACT FOR CONTRACT NEGOTIATION.**

All vendors are required to designate a person who GWA may contact for prompt negotiation.

NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**X. AWARD OF CONTRACT AND NEGOTIATION (IF APPLICABLE).**

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

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

**Y. NOTICE OF AWARD.**

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

**Z. CERTIFICATION AGAINST THE EMPLOYMENT OF CONVICTED SEX OFFENDERS.**

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

**AA. TERMINATION OF BID.**

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

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

**BB. LOCAL PROCUREMENT PREFERENCE:**

All procurement of supplies and services where possible, will be made from among businesses licensed to do business on Guam in accordance with section 5008 of the Guam Procurement Act (5GCA, Chapter 5) and Section 1-104 of the Guam Procurement Regulations.

Procurement of supplies and services from off Guam may be made if no business for such supplies or services may be found on Guam or if the total cost F.O.B. job site, unloaded, of procurement from off island is no greater than eighty-five percent (85%) of the total cost F.O.B. job site, unloaded, of the same supplies or services when procured from a business licensed to do business on Guam that maintains an office or other facility on Guam and that is one of the above-designated businesses entitled to preference

**IV. SPECIAL TERMS AND CONDITIONS**

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

**A. GENERAL COMPLIANCE WITH LAWS.**

The Bidder is required to comply with all Federal and territorial laws and ordinances applicable to the work and it is the responsibility of the Bidder to examine all necessary laws, rules, regulations and guidelines to determine its duties thereunder. Bidder shall attach a copy of appropriate business license or an affidavit executed under penalty of perjury that indicates that Bidder is exempt under Guam law (must include legal citations proving exemption).

**B. ACCESS TO RECORDS AND OTHER REVIEW.**

The Bidder, including his subcontractors, if any, shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of the final payment under the contract, for inspection by GWA.

Each subcontract by Bidder pursuant to this agreement shall include a provision containing all of the conditions of this Special Terms and Conditions Section.

**C. OWNERSHIP OF DOCUMENTS.**

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

**D. INDEMNITY.**

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

**E. CHANGES.**

GWA may at any time, by written order make any change in the services to be performed hereunder. If such changes cause a material increase or decrease in the costs of doing the work under this agreement, or in the time required for this performance, an equitable adjustment shall be made and the agreement shall be modified in writing accordingly to the provisions of the Guam Procurement Law and Procurement Rules and Regulations pertaining to price adjustments.

**F. TERMINATION.**

**TERMINATION FOR DEFAULT:**

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

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

(3) Compensation. Payment for completed services delivered and accepted by GWA shall be at the contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by the Bidder and GWA; if the parties fail to agree, GWA shall set an amount subject to the Bidder's rights under Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations. GWA may withhold from amounts due the Bidder such sums as GWA deems to be necessary to protect GWA against loss because of outstanding liens or claims of former lien holders and to reimburse GWA for the excess costs incurred in procuring similar goods and services.

(4) Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of sub-contractor(s) of Bidder, the Bidder shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Bidder to make progress in the prosecution of the work hereunder which endangers such performance) if the Bidder has notified GWA within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the government of Guam and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform or to make progress due to such causes similar to those set forth above, the Bidder shall not be deemed to be in default, unless the services to be furnished by the sub-contractor were reasonably obtainable from other sources in sufficient time to permit the Bidder to meet the contract requirements. Failure of the sub-contractor to perform for reasons other than cited above shall constitute a default of the Bidder unless cured by Bidder with a reasonable time. Upon request of the Bidder, GWA shall ascertain the facts and extent of such failure, and, if GWA determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Bidder's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of GWA and the government of Guam under the laws of Guam.

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

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

## **TERMINATION FOR CONVENIENCE:**

(1) Termination. GWA may, when the interest of GWA so requires, terminate this contract in whole or in part, for the convenience of GWA. GWA shall give written notice of the termination to the Bidder specifying the part of the contract terminated and when termination becomes effective.

(2) Bidder's Obligations. The Bidder shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Bidder will stop work to the extent specified. The Bidder shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Bidder shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. GWA may direct the Bidder to assign the Bidder's right, title, and interest under terminated orders or subcontracts to GWA. The Bidder must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

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

(4) Compensation.

(a) The Bidder shall submit a termination claim specifying the amount due because of the termination for convenience together with cost or pricing data to the extent required by 2 G.A.R. § 3118 (Cost or Pricing Data) of the Guam Procurement Regulations bearing on such claim. If the Bidder fails to file a termination claim within one year from the effective date of termination, GWA may pay the Bidder, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.

(b) GWA and the Bidder may agree to a settlement, provided the Bidder has filed a termination claim supported by cost or pricing data to the extent required by 2 G.A.R. § 3118 (Cost or Pricing Data) of the Guam Procurement Regulations and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by GWA and the contract price of the work not terminated.



