



JOSEPH T. DUENAS
Chairman

JOHN M. BENAVENTE, P.E.
General Manager

Telephone Nos. (671) 648-3054/55 or Facsimile (671) 648-3165

Accountability	Impartiality	Competence	Openness	Value
INVITATION FOR BID (IFB) NO.: GPA-054-20				
DESCRIPTION: Automotive Ultra-Low Sulfur Diesel Fuel Oil No. 2 (ULSD) and Automotive Regular Unleaded Gasoline for the GPA Transportation Fleet				

SPECIAL REMINDERS TO PROSPECTIVE BIDDERS

Bidders are reminded to read the Sealed Bid Solicitation and Instructions, and General Terms and Conditions attached to the IFB to ascertain that all of the following requirements checked below are submitted in the bid envelope, two (2) copies of the executed Contract (signed by bidder’s authorized representative) and (5) copies of responsive materials, information pertaining to bidder financial responsibility, company profile, history of past GovGuam supply contracts, and others relevant to this bid, at the date and time for bid opening.

- (XX) BID GUARANTEE (15%) May be in the form of; Reference #11 on the General Terms and Conditions
 - a. Cashier’s Check or Certified Check (NOTE: Cashier’s Check or Certified Check Refunds will be ONLY be made out to the name of the Bidder.)
 - b. Letter of Credit or
 - c. Surety Bond – Valid only if accompanied by:
 - 1. Current Certificate of Authority issued by the Insurance Commissioner;
 - 2. Power of Attorney issued by the Surety to the Resident General Agent;
 - 3. Power of Attorney issued by two (2) major officers of the Surety to whomever is signing on their behalf.

- (XX) STATEMENT OF QUALIFICATION;
- () SAMPLES;
- () BROCHURES/DESCRIPTIVE LITERATURE; (Shall provide detailed literature on items offered)
- (XX) AFFIDAVIT OF DISCLOSURE OF MAJOR SHAREHOLDERS;
- (XX) NON-COLLUSION AFFIDAVIT;
- (XX) NO GRATUITIES OR KICKBACKS AFFIDAVIT;
- (XX) ETHICAL STANDARDS AFFIDAVIT;
- (XX) WAGE DETERMINATION AFFIDAVIT;
- (XX) RESTRICTIONS AGAINST SEX OFFENDERS AFFIDAVIT;

Note: The above Affidavits must comply with the following requirements:

- a. The affidavit must be signed within 60 days of the date the bid is due;
- b. Date of signature of the person authorized to sign the bid and the notary date must be the same.
- c. First time affidavit must be an original – If copy, indicate Bid Number/Agency where original can be obtained.

(XX) OTHER REQUIREMENTS:
A Guam Business License and/or Contractor’s License with proof of Employer Identification Number (EIN) is not required in order to provide a proposal for this engagement, but is a pre-condition for entering into a contract with the Authority. Bidders MUST comply with PL 26-111 dated June 18, 2002, PL 28-165 dated January 04, 2007 and Wage Determination under the Service Contract Act (www.wdol.gov). Additionally, upon award the successful bidder must provide to GPA the most recently issued Wage Determination by the US Dept. of Labor.

The reminder must be signed and returned in the bid envelope together with the bid. Failure to comply with the above requirements will mean a disqualification and rejection of the bid.

On this _____ day of _____, 2020, I, _____, authorized representative of _____, acknowledge receipt of this special reminder to prospective bidders with the above referenced IFB.

Bidder Representative’s Signature

INVITATION FOR BID

ISSUING OFFICE:
Guam Power Authority
1st. Floor, Room 101
Procurement Management Materials Supply
Gloria B. Nelson Public Service Building
688 Route 15, Mangilao, Guam 96913

6/24/2020

FOR **JOHN M. BENAVENTE, P.E.** DATE
for General Manager

DATE ISSUED: 06/25/2020
07/02/2020 BID INVITATION NO.: GPA-054-20

BID FOR: Automotive Ultra-Low Sulfur Diesel Fuel Oil No. 2 (ULSD) and Automotive Regular Unleaded Gasoline for the GPA Transportation Fleet

SPECIFICATION: See Attached

DESTINATION: See Attached

REQUIRED DELIVERY DATE: November 01, 2020

INSTRUCTIONS TO BIDDERS:

INDICATE WHETHER: INDIVIDUAL PARTNERSHIP CORPORATION

INCORPORATED IN: _____

This bid shall be submitted in duplicate and sealed to the issuing office above no later than (Time) 2:00 P.M., Date: July 15, 2020 and shall be publicly opened. Bid submitted after the time and date specified above shall be rejected. See attached General Terms and Conditions and Sealed Bid Solicitation for details.

The undersigned offers and agrees to furnish within the time specified, the articles and services at the price stated opposite the respective items listed on the schedule provided, unless otherwise specified by the bidder. In consideration to the expense of the Government in opening, tabulating, and evaluating this and other bids, and other considerations, the undersigned agrees that this bid remain firm and irrevocable within one hundred twenty (120) calendar days from the date opening to supply any or all of the items which prices are quoted.

NAME AND ADDRESS OF BIDDER:

SIGNATURE AND TITLE OF PERSON
AUTHORIZED TO SIGN THIS BID:

AWARD: CONTRACT NO.: _____ AMOUNT: _____ DATE: _____

ITEM NO(S). AWARDED: _____

CONTRACTING OFFICER:

JOHN M. BENAVENTE, P.E. DATE
General Manager

NAME AND ADDRESS OF CONTRACTOR:

SIGNATURE AND TITLE OF PERSON



INVITATION FOR BID NO. GPA-054-20

FOR THE SUPPLY OF

AUTOMOTIVE ULTRA-LOW SULFUR DIESEL FUEL OIL NO.2 (ULSD)

AND

REGULAR UNLEADED AUTOMOTIVE GASOLINE

FOR

TRANSPORTATION FLEET AND HEAVY EQUIPMENTS

JIMMY D. PANGELINAN

Transportation Manager

MELINDA R. MAFNAS, P.E.

Assistant General Manager—Operations

FOR **JOHN M. BENAVENTE, P.E.**

General Manager



GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUÅHAN
P.O.BOX 2977 • HAGÁTÑA, GUAM U.S.A. 96932-2977

June 25, 2020

Dear Interested Bidder:

Attached herewith please find the Invitation for Bid by the Guam Power Authority (GPA), IFB-GPA-054-20 relative to the supply of Automotive Ultra-Low Sulfur Diesel Fuel Oil No. 2 (ULSD) and Automotive Regular Unleaded Gasoline, (or "Fleet Fuels") for the GPA Transportation Fleet. The Fuels supply contract shall be for a three (3) year term, to commence on November 01, 2020 and shall continue until the midnight of October 31, 2023, and with GPA's option to extend the contract for two (2) additional years renewable annually.

The IFB is divided into two (2) parts:

- PART A : The Solicitation (Instructions to Bidders)
- PART B : Formal Contract and Bid Offer

These documents must be filled out completely by the bidder and must be submitted to GPA in response to this IFB. In addition to these documents, the bidder is required to submit as part of his bid, information pertaining to responsibility and other requirements specified in the solicitation. Failure to do so shall be grounds to declare a bid non-responsive.

All interested bidders are advised to read the instructions carefully and tender their offers in conformance to the material aspects of the Invitation.

Sincerely,

A handwritten signature in black ink, appearing to read "John M. Benavente".

FOR JOHN M. BENAVENTE, P.E.
GENERAL MANAGER

A small handwritten signature in blue ink, appearing to read "John".

ATTACHMENTS:

PART A. SOLICITATION.

Section I. **BACKGROUND AND SUMMARY OF SOLICITATION.**

Section II. **INSTRUCTIONS, PROCEDURES AND REQUIREMENTS**

Section III. **APPENDIX "A" - PERFORMANCE BOND**

PART B. BID SUBMITTAL DOCUMENTS

Article I. **GPA FLEET FUELS SUPPLY CONTRACT (DIESEL FUEL OIL No. 2 AN AUTOMOTIVE GASOLINE, REGULAR UNLEADED)**

Preamble

Section 1

- Section 1.01 Fleet Fuels to be Supplied
- Section 1.02 Term
- Section 1.03 Contract Price
- Section 1.04 Fleet Fuels Refilling Stations
- Section 1.05 Terms of Payment
- Section 1.06 Warranty and Claims

Section 2

- Section 2.01 Product and Quality
- Section 2.02 Quantity and Quality Assurance

Section 3

- Section 3.01 Security
- Section 3.02 Government Laws and Regulations
- Section 3.03 Taxes and Other Government Charges
- Section 3.04 Specifications
- Section 3.05 Permits and Responsibilities
- Section 3.06 Force Majeure
- Section 3.07 Notice to Other Party
- Section 3.08 Payment Required
- Section 3.09 Alternate Supply
- Section 3.10 Resumption of Performance
- Section 3.11 Disputes
- Section 3.12 Indemnity
- Section 3.13 Contractor's Insurance

Section 4

Section 4.01	Failure to Supply
Section 4.02	Failure to Pay
Section 4.03	Failure to Comply with Laws
Section 4.04	Default
Section 4.05	Termination for Convenience
Section 4.06	Remedies Cumulative

Section 5

Section 5.01	Covenant Against Contingent Fees
Section 5.02	Notice
Section 5.03	Interest of Other Parties Contractor
Section 5.04	Assignment
Section 5.05	Time
Section 5.06	Amendment and Waiver
Section 5.07	Descriptive Headings
Section 5.08	Governing Law
Section 5.09	Definitions
Section 5.10	Relationship of Parties
Section 5.11	Number and Gender
Section 5.12	Successors in Interest
Section 5.13	Partial Invalidity
Section 5.14	Equal Opportunity Clause

Section 6

Section 6.01	Binding Effect
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Article II. BID OFFER

Article III. PERFORMANCE BOND

Article IV. DISCLOSURE OF MAJOR SHAREHOLDERS AFFIDAVIT AND
NON-COLLUSION AFFIDAVIT

PART A

**INVITATION FOR BIDS TO SUPPLY FLEET FUELS
AUTOMOTIVE ULTRA-LOW SULFUR DIESEL FUEL OIL No.2 (ULSD)
AND
AUTOMOTIVE REGULAR UNLEADED GASOLINE
TO THE GUAM POWER AUTHORITY**

SECTION I: BACKGROUND AND SUMMARY OF SOLICITATION

The Guam Power Authority ["GPA" or "Authority"] of Guam is a public corporation and an autonomous agency of the Government of Guam. GPA is the sole non-military supplier of electric service on the Island of Guam. The Authority desires to solicit and secure Fleet Fuels (Automotive Ultra-Low Sulfur Diesel Fuel Oil No.2 (ULSD) and Automotive Regular Unleaded Gasoline, hereinafter referred to as "Fleet Fuels") supply contract.

GPA is hereby soliciting bids for the supply of Fleet Fuels, for a three (3) year term period, with delivery to commence on November 01, 2020.

SECTION II: INSTRUCTIONS, PROCEDURES AND REQUIREMENTS FOR BIDDERS.

1. TIME AND SCHEDULE.

The deadline for the submission of sealed bids is July 15, 2020 at 2:00 P.M. (CHamoru Standard Time). Two (2) copies of the executed Contract (signed by bidder's authorized representative) and (5) copies of responsive materials, information pertaining to bidder financial responsibility, company profile, history of past GovGuam supply contracts, and others relevant to this bid. Submittals should be received by GPA no later than that date and hour as stated in the instructions. It is advisable to use courier services to expedite delivery of your offer.

