

INVITATION FOR MULTI-STEP BID

NO.: GPA-082-15

ENERGY STORAGE SYSTEM

PHASE I



Volume I

Commercial Terms & Conditions

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1. Introduction

The Guam Power Authority (GPA) is inviting qualified firms to participate in a Multi-Step Bid for the Energy Storage System Phase I project. GPA is seeking the services of an Engineer/Procure/Construct (EPC) for the design, procurement, installation and interconnection to the GPA power system of a 24 MW Energy Storage System at the GPA Agana Substation compound and a 16 MW Energy Storage System at the GPA Talofofu Substation compound. The contractor shall design, procure equipment and materials, obtain required permitting, construct, install, interconnect, test and commission the project. The contractor shall also design and construct the interconnection of the ESS to the existing substation facility. Refer to Volume II for further project details. GPA seeks a “turn-key” project that will be fully operational upon commissioning and intends to enter into a 25-year Operations and Maintenance (O&M) contract with the successful Bidder. The required services include compliance with all applicable local and federal laws as well as applicable local and national standards for the services rendered. GPA reserves the option to negotiate alternative contracting structures for a portion of the project to potentially benefit from greater economic savings. This Invitation for Multi-Step Bid (IFB) is Phase I of a multi-phased approach to procure Energy Storage Systems to support power system stability and renewable energy integration.

In this Phase I acquisition, GPA intends to acquire a total of 40 MW of energy storage capacity that can meet the following established requirements:

- The Bidder’s technology meets the requirements described in “Volume II: Technical Qualification Requirements.”
- The Energy Storage Systems will be commissioned within 12 months after the award of the contract.
- The technology proposed for the Energy Storage Systems will have at least 1 year of commercial operations history in a utility environment.
- The Energy Storage Systems will deliver energy directly to the existing GPA transmission system.
- The Energy Storage Systems will have a minimum 20-year warranty.
- A 25-year Operations and Maintenance (O&M) contract will be provided with the Energy Storage Systems.

GPA conducted a study to determine the feasibility of adding an ESS and the performance of the GPA system with the addition of the ESS. The GPA Energy Storage Feasibility Study is provided in Appendix H.

This bid shall be a Two Step process. Step One will establish a Qualified Bidders List (QBL) based on acceptable submitted non price Bid information (or Technical Qualification Proposals). Step Two will evaluate the Priced Proposals from the vendors identified on the QBL and which, if any, Qualified Bidder will be awarded a contract. Step One is the period from IFB announcement through Notification of Qualified Bidders. Step Two is the period after completion of the Technical Proposal Evaluation and notification of the QBL to the contract award date.

GPA will qualify the Bidders based on their Technical Qualification Proposals and the Qualitative Proposal Scoring Worksheet. GPA will notify the Bidders selected for the QBL and will proceed with the second step of the bid process to open the sealed bid Priced Proposals of the qualified Bidders. GPA will perform a comprehensive evaluation of each bid and select the Bidder with the best bid based on the submitted Priced Proposal Worksheet. If the selected Bidder cannot proceed with the contract, GPA may elect to 1) go to the next best Bidder or 2) cancel the bid.

Table 1 indicates the anticipated milestones for the Bid process. GPA reserves the right to change the Bid process schedule at its sole discretion.

Table 1: Bid Schedule

Bid Process Milestones		From Date	To Date
Bid Announcement		9/22/15	10/15/15
Vendors Submit Questions		9/22/15	12/4/15
Pre-Bid Conference & Site Visit (Mandatory)		10/20/15 9:00 AM (Guam Standard Time)	
Cut-Off Date for Receipt of Questions		12/4/15, COB	
Site Visits (Talofofo & Agana Substations)		9/21/16	9/22/16
Cut-Off Date for Receipt of Questions		9/30/16, COB	
GPA Review and Answer Questions		9/14/16	10/14/16
Vendors Prepare Bids		9/22/15	11/4/16
Cut-Off Date for Receipt of Technical Proposals (Unpriced)		11/4/16 4:00 PM (Guam Standard Time)	
EVALUATION Step One:	Technical Proposal Evaluation	11/7/16	11/10/16
	Notification of Qualified Bidders	11/14/16	11/18/16
EVALUATION Step Two:	Cut-Off Date for Receipt of Priced Proposals	11/28/16 4:00 PM (Guam Standard Time)	
	Opening of Priced Proposals (Public Opening)	12/5/16 2:00 PM (Guam Standard Time)	
	Evaluation of Priced Proposals	12/5/16	12/7/16
	Notification of Successful Bidder	TBD	TBD
Contract Negotiations		TBD	TBD
Contract Review & Approval (GPA Mgmt & CCU)		TBD	TBD
Public Utilities Commission (PUC) Review		TBD	TBD
Contract Signing		TBD	TBD

1.1. Invitation for Bid (IFB) Document Organization

Invitation for Bid documents are organized into four separate volumes, as follows:

- Volume I: Commercial Terms and Conditions
- Volume II: Technical Qualification Requirements
- Volume III: Draft Contract
- Volume IV: Appendices

GPA reminds Bidders to submit the Priced Proposal in a separate sealed envelope clearly marked “Priced Proposal” for Step Two of the bid process.

1.2. GPA Overview

GPA is a public utility corporation that provides electric power service throughout the entire island of Guam. GPA, in conjunction with private partners, operates and maintains 13 power plants, with a total

rated capacity of 552.4 MW. The Authority also has installed and maintains an estimated combined total of 175 miles of 115 kV and 34.5 kV transmission lines and an estimated 585 miles of primary distribution lines, and 29 substations. In addition, GPA operates and maintains a total capacity of 18 MW for emergency generators to support 128 Guam Waterworks Authority water and sewage pump stations and sewage treatment facilities situated at various locations throughout Guam and 10 portable units.

1.3. Generation Overview

An overview of GPA's generation resources and transmission systems is provided in GPA's Integrated Resource Plan, which can be found at the following webpage:

http://guampowerauthority.com/gpa_authority/strategicplanning/2012IRP.php

1.4. Electrical System Overview

Guam Power Authority has approximately 175 miles of 115KV and 34.5KV transmission lines. There are 6 ea 115KV and 34 ea 34.5KV lines connecting 29 substations throughout the island. These Substations have 63 ea 13.8KV distribution feeders with approximately 585 miles of lines. The Guam Power Authority follows National Electrical Manufacturers Association (NEMA) ANSI C84 for delivery of power and imbalance.

The GPA Islandwide System Transmission Single Line Diagram can be found on the following webpage:

http://guampowerauthority.com/gpa_authority/engineering/gpa_engineering_system_diagrams.php.

1.5. IFB Document Media

The four-volume set of IFB documents and all Amendments to this IFB may be made available to Bidders in electronic format including:

- CD-ROM (inclusive of electronic spreadsheets);
- Downloadable files posted on the Internet (webpage); or
- Transmittal through email.

2. Instructions to Bidders

These instructions to Bidders are intended to provide guidance in the preparation of bids and do not constitute part of the bid or of the contract document.

This is a multi-step bid procurement consisting of two steps. Bidders must submit both parts of their bids: the Technical Qualification Proposal and the Priced Proposal by the Bid Submittal Closing Date indicated in Table 1: Bid Schedule. During Step One, only the submitted Technical Qualification Proposals will be evaluated. After Cut-Off Date for Receipts of Technical Proposals, Bidders may be requested to schedule a presentation and discussion session with GPA on Guam. Bidders must discuss, but are not limited to the following:

- Technical approach for project
- Preliminary site plan
- Project Financing
- Project Management Structure
- Operations and Maintenance (O&M) contract.

GPA is at liberty to issue a final Amendment after these presentations and discussions prior to receiving priced proposals.

In Step Two, the Priced Proposals based upon Technical Qualification Proposals will be considered for award. Only the Technical Qualification Proposals that are deemed acceptable, either initially or as a result of further discussions with prospective Bidders, will be considered for award during Step 2.

2.1. Correspondence

2.1.1. Language

English is the official language of Guam. As such, Bidders should submit all of their bid documents, and any accompanying documents, in English. Any bids not submitted in English will be designated as “Unacceptable” and will not qualify for the QBL.

2.1.2. Commercial and Technical Correspondence

Any prospective Bidder desiring an explanation or interpretation of the IFB, commercial terms, Technical Specifications, etc., must make a request in writing to the GPA Procurement Office at the mailing address or the email address listed below, referencing the Invitation for Multi-Step Bid No. GPA-082-15.

ATTENTION: JOHN M. BENAVENTE, P.E.
GENERAL MANAGER
GUAM POWER AUTHORITY
POST OFFICE BOX 2977
HAGATNA, GUAM 96932-2977
ATTENTION: SUPPLY MANAGEMENT ADMINISTRATOR

PHONE: (671) 646-3054/55
FAX: (671) 648-3165

In addition, Bidders may also make this request by writing to the GPA PMC Procurement Officer at: gpa-ess@gpagwa.com.

All inquiries must be received by GPA Procurement no later than the Cut-Off Date for Receipt of Proposals indicated in Table 1: Bid Schedule. Any oral explanations or instructions given by GPA to prospective Bidders will not be binding. GPA will promptly furnish any information given to a prospective Bidder concerning this IFB to all parties recorded by the Procurement Officer as having received the IFB. This information may be provided as an amendment to the IFB if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective Bidders.

2.2. Pre-Bid Site Visit

The Pre-Bid Conference and Site Visit date is indicated in Table 1: Bid Schedule. All prospective Bidders are required to attend the Pre-Bid Conference and Site Visit. Attendance shall be at the Bidder's own expense. Bidders wishing to attend shall meet at the GPA Procurement Conference Room at the time specified before proceeding to the project site at the GPA Agana Substation.

2.3. Examination of Technical and Functional Requirements and IFB Documents

Before submitting their bid, Bidders must familiarize themselves with the nature and extent of the work, duly noting any local conditions that may affect the work to be done and the labor, materials, and equipment required.

Bidders are also required to carefully examine all IFB documents inclusive of all technical and functional requirements and to inform themselves of all conditions and requirements for the execution of the proposed work in accordance with the laws and regulations of the Territory of Guam. Ignorance on the part of Bidders of any part of the IFB documents and Technical Requirements will in no way relieve them of the obligations and responsibilities assumed under the contract.

2.4. IFB Amendment

Any amendment, modification or addendum issued by the Guam Power Authority, prior to the opening of the bids, for the purpose of changing the intent of the Technical Requirements, clarifying the meaning or changing any of the provisions of this IFB, shall be binding to the same extent as if written in the originally-issued IFB documents.

Any addendum issued will be made available to all Bidders via mail, fax, e-mail or posting to the GPA Website. The Bidders shall acknowledge receipt of the amendment by a signature on one copy, which is to be returned to GPA at the mailing address, email address, or FAX number listed under Section 2.1.2: Commercial and Technical Correspondence.

2.5. Familiarity with Laws

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

2.6. Cost of Bidding

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

2.7. Priced Proposals Furnished Separately without Technical Qualification Proposals

Bidders are required to submit their Priced Proposals as found in the **Priced Proposal Worksheet** separately from their Technical Qualification Proposals and completed **Qualitative Proposal Scoring Worksheet** by the Cut-Off Date for Receipt of Priced Proposals. Bidders must package Priced Proposals in a separate sealed envelope marked “Priced Proposal” and indicating the date and time of bid package submittal. Any equipment and material prices shall be provided on the basis of CIF to the Guam job site unloaded.

2.8. Price/Cost Data

Bidders shall provide prices/costs in U.S. Dollars.

2.9. Documents Executed Outside Guam

The Power of Attorney, performance bond guarantee, and documents defining the constitution of the joint venture, consortium, company or firm, if executed outside Guam, whether required to be submitted with the bids or after the award of the contract, must be authenticated by a Notary Public or other official authorized to witness sworn statements. Original bid submittals must be sent to GPA and post-marked no later than the Bid Submittal Closing Date.

2.10. Step One Procedures

The following outlines the requirements for technical (non-price) bid submittals.