(c) Absent complete agreement under Subparagraph (2) of this Paragraph, GWA shall pay the Bidder the following amounts, provided payments agreed to under Subparagraph (2) shall not duplicate payments under this Subparagraph: contract prices for services accepted under the contract; costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted supplies or services; provided, however, that if it appears that the Bidder would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included, and the amount of compensation shall be reduced to reflect the anticipated rate of loss; costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph (b) of this clause; the reasonable settlement costs of the Bidder including accounting, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract for the termination and settlement of subcontracts hereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract. Attorney's fees, if for any reason Bidder files suit against the government, must be paid by the Bidder. The total sum to be paid the Bidder under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the Bidder reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph (b) of this Paragraph, and the contract price of work not terminated.

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

#### **G. SEVERABLE PROVISIONS.**

If any provision of this agreement shall be deemed by a court of competent jurisdiction to be invalid, then such provision shall be deemed stricken from the agreement and the agreement shall be enforced according to its valid and subsisting terms and provisions. The terms of this Contract shall control in the event of any conflict between this Contract and any other document incorporated or referenced herein.

#### **H. GOVERNING LAW AND VENUE.**

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

#### **I. EFFECTIVE DATE OF AGREEMENT.**

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

**J. GOVERNMENT NOT LIABLE.**

1. GWA assumes no liability for any accident or injury that may occur to the Bidder, his or her agents, dependents, or personal property while enroute to or from Guam or during any travel mandated by the terms of this agreement.

2. GWA shall not be liable to Bidder for any work performed by the Bidder prior to the written and signed approval of this Agreement by the General Manager for GWA and the Bidder hereby expressly waives any and all claims for service performed in expectation of this agreement prior to its signature of the General Manager.

**K. ASSIGNMENT.**

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

**L. LIQUIDATED DAMAGES.**

By submitting a bid, the Bidder agrees to commence work on the date to be specified in a written "Notice to Proceed" from GWA and to fully complete the project within the allotted time thereafter. In the event that the Bidder fails to complete the work called for in the bid, fails to provide the goods or services in the allotted time, then Bidder shall pay to GWA ¼ of 1% of the total bid price per day as liquidated damages for the non-performance as specified by the Guam Code Annotated. The liquidated damages herein are not a penalty, but rather a reasonable estimate by GWA of the loss it would suffer as a result of non-performance.

**M. ALL OR NONE BID**

All-or-none bid is an invitation to bid for more than one, or a list of Items or Services for which a partial award would not be made.

All-or none bids will be considered only if bidder quoted prices on all items requested.

**N. CONTRACT DOCUMENTS.**

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

- a. Invitation to Bid
- b. Instructions to Bidders
- c. Bid

- d. Non-Collusion Affidavit
- e. Certification of Non-Employment of Convicted Sexual Offenders
- f. Special Provision for Ownership Disclosure Affidavit
- g. Ownership & Interest Disclosure Affidavit
- h. Bid and Performance Bond for Goods and Services
- i. Wage and Benefit Determination
- j. Non-Gratuity or Kickback Affidavit
- k. Ethical Standards Affidavit
- l. Good Standing Affidavit
- m. Special Provisions
- n. Technical Specifications
- o. Plans (if any)
- p. Addenda/Amendments
- q. Answers to Questions (if GWA determines they are applicable).

**O. DISPUTES.**

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

**P. CONTRACT ISSUED UNDER THIS BID IS BINDING.**

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

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

**Q. BIDDER'S RESPONSIBILITIES.**

The Bidder shall be responsible for the professional and technical accuracy of all work and materials furnished under this contract. The Bidder shall, without additional cost to GWA, correct or revise all errors or deficiencies in his/her work.

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

**R. SCOPE OF AGREEMENT.**

Any Agreement issued under this bid and signed by GWA General Manager (formal contract or Purchase Order) supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to retaining the services of Bidder by GWA and contains all of the covenants and terms between the parties with respect to this project. Each party to this Agreement acknowledges that no representation, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement and addenda will be effective only if it is in writing signed by the party to be charged. For the purposes of this paragraph and of the entire agreement, the signature of the General Manager for the Guam Waterworks Authority (or his designee) is the only signature that will bind GWA.

**S. CHANGE ORDERS.**

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

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

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

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

Within 30 days after receipt of a written change order, unless such period is extended by GWA in writing, the Bidder shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the Bidder's claim, unless GWA is prejudiced by the delay in notification. No claim by the Bidder for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this Contract.