2. ADDRESS.

Please transmit responsive materials to:

(By Mail)

GUAM POWER AUTHORITY
P.O. Box 2977
Hagatna, Guam 96932-2977

ATTN: Supply Management Administrator
TELEPHONE: (671)648-3054/3055
TELEFAX: (671)648-3165

(By Courier)

GUAM POWER AUTHORITY
Procurement Office
1st floor, Gloria B. Nelson Public Service Building 688 Route 15,
Mangilao, Guam 96913
ATTN: Supply Management Administrator
TELEPHONE: (671)648-3054/3055
TELEFAX: (671)648-3165

"The sealed submittal envelope shall be marked on the lower left corner "SEALED BID", "FLEET FUELS (AUTOMOTIVE ULTRA-LOW SULFUR DIESEL FUEL OIL NO.2 or "ULSD" AND AUTOMOTIVE REGULAR UNLEADED GASOLINE) SUPPLY, IFB NO. GPA-054-20, BID OPENING, July 15, 2020 at 2:00 P.M. (CHamoru Standard Time)".

3. FORM.

All bids must be in writing and must be signed by an officer of the bidder having authority to submit such bids. Offers submitted in response to this solicitation shall be in terms of United States Currency and in the English language. The bids should respond in organized fashion to all the requirements of this Invitation for Bids. Bidders must submit along with their bid package, the fully executed (signed) and completed Contract and Offer, Bid Bond, and other information pertaining to the responsibility of Bidder. Failure to submit any of these bid documents shall be grounds to declare a bid non-responsive.

4. RECEIPTS, REGISTRATION OF BIDS AND CONFIDENTIALITY.

The sealed bids shall be opened publicly on July 15, 2020 at 2:00 P.M. (CHamoru Standard Time) in the Guam Power Authority Procurement Conference Room.

For the purposes of this solicitation and bids submitted thereunder, the laws, rules and regulations of Guam concerning confidentiality shall govern. If the Bidder does not want trade secrets or other proprietary data he submitted disclosed to the public or used by the GPA for any purpose other than the evaluation of his bid, he shall designate such trade secrets or other proprietary data to be confidential and the title page with the following legend; "This data furnished in connection with our bid for supply of fuel oil shall not be disclosed outside the GPA or disclosed in whole or in part or any purpose other than to evaluate the proposal; provided, that if a Contract is awarded to this bidder as a result of, or in connection with the submission of this data, the GPA shall have the right to duplicate, use, or disclose the data to the extent provided in the Contract." This restriction does not limit the GPA's right to use information contained in the data if it is obtained from another source without restriction. The General Manager of GPA or his designee shall examine the bids and determine the validity of any requests for non-disclosure of data as requested by the above legend and he shall take such other action as he is required to by Section 3-202.12.3 of the Guam Procurement Regulations. Bids and modifications shall be time-stamped upon receipt and held in a secure place until the established opening date.

5. MODIFICATION OR WITHDRAWAL OF BIDS.

Bids may be modified or withdrawn by written notice received in the office of GPA prior to the time and date set for the opening scheduled for July 15, 2020 at 2:00 P.M. (CHamoru Standard Time). There shall be no modifications and/or withdrawals after the opening date of bids].

6. LATE BIDS, LATE WITHDRAWALS AND LATE MODIFICATIONS.

Any bid received after the time and date set for receipt of bids is late. Any withdrawal or modification of a bid received after July 15, 2020 at 2:00 P.M. (CHamoru Standard Time), is late. No late bid, late modification, or late bid, late modification, or late withdrawal will be considered.

7. AWARD.

Bids will be reviewed and evaluated by GPA and will determine the lowest and most responsive bidder that will be most advantageous to GPA. A written Letter of Award (acceptance of offer) mailed or otherwise furnished to the successful bidder within the time for acceptance specified in the offer shall be deemed to result in a binding Contract without further action by either party. GPA reserves the right to waive informalities and minor irregularities in bids received.

A. In the evaluation process, the following factors will be considered (although not necessarily in the order of importance):

- (1) Price and contract cost;
- (2) Whether the bidder's ultimate offer meets and conforms with the announced requirements of GPA in all material respects;
- (3) Previous Experience in meeting requirements of a similarly sized or larger contract;
- (4) Financial Strength and
- (5) Overall clarity and presentation of bid and plan to supply fuel to GPA, i.e. how supplier will obtain fuel, how fuel will be delivered to GPA, alternative supply source, etc.;
- (6) Whether the bidder has:
 - (a) the appropriate financial, material, equipment, facility, and personnel resources and expertise, necessary to indicate its capability to meet all Contractual requirements;
 - (b) satisfactory references;
 - (c) qualified legally to Contract with the territory; and

B. Bidder is responsible for providing adequate information on operating experience and on financial status (i.e. annual report with audited financial statements) and references for use in evaluating its capabilities.

C. In addition to the evaluation criteria, GPA may require submission of descriptive literature,

technical data, or other material. It may also require accomplishing any of the following prior to award:

- (1) inspection or testing of a product prior to award for such characteristics, as quality or workmanship;
- (2) examination of such product as to compatibility, grade, appearance, texture, or
- (3) other examinations to determine whether it conforms with any other purchase description requirements.

8. **BID BOND.**

All bidders shall submit, together with all the required submittal documents to GPA, a **bid bond** of FIFTEEN PERCENT (15%), made payable to the Guam Power Authority in the form of cash, bank draft, certified check, or by wire transfer to Guam Power Authority. The Account Number details will be provided by GPA to the bidder via e-mail or telephone communication. Unsuccessful bidders will have their bid bonds returned within ten (10) days of the award of Contract. Bid bond will be returned by check unless otherwise agreed to by the Guam Power Authority. The bidder with the successful bid will have bid bond returned within five days of confirmation that a satisfactory performance bond has been received by GPA. For the purposes of this solicitation, the bid bond is being required as a form and indication of "good faith" and it is essential to the best interest of the GPA in accordance with the procurement laws, rules and regulations of the Government of Guam and the Guam Power Authority. Bidders may also be required to furnish financial statements, credit ratings, or other indicators of their financial viability.

9. **PERFORMANCE BONDS.**

The successful bidder shall submit to the GPA a performance bond in the amount equivalent to ONE HUNDRED PERCENT (100%) of the total annual cost of the CONTRACT BID PRICE OFFER and be made payable to the GPA in the form of a surety issued by a company with a A.M. Best credit rating of "AA"- or better within fifteen (15) days after a Notice of Award is issued to the successful bidder. For the purposes of this solicitation, the requirement of a performance bond is essential to the best interest of GPA. A performance bond is required in order to assure

that CONTRACTOR will perform the terms and conditions of the Contract, and that CONTRACTOR will provide against direct or indirect damages that may be suffered or claimed on account of such delivery of fuel oil supply throughout the term of the Contract. The required performance bond shall be in substantially the same form as that prescribed in Appendix "A" of this Bid Invitation. Any deviation from the prescribed format must be approved by GPA in advance. Failure to furnish a performance bond at the time specified above and in the manner as provided shall immediately void the contract.

10. CANCELLATION OF SOLICITATION; DELAYS.

GPA reserves the right to cancel or to withdraw this Invitation for Bids, to delay determination on this Invitation, to reject all bids or any individual bid in whole or in part, at any time prior to the final award.

In case of cancellation or rejection, bid bonds would be concurrently returned. The reasons for the cancellation, delay or rejection shall be made a part of the procurement file and shall be available for public inspection.

(a) Rejection of all Bids.

Prior to the final award, all bids may be rejected in whole or in part when GPA determines in writing that such action is in the Guam's best interest for reasons including, but not limited to:

- (1) the supplies and services being procured are no longer required;
- (2) ambiguous or otherwise inadequate specifications were part of the solicitation;
- (3) the solicitation did not provide for consideration of all factors of significance to the territory.
- (4) prices exceed available funds and it would not be appropriate to adjust quantities to come to within available funds;
- (5) all otherwise acceptable bids received are at clearly unreasonable prices;
- (6) there is reason to believe that the bids may not have been independently arrived at

in open competition, may have been collusive, and may have been submitted in bad faith.

(b) Rejection of Individual Bids.

Any individual bid may be rejected in whole or in part when in the best interest of Guam as determined by GPA in its sole discretion. Reasons for rejecting a bid include, but are not limited to:

- (1) the bidder is non-responsive pursuant to Guam's procurement laws, rules and regulations;
- (2) the bid is not responsive as it does not conform in all material respects to the Invitation for Bids;
- (3) the quantity and/or quality of supply or service offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications set forth in the Invitation for Bids or other acceptability criteria set forth in the Invitation for Bids. Upon request, unsuccessful bidders shall be advised of the reasons for rejection;
- (4) the bid is not the lowest responsible bidder which meets the requirements and criteria set forth in the Invitation for Bids;
- (5) the bidder has failed to submit documents relative to the procurement of necessary licenses, permits and authorizations when requested by the Procurement Officer prior to the award.
- (6) Any changes as initiated by the bidder to the attached Contract form constitute as a basis to declare the bid submittal as non-conformance

11. FUELS TO BE SUPPLIED:

CONTRACTOR agrees to furnish and GPA agrees to pay all of Automotive Ultra-Low Sulfur Diesel Fuel Oil No.2 (ULSD) and Automotive Regular Unleaded Gasoline, (both fuels hereinafter referred to in the solicitation as Fleet Fuels) requirement for the Authority's Transportation Fleet for the term of the Contract. Estimated total

quantity for the fleet's fuel shall be:

- (a) Automotive Ultra-Low Sulfur Diesel Fuel Oil No. 2 (ULSD): about 45,000 gallons per year.
- (b) Automotive Regular Unleaded Gasoline: about 55,000 gallons per year.

The fuel supply shall be based from the "designated service stations" as agreed upon by both the Contractor and GPA Procurement/Supply Management Administrator. The commencement of the Fleet's fuel procurement at the said "designated self-service station" shall be on or about November 01, 2020 or sooner.

12. CONTRACT TERM:

The Contract Term shall be for Three (3) years to commence on or about November 01, 2020 or sooner, and shall continue until midnight of the Three (3) calendar year term with an option to extend the contract for two (2) additional one (1) year term of twelve (12) months per renewal term. The contract price for the EXTENSION TERM shall be at *the same price as contract price offer and all other terms remain unchanged*. The option to extend shall be upon mutual agreement of both parties, unless sooner terminated in accordance with the provisions hereof, or cancelled due to the unavailability of funds. In the event funds are not available for any succeeding months, the remainder of such contract shall be cancelled and the CONTRACTOR shall be reimbursed for the reasonable value of any unpaid balance as procured. The Authority shall notify CONTRACTOR in writing within sixty (60) days if funds are unavailable.

13. CONTRACT PRICE:

The total price per U.S. gallon provided shall be inclusive of all costs and liabilities incurred prior to the delivery to GPA. Bid price shall be entered on Section 1.03 of Article 1 of the executed Contract.

14. PRODUCT AND QUALITY OF FLEET'S FUEL:

The fleet fuels provided hereunder shall have the typical characteristics described in the Contract.

15. CONTRACT PRINCIPALS:

It is important that Contractor fully identify person and entities having any interest in the Contract. GPA reserves the right to require Contractor complete disclosures of owners or stockholders of any entity having interest in the Contract.

16. CONTRACT CONTROLLING:

The comments contained herein are for the use of the bidders and to the extent there is any conflict between the items set forth in this solicitation and the Contract, the Contract language shall govern.