2.10.1. Submission of Bids

2.10.1.1. Bid Contents

Each bid shall contain a complete and clear description of the proposed Energy Storage System, technology, construction timelines and permitting experience, site use, proposed interconnection with GPA system, operation and maintenance experience with proposed technology (as more fully discussed in Volume II: Technical Qualification Requirements). Each bid shall include the following:

- Cover and bid checklist forms defined in Appendix A;
- Responses and supporting information to the questions raised in the Qualitative Proposal Scoring Worksheet and Volume II: Technical Qualification Requirements;
- Supplementary information described below.

Each bid shall be submitted in the format and quantities discussed in Section 2.10.2: Bid Submittal.

2.10.1.2. Responses and Supporting Information to Qualitative Questions

As part of their bid package, Bidders shall provide written responses and supporting information to answer each of the questions raised in the Qualitative Proposal Scoring Worksheet. Volume II provides more detail on information required for the Technical Qualification Proposals and Priced Proposals. The Bidders shall

provide chapters/sections for each scoring category identified in the Qualitative Proposal Scoring Worksheet.

2.10.1.3. Supplementary Information

Bidders shall submit all the supplementary information required by the IFB documents. The supplementary information must be provided in sufficient detail and clarity to permit a complete comparison of the bids with the Technical Specifications. The supplementary information shall be provided in the chapter/section for the Other Documents scoring category and shall include the following:

1. Insurance policy;
2. Audited financial information for the last five years on the main Bidder's firm, its parent or subsidiary company that will be used in this contract. If they have one, Bidders must include their Dunn and Bradstreet Number or Other Major Credit Rating Agency rating, or comparable, independent verification of their credit standing;

Submittal of the following supplementary information is mandatory and must be provided by the Bid Submittal Closing Date. **GPA shall automatically disqualify any bid submitted without the supplementary information listed below:**

3. A copy of the Bidder's Articles of Incorporation or other applicable forms concerning business organization (i.e. partnership, sole proprietorship, etc.) and By-Laws;
4. Affidavit of Disclosure of Major Shareholders (Appendix C);
5. Certificate of Good Standing to conduct business from the jurisdiction of their company's residence;
6. Non-collusion Affidavit (Appendix D);
7. Information regarding outstanding claims against the Bidder, if any;
8. Bid Bond (Appendix B);
9. A current Guam Business License is not required in order to provide a Bid for this engagement, but is a pre-condition for entering into a contract with the Authority;
10. No Gratuities or Kickbacks Affidavit (Appendix J);
11. Ethical Standards Affidavit (Appendix K);
12. Declaration Re Compliance with U.S. DOL Wage Determination (Appendix L);
13. Restriction Against Sex Offenders Employed by Service Providers to Government of Guam from Working on Government of Guam Property (Appendix M).

2.10.2. Bid Submittal

2.10.2.1. Manual Bid Submittal

Bidders shall submit their bids manually.

2.10.2.2. Non-repudiation Issues

GPA has structured its Manual IFB submittal procedures to ensure non-repudiation of the submitted bids. In this IFB, “non-repudiation” means strong and substantial evidence of the identity of the sender and owner of the bid and of bid’s integrity in so far as it being unaltered from its original sent state, sufficient to prevent a party from successfully denying the origin, submission or delivery of the bid and the integrity of its contents. Non-repudiation applies to both parties to this IFB transaction. It binds the sender as well as precludes the recipient from denying the exchange of information and material upon the receipt of secure acknowledgement from the recipient.

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

- Manually executed signatures and printed media documents;
- Chain of custody receipts;
- Manual time-stamps for receipt of IFB materials;
- Machine generated Fax confirmation reports;
- Secure notification e-mail;
- Electronic Postings on the guampowerauthority.com domain;
- Physical delivery of printed material bids;
- Physically secured area storage of IFB materials.

2.10.2.3. Signature of Bidder

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

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

2.10.2.4. Manual Bid Submittal Package Format and Handling

This section describes the bid package format and content required by GPA that is specific to manual submittal of bids. The Manual IFB Bid Submittal Process is characterized by a preponderance of the submitted material in tangible printed media form that is hand-delivered by an authorized agent of the Bidder to the Procurement Officer of the Guam Power Authority. Both the Bidders’ agents and the GPA Procurement Officer are live human beings. In addition, both parties perform non-repudiation of the bid through the execution of manually executed signatures, seals and time stamps.

Bidders are required to submit one original and six (6) bound copies of their bid.

2.10.2.5. Marking and Packaging of Bids

As a general rule, the manually submitted Bids shall be packaged in separate sealed boxes with the following information clearly marked on the outside of the two largest sides:

- 1) "TECHNICAL QUALIFICATION PROPOSAL" OR "PRICED PROPOSAL"
- 2) "ENERGY STORAGE SYSTEM PHASE I";
- 3) BIDDER'S NAME;
- 4) INVITATION FOR BID NUMBER;
- 5) CLOSING DATE and TIME (Guam Standard Time).
- 6) Addressed As follows:

ATTENTION: JOHN M. BENAVENTE, P.E.
 GENERAL MANAGER
 GUAM POWER AUTHORITY
 POST OFFICE BOX 2977
 HAGATNA, GUAM 96932-2977

If the Bidder's submittal cannot fit within one box or if the Bidder chooses to submit more than one box, each box must be labeled as described above and with the following additional information:

- 7) Box Number Within the Set of Submitted Boxes
- 8) The Total Number of Boxes Submitted.

2.10.2.6. Receipt and Handling of Manually Submitted Bids

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

GPA procurement personnel will stamp the outside of each package using the GPA Procurement time stamp and will officially log the date and time that each Bidder's sealed bid package is received.

2.10.3. Submittal Closing Date

The Technical Qualification Proposal Submittal Closing Date is indicated in Table 1: Bid Schedule. Submitted proposals, excluding the Priced Proposals, will be opened at this time which will initiate the proposal evaluation process. No proposals shall be accepted after the Bid Submittal Closing Date.

2.10.4. Bid Changes During Bid Process

Changes may be made to the Technical Qualification Proposals(s) prior to the Bid Submittal Closing Date.

2.10.5. Evaluation of Technical Qualification Proposals

After the Bid Submittal Closing Date, GPA will evaluate the Technical Qualification Proposals and develop the QBL.

In determining the most qualified Bidder, GPA shall be guided by the following:

- The ability, capacity and skill of the Bidder to perform the work specified.
- Whether the Bidder can perform promptly or within the specified time.
- The Bidder's approach or plan for the required work. A preliminary schedule must be provided with the plan.
- The quality of performance of the Bidder with regard to awards of similar scope previously made to him.
- The previous and existing compliance by the Bidder with laws and regulations relative to procurement.

The Qualitative Proposal Scoring Worksheet lists the evaluation criteria and preliminary scoring. GPA will convene an Evaluation Committee of no less than three (3) people whom will elect a committee chairperson. Each committee member will score each Bidder's proposal using the Qualitative Proposal Scoring Worksheet. Proposals that score greater than or equal to 80 points are deemed acceptable. Proposals that score between 75 and 79 percent, inclusive, are deemed potentially acceptable. Proposals scoring below 75 percent are deemed unacceptable.

If the committee determines that a proposal is not acceptable, then that proposal cannot be evaluated in Step Two. If the committee determines that a proposal is potentially acceptable, then that proposal cannot be evaluated in step Two unless the committee finds less than two acceptable proposals. No unacceptable proposals will be scored beyond Step One.

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 Step Two if there are sufficient acceptable Technical Qualification Proposals to assure effective price competition in the second step without technical discussions. If the Procurement Officer finds that such is not the case, the Procurement Officer shall issue an amendment to this IFB or engage in technical discussions with Bidders as set forth below.

The Procurement Officer may conduct discussions with any Bidder who submits an acceptable or potentially acceptable technical Offer. During the course of such discussions, the Procurement officer shall not disclose any information derived from the Technical Qualification Proposals to any other Bidder. Once discussions are begun, any Bidder, who has not been notified that its Technical Qualification Proposal has been finally found acceptable, may submit supplemental information amending its Technical Qualification Proposal at any time. Such submission may be made at the request of the Procurement Officer or upon the Bidder's own initiative.

2.10.5.1. Discussion of Bids

Qualified Bidders may be requested to schedule a presentation and discussion session as per Section 2. GPA may conduct discussions with any Bidder to determine such Bidder's qualifications for further consideration and explore with the Bidder the scope and nature of the required services, method of performance and the relative utility of alternative methods of approach. During the course of such discussions, the Procurement Officer shall not disclose any information derived from the Technical and Qualification Proposals of any other Bidder.

Each Bidder is requested not to contact GPA on any matter relating to its bid, from the Bid Submittal Closing Date to the time the contract is awarded, except to respond to inquiries made by GPA.

2.10.5.2. Notice of Unacceptable Bid

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

2.11. Step Two Procedures.

Upon completion of the Technical Qualification Proposal evaluation and discussions, qualified Bidders must submit their priced proposals. GPA will proceed with Step Two of the multi-step bid, which includes evaluation of the Priced Proposals and award of the contract.

2.11.1. Request for Priced Proposals

Each Bidder from the QBL will be notified and GPA will open their Priced Proposals, which were submitted on the Priced Proposal Worksheet. GPA will select a winning Bidder based on a comprehensive evaluation of the Priced Proposals which may include a life-cycle cost analysis.

2.11.1.1. Bid Changes During Bid Process

Changes may be made to the Priced Proposals only prior to the Bid Submittal Closing Date.

2.11.1.2. Bid Validity

All price/cost data submitted with the Bidders' bids shall remain firm and open for acceptance for a period of **not less than eight (8) months after the Bid Submittal Closing Date**; thereafter, the Priced Proposal shall be subject to renewal by mutual agreement between the Bidder and GPA. The Bidder shall state the actual date of expiration in their Priced Proposal with their bid submittal.

2.11.2. Preliminary Examination of Priced Proposal

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

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

2.11.3. Evaluation Criteria and Comparison of Priced Proposals

GPA will only evaluate and compare the Priced Proposals for Bidder's whose Technical Qualification Proposals were determined to be responsive to the IFB document requirements during Step One. GPA's evaluation of Priced Proposals shall compare the total basic bid prices.

2.12. General Bid Guidelines and Requirements

2.12.1. Amendments to the IFB Document

GPA may elect to change the IFB documents in whole or in part. GPA shall send all Amendments to the IFB document recipients via fax and/or e-mail. In addition, GPA will make all Amendments available on the Internet at the GPA Website.

2.12.2. Proprietary Data

For the purposes of this IFB and submitted bids, the laws, rules and regulations of Territory of Guam concerning confidentiality shall govern. Bidders may designate those portions of the Bid that contain trade secrets or other proprietary data that are to remain confidential.

The Procurement Officer shall examine the bids to determine the validity of any request for nondisclosure of trade secrets and other proprietary data identified in writing. If the Bidder and GPA do not agree as to the disclosure of data, the Procurement Officer shall inform the Bidder in writing and in e-mail within five working days of the closing date for Bid submittal what portions of the Bid will be disclosed and that, unless the Bidder protests under the Conditions of Contract Disputes clause the information will be so disclosed. The bid shall be opened to public inspection subject to any continuing prohibition of the disclosure of confidential data.

2.12.3. Acceptance of Bids

GPA reserves the right to reject any or all bids and to waive minor errors, informalities, and discrepancies made by the Bidders if it appears in GPA's best interest to do so.

Any effort by a Bidder to influence GPA in the bid evaluation, bid comparison or contract award decisions may result in the rejection of the bid. Once GPA has arrived at a decision regarding the award of the contract, it will notify promptly the winning Bidder in writing.