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

**T. STOP WORK ORDERS.**

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

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

**U. CLAIMS BASED ON ACTS OR OMISSIONS BY GWA.**

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

- (a) the Bidder shall have given written notice to GWA:
  - (i) prior to the commencement of the work involved, if at that time the Bidder knows of the occurrence of such action or omission,

(ii) within 30 days after the Bidder knows of the occurrence of such action or omission, if the Bidder did not have such knowledge prior to the commencement of the work; or

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

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

(b) the notice required by Subparagraph (a) of this Paragraph describes as clearly as practicable at the time the reasons why the Bidder believes that additional compensation, damages, or an extension of time may be remedies to which the Bidder is entitled; and

(c) the Bidder maintains and, upon request, makes available to the Procurement Officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

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

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

#### **V. PRICE ADJUSTMENT CLAUSE.**

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

(a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(b) by unit prices specified in the contract or subsequently agreed upon;

(c) by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract or subsequently agreed upon;

(d) in such other manner as the parties may mutually agree; or

(e) in the absence of an agreement between the parties, by a unilateral determination by GWA General Manager of costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by GWA General Manager in accordance with generally accepted accounting principles and applicable sections under Chapter 7 (Cost Principles) of the Guam Procurement Regulations and subject to the provisions under Title 5, Chapter 5 of the Guam Code Annotated (Legal and Contractual Remedies).

For any request for a price adjustment, the contractor shall submit cost or pricing data for any price adjustments subject to the provisions of 2 G.A.R. § 3118 of the Guam Procurement Regulations.

## V. SPECIAL PROVISIONS

### 1. **Bid and Performance Bond Requirements:**

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

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

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

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

2. **Performance Bond:** see Section 1 above.

**3. Contract Terms:**

GWA may enter into a contract on terms acceptable to GWA which shall commence upon vendor’s acknowledged receipt of a Notice to Proceed from GWA. The initial term of the contract shall be for a period of three (3) years. The basis for the multiple year contract is to enhance efficiency, consistency in testing and overall value. The contract thereto is subject to the availability of funds.

GWA reserves the right to have any line items increase or decrease for testing for the duration of the contract.

**4. Failure to Submit Required Documentation.**

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

**5. Shipping and Cost:**

Total cost must include CIF delivery to GWA’s Laboratory Facility located in Upper Tumon, Guam. The bid cost will be broken down as to the Scope of Work. All cost submitted will be fixed for the duration of the sampling and analysis period. Cost of sampling bottles with preservative, shipping containers with appropriate ice packs, and the cost of shipping to the laboratory must be included in the bid cost, per parameter to be analyzed.

Total cost must include CIF and delivery \*(see No. 6 below)

**6. Delivery:**

The vendor will be responsible for all cost and all risks associated with the provision of these goods until delivery is made and the items are formally accepted by GWA. All goods shall be delivered to Guam Waterworks Authority at GWA’s Laboratory Facility Upper Tumon, Guam.

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

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

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**NON-COLLUSION AFFIDAVIT**

Guam )  
 )ss:  
Tamuning )

I, \_\_\_\_\_ first being duly sworn, depose and say:  
(Name of Declarant)

1. That I am the \_\_\_\_\_ of \_\_\_\_\_.  
(Title) (Name of Company or Person Bidding/RFP)

2. That in making the foregoing proposal or bid, that such proposal or bid is genuine and not collusive or sham, that said bidder/offeror has not colluded, conspired, connived or agreed, directly or indirectly, with any bidder or person, to put in a sham or to refrain from bidding or submitting a proposal and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the bid price of affiant or any other bidder, or to secure any overhead, project or cost element of said bid price, or of that of any bidder, or to secure any advantage against the GUAM WATERWORKS AUTHORITY or any person interested in the proposed contract; and

3. That all statements in said proposal or bid are true.

4. This affidavit is made in compliance with 2 G.A.R. § 3126(b).

So sayeth \_\_\_\_\_  
(Declarant)

Signed on this \_\_\_\_ day of \_\_\_\_\_ 201\_\_\_\_, before me a Notary Public in and for Guam, personally appeared \_\_\_\_\_, known to me to be the authorized representative of \_\_\_\_\_, whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed on behalf of \_\_\_\_\_, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the date last above written.

) Seal (

Notary Public

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

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

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I, \_\_\_\_\_ being a duly authorized representative acknowledge the  
(print name)  
directive as describe above and ensure the Bid Proposal as submitted addresses the directive.

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

**SPECIAL PROVISION  
FOR  
OWNERSHIP DISCLOSURE AFFIDAVIT**

All Bidders/Offerors are required to submit a current affidavit as required below. Failure to do so will mean disqualification and rejection of the Bid/RFP.

**5 GCA §5233 (Title 5, Section 5233) states:  
Disclosure of Ownership, Financial, and Conflicts of Interest**

- (a) Purpose. The disclosure required by this Section are intended to reveal information bearing on the responsibility of a bidder, and can be obtained by an inquiry regarding responsibility prior to award.
  
- (b) Definitions.  
As used herein, the term “person” shall be interpreted liberally to include the definition found in 1 GCA § 715, and in § 5030(n) of this Chapter, and includes a natural person as well as every entity of whatever form or composition (an “artificial person”) recognized under the laws of Guam other than a natural person, who is a prospective contractor under a bid, offer, proposal, or other response to a solicitation, or is a contractor under a contract with the government of Guam, and subject to the provisions of this Chapter.
  