III. BID BOND

BID BOND

The Contractor certifies and agrees that the attached Automotive Ultra-Low Sulfur Diesel Fuel Oil No. 2 (ULSD) and Automotive Gasoline Regular (Unleaded) Supply Contract was signed by a person(s) duly authorized to enter into a Contract on behalf of our company.

Enclosed herewith is a bid bond submitted in the amount of _____ United States Dollars made payable to the Guam Power Authority in the form of:

- CASH
- BANK DRAFT
- CERTIFIED CHECK
- WIRE TRANSFER Bank of Hawaii from our Bank

Name of Bank:

Location:

Account Number:

We agree to forfeit said amount in the event of our company's failure to enter into a Contract and furnish performance bond (format as per Attachment A) in the amount of _____ (\$) Dollars within fifteen (15) days after a Notice of Award has been issued to our company as the lowest responsible bidder.

We offer and certify, as part of our bid, the information pertaining to responsibility as required by

Section II, Paragraph 7 of the Invitation. The information herein provided consist of the following:

(Describe briefly)

See attached letter

The full names and business address of persons and firms interested in the foregoing bid as principals, are as follows:

For the purposes of the disclosure, a principal is considered as any person or entity owning or entitled to own at least a 5% equity interest in the CONTRACTOR.

For any publicly held company listed on a stock exchange, please note the exchange and date initially listed. GPA reserves the right to require additional information regarding any principal as provided in Section 21 of the solicitation.

Respectfully submitted,

(S E A L)

ATTEST: _____

BIDDER

WITNESS: _____
ADDRESS

Individual trading in own name _____

Individual trading under firm name _____

Co-partners trading under firm name _____

Corporation-State of _____

Principal Office Address:

IV. PERFORMANCE BOND

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that _____,
 as Principal, hereinafter called CONTRACTOR, and _____, a
 corporation hereinafter called Surety, are held and firmly bound unto the Guam Power Authority as
 Obligee, in the amount of ONE HUNDRED PERCENT (100%) OF THE TOTAL ANNUAL COST of the
 BID PRICE OFFER, and the payment whereof CONTRACTOR and Surety bind themselves, their
 heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these
 presents.

WHEREAS, CONTRACTOR has by written agreement dated _____, 2020,
 entered into a contract to supply Automotive Ultra-Low Sulfur Diesel Fuel Oil No.2 (ULSD) and
 Automotive Regular Unleaded Gasoline with the Guam Power Authority for the transportation fleet
 for a THREE (3) YEAR term in accordance with forms and specifications prepared by GPA which
 Contract is by reference made a part hereof, and is hereinafter referred to as the "Contract".

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if
 CONTRACTOR shall promptly and faithfully perform said Contract then this obligation shall be null
 and void; otherwise it shall remain in full force and effect. The Surety hereby waives notice of any
 alteration or extension provided the same is within the scope of the Contract. Whenever
 CONTRACTOR shall be and is declared by GPA to be in default under the Contract, GPA having

performed its obligations thereunder, 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 GPA and the Surety jointly of the lowest responsive, responsible bidder, arrange for a Contract between such bidder and the Guam Power Authority and make available as delivery of fuel supply progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of recovery less the 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 GPA to CONTRACTOR under the Contract and any amendments thereto, less the amount properly paid by GPA to CONTRACTOR. No right of action shall accrue on this bond to or for the use of any person or corporation other than GPA or successors of GPA.

Signed and sealed this ____ day of _____, 2020.

(Principal)

(Seal)

(WITNESS)

(TITLE)

(WITNESS)

(TITLE)

(Bonding Company)

IFB-GPA-054-20

PART B: BID SUBMITTAL DOCUMENTS

I. OFFER

II. FUEL OIL SUPPLY CONTRACT

NOTICE

Please find the Formal Contract. This document as well as others must be filled out and returned to **GPA** as part of your response. Please be also advised of the requirement of furnishing the bid bond in the designated amount and the information pertaining to responsibility and other requirements specified in the Solicitation that must be submitted together with the aforementioned documents. Bidders are not required to submit Part A-the Solicitation Instructions.

I. BID OFFER.

OFFER of _____ (company) DATED _____

TO: GUAM POWER AUTHORITY
GPA Procurement Office, Route 16
Harmon, Guam

_____, the undersigned do hereby declare that _____ have carefully examined Invitation for Bid IFB GPA-054-20 and do hereby agree to furnish the supply of fleet fuel (fuel quality as referred to Sect. 2.01 Article 2 of the Contract) GPA official vehicles for a THREE (3) year term, with renewal options, in accordance with the attached Fuel Oil Supply Contract (the "Contract") terms, conditions and specifications. The Contract price per gallon delivered to Guam Power Authority inclusive of all costs and liabilities incurred prior to delivery for the duration of the Contract is offered as follows:

BID OFFER:

(a) Automotive Ultra-Low Sulfur Diesel Fuel Oil No. 2 (ULSD):

OFFER: (in words) _____

(in figures) \$ _____ /gal (in three decimal places)

(b) Automotive Regular Unleaded Gasoline:

OFFER: (in words) _____

(in figures) \$ _____ /gal (in three decimal places)

Respectfully submitted,

(PRINT NAME & Signature)
BIDDER/ OFFEROR, Duly Authorized
REPRESENTATIVE OF COMPANY

DATE

ADDRESS:

II. FUEL OIL SUPPLY CONTRACT

IFB GPA-054-20

GPA FLEET FUELS SUPPLY CONTRACT

AUTOMOTIVE ULTRA-LOW SULFUR DIESEL FUEL OIL NO. 2 (ULSD)

AND

REGULAR UNLEADED AUTOMOTIVE GASOLINE

PREAMBLE

This CONTRACT, shall be executed on the date of the award, by and between Guam Power Authority, a public corporation, hereinafter referred to as "Authority" or "GPA", and _____ hereafter referred to as "Contractor" or "Supplier".

W I T N E S S E T H:

RECITALS

WHEREAS, the Authority has issued an Invitation for Bid IFB GPA-054-20, for a THREE (3) year Contract, Invitation for Bid, for the supply of the AUTHORITY's Automotive Ultra-Low Sulfur Diesel Fuel Oil No. 2 (ULSD) and Automotive Regular Unleaded Gasoline, hereinafter referred to as "Fleet Fuels"), for the Authority's Transportation Fleet; and

WHEREAS, the Authority will award the Contract to the lowest responsible bidder whose bid conforms to the material aspects of the Invitation; and

WHEREAS, if Contractor specified herein has been awarded the CONTRACT, Authority and Contractor have agreed upon the terms and conditions of the Contract;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the parties hereto do hereby agree as follows:

SECTION 1

SECTION 1.01: FUELS TO BE SUPPLIED

Contractor agrees to furnish and deliver all the required Fleet Fuels and GPA agrees to accept and pay for all Fleet Fuels delivered to GPA, meeting the specifications requirements for the term of the Contract. The estimated requirement for the Authority's Transportation Fleet shall be:

- (c) Automotive Ultra-Low Sulfur Diesel Fuel Oil No.2 (ULSD): about 45,000 gallons per year
- (d) Automotive Gasoline, Regular Unleaded: about 55,000 gallons per year)

The fuel supply shall be based from the "designated service stations" as agreed upon by both the Contractor and GPA Procurement/ Supply Management Administrator. Notwithstanding any estimated quantity set forth herein, the CONTRACTOR shall be responsible in supplying all the Fleet Fuels, reasonably required by GPA, even if such quantities exceed the estimates provided above.

FLEET FUEL CARDS. Contractor shall provide gas station fleet cards at no cost to GPA. Only employees carrying valid fleet cards shall be allowed to refuel at the gas stations. The Authority shall provide a list of employees and may add or delete names of employees authorized to use the gas station fleet card. Fleet cards shall be limited and restricted only for use in refueling of GPA official vehicles.

SECTION 1.02: TERM.

The Contract Term shall be for three (3) years to commence on November 01, 2020 or sooner and shall continue until midnight of the three (3) year contract term and with GPA's option to extend the contract for two (2) additional one (1) year term of twelve (12) months per renewal term upon mutual agreement of both parties, unless earlier terminated in accordance with the provisions hereof or cancelled due to unavailability of funds.

The contractual obligation of GPA and CONTRACTOR is subject to the availability of funds. In the event funds are not available for any succeeding months, the remainder of such contract shall be cancelled and

the CONTRACTOR shall be notified within sixty (60) days if funds are unavailable.

SECTION 1.03: CONTRACT PRICE.

The total contract BID PRICE per gallon at the gas station pump is (in U.S. Dollars, inclusive of all costs and liabilities, please provide three (3) decimal places):

1. BID PRICE OFFER:

- (a) Automotive Ultra-Low Sulfur Diesel Fuel Oil No. 2 (ULSD) : \$ _____ per gallon
- (b) Automotive Regular Unleaded Gasoline : \$ _____ per gallon

The BID PRICE is the sum of the FIXED SERVICE FEE (per gallon) and the BID REFERENCE PRICE as of June 08, 2020 as posted in the Platts' Asia-Pacific Marketscan Oil Prices.

BID REFERENCE PRICE:

- (a) Automotive Ultra-Low Sulfur Diesel Fuel Oil No.2 (ULSD)
- | | | | |
|--------------------------------|--------------|-------------|----------------|
| Reference Product Code: | Gasoil 10ppm | | |
| | <u>Low</u> | <u>High</u> | <u>Average</u> |
| FOB Singapore Posting , \$/bbl | 47.09 | 47.13 | 47.110 |

Bid Reference Price = \$1.121 per gallon

- (b) Regular Unleaded Automotive Gasoline
- | | | | |
|--------------------------------|----------------------|-------------|----------------|
| Reference Product Code: | Gasoline 92 unleaded | | |
| | <u>Low</u> | <u>High</u> | <u>Average</u> |
| FOB Singapore Posting , \$/bbl | 44.60 | 44.64 | 44.620 |

Bid Reference Price = \$1.062 per gallon

INVOICE PRICE DETERMINATION:

The invoice price for the fuel delivered in any month shall be the average of the effective prices reported for Gasoil 10 ppm (for Automotive Ultra-Low Sulfur Diesel Fuel Oil No.2 or "ULSD") and Gasoline 92 unleaded (for Regular Unleaded Automotive Gasoline), for all Thursdays of the previous month in the Platt's Asia-Pacific Marketscan, for Singapore cargoes, plus the Service Fee as calculated.

In the event that Thursday is a legal holiday and no price is posted for that day, the posted price

immediately preceding the Thursday holiday (i.e.) Wednesday shall be used.

INVOICE PRICE CALCULATION FORMULA

INVOICE PRICE = Invoice Reference Price + Fixed Service Fee

INVOICE REFERENCE PRICE = Average of Previous Month's Thursdays MOPS

Sample data:

Sample Product: Automotive Ultra-Low Sulfur Diesel Fuel Oil No.2 (ULSD)
 Sample Bid Offer: \$1.221 per gallon

Fixed Service Fee = Bid Offer – Bid Reference Price
 = \$1.221- \$1.121
 Fixed Service Fee = \$0.100 per gallon

Delivery Month: May 2020 (Invoiced month)

Previous Month: April 2020 (preceding delivery month)

(i) Sample Calculation of Platt's Marketscan Thursdays for April 2020:

Sample Product: Automotive Ultra-Low Sulfur Diesel Fuel Oil No.2 (ULSD)

<u>MOPS, Gasoil 10 ppm</u>	<u>Low</u>	<u>High</u>	<u>Average</u>
April 02, 2020	\$34.80	\$34.84	\$34.820
April 09, 2020	\$35.77	\$35.81	\$35.790
April 16, 2020	\$32.89	\$32.93	\$32.910
April 23, 2020	\$27.38	\$27.42	\$27.400
April 30, 2020	\$30.21	\$30.25	\$30.230

Average Price: \$ 32.230 per barrel

Invoice Reference Price : \$32.230 per barrel
 : \$ 0.767 per gallon (rounded to three decimal places)

Fixed Service Fee (sample price) = \$0.100 per gallon

(ii) Invoice Price

Invoice Price = Invoice Reference Price + Fixed Service Fee

Diesel Invoice Price = \$0.867 per gallon

These is the invoice price (in three decimal places) for Diesel Fuel Oil No. 2 purchases by GPA for the sample month of May 2020.