2.12.4. IFB Cancellation or Delay

The Guam Power Authority reserves the right to delay award or to cancel the IFB, or to reject all bids or any individual bid in whole or in part, at any time prior to the final award. When the IFB is canceled or rejected prior to final award, notice of cancellation or rejection shall be sent to all Bidders and all bid materials will be promptly returned. The reasons for cancellation or rejection shall be made a part of the procurement file that is available for public inspection. After the Bid Submittal Closing Date, but prior to award, all bids may be rejected in whole or in part when the Procurement Officer determines that such action is in the Territory's best interest for reasons including but not limited to:

- a) The supplies and services being provided are no longer required;
- b) The IFB did not provide consideration of other factors of significance to the Territory;
- c) All otherwise acceptable bids received have clearly unreasonable price/cost data;
- d) 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;

Again, any individual bid may be rejected in whole or in part when in the best interest of the Territory.

2.12.5. Disqualification of Bidder

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

2.12.6. False Statements in Bid

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

2.13. Award of Contract

The contract will be awarded to the Bidder evaluated as being qualified and with the lowest total basic bid price.

The successful Bidder will be notified in writing (letter or e-mail or fax) of the intent to award the contract, and will be required to send to GPA's offices, within ten (10) days of the date of receipt of such notice, a representative or representatives with proper Power-of-Attorney for the purpose of executing a contract with such alterations or additions thereto as may be required to adopt such contract to the circumstances of the bid.

The successful Bidder shall provide the required Performance Bond within **fourteen (14) days** of receipt of the GPA Notice of Intent to Award.

Failure on the part of the successful Bidder to provide a Performance Bond and/or to enter into a contract with GPA shall be sufficient grounds for the annulment of the award. The negotiations may then be resumed with the next most qualified Bidder.

2.14. Bid and Performance Bond Requirements

2.14.1. Bid Bond Form and Amount

A bid bond for an amount of \$ 150,000 (USD) is required and may be in the following form:

- a. Cash, Bank Draft or Certified Check made payable to the Guam Power Authority;
 - b. By wire transfer to Guam Power Authority, Bank of Guam, Revenue Fund Account, Account No.: 0601-026246, Routing No. 121405115, Bank Location: 111 Chalan Santo Papa Street, Mailing Address: P. O. Box BW, Hagatna, Guam 96932
 - c. Letter of Credit;
 - d. Surety Bond – valid if accompanied by:
 - (1) Current Certificate of Authority to do business on Guam issued by the Department of Revenue and Taxation;
 - (2) Power of Attorney issued by the Surety to the Resident General Agent
-

- (3) Power of Attorney issued by two (2) major officers of the Surety to whoever is signing on their behalf.

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

If a Bidder desires to submit a bid bond with an acceptable bonding company, the Bidder must submit original copies of Appendix B.

For those Bidders not selected for award of contract, bid bonds will be refunded. For those Bidders selected for award of contract, bid bonds will be refunded once GPA has received their performance bond (see next Section 2.14.2). Any Bidder who is selected for award of contract but who is unable to fulfill the obligations of its respective bid(s) will permanently forfeit its bid bond(s) to GPA.

2.14.2. Performance Bond Form, Amount, and Duration

A construction period performance bond shall be required from winning Bidders in the form as prescribed in Appendix F in the amount equal to ONE HUNDRED PERCENT (100%) of the contract price as security for the faithful performance and proper fulfillment of the contract. A performance bond is required in order to assure that CONTRACTOR will perform the terms and conditions of the CONTRACT, and that CONTRACTOR will save GPA harmless on account of all claims for damage to persons, property or premises arising out of his/her operations prior to the acceptance of the finished work; and that he/she will promptly make payments to all persons supplying him/her labor, materials, supplies and services used directly or indirectly by CONTRACTOR in the prosecution of the work provided for in the CONTRACT.

A warranty period performance bond shall be required from winning Bidders in the form as prescribed in Appendix F in the amount equal to FIFTEEN PERCENT (15%) of the contract price as security for the proper fulfillment of the performance guarantees specified in Volume II throughout the 20-year warranty period. Receipt by GPA of the warranty period performance bond shall be a prerequisite for release of the construction period performance bond.

If the Bidder is declared by GPA to be in default under the CONTRACT, GPA may exercise any or all rights and remedies it possesses under the provisions of the performance bonds.

2.14.3. Requirement for Performance Bond Execution by a Guam Licensed Surety Company

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

3. Required Bid Forms

This Section describes the forms required for submission of the Bid.

The following forms in Appendices A, B, C, D, E, J, K, L, M and P must be completed:

- a) Appendix A, Bid Checklist
- b) Appendix B, Bid Bond Form and Instructions
- c) Appendix C, Major Shareholders Disclosure Affidavit
- d) Appendix D, Non-collusion Affidavit
- e) Appendix E, Local Procurement Preference Application
- f) Appendix J, No Gratuities or Kickbacks Affidavit
- g) Appendix K, Ethical Standards Affidavit
- h) Appendix L, Declaration Re Compliance With U.S. DOL Wage Determination
- i) Appendix M, Restriction Against Sex Offenders Employed by Service Providers to Government of Guam from Working on Government of Guam Property
- j) Appendix P, Priced Proposal Worksheet

These Forms and Worksheets will be available on the GPA Website's Procurement Page and in Volume IV: Appendices.

3.1. Technical Bid Forms

The following referenced forms are contained in the Appendices and shall be completed and submitted with the Bid.

3.1.1. Document Receipt Checklist

The Bidder shall complete Form A-1 by initialing the Invitation For Bid Documents received from Guam Power Authority, including the latest IFB Amendment received. This Form is an acknowledgement of receipt, review and understanding of the IFB documents.

3.1.2. Bid Submittal Checklist

The Bidder shall complete Form A-2. This Form provides an inventory of documents submitted by the Bidder in response to the Bid requirements.

3.1.3. Major Shareholders Disclosure Affidavit

Bidders shall fill out the Major Shareholders Disclosure Affidavit form in Appendix C and submit it with their bids.

3.1.4. Non-collusion Affidavit

Bidders shall fill out the Non-collusion Affidavit form in Appendix D and submit it with their bids.

3.1.5. Local Procurement Preference Application

Bidders shall fill out and sign the Local Procurement Preference Application in Appendix E and submit it with their bids.

3.1.6. No Gratuities or Kickbacks Affidavit

Bidders shall fill out and sign the No Gratuities or Kickbacks Affidavit in Appendix J and submit it with their bids.

3.1.7. Ethical Standards Affidavit

Bidders shall fill out and sign the Ethical Standards Affidavit in Appendix K and submit it with their bids.

3.1.8. Declaration Re Compliance with U.S. DOL Wage Determination

Bidders shall fill out and sign the Declaration Re Compliance with U.S. DOL Wage Determination in Appendix L and submit it with their bids.

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

Bidders shall fill out and sign the Restriction Against Sex Offenders Employed by Service Providers to Government of Guam from Working on Government of Guam Property Affidavit and submit it with their bids.

3.1.10. Local Procurement Preference Application

Bidders shall fill out and sign the Local Procurement Preference Application in Appendix E and submit it with their bids.

3.2. Price Bid Form

3.2.1. Fee & Evaluation Data

Bidders shall complete the Priced Proposal Worksheet and submit it in a sealed envelope which will only be opened when the Bidder has been deemed qualified through Step One of the multi-step bid process.

4. Conditions of Contract

4.1. Definitions

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

4.1.1. \$

The term "\$" refers to currency in U.S. dollars.

4.1.2. Approved

The word "Approved," when applied by ENGINEER to CONTRACTOR's drawings or documents, shall mean that the drawings or documents are satisfactory from the standpoint of interfacing with GPA-furnished components, and/or that ENGINEER has not observed any statement or feature that appears to deviate from the Specification requirements.

4.1.3. Approved As Revised

The words "Approved As Revised," when applied by ENGINEER to CONTRACTOR's drawings or documents shall mean that the drawings or documents are approved as defined above, except that the corrections shown are required for the proper interfacing with GPA-furnished components or are necessary to be in conformance with the Specification's requirements.

4.1.4. Change Order

A written instrument to CONTRACTOR signed by GPA authorizing an addition, deletion, or revision in the goods or special services, or an adjustment in the purchase order price or the delivery time, issued after the effective date of the Contract Agreement (Agreement).

4.1.5. Contract

The term "Contract" means the Energy Storage System Phase I Contract executed as a result of this Multi-Step Bid.

4.1.6. Contract Agreement (Agreement)

The written agreement between GPA and CONTRACTOR covering the furnishing of the Goods, Special Services, and other services in connection therewith evidencing what is contemplated and agreed to between the parties including any other Contract Documents either attached to the Agreement or made a part thereof by reference therein.

4.1.7. Contract Documents

The Contract Agreement, Bonds (where required), Bid Documents and Amendments, Bidder's Proposals, any Supplementary Conditions, the Specifications, the Drawings and any other documents specifically identified in the Contract Agreement, together with all Modifications issued after execution of the Contract Agreement.

4.1.8. CONTRACTOR

The Bidder with whom GPA has entered into the Contract Agreement.

4.1.9. Day

A calendar day of twenty-four (24) hours measured from midnight to the next midnight

4.1.10. Delivery Time

The total number of days or the dates stated in the Agreement for furnishing the Goods and/or Special Services

4.1.11. Defective

An adjective which when modifying the words Goods or Special Services refers to Goods or Special Services which are unsatisfactory, faulty, deficient, do not conform to the Contract Documents, or do not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents.

4.1.12. Drawings

Drawings are all official drawings approved by the ENGINEER and showing the character and scope of the Goods to be furnished.

4.1.13. Effective Date of the Contract Agreement

The date indicated in the Purchase Agreement on which it becomes effective, or if no such date is indicated, the date by which the Purchase Contract is signed by both parties.

4.1.14. ENGINEER

Wherever the words "ENGINEER" or "ENGINEERS" appear in the CONTRACT Documents, it shall mean GPA's engineer duly appointed as "ENGINEER". GPA shall assign several ENGINEERS as required to cover specialized areas of expertise.

4.1.15. ENGINEER's Instructions

Written instructions issued by ENGINEER which clarify or interpret the CONTRACT Documents or order minor changes or alterations in the Goods or Special Services to be furnished but which do not involve a change in the Purchase Price or the Delivery Time.

4.1.16. General Manager

The General Manager is the Chief Executive Officer of the Guam Power Authority. The office and title of General Manager shall apply to any person acting in a regular or in an acting capacity as the Chief Executive Officer of the Guam Power Authority.

4.1.17. Goods

All property required to be furnished by CONTRACTOR under the procurement documents.

4.1.18. Modification

A written amendment of the Contract Agreement signed by both parties, or Change Order, or ENGINEER's Instructions.

4.1.19. Notice

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

4.1.20. OWNER

The Guam Power Authority (An autonomous instrumentality of the Government of Guam).

4.1.21. Point of Delivery

The place at which property in the goods shall pass to GPA. Goods shall be CIF landed at job-site, Guam, unloaded.

4.1.22. Project

The facilities, or works, the Goods and Services are to be used for or incorporated into.

4.1.23. Procurement Officer

The General Manager of the Guam Power Authority or the General Manager's designee.

4.1.24. PURCHASER

The Guam Power Authority with whom CONTRACTOR has entered into the Contract Agreement.

4.1.25. Seller

The CONTRACTOR.

4.1.26. SITE or Site

The SITE is the area where the Project is to be constructed or executed.

4.1.27. Special Services

Services to be furnished by CONTRACTOR at the Site as required by the Contract Agreement.

4.1.28. Territory

The Territory of Guam.

4.2. Agreement

Prior to entering into a formal agreement, GPA and CONTRACTOR shall resolve and document any differences between the CONTRACTOR's bid and the IFB documents. The Agreement between GPA and CONTRACTOR shall consist of the IFB documents, as resolved by the CONTRACTOR's final negotiated Bid and by GPA amendments, and the CONTRACTOR's bid, as adjusted by a prioritized list of documents generated during the evaluation and negotiation processes and agreed to and acknowledged in writing by both parties. These documents may consist of, but are not limited to, written answers to questions, letters, and written clarifications to the bid.