- (c) Public Disclosure of Ownership.
  - (1) The ownership interests to be disclosed under this Section include the interests of a natural or artificial person who owns all or any part of a prospective contractor, bidder, or offeror, whether as proprietor, a partner, limited or otherwise, a shareholder of any class, in which case the percentage ownership interest test shall be based on each class, a member of an association or company, limited or otherwise, and any person owning a beneficial legal interest in any trust, and any other person having the power to control the performance of the contract or the prospective contractor.
  - (2) Prior to award, every person who is a prospective contractor, bidder, or offeror of a contract to be acquired under any method of source selection authorized by this Chapter shall submit a Disclosure Statement, executed as an affidavit under oath, disclosing the name of each person who currently or has owned an ownership interest in the prospective contractor, bidder, or offeror greater than ten percent (10%) at any time during the twelve (12) month period immediately preceding the date of the solicitation (the “relevant disclosure period”). If a prospective contractor, bidder, or offeror is an artificial person, the Disclosure Statement shall disclose the name of each person who has owned an ownership interest in such artificial person (a “second tier owner”) greater than twenty-five percent (25%) at any time during the relevant disclosure period. If any such second tier owner is also an artificial person, the Disclosure Statement shall disclose the name of each person who has owned an ownership interest in such second tier owner (a “third tier owner”) of forty-nine percent (49%) or more during the relevant disclosure period. If the name of no natural person has been identified as an owner, or a second or third tier owner of the prospective contractor, bidder, or offeror, the Disclosure Statement shall identify the name, position, address, and contact information of the natural person having the

authority and responsibility for the performance of the prospective contract, and the name of any natural person who has the authority and power to remove and replace the designated responsible person or otherwise control the performance of the prospective contract.

- (d) Disclosure of Financial Interest. A prospective contractor shall execute an affidavit disclosing the name of any person who has received or is entitled to receive a commission, gratuity, contingent fee or other compensation to solicit, secure, or assist in obtaining business related to the solicitation by means of a Disclosure Statement, executed as an affidavit under oath, disclosing such interest and shall also contain the amounts of any such commission, gratuity, contingent fee or other compensation.
- (e) Disclosure of Conflict of Interest. A prospective contractor shall disclose the name of any person who directly or indirectly participates in any solicitation if such person is also an employee of the government of Guam, or of the government of the United States if federal funds are used in payment of the contract.
- (f) Every disclosure of an ownership or financial interest of any person required to be identified by this Section shall name the person required to be disclosed and the street address of their principal place of business. All information disclosed or meant to be disclosed under this Section is public procurement data and shall be kept as part of the public record of each procurement.
- (g) Continuing Duty of Disclosure. Notwithstanding any other provision of this Chapter, the duty to disclose the information required under this Section shall be, upon award a continuing duty of a contractor of every contract subject to this Chapter, and all such information shall become part of the procurement record required by § 5249 of this Chapter. Throughout the term of a contract subject to the terms of this Chapter, the contractor shall promptly make any disclosures not made previously and update changes in the identities or other required information, interests, or conflicts of the persons required to be disclosed herein. Failure to comply with this Section shall constitute a material breach of contract.”

**Section 2. Severability.** If any provision of this Act or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity shall not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

- 1. If the affidavit is a copy, indicate the BID/RFP number and where it is filed.**
- 2. Affidavits must be signed within 60 days of the date the bids or proposals are due.**

**OWNERSHIP & INTEREST DISCLOSURE AFFIDAVIT**

TERRITORY OF GUAM)

)

HAGATNA, GUAM )

I, undersigned, \_\_\_\_\_, being first duly sworn, deposes and says: (partner or officer of the company, etc.)

1. That the name of each person who owns or has owned an ownership interest in the prospective contractor, bidder, or offeror greater than ten (10%) at any time during the twelve (12) month period immediately preceding the date of this solicitation are as follows:

<u>Name</u>	<u>Street Address (Principal Place of Business)</u>	<u>Percentage of Shares Held</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
Total percentage of shares:		_____

2. That for any owners listed Section 1 who are artificial persons, the name of each person who owns or has owned an interest in such artificial person (a “second-tier owner”) greater than twenty-five percent (25%) at any time during the relevant disclosure period are as follows:

<u>Name</u>	<u>Street Address (Principal Place of Business)</u>	<u>Percentage of Shares Held</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
Total percentage of shares:		_____

3. That for any owners listed Section 2 who are artificial persons, the name of each person who has owned an ownership interest in such second-tier owner (a “third-tier owner”) of forty-nine percent (49%) or more during the relevant disclosure period are as follows:

<u>Name</u>	<u>Street Address (Principal Place of Business)</u>	<u>Percentage of Shares Held</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
Total percentage of shares:		_____

4. That if no natural person has been identified as an owner in Section 1-3 above, the natural person having the authority and responsibility for the performance of the prospective contract:

<u>Name &amp; Position</u>	<u>Street Address (Principal Place of Business)</u>	<u>Contact Information</u>
_____	_____	_____
_____	_____	_____

The natural person having the authority and power to remove and replace the designated responsible person or otherwise control the performance of the prospective contract:

<u>Name &amp; Position</u>	<u>Street Address (Principal Place of Business)</u>	<u>Contact Information</u>
_____	_____	_____
_____	_____	_____

5. Persons who have received or are entitled a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the Bid/RFP for which this Affidavit is submitted are as follows:

<u>Name</u>	<u>Address</u>	<u>Amount of Commission, Gratuity, or other Compensation</u>
_____	_____	_____
_____	_____	_____

6. Persons who directly or indirectly participated in this solicitation, if government of Guam employees (or government of the United States employees, if federal funds are used in payment of the contract):

<u>Name &amp; Position</u>	<u>Street Address (Principal Place of Business)</u>	<u>Contact Information</u>
_____	_____	_____
_____	_____	_____

Further, affiant sayeth naught.

Date: \_\_\_\_\_

\_\_\_\_\_  
 Signature of individual if bidder/offeror is a sole Proprietorship; Partner, if the bidder/offeror is a Partnership Officer, if the bidder/offeror is a corporation.

Subscribe and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Notary Public \_\_\_\_\_

In and for the Territory of Guam

My Commission expires \_\_\_\_\_.

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

KNOW ALL MEN BY THESE PRESENTS, that

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

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(Name of Surety)  
as duly admitted insurer under the laws of the Territory of Guam, as Surety, hereafter called the Surety, are held and firmly bound unto the Guam Waterworks Authority for the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), for payment of which sum will and truly to be made, the said Principal and the said Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally firmly by these presents:

WHEREAS, the Principal has submitted a bid for and is anticipated to enter into a contract in the amount specified below,

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

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

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

B. Whenever the contractor shall be and is declared in default by the Authority to be in default under the Contract, the Authority having performed its obligations hereunder, the Surety may promptly remedy the default or shall promptly:

1. Complete the Contract in accordance with its terms and conditions; or

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

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

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

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

1. Unless claimant, other than one having a direct contract with the contractor, shall have given written notice to any two (2) of the following entities named below:

(a) the Contractor; (b) the Guam Waterworks Authority, or (c) the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be personally served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Contractor at any place the principal maintains an office or conducts its business.



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

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

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

SIGNED AND SEALED THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ , A.D.

IN THE PRESENCE OF:

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

\_\_\_\_\_  
(WITNESS)

\_\_\_\_\_  
(CONTRACTOR ) (SEAL)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(MAJOR OFFICER OF SURETY)

\_\_\_\_\_  
(MAJOR OFFICER OF SURETY)

\_\_\_\_\_  
TITLE)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(RESIDENT GENERAL AGENT)

**WAGE AND BENEFIT DETERMINATION**

Bid or RFP No.: \_\_\_\_\_ Name of Offeror: \_\_\_\_\_

I, \_\_\_\_\_ hereby certify under penalty of perjury as follows:

(1) That I am \_\_\_\_\_ [*please select one: the offeror, a partner of the offeror, an officer of the offeror*] making the bid or proposal in the foregoing identified procurement;

(2) That I have read and understand the provisions of 5 GCA 5801 and 5802 below and that I will ensure that I and my subcontractors will comply with said provisions which read as follows:

**§5801. Wage Determination Established.**

In such cases where the government of Guam enters into contractual arrangements with a sole proprietorship, a partnership or a corporation ("contractor") for the provision of a service to the government of Guam, and in such cases where the contractor employs a person(s) whose purpose, in whole or in part, is the direct delivery of service contracted by the government of Guam, then the contractor shall pay such employee(s) in accordance with the Wage Determination for Guam and the Northern Mariana Islands issued and promulgated by the U.S. Department of Labor for such labor as is employed in the direct delivery of contract deliverables to the government of Guam.

The Wage Determination most recently issued by the U.S. Department of Labor at the time a contract is awarded to a contractor by the government of Guam shall be used to determine wages, which shall be paid to employees pursuant to this Article. Should any contract contain a renewal clause, then at the time of renewal adjustments, there shall be made stipulations contained in that contract for applying the Wage Determination, as required by this Article, so that the Wage Determination promulgated by the U.S. Department of Labor on a date most recent to the renewal date shall apply.

**§ 5802. Benefits**

In addition to the Wage Determination detailed in this Article, any contract to which this Article applies shall also contain provisions mandating health and similar benefits for employees covered by this Article, such benefits having a minimum value as detailed in the Wage Determination issued and promulgated by the U.S. Department of Labor, and shall contain provisions guaranteeing a minimum of ten (10) paid holidays per annum per employee.

(3) That the offeror and its subcontractors are now, or will be prior to beginning performance and throughout the contract term, in full compliance with 5 GCA 5801 and 5802.