The invoice price for the fuels (a) and (b), shall be the actual gallons received into GPA's fleet multiplied by the invoice price as calculated and determined on a monthly basis in reference to Platts' Asia-Pacific Marketscan Oil Price. All invoices submitted must be accompanied by the product delivery receipts signed by the duly authorized personnel and the service station representative.

SECTION 1.04. FLEET FUELS TO BE PURCHASED- DESIGNATED SERVICE STATIONS:

All Fleet's fuel purchases shall be at the designated self-service GAS SERVICE STATIONS AS AGREED UPON BY AND BETWEEN GPA Supply Administrator and the Contractor's authorized representative. Fuel refilling shall be limited and restricted to GPA official vehicles only. The purchase is effected upon the fleets' fuel refilling at the said "GAS SERVICE STATIONS" AND PROPER DOCUMENTATION IS EXECUTED BY THE GAS SERVICE STATION REPRESENTATIVE AND THE GPA AUTHORIZED PERSONNEL.

SECTION 1.05: TERMS OF PAYMENT.

Invoices for Fleet Fuels purchased pursuant to quantity (receipts) and quality prescribed under the terms of this Contract, shall be submitted on a monthly basis, based on the amount of gallons of fuels purchased by GPA. The payment term is thirty days (net) and the Authority shall promptly make payments within a reasonable time not to exceed a period of THIRTY (30) calendar days from the receipt of the invoice. All payments shall be based upon the received (invoiced) quantity.

SECTION 1.06. WARRANTY AND CLAIMS.

CONTRACTOR shall provide both express and implied warranties of merchantability and warrants that the Fleet Fuels shall meet the specifications prescribed herein under Section 2 of Article I and other pertinent sections. Claims against the CONTRACTOR on account of quality and contaminations (defects), loss or damage to product shall be given in writing by GPA within thirty days (30) from date of purchase (delivery) of fuels as specified in Section 1.04. If the fuel oil fails to meet the specifications herein, CONTRACTOR shall be liable for any direct damages including, but not limited to, compensation and such damages shall not affect other remedies provided for in the Contract.

SECTION 2

SECTION 2.01: PRODUCT AND QUALITY

The typical characteristics of the fuels to be supplied under this contract shall be as follows:

A. AUTOMOTIVE ULTRA-LOW SULFUR DIESEL FUEL Oil No.2 (ULSD) ^A

Typical Characteristics:

Property	ASTM Test Method ^B	Alternate Method ASTM	Unit of Measure	Limits
Flash Point	D93		°C	52 Min
Water & Sediment	D2709		% vol	0.05 Max
Distillation Temp, °C 90%, recovered	D86		% vol	282 Min 360 Max
Kinematic Viscosity	D-445		mm ² at 40°C	1.9 Min 4.1 Max
Ash	D482		% mass	0.01 Max
Sulfur	D5453		ppm (µg/g)	15 Max
Copper Strip Corrosion Rating (3hrs min at 50°C)	D130			No.1 Max
Cetane Index	D 613	D976-80 D 4737		46 Min
Aromaticity	D1319		% vol	35 Max
Carbon Residue on 10% distillation residue	D524	D4530 D6371	% mass	0.20 Max
Lubricity, HFRR @ 60°C	D6079		Micron	460 Max
Conductivity	D2624	D4308	pS/m	25 Min
Density @ 15°C	D1298	D4052	Kg/m ³	820 Min 850 Max
Gravity, API @ 60°F	D1295	D4052		35 Min 41 Max
Color	D1500		ASTM	2.0 Max
Strong Acid No.	D974		mg KOH/g	NIL
Total Acid No.	D974		mg KOH/g	0.5 Max
Stability (Oxidation), 16Hrs	D2274		mg/L	25 Max
Appearance @ ambient temp	Visual			Report
Guaranteed Heating Value (HHV)	D240		MMBTU/bbl	5.70 Min

^A Follows the minimum requirements for **Ultra-Low Diesel Fuel Oils (ULSD)** listed under ASTM 975-10.

B. AUTOMOTIVE REGULAR UNLEADED GASOLINE

Typical characteristics:

Property	ASTM Test Method	Alternate Method	Unit of Measure	Limits
Appearance @ Ambient Temp.			VISUAL	Clear & Bright
Color			ASTM	Report
Gravity, API @ 60 deg. F.		D – 1298		Report
DISTILLATION IBP, °C		D-86		Report
10% Evaporation				70 Max
20% Evaporation				Report
50% Evaporation				115 Max
90% Evaporation				180 Max
FBP				215 Max
Residue				2 Max
Reid Vapor Pressure @100°F,	D-5191	D-6378	psi	9 Max
SULFUR Content	D-2622	D-5453	Wt. ppm	300 Max.
Existent Gum	D-381		mg/100 ml	4 Max
Doctor Test	D-4952	IP30		Negative
Induction Period @100°C	D-525		minutes	480 Min
Research Octane No. (RON)	D-2885	D-2699MOD		91 Min
Motor Octane No. (MON)	D-2700MOD			Report
Anti-Knock Index (RON +MON)/2			Calculated	87 Min
Copper Corrosion @3 hrs @ 50°C	D-130			1 Max
Lead Content	D-3237	IP-224	g Pb/ USG	NIL
Phosporus	D-3231		g/USG	0.005 Max
Benzene	UOP 744MOD	JM63	Wt%	Report
EthlyBenzene	UOP 744 MOD	JM63	Wt%	Report
Toluene	UOP 744 MOD	JM63	Wt%	Report
Total Aromatics	UOP 744 MOD	JM63	Wt%	Report
Xylene	UOP 744 MOD	JM63	Wt%	Report

Note: The Authority may require the supplier to conduct additional test as may be necessary.

SECTION 2.02: QUANTITY AND QUALITY ASSURANCE

The Contractor shall ensure that the “designated GAS SERVICE STATIONS” metered quantity at the pump, the metering device to be calibrated or had been calibrated at a frequency of six (6) months minimum and to be effected with the presentation of calibration certificate as performed by the third party certifying company. GPA will require submittals by the successful awardee.

(a) FLEET FUELS ON-STOCK INVENTORY.

The Contractor is required to maintain at its own storage facility, a minimum inventory of 20-days supply requirement, approximately 20,000 gallons for each fuel grade.

(b) FLEET’S FUELS QUALITY TESTING.

GPA may require the Contractor to provide quality certification of the Fleet Fuels at no cost to the Authority.

SECTION 3

SECTION 3.01. SECURITY.

For security of supply, CONTRACTOR reserves the right to supply the Fleet Fuels meeting GPA specifications from any lawful source. In the event that supplies are taken from such other places, then the price as invoiced to GPA will remain the same as established in Section 1.03.

SECTION 3.02: GOVERNMENT LAWS AND REGULATIONS

This Contract as executed shall be governed and construed in accordance with, the laws, statutes and regulations of the Territory of Guam. Wherever a term defined by the Uniform Commercial Code is used in the Contract the definition contained in the Uniform Commercial Code of Guam will control, unless otherwise specified.

The parties expressly submit to the jurisdiction of the Superior Court of the Territory of Guam, for the resolution of any dispute or difference or claims between the parties in connection with the Contract, and to service of process by registered mail. The Contractor agrees to accept the jurisdiction of the Superior Court of the Territory of Guam for the resolution of any claims. The Contractor waives all rights against GPA to claim consequential, special or punitive damages.

SECTION 3.03: TAXES and OTHER GOVERNMENT CHARGES

All forms of taxes, fees, charges, duty, or other form of amount equivalent thereto, now or hereafter imposed, levied, or assessed by the United States Government, the Government of Guam, or any instrumentality or agency thereof, in connection with and as a result of the sale of such goods herein provided for, if collectible or payable, shall be the responsibility of the Contractor.

SECTION 3.04. SPECIFICATIONS.

Should GPA wish to alter any of the specifications set out under Section 2.01 of Article I, terms of delivery, for good cause, it shall give written notice to CONTRACTOR within thirty (30) days. If such changes cause an increase or decrease in CONTRACTOR's cost of performance of Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly. Any claim by

CONTRACTOR for adjustment under this section must be asserted in writing within thirty (30) days from the date of receipt by CONTRACTOR of the notification of changed specifications.

CONTRACTOR and GPA shall, in good faith, negotiate an equitable adjustment pursuant to the change in specifications. If CONTRACTOR and GPA fail to agree on the adjustment to be made within thirty (30) days after CONTRACTOR receives notice of altered specifications, or if CONTRACTOR is unwilling to meet the altered specifications, the parties shall be subject to "Disputes" clause. However, nothing in this clause shall excuse the CONTRACTOR from proceeding with the Contract specifications as changed.

SECTION 3.05. PERMITS AND RESPONSIBILITIES.

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

SECTION 3.06. FORCE MAJEURE.

No failure or omission to carry out or to observe any of the terms, provisions or conditions of the Contract shall give rise to any claim by one party against the other, or be deemed to be a breach of the Contract if the same shall be cause by or arise out of:

- (a) War, etc. War, hostilities, acts of public enemy or belligerents, sabotage, blockade, revolution, insurrection, riot or disorder;
- (b) Restraints. Arrest or restraint of princes, rulers or peoples;
- (c) Confiscation. Expropriation, requisition, confiscation or nationalization;
- (d) Rationing. Embargoes, export or import restrictions or rationing or allocation, whether imposed by law or regulation or by voluntary cooperation of industry at the insistence or request of any governmental AUTHORITY or person purporting to act therefore;
- (e) Regulations. Interference by restriction or onerous regulations imposed by civil or military authorities, whether legal or de facto and whether purporting to act under some constitution, decree, law or otherwise;

- (f) Acts of God. Acts of God, fire, frost or ice, earthquake, storm, lightning, tide, tidal wave, or peril of the sea, accident of navigation or breakdown or injury of vessels;
- (g) Loss for Tankers. Loss of tanker tonnage due to sinking by belligerents or to governmental taking whether or not by formal requisition;
- (h) Strikes. Epidemics, quarantine, strikes or combination of workmen, lockouts, or other labor disturbances;
- (i) Explosions. Explosion, accidents by fire or otherwise to wells, pipes, storage facilities, refineries, installations, machinery;
- (j) Taking by Government. Unavailability of fuel because of the election of the government of the country of its origin to take royalty product in kind;

No failure or omissions to carry out or to observe any of the terms, provisions or conditions of the Contract shall give rise to any claim by one party against the other, or be deemed to be a breach of the Contract from the time of and to the extent occasioned by the Force Majeure.

SECTION 3.07. **NOTICE TO OTHER PARTY.**

Either party whose obligations may be affected by any of the forces or causes set out in Section 3.06, shall promptly notify the other party in writing, giving full particulars thereof as soon as possible after the occurrence of such force or cause. Such party shall exercise due diligence to remove such cause with all reasonable dispatch and to resume performance at the earliest practicable time.