Any formal contract document shall reference GPA IFB documents and the CONTRACTOR's bid. No oral understanding or statement shall modify the Agreement. Changes to the above documents can only be made in accordance with the procedure for modifications as defined in Section 4.14 Changes.

The resolved IFB documents shall take priority over and shall govern in all cases of conflict with the adjusted bid. The CONTRACTOR's contractual obligation shall be to fulfill all requirements of the IFB documents, as resolved, and to provide all features of the CONTRACTOR's bid, as adjusted.

The IFB documents are intended to be complementary, what is called for by one shall be as binding as if called for by all. If not otherwise specified in the IFB documents, these General Conditions shall apply. If, during performance of the Agreement CONTRACTOR detects a discrepancy in the IFB documents, CONTRACTOR shall so report to ENGINEER in writing at once and shall obtain a written interpretation or clarification from ENGINEER before proceeding further; however, CONTRACTOR shall not be liable to GPA for failure to report any conflict, error, or discrepancy in the Contract Documents unless CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

All materials, equipment, and services that may reasonably be inferred from the IFB documents, as being required to produce the intended result will be supplied whether or not specifically called for. When words that have a well-known technical or trade meaning are used to describe materials, equipment, or services, such words will be interpreted in accordance with such meaning. Reference to standard specifications, manuals, or codes of any technical society, organization or association, or to the code of any Governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, or code in effect on the effective date of the Agreement except as may be otherwise specifically stated in the Specification or Agreement. ENGINEER shall issue clarifications and interpretations of the IFB documents.

4.3. Indemnity

CONTRACTOR shall indemnify and hold GPA and ENGINEER harmless from any claim, liability or product liability, loss, damage, demand, cause of action or suit, expense, or fee of legal counsel arising out of or in connection with the Goods or Special Services provided by the CONTRACTOR.

4.4. Shipment, Delivery, and Acceptance of Goods

Shipment and delivery of the Goods shall be in accordance with this Paragraph except as otherwise provided or specified in the CONTRACT Documents.

All goods will be delivered at the point of delivery set forth in the Purchase Contract. CONTRACTOR shall select the means and methods of transportation. All charges necessary to effect shipment to the point of delivery, including but not limited to export packing, switching, trucking, lighter age, and special handling will be paid by CONTRACTOR.

GPA and/or ENGINEER reserve the right to inspect the Goods upon delivery for the purpose of identifying the Goods and general verification of quantities.

4.5. Accounting

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

Where the Agreement covers the reimbursement of the traveling or living expenses of the CONTRACTOR's employees or agents, the CONTRACTOR agrees to furnish complete itemization and breakdowns of such expenses when requested by GPA.

In the event of any changes to or termination of the Agreement, or the furnishing of goods or services on a labor hour or a cost reimbursable basis, CONTRACTOR shall supply information in such detail as may be reasonably required by GPA to support all applicable charges. GPA, or an independent auditor designated by GPA, shall have the right to audit, during normal working hours, CONTRACTOR's accounts and records relating to such charges. The expense of such audit will be borne by GPA.

4.6. Waiver of Claims

The making and acceptance of final payment will constitute:

A waiver of all claims by GPA against CONTRACTOR, except claims arising from unsettled liens, claims relative to defective Goods appearing after final payment, or from failure to comply with the Contract Documents or the terms of any special guarantees specified therein; nor will final payment constitute a waiver by GPA of any rights in respect of CONTRACTOR's continuing obligations 'under the Procurement Documents; and

A waiver of all claims by CONTRACTOR against GPA other than those previously made in writing and still unsettled.

4.7. Supervision and Coordination by CONTRACTOR

CONTRACTOR shall competently and efficiently manage, supervise, and direct production of the Goods and furnishing of Special Services and coordinate all operations required to deliver the Goods and furnish any required Special Services.

CONTRACTOR shall designate, in writing to GPA, a person with authority to act on behalf of CONTRACTOR with respect to CONTRACTOR's obligations under the CONTRACT Documents, and all communications given to or received from that person will be binding on CONTRACTOR.

CONTRACTOR shall perform all such activities as an independent contractor and not as an agent of GPA. When others furnish materials and equipment for assembly by the CONTRACTOR, CONTRACTOR shall

receive, unload, store, and handle it and become responsible therefore as though CONTRACTOR was furnishing such materials and/or equipment under the Agreement.

4.8. Substitutions

If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall make written application to ENGINEER for acceptance thereof certifying that the proposed substitute will perform adequately the function as called for by the general design, be similar and of equal substance to that specified, and be suited to the same use and capable of performing the same function as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not prejudice the CONTRACTOR's warranty or timely delivery of the Goods, whether or not acceptance of the substitute will require a change in any of the Contract Documents to adapt the design to the substitute and whether or not incorporation or use of the substitute in connection with the production of the Goods is subject to payment of any license fee or royalty.

All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair, and replacement service will be indicated. ENGINEER may require CONTRACTOR to furnish at CONTRACTOR's expense such additional data about the proposed substitute as is required by ENGINEER. GPA may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety with respect to any substitute.

4.9. Documentation and Drawings

The Agreement will not be deemed satisfactorily completed until all requirements have been complied with including, but not limited to, proper material documentation, final drawings and reproductions, and other requirements stated in the Contract Documents. GPA may withhold final payment hereunder, pending completion of all such requirements by the CONTRACTOR.

At the time of each submission, CONTRACTOR shall in writing call ENGINEER's attention to any deviations that the drawings or documents may have from the requirements of the Specification or Contract Documents. CONTRACTOR shall also direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals. CONTRACTOR's submission of any drawing or document bearing CONTRACTOR's approval shall constitute a representation to GPA and ENGINEER that CONTRACTOR assumes full responsibility for having determined and verified the design criteria, quantities, dimensions, installation requirements, materials, catalog numbers, and similar data and that CONTRACTOR has reviewed or coordinated each drawing or document with the requirements of the Contract Documents.

ENGINEER's review and approval of CONTRACTOR's drawings or documents will be only for conformance with the design concept of the Goods and for compliance with the information given in the Contract Documents. Such review and approval will not extend to design data reflected in drawings or documents that is peculiarly within the special expertise of CONTRACTOR or any party dealing directly with CONTRACTOR. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make corrections required by ENGINEER when drawings or documents are marked "Approved As Revised" and shall return the required number of corrected copies.

GPA and/or ENGINEER shall have the right to reproduce any and all drawing, prints, or other data or documents received from CONTRACTOR that are considered necessary for engineering, construction, or other purposes, despite any notice to the contrary appearing on the item. When a drawing or document

approval is required by the Specifications, CONTRACTOR shall not commence production of any part of the Goods affected thereby until such drawing or document has been reviewed and approved by ENGINEER.

ENGINEER's review and approval of CONTRACTOR's drawings or documents will not relieve CONTRACTOR from responsibility for any deviations from the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to such deviation at the time of submission and ENGINEER has given written concurrence and approval to the specific deviation, nor will any concurrence or approval by ENGINEER relieve CONTRACTOR from responsibility for errors or omissions in the drawings or documents submitted.

The Contractor shall submit for the approval of the Contracting Officer, shop and setting drawings and schedules required by the specifications or that may be requested by the Contracting Officer and no work shall be fabricated by the Contractor, save at his own risk, until such approval has been given. The drawings submitted shall be marked with the name of the project, numbered consecutively and bear the stamp of approval of the Contractor as evidence that the drawings have been checked by the Contractor. Any drawings submitted without this stamp of approval will not be considered and will be returned to the Contractor for re-submission. If the shop drawings show variations from the requirements of the contract because of standard shop practice or other reasons, the Contractor shall make specific mention of such variation in his letter of transmittal so that if any variations are acceptable, suitable action may be taken for proper adjustment; otherwise, the Contractor will not be relieved of the responsibility for executing the work in accordance with the contract even though such shop drawings have been approved. If a drawing as submitted indicates a departure from the contract requirements which the Contracting Officer finds to be in the interest of the Owner and to be so minor as not to involve a change in the contract price or time for performance, he may approve the drawing.

4.10. Continuing Performance

CONTRACTOR shall continue its performance under the Agreement during all claims, disputes, or disagreements with GPA. Production of Goods will not be delayed or the timely delivery of Goods or furnishing of Special Services be prejudiced, delayed, or postponed pending resolution of any claims, disputes, or disagreements, except as CONTRACTOR and GPA may otherwise agree in writing.

4.11. Expediting

CONTRACTOR shall expedite delivery of the Goods and any related work of subcontractors. When requested or required by the Contract Documents, CONTRACTOR shall also provide GPA with an itemized schedule for engineering, outsourcing, fabrication, and shipping, which shall be followed by expediting reports including status of deliveries of materials and/or equipment purchased from subcontractors, if any, each month during its performance under the Agreement. If CONTRACTOR encounters delay in obtaining materials, or foresees any delay in its own manufacturing works, CONTRACTOR shall immediately inform GPA of such situation.

GPA and/or its designee shall be allowed reasonable access to CONTRACTOR's and its subcontractor's works for the purpose of expediting project progress. Any expediting done by GPA shall not relieve CONTRACTOR from its obligations as to the Delivery Time specified in the Agreement.

4.12. Compliance with Law

CONTRACTOR shall comply, and secure compliance by its subcontractors, with all applicable laws or regulations in connection with the Goods and services furnished hereunder. This includes the securing of any business or other licensing, certifications, or permits required.

If CONTRACTOR discovers any variance between the provisions of applicable laws and regulations and the drawings, Specifications, and other technical data furnished by the GPA, CONTRACTOR shall promptly notify GPA in writing thereof and obtain necessary changes from GPA before proceeding with the work affected thereby.

4.13. Price Adjustment

4.13.1. Price Adjustment Methods

Any adjustment in contract price within the parameters of this contract shall be made in one or more of the following ways:

- a) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- b) By unit prices specified in the contract or subsequently agreed upon;
- c) By the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract or subsequently agreed upon;
- d) In such other manner as the parties may mutually agree; or
- e) In the absence of agreement between the parties, by a unilateral determination by the Procurement Officer of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the Procurement

4.13.2. Submission of Cost or Pricing Data

The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of Section 3-403 (Cost or Pricing Data) of the Guam Procurement Regulations.

4.14. Changes

4.14.1 Change Order

By a written order, at any time, and without notice to surety, the Procurement Officer may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:

- a) Drawings, designs, or Specifications, if the supplies to be furnished are to be specially manufactured for the Territory in accordance therewith;
 - b) Method of shipment or packing; or
 - c) Place of delivery.
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4.14.2. Change Order Procedures

- a) Maintain detailed records of work done on a cost of work basis. Provide full information required for evaluation of proposed changes, and to substantiate costs of changes in the Work.
 - b) Document each quotation for a change in cost or time with sufficient data to allow evaluation of the quotation. The Schedule of Values shall be used as a basis for the Change Order.
 - c) On request, provide additional data to support computations:
 - i. Quantities of products, labor, and equipment
 - ii. Taxes, insurance and bonds
 - iii. Overhead and profit
 - iv. Justification for any change in Contract Time
 - v. Credit for deletions from Contract, similarly documented
 - d) Support each claim for additional costs, and for work done on a cost of work basis, with additional information:
 - i. Origin and date of claim
 - ii. Dates and times work was performed, and by whom
 - iii. Time records and wage rates paid
 - iv. Invoices and receipts for products, equipment, and subcontracts, similarly documented
 - e) The Project Engineer will advise of minor changes in the Work not involving an adjustment to Contract Sum/Price or Contract Time by issuing supplemental instructions, or by issuing a Field Change Order.
 - f) The Project Engineer may issue a proposal request which includes a detailed description of a proposed change with supplemental or revised drawings and specifications, and change in Contract Time for executing the change. Contractor will prepare and submit an estimate within 10 days.
 - g) The Contractor may propose a change by submitting a request for change to the Project Engineer, describing the proposed change and its full effect on the Work, with statement describing the reason for the change, and the effect on the Contract Sum/Price and Contract Time with full documentation and a statement describing the effect on Work by separate or other contractors.
 - h) No change order is authorized unless an original, certified, signed purchase order amendment is received by the Contractor.
 - i) The Contractor may not make a change order claim for work already completed.
 - j) Promptly revise Application for Payment form to record each authorized Change Order as a separate line item and adjust the Contract Sum/Price.
 - k) Promptly revise progress schedules to reflect any change in Contract Time, revise sub-schedules to adjust time for other items of work affected by the change, and resubmit.
 - l) Promptly enter changes in Project Record Documents.
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4.14.3. Time Period for Claim

Within 30 days after receipt of a written change order under Paragraph 4.14.1 Change Order, unless the Procurement Officer extends such period in writing or e-mail, The CONTRACTOR shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the CONTRACTOR's claim unless the Territory is prejudiced by the delay in notification.