(4) That I have attached the most recent wage and benefit determinations applicable to Guam issued by the U.S. Department of Labor and that I will ensure all of my employees and the employees of my subcontractors will be provided a minimum of ten (10) paid holidays per annum.

\_\_\_\_\_  
Signature

**NON-GRATUITY or KICKBACKS AFFIDAVIT**

Guam )  
 )ss:  
Tamuning )

I, \_\_\_\_\_ first being duly sworn, depose and say:  
(Name of Declarant)

1. That I am the \_\_\_\_\_ of \_\_\_\_\_.  
(Title) (Name of Company or Person Bidding/Offeror)

2. To the best of my knowledge, neither I, nor any of Offeror’s officers, representatives, agents, subcontractors or employees have violated or are violating the prohibition against gratuities and kickbacks set forth in 2 GAR Division 4 § 11107. Further, I promise, on behalf of Offeror, not to violate the prohibition against gratuities and kickbacks as set forth in 2 GAR Division 4 § 11107.

3. To the best of my knowledge, neither I, nor any of Offeror’s officers, representatives, agents, subcontractors or employees have offered, given or agreed to give, any GWA employee and/or former GWA employee any payment, gift, kickback, gratuity or offer of employment in connection with Offeror’s proposal.

4. I make these statements on behalf of myself as a representative of Offeror, and on behalf of the Offeror’s officers, representatives, agents, subcontractors, and employees.

So sayeth \_\_\_\_\_  
(Declarant)

Signed on this \_\_\_\_ day of \_\_\_\_\_ 202\_, before me a Notary Public in and for Guam, personally appeared \_\_\_\_\_, known to me to be the authorized representative of \_\_\_\_\_, whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed on behalf of \_\_\_\_\_, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the date last above written.

) Seal (

Notary Public

**ETHICAL STANDARD AFFIDAVIT**

Guam )  
 )ss:  
Tamuning )

I, \_\_\_\_\_ first being duly sworn, depose and say:  
(Name of Declarant)

1. That I am the \_\_\_\_\_ of \_\_\_\_\_.  
(Title) (Name of Company or Person Bidding/Offeror)

2. To the best of my knowledge, neither I nor any officers, representatives, agents, subcontractors or employees of Offeror have knowingly influenced any GWA employee to breach any of the ethical standards set forth in 5 GCA Chapter 5, Article 11. Further, I promise that neither I, nor any officer, representative, agent, subcontractor, or employee of Offeror will knowingly influence any GWA employee to breach any ethical standards set forth in 5 GCA Chapter 5, Article 11.

3. All statements in this affidavit and in the bid are true to the best of the knowledge of the undersigned. This statement is made pursuant to 2 GAR Division 4 § 3126.

4. I make these statements on behalf of myself as a representative of Offeror, and on behalf of the Offeror’s officers, representatives, agents, subcontractors, and employees.

So sayeth \_\_\_\_\_  
(Declarant)

Signed on this \_\_\_\_ day of \_\_\_\_\_ 202\_, before me a Notary Public in and for Guam, personally appeared \_\_\_\_\_, known to me to be the authorized representative of \_\_\_\_\_, whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed on behalf of \_\_\_\_\_, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the date last above written.

) Seal (

Notary Public

**GOOD STANDING AFFIDAVIT**

Guam )  
 )ss:  
Tamuning )

I, \_\_\_\_\_ first being duly sworn, depose and say:  
(Name of Declarant)

1. That I am the \_\_\_\_\_ of \_\_\_\_\_.  
(Title) (Name of Company or Person Bidding/Offeror)

2. That I represent and warrant that Offeror is duly registered and in good standing under the laws of Guam or will be duly registered and in good standing under the laws of Guam at the time award is made under IFB \_\_\_\_\_ [insert IFB Number].

3. I make these statements on behalf of myself as a representative of Offeror, and on behalf of the Offeror’s officers, representatives, agents, subcontractors, and employees.

So sayeth \_\_\_\_\_  
(Declarant)

Signed on this \_\_\_\_ day of \_\_\_\_\_ 202\_, before me a Notary Public in and for Guam, personally appeared \_\_\_\_\_, known to me to be the authorized representative of \_\_\_\_\_, whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed on behalf of \_\_\_\_\_, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the date last above written.

) Seal (

Notary Public

**DRAFT FORMAL CONTRACT**

**Bidders are notified they will be subject to these terms and conditions and as a condition of the submitting a bid, agree to the terms contained herein**

**THIS AGREEMENT AND FORMAL CONTRACT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023 by and between the **GUAM WATERWORKS AUTHORITY** (“GWA”), whose business address is 688 Route 15, Mangilao, Guam, 96913, and \_\_\_\_\_ (“Bidder”), whose mailing address is \_\_\_\_\_ licensed to conduct business on Guam and having Guam business license Nos. \_\_\_\_\_.

**WITNESSETH,** that whereas, GWA intends to purchase \_\_\_\_\_ for the purpose of \_\_\_\_\_ as identified in GWA Bid No. \_\_\_\_\_.