SECTION 3.08. **PAYMENT REQUIRED.**

Notwithstanding the provisions of Section 3.06, GPA shall not be relieved of any obligation to make payments for any Fleet Fuels delivered to/ purchased by GPA, however, during the force majeure condition the obligation shall be suspended, except for all fuels purchased prior to the force majeure condition.

SECTION 3.09. **ALTERNATE SUPPLY.**

In the event CONTRACTOR is unable to fulfill its obligations under this Contract as a result of any negligence on part of the Contractor OR FAILURE TO MEET GPA's requirement, GPA may at its sole discretion seek an alternative source for the fleet fuels from other petroleum suppliers. If the cost of fuels during such period exceeds the Contract price as provided in Section 1.03, the CONTRACTOR shall be liable to GPA for the difference in cost and GPA must be reimbursed for such equitable amount as calculated and agreed between both parties.

SECTION 3.10. **RESUMPTION OF PERFORMANCE.**

If CONTRACTOR is prevented from delivering or GPA is prevented from receiving all or any Of the Fleet Fuels, to be purchased under the Contract for the reasons which fall within the provisions of Section 3.06, then the party so prevented shall, as to the remainder of the Fleet Fuels not affected thereby, promptly resume performance of the Contract. No curtailment or suspension of deliveries or payment under the causes listed in Section 3.06, shall operate to extend the term of or terminate the Contract unless the occurrence of force majeure will materially impair, for an indefinite period of time, the parties' ability to perform the Contract.

SECTION 3.11 **DISPUTES.**

- (a) All controversies between GPA and the CONTRACTOR which arise under, or are by virtue of, this Contract and which are not resolved by mutual agreement, shall be decided by GPA pursuant to Guam Procurement laws and regulations.
- (b) CONTRACTOR may pursue applicable remedies under the Guam Procurement Law and regulations and the Government Claims Act.
- (c) CONTRACTOR shall comply with any decision of GPA and proceed diligently with performance of this Contract pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, this Contract; provided, however, that in any event the CONTRACTOR shall proceed diligently with the performance of the Contract where the General Manager of GPA has made a written determination that continuation of work under the Contract is essential to the welfare of the territory.

SECTION 3.12. INDEMNITY.

CONTRACTOR shall indemnify and hold GPA harmless from all damages to persons or property or to receiving facilities and delivery facilities, regardless of ownership, including the cost of enforcement of the indemnity, actually and proximately caused by CONTRACTOR or its agents in making deliveries hereunder.

SECTION 4

SECTION 4.01: FAILURE TO SUPPLY.

(a) Should Contractor fail to perform any of the terms, provisions or conditions of this Contract, the contractor shall be in default of the Contract agreement. In this event, GPA will provide a written notice to the Contractor of such default, and provide the contractor an opportunity to cure the default within thirty (30) calendar days after the notice of default. GPA, during this period, in its discretion and in accordance with whatever action, reserves the right to secure similar diesel engine cylinder lubrication oil from other sources; in such event, the contractor shall be responsible for any costs, expenses, fees, and monetary amounts of any nature whatsoever, including but not limited to diesel engine cylinder lubrication oil handling fees, administrative, labor, and operations costs, and all other amounts associated with or related to the securing of such diesel engine cylinder lubrication oil supply by the Authority.

(b) Should the Contractor fail to cure such default within thirty (30) calendar days after the notice of default thereof, GPA may terminate the Contract in whole or in part. In the event that GPA terminates the Contract by default, then the provisions of the performance bond shall be in effect.

SECTION 4.02. FAILURE TO PAY.

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

- (a) terminate the Contract effective thirty (30) days after receipt by GPA of written notice if not first cured; or
- (b) continue to supply fuel oil and bring suit in the Superior Court of Guam for amounts past due and as they become due.

SECTION 4.03. FAILURE TO COMPLY WITH LAWS.

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

SECTION 4.04. DEFAULT.

(a) Default.

In addition to default under the provision of Section 4.01, if the CONTRACTOR refuses or fails to perform any of the provisions of this contract with such diligence as will ensure the timely delivery of fuel oil supply or commits any other substantial breach of this contract, GPA may notify the CONTRACTOR in writing of the delay or non-performance and if not cured within thirty (30) days of the date of notification, GPA may terminate the contract in whole or such part or parts of the contract as to which there has been a delay or a failure to properly perform. However, in any event, and without the necessity of first issuing a Notice of Default, GPA may obtain an alternate source of fuel oil if CONTRACTOR fails to fully deliver any shipment of fuel oil within 15 days of the scheduled delivery date specified in the final notice. In the event of termination in whole or in part, GPA may procure fuel oil supply from another source whenever it deems appropriate. The CONTRACTOR shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar fuel oil supply.

(b) Compensation.

GPA shall pay for fuel oil delivered to GPA and shall be obliged to accept delivery of, and pay for, cargo in transit to GPA provided such cargo is received at the time of receipt of GPA's notice of termination for default.

(c) Erroneous Termination for Default.

If, after notice of termination of the CONTRACTOR'S right to proceed under the provisions of this clause, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Section 3.06 relating to Force Majeure of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination for convenience had been issued pursuant to Section 4.05.

(d) 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 4.05. ATTORNEYS FEES.

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

SECTION 4.06. TERMINATION FOR CONVENIENCE.

(a) Termination.

The supply of Fleets Fuels under this Contract may be terminated by GPA in accordance with this clause in whole, or from time to time in part, whenever GPA shall determine that such termination is in the best interest of GPA, or whenever GPA because of technological developments ceases to use the said Fleet Fuels, as described in the specifications contained in Section 2.01.

Any such termination shall be effected by delivery to the CONTRACTOR of a written Notice of Termination specifying the extent to which the Contract is terminated, and the Contract shall be terminated effective sixty (60) days after receipt of notice by CONTRACTOR.

(b) CONTRACTOR's Obligations.

The CONTRACTOR shall incur no further obligations in connection with the terminated fuel oil

supply delivery and on the date set in the Notice of Termination the CONTRACTOR will stop delivery of fuel oil to the extent specified. The CONTRACTOR shall also terminate outstanding orders and contracts, if any, as they relate to the terminated Contract for fuel oil supply. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of orders and contracts, if any, connected with the terminated fuel oil supply delivery. The CONTRACTOR must still deliver fuel oil supply not terminated by the Notice of Termination and may incur obligations as are necessary to do so.

(c) Compensation.

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

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

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

- (i) Fleet Fuels Contract prices for supplies or services accepted under the Contract by GPA;
- (ii) Costs incurred in preparing to perform and performing the terminated portion of the delivery of Fleet Fuels plus a fair and reasonable profit on such portion of the delivery (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted fuels supplies or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would

have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

- (iii) costs of settling and paying claims arising out of the termination of Contracts or orders pursuant to paragraph (2) of this clause. These costs must not include costs paid in accordance with subparagraph (3)(ii) of this paragraph;
- (iv) the reasonable settlement costs of the CONTRACTOR including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract for the termination and settlement of contracts 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 CONTRACTOR under this subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under the Uniform Commercial clause.

SECTION 4.06. REMEDIES CUMULATIVE.

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

SECTION 5

SECTION 5.01. COVENANT AGAINST CONTINGENT FEES.

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

SECTION 5.02. NOTICE.

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

GPA: General Manager
Guam Power Authority
Post Office Box 2977
Hagatna, Guam 96932
TELEFAX: (671) 648-3224

CONTRACTOR: _____

Telefax: _____

SECTION 5.03. INTEREST OF OTHER PARTIES.

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

SECTION 5.04. ASSIGNMENT.

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

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

SECTION 5.05. TIME.

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

SECTION 5.06. AMENDMENT AND WAIVER.

Neither the Contract nor any provision hereof may be changed, waived, altered, amended, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, alteration, amendment, discharge or termination is sought. For purposes of this contract, the signature of the Chairman of the Consolidated Commission on Utilities is required to bind the AUTHORITY. Failure by either party to object to any failure of performance by the other party of any provision of the Contract shall not constitute a waiver of, the right of such party to require such performance by the other. Nor shall any such failure to object constitute a waiver or estoppel with respect to any succeeding failure of performance.

SECTION 5.07. DESCRIPTIVE HEADINGS.

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

SECTION 5.08. GOVERNING LAW.

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

Judgment upon any award rendered by the Superior Court of the Territory of Guam may be entered in any court of any country having jurisdiction, and such award shall be binding upon the parties. The CONTRACTOR waives all rights against GPA to claim consequential, special or punitive damages.

SECTION 5.09. DEFINITIONS.

(a) "Barrel" shall mean 42 gallons.

- (b) "Day" and "month" mean a calendar day and month respectively.
- (c) "Fleet Fuels" means Automotive Ultra-Low Sulfur Diesel Fuel Oil No.2 (ULSD) or Automotive Regular Unleaded Gasoline, consistent with the specifications set forth in Section 2.01,
- (d) "Gallon". As used in the Contract, "gallon" shall mean a U.S. standard gallon of 231 cubic inches at sixty degrees Fahrenheit.
- (e) "Receiving facility" means the GPA transportation fleet.
- (f) "GPA" or "Authority" shall mean the Guam Power Authority.
- (g) "Ton" means a metric ton of 2204.62 English pounds.
- (h) "\$" refers to United States Dollars.

SECTION 5.10. RELATIONSHIP OF PARTIES.

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

SECTION 5.11. NUMBER AND GENDER.

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

SECTION 5.12. SUCCESSORS IN INTEREST.

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

SECTION 5.13. PARTIAL INVALIDITY.

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

SECTION 5.14. EQUAL OPPORTUNITY CLAUSE.

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

- (a) The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, political opinion or affiliation, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, political opinion or affiliation, or national origin. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the GPA setting forth the provisions of this equal opportunity clause.

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

SECTION 6

SECTION 6.01. BINDING EFFECT.

This Contract is binding upon the Contractor only if Contractor has been awarded the Contract in response to the IFB GPA-054-20. This Contract is subject to the approval of the Consolidated Commission on Utilities (CCU), and shall be binding only upon such approval is made as evidenced by the signatories below.

JOHN M. BENAVENTE, P.E.
General Manager
Guam Power Authority

Date

Contractor's duly Authorized
Representative

Date

Attested as to form:

GRAHAM BOTHA
Legal Counsel
Guam Power Authority

Date



GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUÅHAN
P.O.BOX 2977 • HAGÁTÑA, GUAM U.S.A. 96932-2977

Lourdes A. Leon Guerrero
I Maga 'håga

Telephone Nos. (671) 648-3054/55 Fax: 648-3165

Joshua F. Tenorio
I Sigundo Maga 'låhi

BID BOND

NO.: _____

KNOW ALL MEN BY THESE PRESENTS that _____, as

Principal Hereinafter called the Principal, and (Bonding Company), _____
A duly admitted insurer under the laws of the Territory of Guam, as Surety, hereinafter called the Surety are
Held firmly bound unto the Territory of Guam 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 (identify project by number and brief description)

NOW, THEREFORE, if the Territory of Guam shall accept the bid of the Principal and the Principal shall
enter into a Contract with the Territory of Guam in accordance with the terms of such bid, and give such bond or
bonds as my be specified in bidding or Contract documents with good and sufficient surety for the faithful
performance of such Contract Documents with good and sufficient surety for the faithful performance of such
Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event
of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the
Territory of Guam the difference not to exceed the penalty hereof between the amounts specified in said bid
and such larger amount for which the Territory of Guam 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 full force and effect.