4.14.4. Claims Barred After Final Payment

No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract.

4.14.5. Other Claims Not Barred

In the absence of such a change order, nothing in this clause shall be deemed to restrict the CONTRACTOR's right to pursue a claim arising under the contract if pursued in accordance with the clause entitled, "Claims Based on the General Officer's Actions or Omissions, - Notice of Claim", or for breach of contract.

4.15. Contract Price

The Contract Price constitutes the total consideration to be paid by GPA to the CONTRACTOR for the complete delivery of the Goods, Special Services, and for performing other services in connection therewith in accordance with the Contract Documents as amended by the parties pursuant to the Agreement. Unless expressly provided otherwise in the Contract Documents, the Contract Price is not subject to escalation in respect of materials and/or labor cost or any other factor or variation in rates of exchange, and all duties, responsibilities, and obligations assigned to or undertaken by the CONTRACTOR shall be at its expense without change in the Contract Price. Charges, fees, CONTRACTOR's profit, and all other expense shall be deemed to be included in the Contract Price.

Only a formal Change Order, accepted by GPA, may change the Contract Price. The CONTRACTOR shall make any claim for an increase in the Contract Price in advance of performance of any such changes. However, GPA reserves the right to challenge or refute such claims.

4.16. Payment Schedule

- a) GPA will make partial payments to the CONTRACTOR after receipt and approval of the request for partial payment covering the work performed during the preceding calendar month. No payments for installed materials on the site will be made unless such request is accompanied by a receipt or certification showing that the CONTRACTOR has made payment in full for such work done. In preparing such estimates, preparatory work done shall not be considered for payment. Materials delivered to site shall be considered for payment subject to the following conditions:
 - i. The material shall be kept in a safe and enclosed warehouse or area located on site with restricted access.
 - ii. The receipt and issue of material must be controlled by a stock card kept in the warehouse.
 - iii. Insurance coverage required under Section 11, Chapter IV of the General Conditions shall include insurance of such material and shall include theft insurance.
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- iv. Request for payment must be accompanied with certification and receipts indicating the cost of material and showing that the CONTRACTOR has made full payment for such material.

- b) In making such partial payments there shall be retained ten percent (10%) of the estimated amount until final completion and acceptance of all work covered by the contract. However, if the Contracting Officer, at any time after 50 percent of the work has been completed, finds that satisfactory progress is being made, he may authorize payment in full of each progress payment for work performed beyond the 50 percent stage of completion. Also, whenever the work is substantially complete, the Contracting Officer, if he considers the amount retained to be in excess of the amount adequate for the protection of GPA, at his discretion, may release to the CONTRACTOR all or a portion of such excess amount.

- c) All materials and work covered by partial payments made shall thereupon become the sole property of GPA, but this provision shall not be construed as relieving the CONTRACTOR from the sole responsibility for all materials and work upon which payment have been made, or the restoration of any damaged work or as a waiver of the right of GPA to require the fulfillment of all of the terms of the contract.

- d) Release of Claims - Neither the final payment or any part of the retained percentage shall become due until the CONTRACTOR shall deliver to GPA through the Contracting Officer a complete release of all claims against GPA arising under and by virtue of this contract, including claims of all subcontractors and suppliers of either materials or labor, other than such claims, if any, as may be specifically excepted by the CONTRACTOR.

- e) Certificate of Completion - Upon completion and acceptance of all work whatsoever required and the release of all claims against GPA as specified, the Contracting Officer shall file a written certificate with GPA and with the CONTRACTOR as to the entire amount of work performed and compensation earned by the CONTRACTOR, including extra work and compensation thereof.

- f) Final Payment - Within thirty (30) calendar days after the filing of such certificate of completion, GPA shall pay to the CONTRACTOR the amount therein stated less all prior payments and advances whatsoever to or for the amount of the contract. All prior estimates and payments including those relating to extra work shall be subject to correction by this payment which is throughout this contract called Final Payment.

- g) Acceptance of Final Payment Constitutes Release - The acceptance by the CONTRACTOR of the final payment shall be and shall operate as a release to GPA of all claims and of all liability to the CONTRACTOR for all things done or furnished in connection with this work and for every act and neglect of GPA and others relating to or arising out of this work, excepting the CONTRACTOR's claims for interest upon the final payments if this payment be improperly delayed. No payments, however, final or otherwise shall operate to release the CONTRACTOR or his sureties from any obligations under this contract or the performance and payment bonds.

The CONTRACTOR shall submit for review by GPA monthly invoices accompanied by a progress report describing the work performed during the compensation period. The CONTRACTOR shall also provide the updated project schedule. All payments to CONTRACTOR shall be free of any deductions, including but not limited to withholding taxes.

Should GPA enter into a Deferred Payment Agreement with the CONTRACTOR, GPA shall pay the CONTRACTOR for cost and services rendered upon complete delivery and acceptance of all goods and services as herein specified and performed under the Contract Agreement. A Deferred Payment Agreement as shown on Appendix N shall be executed between the CONTRACTOR and GUAM POWER AUTHORITY. The first application for payment maybe submitted by the CONTRACTOR after the Deferred Payment Agreement has been executed. GPA will make payments within thirty (30) days from receipt and approval of the invoice.

4.17. Application for Payment

4.17.1 Schedule of Values

The CONTRACTOR shall submit typed schedule on attached Application for Payment form. Contractor's standard form or electronic media printout will be considered. The Bid Items shall be used as the basis for the Schedule of Values except a breakdown for those Bid Items which are lump sum items shall be provided. The schedule shall be revised to list approved Change Orders, with each Application for Payment.

4.17.2 Application for Payment Submittal Procedures

- a) Present required information in typewritten form.
- b) Execute certification by signature of authorized officer.
- c) List each authorized Change Order with Change Order number and dollar amount.
- d) Submit an updated progress schedule with each Application for Payment.
- e) When the Contracting Officer requires substantiating information, submit data justifying dollar amounts in question. Indicate Application number and date.

4.18. Force Majeure

Force Majeure referred to herein shall mean an occurrence beyond the control and without the fault or negligence of the party affected including, but not limited to, acts of God or the public enemy, expropriation or confiscation; changes in law procedures, war, rebellion, or riots; floods, unusually severe weather that could not reasonably have been anticipated; fires, explosions, epidemics, catastrophes, or other similar occurrences which are not within the control of the party affected. However, the following shall not be considered as Force Majeure:

- a) Delay caused by lack or inability to obtain raw materials, congestion at CONTRACTOR's or its subcontractor's facilities, or elsewhere; market shortages, or similar occurrences, or
- b) Delay, either on the part of the CONTRACTOR or its subcontractors, caused by shortages of supervisors or labor, inefficiency, or similar occurrences, or
- c) Sabotage, strikes, or any other concerted acts of workmen, which occur only in the facilities of the CONTRACTOR or its subcontractors.

Should the circumstances of Force Majeure continue over a period of ninety (90) days, GPA has the right, if no other understanding is reached, to terminate the whole Agreement or any part thereof in accordance with Paragraph 4.21. Any delay or failure in performing the obligations under the Contract Documents of the parties hereto shall not constitute default under the Purchase Contract or give rise to any claim for damages or loss or anticipated profits if, and to the extent, such delay or failure is caused by Force Majeure, and if a claim is made therefore.

4.18.1 Invocation of Force Majeure

The party invoking Force Majeure shall perform the following:

- a) Notify the other party as soon as reasonably possible by facsimile, e-mail, telex, cable or Messenger/courier of the nature of Force Majeure, anticipated exposure time under Force Majeure, and the extent to which the Force Majeure suspends the affected party's obligations under the CONTRACT;
- b) Consult with the other party and take all reasonable, prudent steps to minimize the losses of either party resulting from the Force Majeure;
- c) Resume the performance of its obligations as soon as possible after the Force Majeure condition ceases.

4.18.2 Delivery Time and Force Majeure

Only a Change Order may change contractual Delivery Times. The CONTRACTOR as provided in Paragraph 4.14 Changes and its sub-paragraphs shall file all claims for an extension in the Delivery Time.

The Delivery Time will be extended in an amount equal to time lost due to delays caused by Force Majeure if a claim is made therefore as provided in this Paragraph. No amendment to the Contract Price, however, shall be allowable because of Force Majeure occurrences.

Notwithstanding the foregoing, all time limits stated in the Purchase Order documents are of the essence in the agreement. The provisions of this Paragraph shall not exclude recovery for damages (including compensation for additional professional services) for delays not caused by Force Majeure.

4.19. Warranty

The CONTRACTOR'S obligation to furnish the Goods and Special Services and to perform other services in connection therewith in accordance with the Agreement is absolute, and the CONTRACTOR warrants and guarantees to GPA that all Goods will be in accordance with the Contract Documents and will be new, fit for the purpose for which they are intended, and free from any defects, including faulty design, materials, or workmanship.

The CONTRACTOR shall provide GPA with all warranties and guarantees in writing. GPA and the Bidder shall negotiate the manner in which claims against these warranties are addressed including any remedies for non-responsiveness. This may include retention of contract amounts, performance bonds, etc.

The CONTRACTOR shall be responsible for remedying all defects, without limitation, in design, materials, workmanship, operating characteristics, or performance of the Goods developing within twenty-four (24) months from the date on which GPA has placed the Goods in continuous service, or within twelve (12) months from the date of final payment, whichever date shall first occur, or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee or by any specific provisions of the Contract Documents.

Any part(s) supplied in replacement of the defective part(s) of the Goods or any Goods repaired pursuant to the provisions of this Paragraph shall be supplied or repaired on the same terms and conditions as

provided for herein for the supply of the Goods and in particular a new warranty period shall apply. Such new warranty period shall expire on the date twelve (12) months from the date of such replacement or repair or on the expiration date of the warranty for the original Goods that were replaced or repaired, whichever is later.

If within any warranty period, repairs or changes are required in connection with guaranteed work which, in the opinion of GPA, is rendered necessary as the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the contract, the CONTRACTOR shall promptly upon receipt of notice from GPA and without expense to GPA:

- a) Place in satisfactory condition in every particular all of such guaranteed work and correct all defects therein; and
- b) Make good all damages to the building or site or equipment or contents thereof which, in the opinion of GPA, are the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the contract.

In any case wherein fulfilling the requirements of the contract or of any guarantee embraced in or required thereby the CONTRACTOR disturbs any work guaranteed under another contract, he shall restore such disturbed work to a condition satisfactory to GPA and guarantee such restored work to the same extent as it was guaranteed under such other contract.

If the CONTRACTOR, after notice, fails to proceed promptly to comply with the terms of the guarantee, GPA may have the defects corrected and the CONTRACTOR and his surety shall be liable for all expense incurred.

All special guarantees applicable to definite parts of the work shall be stipulated in the specifications or other papers forming a part of the contract and shall be subject to the terms of this paragraph during the first year of the life of such special guarantee.

In the event the CONTRACTOR furnishes special services for installation and startup, such services shall be rendered in a competent and diligent manner and in accordance with the Contract Documents, accepted industry practice and any applicable professional standards.

4.20. Tests and Inspections

GPA or its designee shall have the right to inspect or observe the production, inspection, or testing of the Goods at any time and place including the CONTRACTOR's facilities and those of its subcontractors where the Goods are being produced.