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

**SECTION 1. THE BIDDER AGREES:**

To provide all of the goods and services specified in GWA IFB No. \_\_\_\_\_ at the prices specified in the bid. Bidder agrees to maintain all time all licenses, labor, insurance, material, equipment, tools and services necessary to perform and comply with this Contract and the Contract Documents as defined in Section 3 herein. Bidder also understands that it is responsible for all taxes and fees which may be due relative to payment or performance hereunder (including but not limited to, all employee, corporate and gross receipt taxes). GWA reserves the right to amend this Agreement or request a change order, but the right is subject to the mutual agreement of both parties and all amendments or change orders shall be in writing signed by both parties.

- (a) **CONTRACT TIME:** The Bidder agrees to commence work under this contract upon written notice to proceed and to provide the services as specified in the Bid Documents in the time, place and manner provided in the Bid Documents (as amended). Bidder agrees by placing their signature hereto that they have been placed on notice that the provision of the goods and services hereunder is necessary to protect the public health and that time is always of the essence.
- (b) **SUB-BIDDERS:** The Bidder agrees to bind every sub-Bidder to the terms of the Contract Documents. Bidder further agrees that no sub-Bidder Bidder may be allowed to perform in any fashion whatsoever under this contract until such time as the express written approval of GWA is obtained. The Contract Documents shall not be construed as creating any contractual relation between a sub-Bidder and the Guam Waterworks Authority.

**SECTION 2. GWA AGREES:**

To pay, and the Bidder agrees to accept in full payment for the performance of this Contract, the amount of \_\_\_\_\_. (add other explanation if necessary). GWA agrees to pay approved invoices on a net 30 day basis. In the event GWA does not pay an invoice approved by GWA within sixty (60) days, GWA agrees to pay Bidder six (6) percent interest on such overdue payments.

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

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

For any request for a price adjustment, the Bidder shall submit cost or pricing data for any price adjustments subject to the provisions of 2 G.A.R. § 3118 of the Guam Procurement Regulations. Please note, fixed price bids of one year or less shall not be modified by GWA except in extreme circumstances (e.g., factory has burned down, massive increases in shipping costs, etc.)

**SECTION 3. CONTRACT DOCUMENTS:**

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

- a. Invitation to Bid
- b. Instructions to Bidders
- c. Bid
- d. Non-Collusion Affidavit
- e. Certification of Non-Employment of Convicted Sexual Offenders

- f. Special Provision for Ownership Disclosure Affidavit
- g. Ownership & Interest Disclosure Affidavit
- h. Bid and Performance Bond for Goods and Services
- i. Wage and Benefit Determination
- j. Non-Gratuity or Kickback Affidavit
- k. Ethical Standards Affidavit
- l. Good Standing Affidavit
- m. Special Provisions
- n. Technical Specifications
- o. Plans (if any)
- p. Addenda/Amendments
- q. Answers to Questions (if GWA determines they are applicable).

**SECTION 4. LIQUIDATED DAMAGES:**

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

**SECTION 5. COVENANT AGAINST CONTINGENT FEES:**

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

**SECTION 6. OTHER CONTRACTS:**

GWA may award other contracts for additional work, and the Bidder shall fully cooperate with such other Bidders and carefully fit his own work to that provided under other contracts as may be directed by the Contracting Officer. The Bidder shall not commit or permit any act which will interfere with the performance of work by any other Bidder.

**SECTION 7. DISPUTES:**

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



**SECTION 8. DIFFERING SITE CONDITIONS.**

The Bidder accepts the conditions at the work site as they eventually may be found to exist and warrants and represents that the contract can and will be performed under such conditions, and that all materials, equipment, labor and other facilities required because of any unforeseen conditions (physical or otherwise) shall be wholly at the Bidder's own cost and expense, anything in this contract to the contrary notwithstanding.

**SECTION 9. CONTRACT BINDING:**

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

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

**SECTION 10. GWA NOT LIABLE:**

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

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

**SECTION 11. NOTICES:**

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

To: **GUAM WATERWORKS AUTHORITY**  
Miguel C. Bordallo, P.E.  
GWA General Manager  
688 Route 15,  
Mangilao, Guam, 96913

To: **BIDDER**

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**SECTION 12. TERMINATION:**

**Section 12.1 – Termination For Default:**

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

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

(3) Compensation. Payment for completed services delivered and accepted by the government and GWA shall be at the contract price. GWA may withhold from amounts due the Bidder such sums as the GWA deems to be necessary to protect GWA against loss because of outstanding liens or claims of former lien holders and to reimburse the GWA for the excess costs incurred in procuring similar goods and services (including the provision of these goods and services by GWA personnel). In addition, in the event of a breach on the part of the Bidder, GWA shall be due liquidated damages in the amount of \$4,500 per day to compensate GWA for the costs incurred by attributable to Bidder’s delay, breach or non-performance.