Signed and sealed this _____ day of _____ 2020.

(PRINCIPAL)

(SEAL)

(WITNESS)

(TITLE)

(MAJOR OFFICER OF SURETY)

(TITLE)

(TITLE)

(RESIDENT GENERAL AGENT)

SEE INSTRUCTIONS FOR SUPPORTING DOCUMENTS REQUIRED.

INSTRUCTION TO PROVIDERS:

NOTICE to all Insurance and Bonding Institutions:

The Bond requires the signatures of the Vendor, two (2) major Officers of the Surety and Resident General Agent, if the Surety is a foreign or alien surety.

When the form is submitted to the Guam Power Authority, it should be accompanied with copies of the following:

1. Current Certificate of Authority to do business on Guam issued by the Department of Revenue and Taxation.
2. Power of Attorney issued by the Surety to the Resident General Agent.
3. Power of Attorney issued by two (2) major officers of the Surety to whoever is signing on their behalf.

Bonds, submitted as Bid Guarantee, without signatures and supporting documents are invalid and Bids will be rejected.



GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUÅHAN
P.O.BOX 2977 • HAGÁTÑA, GUAM U.S.A. 96932-2977

SPECIAL PROVISION FOR MAJOR SHAREHOLDERS 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:

"Section 5233 Disclosure of Major Shareholders. As a condition of submitting a bid or offer, any partnership, sole proprietorship or corporation doing business with the government of Guam shall submit an affidavit executed under oath that lists the name and 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, or, that it is a not for profit organization that qualifies for tax exemption under the Internal Revenue Code of the United States or the Business Privilege Tax law of Guam, Title 12, Guam Code Annotated, Section 26203©. With the exception of not for profit organizations, 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 or offer and shall also contain the amounts of any such commission, gratuity or other compensation. The affidavit shall be open and available to the public for inspection and copying."

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.

MAJOR SHAREHOLDERS OF DISCLOSURE AFFIDAVIT

TERRITORY OF GUAM)

HAGATNA, GUAM)

I, undersign, _____,
 (partner or officer of the company of, etc.)

being first duly sworn, deposes and says:

1. That the person who have held more than ten percent (10%) of the company's shares during the past twelve (12) months are as follows:

<u>Name</u>	<u>Address</u>	<u>Percentage of Shares Held</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
Total number of shares		_____

2. 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>
_____	_____	_____
_____	_____	_____

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 _____.

NON-COLLUSION AFFIDAVIT

Guam)
)ss:
Hagatna)

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

1. That I am the _____ of _____.
(Title) (Name of Bidding/RFP Company)
2. That in making the foregoing proposal or bid, that such proposal or bid is Genuine and not collusive or shame, 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 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 POWER 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 Guam Administrative Rules and Regulations §§3126(b).

(Declarant)

SUBSCRIBED AND SWORN to me before this _____ day of _____, 2020.

)Seal(

Notary Public

NO GRATUITIES OR KICKBACKS AFFIDAVIT

AFFIDAVIT
(Offeror)

TERRITORY OF GUAM)

HAGATNA, GUAM)

SS:

_____, being first duly sworn, deposes and says:

As the duly authorized representative of the Offeror, that neither I nor of the Offeror's officers, representatives, agents, subcontractors, or employees has or have offered, given or agreed to give any government of Guam employee or former employee, any payment, gift, kickback, gratuity or offer of employment in connection with Offeror's proposal.

Signature of Individual if Proposer is a Sole Proprietorship;
Partner, if the Proposer is a Partnership;
Officer, if the Proposer is a Corporation

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2020.

Notary Public
In and for the Territory of Guam
My Commission Expires:

DECLARATION RE-COMPLIANCE WITH U.S. DOL WAGE DETERMINATION

Procurement No.: _____

Name of Offeror Company: _____

_____ hereby certifies under penalty of perjury:

(1) That I am _____ (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 which read:

§ 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 is in full compliance with 5 GCA § 5801 and § 5802, as may be applicable to the procurement referenced herein;

Signature of Individual if Proposer is a Sole Proprietorship;
Partner, if the Proposer is a Partnership;
Officer, if the Proposer is a Corporation

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2020.

Notary Public
In and for the Territory of Guam
My Commission Expires:

SPECIAL PROVISIONS

Restriction Against Sex Offenders Employed by Service Providers to Government of Guam from Working on Government of Guam Property

GCA 5 §5253 Restriction Against Contractors Employing Convicted Sex Offenders from Working at Government of Guam Venues:

- (a) No person convicted of a sex offense under the provisions of Chapter 25 of Title 9 Guam Code Annotated, or an offense as defined in Article 2 of Chapter 28, Title 9 GCA in Guam, or an offense in any jurisdiction which includes, at a minimum, all of the elements of said offenses, or who is listed on the Sex Offender Registry, and who is employed by a business contracted to perform services for an agency or instrumentality of the government of Guam, shall work for his employer on the property of the Government of Guam other than public highway.
- (b) All contracts for services to agencies listed herein shall include the following provisions: (1) warranties that no person providing services on behalf of the contractor has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry; and (2) that if any person providing services on behalf of the contractor is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry, that such person will be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.
- (c) Duties of the General Services Agency or Procurement Administrators. All contracts, bids, or Requests for Proposals shall state all the conditions in § 5253(b).
- (d) Any contractor found in violation of § 5253(b), after notice from the contracting authority of such violation, shall, within twenty-four (24) hours, take corrective action and shall report such action to the contracting authority. Failure to take corrective action within the stipulated period may result in the temporary suspension of the contract at the discretion of the contracting authority.

SOURCE: *Added by P.L. 28-024:2 ((Apr. 21, 2005). Amended by P.L. 28-098:2 (Feb. 7, 2006).*

Signature of Bidder Date

Proposer, if an individual;
Partner, if a partnership;
Officer, if a corporation.

Subscribed and sworn before me this _____ day of _____, 2020.

Notary Public



Lourdes A. Leon Guerrero
I Maga 'håga

Telephone Nos. (671) 648-3054/55 Fax: 648-3165

Joshua F. Tenorio
I Sigundo Maga 'låhi

Accountability • Impartiality • Competence • Openness • Value

LOCAL PROCUREMENT PREFERENCE APPLICATION

Based on the law stipulated below, please place a checkmark or an "X" on the block indicating the item that applies to your business:

5GCA, Chapter 5, Section 5008, "Policy in Favor of Local Procurement" of the Guam Procurement Law states:

All procurement of supplies and services shall be made from among businesses licensed to do business on Guam and that maintains an office or other facility on Guam, whenever a business that is willing to be a contractor is:

- () (a) A licensed bonafide manufacturing business that adds at least twenty-five percent (25%) of the value of an item...
(b) A business that regularly carries an inventory for regular immediate sale of at least fifty percent (50%) of the items of supplies to be procured; or
(c) A business that has a bonafide retail or wholesale business location that regularly carries an inventory on Guam of a value of at least one half of the value of the bid or One Hundred Fifty Thousand Dollars (\$150,000.0) whichever is less...
*(d) A service actually in business, doing a substantial business on Guam, and hiring at least 95% U.S. Citizens, lawfully admitted permanent residents or national of the United States...

- Bidders indicating qualification under (d) may be considered QUALIFIED for the Local Procurement Preference only if the Government's requirement is for service. Service is defined Pursuant to 5 GCA Government Operations Subparagraph 5030 entitled DEFINITIONS under Chapter 5 of the Guam Procurement Law.

- 1. I _____, representative for _____, have read the requirements of the law cited above and do hereby qualify and elect to be given the LOCAL PROCUREMENT PREFERENCE for Bid No.: GPA _____.
2. I _____, representative for _____, have read the requirements of the law cited above, and do not wish to apply for the Local Procurement Preference for Bid No.: GPA _____.

Bidder Representative Signature

Date

NOTE:

Prospective Bidders not completing this form will automatically be not considered for Local Procurement Preference. Non-completion of this form is not a basis for rejection of the bid or proposal.

GOVERNMENT OF GUAM

GENERAL TERMS AND CONDITIONS

SEALED BID SOLICITATION AND AWARD

Only those Boxes checked below are applicable to this bid.

- [X] 1. **AUTHORITY:** This solicitation is issued subject to all the provision of the Guam Procurement Act (5GCA, Chapter 5) And the Guam Procurement Regulations (copies of both are available at the Office of the Complier of laws, Department of Law, copies available for inspection at the Guam Power Authority). It requires all parties involved in the Preparation, negotiation, performance, or administration of contracts to act in good faith.
- [X] 2. **GENERAL INTENTION:** Unless otherwise specified, it is the declared and acknowledged intention and meaning of these General Terms and conditions for the bidder to provide the Government of Guam (Government) with specified services or with materials, supplies or equipment completely assembled and ready for use.
- [X] 3. **TAXES:** Bidders are cautioned that they are subject to Guam Income Taxes as well as all other taxes on Guam Transactions. Specific information on taxes may be obtained from the Director of Revenue and Taxation.
- [X] 4. **LICENSING:** Bidders are cautioned that the Government will not consider for award any offer submitted by a bidder who has not complied with the Guam Licensing Law. Specific information on licenses may be obtained from the Director of Revenue and Taxation.
- [X] 5. **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.
- [X] 6. **COMPLIANCE WITH SPECIFICATIONS AND OTHER SOLICITATION REQUIREMENTS:** Bidders shall comply with all specifications and other requirements of the Solicitation.
- [X] 7. **“ALL OR NONE” BIDS:** Unless otherwise allowed under this Solicitation. “all or none” bids may be deemed to be non-responsive. If the bid is so limited, the Government may reject part of such proposal and award on the remainder.

NOTE: By checking this item, the Government is requesting all of the bid items to be bided or none at all. **The Government will not award on an itemized basis.** Reference: Section 3-101.06 of the Guam Procurement Regulations.