Authorized GPA representatives shall have access at all times to the work for inspection whatever it is in preparation or progress and the CONTRACTOR shall provide proper facilities for such access and inspection.

Inspectors may be placed by GPA to supervise each and every subdivision of the work or any parts or process thereof. The authorized inspectors shall have free access to all parts of the work at all times and shall be given every facility, information and means of thoroughly inspecting the work done and the materials used or to be used. The inspectors shall at all times be free to perform their duties and any intimidation of any inspector by the CONTRACTOR or the employees thereof shall be sufficient reason, if GPA shall so decide, to annul the contract.

The CONTRACTOR shall conduct, at its responsibility and expense, all tests and inspections called for by the Contract Documents. In the event that witness inspection by GPA is required under the Contract Documents, the costs and expense arising therefrom shall be borne by the CONTRACTOR, including inspector's fees, transportation, hotel, and general flying expenses. In the event that CONTRACTOR's inspection is required at the site, CONTRACTOR's transportation, hotel, and general living expenses shall be borne by The CONTRACTOR.

Any inspection made by the inspector of GPA and/or its designee will be final. Such inspections or the witnessing of CONTRACTOR's test and inspection by GPA and/or its designee shall not relieve The CONTRACTOR of any of its responsibilities or liabilities under the Contract Documents, nor be interpreted in any way as implying acceptance of the Goods.

In the event of a dispute, an independent inspector shall be appointed, mutually acceptable to both parties, whose decision as to the quality and/or necessity of the work shall be final and binding on both parties. The independent inspector(s)' fees and charges shall be shared equally by both parties. Payments of any and all invoices of any major repairs or replacements shall be made based on mutually acceptable terms pre-approved by the CONTRACTOR and GPA.

The CONTRACTOR shall repair and replace, without cost or delay, anything found defective by tests and inspections, and also to bear all costs of re-inspection.

If the CONTRACTOR fails to proceed at once with the replacement of rejected materials and/or the correction of defective workmanship, the OWNER may, by contract or otherwise, replace such materials and/or correct such workmanship and charge the cost to the CONTRACTOR, or may terminate the right of the CONTRACTOR to proceed. The CONTRACTOR and surety shall be liable for any damage to the same extent for termination thereunder.

The CONTRACTOR must carry out at its authority and expense any inspection required by statutory Authority, governmental regulation, or other similar Authority on the codes or standards.

The CONTRACTOR shall furnish promptly, without additional charge, all reasonable facilities, labor and materials necessary for the safe and convenient inspection and tests that may be required by the Contracting Officer. All inspections and tests shall be performed in such manner as not to unnecessarily delay the work. Special, full-size and performance tests shall be as described in the specifications. The CONTRACTOR shall be charged with any cost of inspection when material and workmanship are not ready at the time inspection is requested by the CONTRACTOR.

Should it be considered necessary or advisable by the Contracting Officer at any time before final acceptance of the entire work to make an examination of work already completed by removing or tearing out same, the CONTRACTOR shall on request promptly furnish all necessary facilities, labor and materials. If such work is found to be defective in any material respect due to the fault of the CONTRACTOR or his subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements involved in the examination and replacement, the cost of conducting the test plus fifteen percent (15%) shall be allowed the CONTRACTOR and he shall in addition, if completion of the work has been delayed thereby, be granted a suitable extension of time on account of the additional work involved.

4.21. Final Inspection

When the work is substantially completed the CONTRACTOR shall notify the OWNER, in writing, that the work will be ready for final inspection and test on a definite date which shall be stated in such notice. The notice shall be given at least ten (10) calendar days in advance of said date and shall be forwarded through the Contracting Officer who will attach his endorsement as to whether or not he concurs in the CONTRACTOR's statement that the work will be ready for final inspection or tests on the date given but such endorsement shall not relieve the CONTRACTOR of this responsibility in the matter.

4.22. Remedying Defects

4.22.1. Remedying Defective Parts

If at any time GPA determines that the replacement parts are defective, the CONTRACTOR shall, upon written notice from GPA, do all things necessary, at its expense, to make good the defects as soon as possible after being notified to do so by GPA. The CONTRACTOR warrants that the CONTRACTOR, unless otherwise agreed, shall remedy any defects. It is understood, that if so instructed by GPA, the CONTRACTOR shall make shipment by the fastest available method.

In the event that the CONTRACTOR does not take prompt action to fulfill its obligations hereunder as required by GPA and to the satisfaction of GPA, GPA may, after ten (10) days written notice to the CONTRACTOR, and without prejudice to any of its rights under the Contract Agreement, accept the defective Goods and carry out the remedial work itself instead of requiring correction or removal and replacement, and charge the CONTRACTOR for the costs of the work. In an emergency where delay would cause serious risk of loss or damage, GPA may take such action without prior notice to or waiting for action by the CONTRACTOR.

4.22.2. Remedying Defective Special Services

If at any time GPA notifies the CONTRACTOR in writing that any of the Special Services are defective, the CONTRACTOR shall promptly provide acceptable services. If the CONTRACTOR fails to do so, GPA may obtain the Special Services elsewhere.

4.22.3. Cost of Remedying Defects

All direct, indirect, and other costs of correcting, removing, and replacing defective Parts or of obtaining Special Services elsewhere and of exercising GPA's rights and remedies under Paragraph 4.32, and other sections as they apply, will be charged against the CONTRACTOR and, if incurred prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents and a reduction in the Purchase Price, or if incurred after final payment, an appropriate amount will be paid by the CONTRACTOR to GPA. Such direct, indirect, and other costs will include, in particular but without limitation, compensation for additional professional services required and all costs of repair and replacement of property of GPA or others destroyed or damaged by correction, removal, or replacement of defective Goods. The CONTRACTOR shall not be allowed an extension of the Delivery Time because of any delay in performance attributable to the exercise by GPA of GPA's rights and remedies under this Paragraph.

4.23. Stop Work Order

4.23.1. Order to Stop Work

The Procurement Officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding ninety-days (90-days) after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Procurement Officer shall either:

- a) Cancel the stop work order; or
- b) Terminate the work covered by such order, as provided in the 'Termination for Default Clause' or the 'Termination for Convenience Clause' of this contract.

4.23.2 Cancellation or Expiration of the Order

If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contract price shall be modified in writing accordingly, if:

- a) The stop work order results in an increase in the time required for, or in the CONTRACTOR's cost properly allocable to, the performance of any part of this contract; and
- b) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

4.23.3 Termination of Stopped Work

If a stop work order is not canceled and the work covered by such order is terminated for default or Convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

4.24. Termination for Convenience

4.24.1. Termination

The Procurement Officer may, when the interest of GPA or the Territory so require, terminate this contract in whole or in part, for the Convenience of the Territory. The Procurement Officer shall give written notice of the termination to the CONTRACTOR specifying the part of the contract terminated and when termination becomes effective. [GSA Procurement Regulations 6-101.10.]

4.24.2. CONTRACTOR's Obligations

The CONTRACTOR shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the CONTRACTOR will stop work to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated

work. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Procurement Officer may direct the CONTRACTOR to assign the CONTRACTOR's right, title, and interest under terminated orders or subcontracts to the GPA. The CONTRACTOR must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

4.24.3. Right to Supplies

The Procurement Officer may require the CONTRACTOR to transfer title and deliver to GPA in the manner and to the extent directed by the Procurement Officer:

- a) Training material;
- b) Any completed supplies; and,
- c) Such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this contract.

The CONTRACTOR shall, upon direction of the Procurement Officer, protect and preserve property in the possession of the CONTRACTOR in which the Territory has an interest. If the Procurement Officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such supplies and manufacturing materials in accordance with the standards of **Uniform Commercial Code of Guam (UCCG), Section 2706**. Utilization of this Section in no way implies that the Territory has breached the contract by exercise of the Termination for Convenience Clause.

4.24.4. Compensation Under Termination for Convenience

The CONTRACTOR shall perform the following for compensation under termination for convenience.

- a) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for Convenience together with cost or pricing data to the extent required by **Section 3-403 (Cost or Pricing Data) of the Guam Procurement Regulations** bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Procurement Officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph (c) of this Paragraph.
- b) The Procurement Officer 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, and the contract price of the work not terminated.
- c) Absent complete agreement under Subparagraph (b) of this Paragraph, the Procurement Officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under Subparagraph (b) shall not duplicate payments under this subparagraph:
 - i. Contract prices for supplies or services accepted under the contract;

- ii. Costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted supplies or services; provided, however, that if it appears that the 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 subcontracts or orders. These costs must not include costs paid in accordance with other subparagraphs 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 subcontracts there under, 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 to 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 subparagraph (b) of this Paragraph, and the contract price of work not terminated.
- d) Cost claimed, agreed to, or established under subparagraph (b) and (c) of this Paragraph shall be in accordance with **Chapter 7 (Cost Principles) of the Guam Procurement Regulations. 13 GCA 2796 (UCCG)** states:

2706. SELLER's Resale Including contract for Resale

- (1) Under the conditions stated in **Section 2703** on CONTRACTOR's remedies, the CONTRACTOR may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the CONTRACTOR may recover the difference between the resale price and the contract price together with an incidental damages allowed under the provisions of this division (Section 2710), but less expenses saved in consequence of the buyer's breach.
 - (2) Except as otherwise provided in Subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the CONTRACTOR. Sale may be as a unit or in parcels and at any time and place and on any terms, but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.
 - (3) Where the resale is at private sale the CONTRACTOR must give the buyer [i.e., GPA] reasonable notification of his intention to resell.
 - (4) Where the resale is at public sale:
-

- (01) Only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and
- (02) It must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the CONTRACTOR must give the buyer [i.e., GPA] reasonable notice of the time and place of the resale; and,
- (03) If the goods are not to be within the view of those attending the sale, the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective Bidders; and
- (04) The CONTRACTOR may buy.
- (5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer [i.e., GPA] even though the CONTRACTOR fails to comply with one or more of this section's requirements.
- (6) The CONTRACTOR is not accountable to the buyer [i.e., GPA] for any profit made on any resale. A person in the position of a CONTRACTOR (**Section 2707**) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (Subsection 3) of Section 2711."

4.25. Termination for Defaults

4.25.1. Default

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

4.25.2. CONTRACTOR's Duties

Notwithstanding termination of the contract and subject to any directions from the Procurement Officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which GPA has an interest.

4.25.3. Compensation

Payment for completed supplies delivered and accepted by the GPA shall be at the contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR

and the Procurement Officer; if the parties fail to agree, the Procurement Officer shall set an amount subject to the CONTRACTOR's rights under Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations. The GPA may withhold from amounts due the CONTRACTOR such sums as the Procurement Officer deems to be necessary to protect the GPA against loss because of outstanding liens or claims of former lien holders and to reimburse the PURCHASER for the excess costs incurred in procuring similar goods and services.

4.25.4. Excuse for Nonperformance or Delayed Performance

Except with respect to defaults of subcontractors, the CONTRACTOR shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the CONTRACTOR to make progress in the prosecution of the work hereunder which endangers such performance) if the CONTRACTOR has notified the Procurement Officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; act of the Territory and any other governmental entity in its sovereign restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the supplies or services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the contract requirements. Upon request of the CONTRACTOR, the Procurement Officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the GPA under the clause entitled "Termination For Convenience", Paragraph 01. (As used in the Paragraph of this clause the term "subcontractor" means subcontractor at any tier.)

4.25.5. Erroneous Termination for Default

If, after notice of termination of the CONTRACTOR's right to proceed under the provisions of this clause, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph 0 (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for Convenience of GPA, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for Convenience of GPA, the contract shall be adjusted to compensate for such termination and the contract modified accordingly subject to the CONTRACTOR's rights under Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations.

4.25.6. Additional Rights and Remedies

The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

4.26. Disputes

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 resolved under Guam Procurement Law and the Government Claims Act.