(4) Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of sub-Bidder(s) of Bidder, the Bidder shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Bidder to make progress in the prosecution of the work hereunder which endangers such performance) if the Bidder has notified the GWA within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform or to make progress due to such causes similar to those set forth above, the Bidder shall not be deemed to be in default, unless the services to be furnished by the Bidder (or sub-Bidder) were reasonably obtainable from other sources in sufficient time to permit the Bidder to meet the contract requirements. Failure of the Bidder (or sub-Bidder) to perform for reasons other than cited above shall constitute a default of the Bidder unless cured by Bidder with a reasonable time. Upon request of the Bidder, GWA shall ascertain the facts and extent of such failure, and, if GWA determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Bidder's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the GWA and the government of Guam under the laws of Guam.

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

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

### **Section 12.2 – Termination For Convenience:**

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

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

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

(4) Compensation.

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

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

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

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

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

**SECTION 13. SEVERABLE PROVISIONS:**

If any provision of this agreement shall be deemed by a court of competent jurisdiction to be invalid, then such provision shall be deemed stricken from the agreement and the agreement shall be enforced according to its valid and subsisting terms and provisions. The terms of this Contract shall control in the event of any conflict between this Contract and any other document incorporated or referenced herein.

**SECTION 14. GOVERNING LAW AND VENUE:**

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

**SECTION 15. OWNERSHIP OF DOCUMENTS:**

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

**SECTION 16. INDEMNITY:**

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

**SECTION 17. GENERAL COMPLIANCE WITH LAWS:**

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

**SECTION 18. ACCESS TO RECORDS AND OTHER REVIEW:**

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

**SECTION 19. SCOPE OF AGREEMENT.**

This Agreement supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to retaining the services of Bidder by the GWA and contains all of the covenants and terms between the parties with respect to such this project. Each party to this Agreement acknowledges that no representation, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement and addenda will be effective only if it is in writing signed by the party to be charged. For the purposes of this paragraph and of the entire agreement, the signature of the General Manager for the Guam Waterworks Authority (or his designee) is the only signature that will bind the GWA.

**SECTION 20. RESPONSIBILITY OF BIDDER.**

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

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

**SECTION 21. CHANGE ORDERS.**

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

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

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

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

Within 30 days after receipt of a written change order, unless such period is extended by GWA in writing, the Bidder shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the Bidder's claim unless GWA is prejudiced by the delay in notification. No claim by the Bidder for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this Contract.

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

## **SECTION 22. STOP WORK ORDERS.**

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

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

**SECTION 23. CLAIMS BASED ON ACTS OR OMISSIONS BY GWA.**

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

(a) the Bidder shall have given written notice to GWA:

- (i) prior to the commencement of the work involved, if at that time the Bidder knows of the occurrence of such action or omission;
- (ii) within 30 days after the Bidder knows of the occurrence of such action or omission, if the Bidder did not have such knowledge prior to the commencement of the work; or
- (iii) within such further time as may be allowed by the Procurement Officer in writing.

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

(b) the notice required by Subparagraph (a) of this Paragraph describes as clearly as practicable at the time the reasons why the Bidder believes that additional compensation, damages, or an extension of time may be remedies to which the Bidder is entitled; and

(c) the Bidder maintains and, upon request, makes available to the Procurement Officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

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



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

**SECTION 24. EFFECTIVE DATE OF THIS CONTRACT.**

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

**IN WITNESS WHEREOF** the parties hereto have executed this contract as of the day and year first written.

**GUAM WATERWORKS AUTHORITY:**

**BIDDER:**

\_\_\_\_\_  
Miguel C. Bordallo  
GWA General Manager

\_\_\_\_\_  
Bidder's Authorized Representative

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Certified Funds Available:

Approved as to Form:

\_\_\_\_\_  
Certifying Officer  
Guam Waterworks Authority

\_\_\_\_\_  
Kelly O. Clark  
General Counsel, GWA

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Guam Business License or Certificate of Authorization No.: \_\_\_\_\_:

Contract No.: \_\_\_\_\_

Vendor No.: \_\_\_\_\_

Contract Amount: \_\_\_\_\_

Certifying Officer: \_\_\_\_\_

Amount Certified: \_\_\_\_\_

Date: \_\_\_\_\_

Source of funding: \_\_\_\_\_

**CORPORATE OR PARTNERSHIP CERTIFICATION  
AS TO AUTHORIZATION TO BIND**

I, \_\_\_\_\_ certify that I am the Secretary of the corporation or managing partner named as Bidder herein; that \_\_\_\_\_ who signed this contract on behalf of the Bidder, was then \_\_\_\_\_ of said corporation/partnership by authority of said corporation of its governing body, and is within the scope of its corporate/partnership powers to bind said corporation/partnership to the terms and conditions of this Contract.

Signed: \_\_\_\_\_  
Corporate Secretary

Date: \_\_\_\_\_

(CORPORATE/PARTNERSHIP SEAL)

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