- [X] 8. **INDEPENDENT PRICE DETERMINATION:** The bidder, upon signing the Invitation for Bid, certifies that the prices in his bid were derived at without collusion, and acknowledge that collusion and anti-competitive practices are prohibited by law. Violations will be subject to the provision of Section 5651 of that of the Guam Procurement Act. Other existing civil, criminal or administrative remedies are not impaired and may be in addition to the remedies in Section 5651 of the Government code.
- [X] 9. **BIDDER’S PRICE:** The Government will consider not more than two (2) (Basic and Alternate) item prices and the bidder shall explain fully each price if supplies, materials, equipment, and/or specified services offered comply with specifications and the products origin. Where basic or alternate bid meets the minimum required specification, cost and other factors will be considered. Failure to explain this requirement will result in rejection of the bid.
- [X] 10. **BID ENVELOPE:** Envelope shall be sealed and marked with the bidder’s name, Bid number, time, date and place of Bid Opening.
- [X] 11. **BID GUARANTEE REQUIREMENT:** Bidder is required to submit a Bid Guarantee Bond or standby irrevocable Letter of Credit or Certified Check or Cashier’s Check in the same bid envelope to be held by the Government pending award. The Bid Guarantee Bond, Letter of Credit, Certified Check or Cashier’s Check must be issued by any local surety or banking institution licensed to do business on Guam and made payable to the Guam Power Authority in the amount of fifteen percent (15%) of his highest total bid offer. The Bid Bond must be submitted on Government Standard Form BB-1 (copy enclosed). Personal Checks will not be accepted as Bid Guarantee. If a successful Bidder (contractor) withdraws from the bid or fails to enter into contract within the prescribed time, such Bid guarantee will be forfeited to the Government of Guam. Bids will be disqualified if not accompanied by Bid Bond, Letter of Credit, Certified Check or Cashier’s check. Bidder must include in his/her bid, valid copies of a Power of Attorney from the Surety and a Certificate of Authority from the Government of Guam to show proof that the surety company named on the bond instrument is authorized by the Government of Guam and qualified to do business on Guam. For detailed information on bonding matters, contact the Department of Revenue and Taxation. Failure to submit a valid Power of Attorney and Certificate of Authority on the surety is cause for rejection of bid. (GPR Section 3-202.03.3) **Pursuant to Public Law 27-127, all competitive sealed bidding for the procurement of supplies or services exceeding \$25,000.00 a 15% Bid Security of the total bid price must accompany the bid package.**
- [X] 12. **PERFORMANCE BOND REQUIREMENT:** The Bidder may be required to furnish a Performance Bond on Government Standard Form BB-1 or standby irrevocable Letter of Credit or Certified Check or Cashier’s Check payable to the Guam Power Authority issued by any of the local Banks or Bonding Institution in the amount equal to ONE HUNDRED PERCENT (100%) of the contract prices as security for the faithful performance and proper fulfillment of the contract. In the event that any of the provisions of this contract are

violated by the contractor, the Chief Procurement Officer shall serve written notice upon both the contractor and the Surety of its intention to terminate the contract. Unless satisfactory arrangement or correction is made within ten (10) days of such notice the contract shall cease and terminate upon the expiration of the ten (10) days. In the event of any such termination, the Chief Procurement Officer shall immediately serve notice thereof upon the Surety. The Surety shall have the right to take over and perform the contract, provided, however, that if the Surety does not commence performance thereof within 10 days from the date of the mailing of notice of termination, the Government may take over and prosecute the same to complete the contract or force account for the account and at the expense of the contractor, and the contractor and his Surety shall be liable to the Government for any excess cost occasioned the Government thereby (GPR Section 3-202.03.4).

- [X] 13. **PERFORMANCE GUARANTEE:** Bidders who are awarded a contract under this solicitation, guarantee that goods will be delivered or required services performed within the time specified. Failure to perform the contract in a satisfactory manner may be cause for suspension or debarment from doing business with the Government and to enforce Section 23 of these General Terms and Conditions. In addition, the Government will hold the Vendor liable and will enforce the requirements as set forth in Section 41 of these General Terms and Conditions.
- [X] 14. **SURETY BONDS:** Bid and Performance Bonds coverage must be signed or countersigned in Guam by a foreign or alien surety's resident general agent. The surety must be an Insurance Company, authorized by the government of Guam and qualified to do business in Guam. Bids will be disqualified if the Surety Company does not have a valid Certificate of Authority from the Government of Guam to conduct business in Guam.
- [X] 15. **COMPETENCY OF BIDDERS:** Bids will be considered only from such bidders who, in the opinion of the Government, can show evidence of their ability, experience, equipment, and facilities to render satisfactory service.
- [X] 16. **DETERMINATION OF RESPONSIBILITY OF BIDDERS:** The Chief Procurement Officer reserves the right for securing from bidders information to determine whether or not they are responsible and to inspect plant site, place of business; and supplies and services as necessary to determine their responsibility in accordance with Section 15 of these General Terms and Conditions (GPR Section 3-401).
- [X] 17. **STANDARD FOR DETERMINATION OF LOWEST RESPONSIBLE BIDDER:** In determining the lowest responsible offer, the Chief Procurement Officer shall be guided by the following:
- a) Price of items offered.
 - b) The ability, capacity, and skill of the Bidder to perform.
 - c) Whether the Bidder can perform promptly or within the specified time.
 - d) The quality of performance of the Bidder with regards to awards previously made to him.
 - e) The previous and existing compliance by the Bidder with laws and regulations relative to procurement.
 - f) The sufficiency of the financial resources and ability of the Bidder to perform.
 - g) The ability of the bidder to provide future maintenance and services for the subject of the award.
 - h) **The compliance with all of the conditions to the Solicitation.**
- [X] 18. **TIE BIDS:** If the bids are for the same unit price or total amount in the whole or in part, the Chief Procurement Officer will determine award based on Section 3.202.15.2, or to reject all such bids (GPR Section 3-202.15.2).
- [] 19. **BRAND NAMES:** Any reference in the Solicitation to manufacturer's Brand Names and number is due to lack of a satisfactory specification of commodity description. Such preference is intended to be descriptive, but not restrictive and for the sole purpose of indicating prospective bidders a description of the article or services that will be satisfactory. Bids on comparable items will be considered provided the bidder clearly states in his bid the exact articles he is offering and how it differs from the original specification.
- [] 20. **DESCRIPTIVE LITERATURE:** Descriptive literature(s) as specified in this solicitation must be furnished as a 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 manufacture, 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 conform(s) to the specifications and other requirements of this solicitation. Failure to furnish the descriptive literature(s) by the time specified in the Solicitation will require rejection of the bid.
- [] 21. **SAMPLES:** Sample(s) of item(s) as specified in this solicitation must be furnished as a part of the bid and must be received at the date and time set for opening Bids. The sample(s) should represent exactly what the bidder proposes to furnish and will be used to determine if the item(s) offered complies with the specifications. Rejection of the Bid will be required if the sample(s) do not show that the product(s) offered conform(s) to the specifications and other requirements of this solicitation. Failure to furnish the sample(s) by the time specified in the Solicitation will require rejection of the Bid.
- [] 22. **LABORATORY TEST:** Successful bidder is required to accompany delivery of his goods with a Laboratory Test Report indicating that the product he is furnishing the Government meets with the specifications. This report is on the bidder's account and must be from a certified Testing Association.
- [X] 23. **AWARD, CANCELLATION, & REJECTION:** Award shall be made to the lowest responsible and responsive bidder, whose bid is determined to be the most advantageous to the Government, taking into consideration the evaluation factors set forth in this solicitation. No other factors or criteria shall be used in the evaluation. The right is reserved as the interest of the Government may require to waive any minor irregularity in bid received. The Chief Procurement Officer shall have the authority to award, cancel, or reject bids, in whole or in part for any one or more items if he determines it is in the public interest. Award issued to the lowest responsible bidder within the specified time for acceptance as indicated in the solicitation, results in a bidding contract without further action by either party. In case of an error in the extension of prices, unit price will govern. It is the policy of the Government to award contracts to qualified local bidders. The government reserves the right to increase or decrease the quantity of the items for award and make additional awards for the same type items and the vendor

agrees to such modifications and additional awards based on the bid prices for a period of thirty (30) days after original award. No. award shall be made under this solicitation which shall require advance payment or irrevocable letter of credit from the government (GPR Section 3-202.14.1).

- [] 24. **MARKING:** Each outside container shall be marked with the Purchase Order number, item number, brief tem description and quantity. Letter marking shall not be less than 3/4" in height.
- [] 25. **SCHEDULE FOR DELIVERY:** Successful bidder shall notify the Guam Power Authority, Dededo Warehouse at (671) 653-2073, Information Technology Division at (671) 648-3060, GPA Transportation Supply at (671) 300-8318 and/or Guam Power Authority Cabras Warehouse at (671) 475-3319 at least twenty-four (24) hours before delivery of any item under this solicitation.
- [] 26. **BILL OF SALE:** Successful supplier shall render Bills of Sale for each item delivered under this contract. Failure to comply with this requirement will result in rejection of delivery. The Bill of Sale must accompany the items delivered but will not be considered as an invoice for payment. Supplier shall bill the Government in accordance with billing instructions as indicated on the Purchase Order.
- [] 27. **MANUFACTURER'S CERTIFICATE:** Successful bidder is required, upon delivery of any item under this contract, to furnish a certificate from the manufacturer indication that the goods meet the specifications. Failure to comply with this request will result in rejection of delivery payment. Supplier shall bill the Government in accordance with billing instructions as indicated on the Purchase Order.
- [X] 28. **INSPECTION:** All supplies, materials, equipment, or services delivered under this contract shall be subject to the inspection and/or test conducted by the Government at destination. If in any case the supplies, materials, equipment, or services are found to be defective in material, workmanship, performance, or otherwise do not conform with the specifications, the Government shall have the right to reject the items or require that they be corrected. The number of days required for correction will be determined by the Government.
- [] 29. **MOTOR VEHICLE SAFETY REQUIREMENTS:** The Government will only consider Bids on motor vehicles which comply with the requirements of the National Traffic and Motor Vehicle safety Act of 1966 (Public Law 89-563) and Clean Air Act as amended (Public Law 88-206), that are applicable to Guam. Bidders shall state if the equipment offered comply with these aforementioned Federal Laws.
- [] 30. **SAFETY INSPECTION:** All motor vehicles delivered under this contract must pass the Government of Guam Vehicle Inspection before delivery at destination.
- [] 31. **GUARANTEE:**
- a) **Guarantee of Vehicle Type of Equipment:**
The successful bidder shall guarantee vehicular type of equipment offered against defective parts, workmanship, and performance, for a period of not less than one (1) year after date of receipt of equipment. Bidder shall also provide service to the equipment for at least one (1) year. Service to be provided shall include, but will not be limited to tune ups (change of spark plugs, contact points and condensers) and lubrication (change of engine and transmission oil). All parts and labor shall be at the expense of the bidder. All parts found defective and not caused by misuse, negligence or accident within the guarantee period shall be repaired, replaced, or adjusted within six (6) working days after notice from the Government and without cost to the Government. Vehicular type of equipment as used in this context shall include equipment used for transportation as differentiated from tractors, backhoes, etc.
- b) **Guarantee of Other Type of Equipment:**
The successful bidder shall guarantee all other types of equipment offered, except those mentioned in 31a, above, against defective parts, workmanship, and performance for a period of not less than three (3) months after date of receipt of equipment. Bidder shall also provide service to the equipment for at least three (3) months. All parts found defective within that period shall be repaired or replaced by the Contractor without cost to the Government. Repairs, adjustments or replacements of defective parts shall be completed by the contractor within six (6) working days after notice from the Government.
- c) **Compliance with this Section is a condition of this Bid.**
- [X] 32. **REPRESENTATION REGARDING ETHICS IN PUBLIC PROCUREMENT:** The bidder or contractor represents that it has not knowingly influenced and promises that it will not knowingly influence a Government employee to breach any of the ethical standards and represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth on Chapter 11 (Ethics in Public Contracting) of the Guam Procurement Act and in Chapter 11 of the Guam Procurement Regulations.
- [X] 33. **REPRESENTATION REGARDING CONTINGENT FEES:** The contractor represents that it has not retained a person to solicit or secure a Government contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business (GPR Section 11-207).
- [X] 34. **EQUAL EMPLOYMENT OPPORTUNITY:** Contractors shall not discriminate against any employee or applicant of employment because of race, color, religion, se, or national origin. The contractor will take affirmative action to ensure that employees are treated equally during employment without regards to their race, color, religion, sex, or national origin.
- [X] 35. **COMPLIANCE WITH LAWS:** Bidders awarded a contract under this Solicitation shall comply with the applicable standard, provisions, and stipulations of all pertinent Federal and/or local laws, rules, and regulations relative to the performance of this contract and the furnishing of goods.
- [] 36. **CHANGE ORDER:** Any order issued relative to awards made under this solicitation will be subject to and in accordance with the provisions of Section 6-101-03.1 of the Guam Procurement Regulations.
- [] 37. **STOP WORK ORDER:** Any stop work order issued relative to awards made under this solicitation will be subject to and in accordance with the provisions of Section 6-101-04.1 of the Guam Procurement Regulations.