4.27. Consequential Damages

Unless expressly provided for otherwise in this Agreement, neither party, including their agents and employees, shall be liable to the other party for consequential damages, including, but not limited to, loss of use, loss of profit and interest due to breach of contract, breach of warranty, negligence, or any other cause whatsoever, provided nothing herein shall relieve CONTRACTOR from its liability for injury to persons or property, including property of GPA, whether such liability arises in contract, including breach of warranty, or tort, including negligence.

4.28. Time of Completion and Liquidated Damages

The CONTRACTOR must agree to fully complete the basic work under the Contract Agreement within three hundred sixty-five (365) calendar days from the issuance of Notice to Proceed (NTP). The CONTRACTOR must also agree to pay to GPA the amount of two thousand dollars (\$2,000.00) per calendar day, not as a penalty, but as reasonable liquidated damages for failing, neglecting or refusing the work within the time specified.

Should GPA choose to award the additive bid, the CONTRACTOR must agree to fully complete the work under the Contract Agreement within the negotiated time frame after the issuance of the Notice to Proceed (NTP). The CONTRACTOR must also agree to pay to GPA the amount of two thousand dollars (\$2,000.00) per calendar day, not as a penalty, but as reasonable liquidated damages for failing, neglecting or refusing the work within the time specified.

The CONTRACTOR shall not be charged with liquidated damages when the delay in completion of the work is due:

- a) To any preference, priority or allocation order duly issued by the Guam Power Authority.
- b) To unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including but not restricted to acts of God or the public enemy, acts of the Guam Power Authority, acts or another contractor in the performance of a contract with the Guam Power Authority, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.
- c) To any delays of Subcontractors or suppliers occasioned by any of the causes specified in subsections (a) and (b) of this article.

The CONTRACTOR shall, within seven (7) calendar days from the beginning of delay give written notice as to the causes of the delay to the Contracting Officer, who will ascertain the facts and extent of the delay and notify the CONTRACTOR within reasonable time of his decision in the matter.

The CONTRACTOR shall note that Guam by nature has frequent rainfall causing suspension of work. Said suspensions shall not qualify for time extensions unless the weather is unusually severe.

4.28.1. Prosecution of the Work

The CONTRACTOR agrees that said work shall be prosecuted regularly, diligently and without interruption at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed by and between the CONTRACTOR and the OWNER that the time for

completion of the same takes into consideration the average climatic range and usual industrial conditions prevailing in the locality.

4.28.2 Suspension of Work

The OWNER will furnish all land and rights-of-way necessary for the carrying out of this contract and the completion of the work herein contemplated. Should the OWNER be prevented or enjoined from proceeding with the work or from authorizing its prosecution, either before or after the commencement by reason of any litigation, the CONTRACTOR shall not be entitled to make or assert any claim for damage by reason of said delay, or to withdraw from the contract except by consent of the OWNER, but time for completion of the work will be extended to such time as the OWNER determines will compensate for the time lost by such delay determination to be set forth in writing

4.29. Notices

Whenever any provision of the Contract Documents requires the giving of written notice it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

4.30. Computation of Time

When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the time computation.

4.31. Language and Trade Terms

All communications, documents, and execution of services hereunder, unless otherwise designated, shall be in the English language. INCOTERMS (International Rules for the Interpretation of Trade Terms) published by the International Chamber of Commerce in 1980 and any subsequent revisions thereto shall govern interpretation of trade terms in the Contract Documents

4.32. Governing Law

The laws of Guam shall govern the validity and interpretation of these conditions, the Agreement and legal relations of the parties.

CONTRACTOR shall not transfer or assign to any third parties any obligations or rights under the Agreement, nor any claims against GPA arising directly or indirectly out of the Agreement.

CONTRACTOR shall not sublet the Agreement in whole or in part without the prior written consent of GPA. Written consent of GPA for subletting shall not relieve CONTRACTOR of any of his obligations under the Agreement.

4.33. Non-waiver

GPA shall not consider any provisions of this Agreement waived unless GPA gives notice of such waiver in writing. Even if such notice has been given, such waiver shall not be construed as being a waiver of any

other past or future right of GPA under the provisions of this Agreement, unless otherwise expressly stipulated therein. Failure of GPA to insist upon strict performance of any of the terms and conditions hereof, or failure or delay of GPA to insist upon strict performance of any of the terms and conditions hereof, or failure or delay of GPA to exercise any acts, rights, or remedies provided herein or by law shall not relieve CONTRACTOR of liability under any guarantees or of obligations under the Agreement and shall not be deemed a waiver of any right of GPA to insist upon strict fulfillment of the Agreement or of any of GPA's rights or remedies as to the Goods or Special Services furnished.

4.34. Severability

If any work, phrase, clause, article, or other provision of this Agreement is or is deemed or adjudicated or otherwise found to be against public policy, void, or otherwise unenforceable, then said work, phrase, clause, article, or other provision shall be deleted or modified, in keeping with the express intent of the parties hereto as necessary to render all the remainder of this Agreement valid and enforceable. All such deletions or modifications shall be the minimum necessary to effect the foregoing.

4.35. Rights and Remedies

The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, will be in addition to, and shall not be construed in any way as a limitation of any rights and remedies available to any or all of them which are otherwise imposed or available by law or contract, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this paragraph shall be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply. All representations, warranties, and guarantees made in the Contract Documents will survive final payment and termination or completion of this Agreement.

4.36. New Material

Unless the Contract Agreement specifies otherwise, the CONTRACTOR represents that the Goods and components are new. If the CONTRACTOR believes that furnishing used or reconditioned Goods or components will be in GPA's interest, the CONTRACTOR shall so notify GPA in writing. The CONTRACTOR's notice shall include the reasons for the request along with a proposal for any consideration to GPA if GPA authorizes the use of used or reconditioned Goods or components.

All materials shall conform to federal and local codes and standards applicable to this type of work i.e. NEMA, ANSI, IEEE, ASTM etc. All necessary items and accessories not specified herein, but which are required to fully carryout the specified intent of the work, shall be furnished by the CONTRACTOR at no cost to the owner.

4.37. Claims based on the General Manager's Action or Omissions

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

- (1) The CONTRACTOR shall have given written notice to the General Manager, or his/her designee:
 - i. Prior to the commencement of the work involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
 - ii. Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the work; or
 - iii. Within such further time as may be allowed by the Procurement Officer in writing. This notice shall state that the CONTRACTOR regards the act or omission as a reason that may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Procurement Officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Procurement Officer or designee of such officer.
- (2) The notice required by subparagraph (1) of this Paragraph describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
- (3) The CONTRACTOR maintains and, upon request, makes available to the Procurement Officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

4.37.1. Limitations of Clause

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

4.38. Standards of Design and Workmanship

The finished Work shall be complete in all respects. The intent of the Specifications is to acquire or purchase management services, training, operations and maintenance materials and services, and supply and inventory management and control. All hardware shall be manufactured, fabricated, assembled, finished, and documented with quality workmanship throughout, and all of its components shall be new and suitable for the purposes specified. All firmware/software shall be designed, implemented, tested, and documented in accordance with the best and recognized correct practices and shall be suitable for the purpose specified. All work shall conform to industry best practices.

4.39. Standard Work Schedule

Work scheduled and performed by the CONTRACTOR on GPA's premises shall conform to published GPA working hours and shall account for GPA's observed holidays.

4.40. Interference with Operation

Interference with normal operation of GPA's facilities or equipment, or that of any CONTRACTORS or subcontractors on GPA's premises, shall be avoided. The GPA's representative will determine in advance whether such interference is unavoidable and will establish the necessary procedures under which the interferences will be allowed.

4.41. Release of Information

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

4.42. Liens

In the event that a lien of any nature shall at any time be filed against the hardware, firmware, or software or the CONTRACTOR's facility by any person, firm, or corporation which has supplied material or services at the request of the CONTRACTOR, and for the cost of which the CONTRACTOR is liable under the terms of the Agreement, the CONTRACTOR agrees, promptly on demand of GPA and at the CONTRACTOR's expense, to take any and all action necessary to cause any such lien to be released or discharged therefrom. The CONTRACTOR agrees to hold GPA harmless from all liens, claims, or demands in connection with the Work.

4.43. Title

Title to any of the hardware, firmware, and software, management practices, training and other documents and/or processes required by GPA to continue the improved management, operations and maintenance of the project will pass to GPA upon placement of the equipment within GPA's premises prior to commencement of its installation, subject to GPA's inspection thereof. The CONTRACTOR shall retain title and be responsible for movement of the equipment from the delivery carrier onto the premises and the subsequent unpacking of the equipment. If, for any reason, the Work is terminated prior to its completion, the title to all the Work performed to that time including all hardware, firmware, software, management practices, training and other documents and/or processes required by GPA to continue the improved management, operations and maintenance of the project, whether in the CONTRACTOR's facility, in transit, or on GPA's premises, shall immediately pass to GPA.

4.44. Insurance

CONTRACTOR shall not commence work under this contract until he has obtained all insurance required under this section and GPA has approved such insurance, nor shall the CONTRACTOR allow any Subcontractor to commence work on this subcontract until all similar insurance required of the Subcontractor has been so obtained and approved. He shall maintain all insurance required during the course of the work.

4.44.1. Contractors and Subcontractors Insurance

Prior to commencing the work, contractor shall obtain and thereafter maintain during the course of the work Insurance with companies acceptable to GPA. The contractor shall not allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so

obtained and approved. The limits of insurance shall be as follows unless a higher limit is required by statute:

- a) General Liability including products, completed operations and contractual coverage for this Agreement in the amount of \$1,000,000 combined limit. Coverage for "on an occurrence basis" commercial general liability which includes owner's and contractor's protective and contractual liabilities, and have a general aggregate limit of \$1,000,000, a products and completed operations aggregate limit of \$1,000,000, and a single occurrence limit of \$1,000,000, and \$1,000,000 for any of the above. GPA shall be an additional insured. Waiver of subrogation shall be granted in favor of GPA.
- b) Auto Liability covering owned, hired, and non-owned vehicles, which includes endorsement for loss, property damage or destruction, and personal bodily injury in single aggregate minimum amount of \$1,000,000 for each occurrence. GPA shall be an additional insured. Waiver of subrogation shall be granted in favor of GPA.
- c) Professional Liability or Architects and Engineers Liability in the amount of \$1,000,000.
- d) Excess Liability with limits of \$5,000,000 or higher. GPA shall be an additional insured. Waiver of Subrogation shall be granted in favor of GPA.
- e) Worker's Compensation and Employer's Liability covering all employees and all statutory limits and requirements for workers' compensation for Guam, and including but not limited to employers' (CONTRACTOR) liability for employee bodily injury. Statutory limits and \$1,000,000/\$1,000,000/\$1,000,000 respectively. Waiver of Subrogation endorsement shall be granted in favor of GPA.
- f) Builder's Risk or Installation Floater, when applicable, is to be furnished by CONTRACTOR, which shall include GPA as named insured.
- g) Pollution Liability, when applicable, with limits of \$5,000,000. GPA shall be an additional insured. Waiver of Subrogation shall be granted in favor of GPA.
- h) Property insurance with replacement cost limits for the premises, property, improvements, structures, and machinery and equipment on the Premises.
- i) Business Income and Extra Expense with a \$3,000,000 limit or whatever is deemed appropriate by GPA upon award.

CONTRACTOR must furnish to the OWNER "Certificates of Insurance" evidencing all such coverage of the above items including the statement to the effect that cancellation or termination of said policy shall not be effective until thirty (30) working days after receipt of written notice by OWNER, prior to the commencement of this Contract. OWNER shall have the rights, which shall be exercised in OWNER's sole discretion, to terminate this contract if CONTRACTOR fails to maintain or have the insurance policy described above.

All insurance policies herein required of CONTRACTOR shall be written by a company duly authorized and licensed to do business in Guam where work under this contract is being performed and be executed by some agent thereof duly licensed as an agent in Guam.