- [X] 38. **TERMINATION FOR CONVENIENCE:** Any termination order for the convenience of the Government issued relative towards made under this solicitation will be subject to and in accordance with the provisions of Section 6-101.10 of the Government Procurement Regulations.

- [X] 39. **TIME FOR COMPLETION:** It is hereby understood and mutually agreed by and between the contractor and the Government that the time for delivery to final destination or the timely performance of certain services is an essential condition of this contract. If the contractor refuses or fails to perform any of the provisions of this contract within the time specified in the Purchase Order (from the date Purchase Order is acknowledged by vendor), then the contractor is in default. Defaults will be treated subject to and in accordance with the provisions of Section 6-101-08 of the Guam Procurement Regulations.

- [X] 40. **JUSTIFICATION OF DELAY:** Bidders who are awarded contracts under this Solicitation, guarantee that the goods will be delivered to their destination or required services rendered within the time specified. If the bidder is not able to meet the specified delivery date, he is required to notify the Chief Procurement Officer of such delay. Notification shall be in writing and shall be receive by the Chief Procurement Officer at least twenty-four (24) hours before the specified delivery date. Notification of delay shall include an explanation of the causes and reasons for the delay including statement(s) from supplier or shipping company causing the delay. The Government reserves the right to reject delay justification if, in the opinion of the Chief Procurement Officer, such justification is not adequate.

- [X] 41. **LIQUIDATED DAMAGES:** When the contractor is given notice of delay or nonperformance as specified in Paragraph 1 (Default) of the Termination for Default Clause of this contract and fails to cure in the time specified, the contractor shall be liable for damages for delay in the amount of one-fourth of one percent (1%) of outstanding order per calendar day from date set for cure until either the territory reasonable obtains similar supplies or services if the contractor is terminated for default, or until the contractor provides the supplies or services if the contractor is not terminated for default. To the extent that the contractor's delay or nonperformance is excused under Paragraph 40 (Excuse for Nonperformance or Delayed Performance) of the Termination for Default Clause of this contract, liquidated damages shall note due the territory. The contractor remains liable for damages caused other than by delay (GPR Section 6-101-09.1).

- [X] 42. **PHYSICAL LIABILITY:** If it becomes necessary for the Vendor, either as principal, agent or employee, to enter upon the premises or property of the Government of Guam in order to construct, erect, inspect, make delivery or remove property hereunder, the Vendor hereby covenants and agrees to take, use, provide and make all proper, necessary and sufficient precautions, safeguards and protections against the occurrence of any accidents, injuries or damages to any person or property during the progress of the work herein covered, and to be responsible for, and to indemnify and save harmless the Government of Guam from the payment of all sums of money by reason of all or any such accidents, injuries or damages that may occur upon or about such work, and fines, penalties and loss incurred for or by reasons of the violations of any territorial ordinance, regulations, or the laws of Guam or the United States, while the work is in progress. Contractor will carry insurance to indemnify the Government of Guam against any claim for loss, damage or injury to property or persons arising out of the performance of the Contractor or his employees and agents of the services covered by the contract and the use, misuse or failure of any equipment used by the contractor or his employees or agents, and shall provide certificates of such insurance to the Government of Guam when required.

- [X] 43. **CONTACT FOR CONTRACT ADMINISTRATION:** If your firm receives a contract as a result of this Solicitation, please designate a person whom we may contact for prompt administration.

Name: _____ Title: _____

Address: _____ Telephone: _____

GOVERNMENT OF GUAM

SEALED BID SOLICITATION INSTRUCTIONS

1. **BID FORMS:** Each bidder shall be provided with two (2) sets of Solicitation forms. Additional copies may be provided upon request. Bidders requesting additional copies of said forms will be charged per page in accordance with Section 6114 of the Government Code of Guam. All payments for this purpose shall be by cash, certified check or money order and shall be made payable to the Guam Power Authority.

2. **PREPARATIONS OF BIDS:**
 - a) Bidders are required to examine the drawings, specifications, schedule, and all instructions. Failure to do so will be at bidder's risk.
 - b) Each bidder shall furnish the information required by the Solicitation. The bidder shall sign the solicitation and print or type his name on the Schedule. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent are to be accompanied by evidence of this authority unless such evidence has been previously furnished to the issuing office.
 - c) Unit price for each unit offered shall be shown and such price shall include packing unless otherwise specified. A total shall be entered in the amount column of the Schedule for each item offered. In case of discrepancies between a unit price and extended price, the unit price will be presumed to be correct.
 - d) Bids for supplies or services other than those specified will not be considered. Time, if stated as a number of days, means calendar days and will include Saturdays, Sundays, and holidays beginning the day after the issuance of a Notice to Proceed. Time stated ending on a Saturday, Sunday or Government of Guam legal holiday will end at the close of the next business day.

3. **EXPLANATION TO BIDDERS:** Any explanation desired by a bidder regarding the meaning or interpretation of the Solicitation, drawings, specifications, etc., must be submitted in writing and with sufficient time allowed for a written reply to reach all bidders before the submission of their bids. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective bidder concerning a Solicitation will be furnished to all prospective bidders in writing as an amendment to the Solicitation if such information would be prejudicial to uninformed bidders.

4. **ACKNOWLEDGEMENT OF AMENDMENTS TO SOLICITATIONS:** Receipt of an amendment to a Solicitation by a bidder must be acknowledged by signing an acknowledgement of receipt of the amendment. Such acknowledgement must be received prior to the hour and date specified for receipt of bids.

5. **SUBMISSION OF BIDS:**
 - a) Bids and modifications thereof shall be enclosed in sealed envelopes and addressed to the office specified in the Solicitation. The bidder shall show the hour and date specified in the Solicitation for receipt, the Solicitation number, and the name and address of the bidder on the face of the envelope.
 - b) Telegraphic bids will not be considered unless authorized by the Solicitation. However, bids may be modified or withdrawn by written or telegraphic notice, provided such notice is received prior to the hour and date specified for receipt (see paragraph 6 of these instructions).
 - c) Samples of items, when required, must be submitted within the time specified, unless otherwise specified by the Government, at no expense to the Government. If not destroyed by testing, samples will be returned at bidder's request and expense, unless otherwise specified by the Solicitation.
 - d) Samples or descriptive literature should not be submitted unless it is required on this solicitation. Regardless of any attempt by a bidder to condition the bid, unsolicited samples or descriptive literature will not be examined or tested at the bidder's risk, and will not be deemed to vary any of the provisions of this Solicitation.

6. **FAILURE TO SUBMIT BID:** If no bid is to be submitted, do not return the solicitation unless otherwise specified. A letter or postcard shall be sent to the issuing office advising whether future Solicitations for the type of supplies or services covered by this Solicitation are desired.

7. **LATE BID, LATE WITHDRAWALS, AND LATE MODIFICATIONS:**
 - a) Definition: Any bid received after the time and date set for receipt of bids is late. Any withdrawal or modification of a bid received after the time and date set for opening of bids at the place designated for opening is late (Guam Procurement Regulations Section 3-202)
 - b) Treatment: No late bid, late modification, or late withdrawal will be considered unless received before contract award, and the bid, modification, or withdrawal would have been timely but for the action or inaction of territorial personnel directly serving the procurement activity.

8. **DISCOUNTS:**
 - a) Notwithstanding the fact that prompt payment discounts may be offered, such offer will not be considered in evaluating bids for award unless otherwise specified in the Solicitation. However, offered discounts will be taken if payment is made within the discount period, even though not considered in the evaluation of bids.
 - b) In connection with any discount offered, time will be computed from date of delivery and acceptance of the supplies to the destination as indicated in the purchase order or contract. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the Government check.

9. **GOVERNMENT FURNISHED PROPERTY:** No material, labor or facilities will be furnished by the Government unless otherwise provided for in the Solicitation.
10. **SELLERS' INVOICES:** Invoices shall be prepared and submitted in quadruplicate (one copy shall be marked "original") unless otherwise specified. Invoices shall be "certified true and correct" and shall contain the following information: Contract and order number (if any), item numbers, description of supplies or services, sizes, quantities, unit prices, and extended total. Bill of lading number and weight of shipment will be shown for shipments made on Government bills of lading.
11. **RECEIPT, OPENING AND RECORDING OF BIDS:** Bids and modifications shall be publicly opened in the presence of one or more witnesses, at the time, date, and place designated in the Invitation for Bids. The name of each bidder, the bid price, and such other information as is deemed appropriate by the Procurement Officer, shall be read aloud and recorded, or otherwise made available. The names and addresses of required witnesses shall be recorded at the opening. The opened bids shall be available for public inspection except to the extent the bidder designates trade secrets or other proprietary data to be confidential as set forth in accordance with Section 12 below. 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. 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 (Guam Procurement Regulations Section 3-202.12.2).
12. **CONFIDENTIAL DATA:** The Procurement Officer shall examine the bids 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, the Procurement Officer shall inform the bidders in writing what portions of the bid will be disclosed and that, unless the bidders protest under Chapter 9 of the Guam Procurement Act (P.L. 16-124), the bids will be so disclosed. The bids shall be opened to public inspection subject to any continuing prohibition on the disclosure of confidential data (Guam Procurement Regulations Section 3-202.12.3).

13. **MULTI-STEP SEALED BIDDING:**

- a. It is defined as two-phase process consisting of a technical first-phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the territory, and a second-phase in which those bidders whose technical offers are determined to be acceptable during the first-step have their priced bids considered. It is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtained the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to evaluate and determine the acceptability of technical offers.
- b. In addition to the requirements set forth in the General Terms and Conditions and the Special provisions, the following applies:
- 1). only unpriced technical offers are requested in the first phase;
 - 2). priced bids will be considered only in the second phase and only from bidders whose unpriced technical offers are found acceptable in the first phase;
 - 3). the criteria to be used in the evaluation at those specified in the Special Provisions and the General Terms and Conditions;
 - 4). the territory, to the extent the Procurement Officer finds necessary, may conduct oral or written discussion of the unpriced technical offers;
 - 5). the bidders, may designate those portions of the unpriced technical offers which contain trade secrets or other proprietary data which are to remain confidential; and,
 - 6). the service being procured shall be furnished generally in accordance with bidder's technical offer as found to be finally acceptable and shall meet the requirements of the Invitation for Bids.
- c. **RECEIPT AND HANDLING OF UNPRICED TECHNICAL OFFERS.**
Unpriced technical offers shall not be opened publicly, but shall be opened in front of two or more procurement officials. Such offers shall not be disclosed to unauthorized persons. Bidders may request nondisclosure of trade secrets and other proprietary data identified in writing.
- d. **EVALUATION OF UNPRICED TECHNICAL OFFERS.**
The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bids. The unpriced technical offers shall be categorized as:
- 1). acceptable;
 - 2). potentially acceptable, that is, reasonably susceptible of being made acceptable; or
 - 3). unacceptable. The Procurement Officer shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

The Procurement Officer may initiate Phase Two of the procedure if, in the Procurement Officer's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without technical discussions. If the Procurement Officer finds such is not the case, the Procurement Officer shall issue an amendment to the Invitation for Bids or engage in technical discussions as set forth in Subsection 3-202.20.5 of this Section.

- e. Upon the completion of Phase One, the Procurement Officer shall invite each acceptable bidder to submit a price bid. Upon submission of prices, the Procurement Officer shall prepare the final evaluation and reconsideration for the Chief Procurement Officer's approval.