4.44.2. Indemnification

The CONTRACTOR shall indemnify, defend and hold harmless GPA against all loss, damage, or expense (including reasonable attorney's fees incurred by GPA) arising out of the performance of the work, including injury or death to any person or persons resulting from the acts, omissions or negligence of the CONTRACTOR or the CONTRACTOR's employees, servants, agents or subcontractors and from mechanics and materialism liens and to include the cost of enforcement of this indemnity. CONTRACTOR agrees that the insurance herein shall be issued by an established and reputable company with Best's Key Rating of B+ or better.

4.44.3. Certificate of Insurance

CONTRACTOR shall furnish certificates of insurance and waiver of subrogation endorsement to GPA prior to commencement of work showing evidence of such coverage, including the statement to the effect that cancellation or termination of the insurance shall not be effective until at least (30) days after receipt of written notice to GPA. At all times CONTRACTOR's insurance shall be primary to any other insurance that may be carried by GPA. The statement of limits of insurance coverage shall be construed as in any way limiting the CONTRACTOR's liability under this agreement. GPA shall be an additional insured on all liability coverage and certificates of insurance shall clearly indicate such.

4.44.4. Insurance Company and Agent

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

4.44.5. GPA Insurance

GPA agrees that it will keep the property and machinery and equipment insured, at a minimum, against loss or damage by fire with extended coverage endorsement for full replacement value as determined by GPA from time to time. Such insurance shall be issued by financially responsible insurers duly authorized to do business in Guam where the property is located and shall contain the standard form of waiver of subrogation. The insurance company shall be required to give GPA not less than thirty days (30) notice in the event of cancellation or material alteration of such coverage. Nothing contained herein shall be construed as creating any liability or responsibility on the part of the CONTRACTOR for the adequacy of insurance coverage on the property. As to any insurable risks of loss or damage to the property and machinery and equipment not required to be insured hereunder, GPA shall bear the cost of the same. GPA shall be deemed to be self-insured as to the deductible or co-insurance amount applicable to such insurance coverage and shall pay any deductible or co-insurance amount applicable in the event of such loss or damage.

4.44.6. Waiver of Subrogation

The CONTRACTOR hereby releases GPA and their respective officers, employees, and agents from all loss or damage to the Premises and to the fixtures, personal property, equipment and improvements of the CONTRACTOR in or on the Premises, notwithstanding that any such loss or damage may be due to or result from the negligence of GPA or their respective officers, employees or agents. This waiver does not apply to maintenance and repair assumed under the Contract Agreement by the CONTRACTOR.

4.45. CONTRACTOR Use of Site and Removal of Debris

The CONTRACTOR expressly agrees to undertake the following at his own expense:

- a) To confine all operations to within the vicinity of the site limits and arrange work so that all materials and equipment are placed in such manner and location that there may be a minimum of interference or inconvenience inflicted upon other contractors, employees, equipment of GPA and the public
- b) To take every precaution against injuries to persons or damages to property
- c) To comply with the regulations governing the operation of premises which are occupied and to perform his contract in such a manner as not to interrupt or interfere with the operation of other facilities
- d) To perform any work necessary to be performed after regular working hours or on Saturdays, Sundays or legal holidays without additional expense to GPA
- e) To store his apparatus, materials, supplies, and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of his work or the work of any other contractors
- f) To place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work
- g) To frequently clean up all refuse, rubbish, scrap materials, and debris caused by his operation so that at all times the site of the work shall present a neat, orderly and workmanlike appearance
- h) To affect all cutting, fitting, or patching of his work required to make the same conform to the plans and specifications, and except with the consent of GPA, not to cut or otherwise alter the work of any contractor
- i) Before final payment to remove all surplus materials, false work, temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from his operations, to put the site in a neat, orderly condition and to thoroughly clean and leave reasonably dust free all finished surfaces

4.46. Restoration of Property

Any property damages to private and public properties, buildings, equipment, or utilities during the course of the work shall be restored to its original condition at no expense to GPA.

4.47. Barricades

The CONTRACTOR shall erect, install and maintain all temporary public walks, warning signs, barricades or other protective means in and around the site as deemed necessary or as may be ordered by the Contracting Officer for the effective protection of the public from injury and shall be held strictly liable for their safety.

4.48. Working Hours

Working hours shall be between 7:00 a.m. and 4:00 p.m. Monday through Friday.

4.49. Time Restrictions for Performing Work

No work shall be carried out on site outside of the specified working hours or on Saturdays, Sundays, or legal holidays without the Engineer's written consent unless the work is unavoidable, absolutely necessary to save life or property, or necessary for the safety of the work, in which case the CONTRACTOR shall immediately advise the Engineer. Engineer shall not unreasonably withhold any such consent save in exceptional circumstances, nor do so if work outside of the specified working hours or on Saturdays, Sundays, or legal holidays is considered by CONTRACTOR to be necessary to meet the Contract Time. The services of the Inspector and Engineer will be charged to the CONTRACTOR.

4.50. Safety and Health Requirements

4.50.1. Compliance with Federal and Local Safety Regulations

The CONTRACTOR shall comply with Safety and Health Regulations for Construction, promulgated by the Secretary of Labor under Section 107 of the Contract Work Hours and Safety Standards Act, as set forth in Title 29, C.F.R. Copies of these regulations may be obtained from Labor Building, 14th and Constitution Avenue, NW, Washington, DC 20013. The CONTRACTOR shall comply with the provisions of the Federal Occupational Safety and Health Act, as amended.

4.50.2. Accident Prevention

Precaution shall be exercised at all times for the protection of persons (including employees) and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery, equipment and all hazards shall be guarded or eliminated in accordance with the safety provisions of the latest edition of the Manual of Accident Prevention in Construction published by the Associated General Contractors of America to the extent that such provisions are not in contravention of applicable laws.

Should typhoon warnings be issued, the CONTRACTOR shall take every practicable precaution to minimize damage and/or danger to persons, to the work, and to adjacent property. These precautions shall include closing all openings, removing all loose materials, tools and/or equipment from exposed locations, and removing or securing scaffolding and all other temporary work. The CONTRACTOR shall undertake these precautions at his own expense.

4.50.3. Responsibility of CONTRACTOR to Act in Emergency

In case of an emergency which threatens loss or injury of property and/or safety or life, the CONTRACTOR shall act, without previous instructions from the OWNER, as the situation may warrant.

4.51. Electrical Energy

The CONTRACTOR shall make all necessary applications, pay all fees and charges, obtain necessary permits and provide and maintain his own electrical power and light as required and necessary in the progress of any branch of the work. He shall provide all temporary wiring necessary.

4.52. Water

The CONTRACTOR shall make all necessary applications, pay all fees and charges, obtain necessary permits for construction of temporary water required for use on this project. The nearest available source

of water tap shall be verified by the CONTRACTOR. The CONTRACTOR shall be responsible for all expenses required for conveying water to the site from the available nearest source.

4.53. Signs

The CONTRACTOR shall erect a sign at the project site at his own expense and shall submit a shop drawing for the approval of the Contracting Officer prior to fabrication. The location of sign shall be as directed by the Contracting Officer. Size of sign, lettering, and other pertinent data that should appear on the sign will be furnished by the Contracting Officer to the CONTRACTOR.

4.54. Standards

- a) Any material specified by reference to the number, symbol or title of a specific standard, such as a commercial standard, a Federal specification, a trade association standard or other similar standard, shall comply with the requirements in the latest revision thereto in effect on the date of Invitation for Bids, except as limited to type, class or grade or modified in such reference.
- b) The standard referred to, except as modified in the specifications, shall have full force and effect as though printed in the specifications. These standards are not furnished to bidders for the reason that the manufacturers and trades involved are assumed to be familiar with their requirements. The Contracting Officer will furnish, upon request, information as to how copies of such standards may be obtained.
- c) Reference in the specifications to any article, device, product, material, fixture, form, or type of construction by name, make or catalog number shall be interpreted as establishing a standard of quality and shall not be construed as limiting competition; and the CONTRACTOR, in such cases, may at his option use any article, device, product, material, fixture, form of type of construction which in the judgment of the Contracting Officer expressed in writing is equal to that specified.
- d) All construction work must comply with applicable GPA standards. The CONTRACTOR shall be responsible for obtaining all applicable GPA standards.

4.55. Samples

- a) The CONTRACTOR shall furnish for the approval of the Contracting Officer any samples required by the specifications or that may be required by the Contracting Officer of any and all materials or equipment he proposes to use and shall prepay all shipping charges on the samples.
 - b) No samples are to be submitted with bids.
 - c) No materials or equipment of which samples are required to be submitted for approval shall be used on the work until such approval has been given by the Contracting Officer, save only at the CONTRACTOR's risk and expense.
 - d) Each sample shall have a label indicating the material represented, its place of origin and the names of the producer, the CONTRACTOR and the building or work for which the material is intended. Samples of finished materials shall be so marked as to indicate where the materials represented are required by the drawings or specifications.
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- e) A letter in duplicate submitting each shipment of samples shall be mailed under separate cover by the Contractor and contain a list of the samples, the name of the building or work for which the materials are intended, and the brands of the materials and names of the manufacturers.
- f) The approval of any sample shall be only for characteristics or for the named in such approval and no other. No approval of a sample shall be taken in itself to change or modify any contract requirement. When a material has been approved, no additional sample of that material will be considered and no change in brand or make will be permitted. Approval of samples of hardware in good condition may be suitably marked for identification and used in the work.
- g) Failure of any material to pass the specified tests will be sufficient cause for refusal to consider under this contract any further samples of the same brand or make of that material.
- h) Test samples as the Contracting Officer may deem necessary will be procured from the various materials or equipment delivered by the CONTRACTOR for use in the work. If any of these test samples fail to meet the specifications requirement, any previous approvals will be withdrawn and such materials or equipment shall be subject to removal and replacement by the CONTRACTOR with materials or equipment meeting the specification requirements, or at the discretion of the OWNER, the defective materials and equipment may be permitted to remain in place subject to a proper adjustment of the contract price. The cost of the tests will be borne by the OWNER except where laboratory tests as hereinafter specified are required by the specifications.

4.56. Laboratory Tests

Any specified laboratory tests of materials and finished articles to be incorporated in the work shall be made by bureaus, laboratories or agencies approved by the Contracting Officer, and the reports of such tests shall be submitted to the Contracting Officer. The cost of the testing shall be paid for by the CONTRACTOR.

4.57. Methods

The CONTRACTOR shall use proper and efficient methods and appliances for the performance of all the operations connected with work embraced under these specifications, drawings and contract to secure a rate of progress which will secure completion of the work within the time specified. If, at any time before commencement of work, or during the progress thereof, such methods, equipment or appliances are inefficient or inappropriate for securing said quality of work or said rate of progress, the Contracting Officer may order the CONTRACTOR to increase their efficiency or to improve their character, and the CONTRACTOR must conform to such order. The failure of the Contracting Officer to demand such increases of efficiency or improvement shall not relieve the CONTRACTOR or his sureties from the obligations to secure such quality of work and said rate of progress and the completion of the work as required herein.

4.58. Labor and Materials

The CONTRACTOR shall furnish all labor, materials and equipment for the execution of the work according to the drawings, specifications and contract, and where no specifications are contained therein for whatever may be necessary, shall do all that may be termed ordinary, customary or essential to a job to be well and reliably completed. This includes concealment of all pipes and other rough items of installation if not clearly so shown on the drawings in a manner acceptable to the Contracting Officer. Structural safety shall not be impaired by such concealment. Work not particularly detailed, marked or specified shall be of equal quality as similar parts that are detailed, marked or specified. All material finished for and used in

the job shall be of kind and grade specified and where not specifically called for at least of customary standard grade. All work shall be executed in accordance with their trades. Full structural safety is essential and the CONTRACTOR guarantees to accomplish same for the entire work.

4.59. Submittals

Specific items requiring submittals are specified in the Contract Documents or may be requested as needed by the Contracting Officer. Shop Drawings shall be submitted and approved before procurement, fabrication or delivery. Partial submittals are not acceptable.

4.59.1. Submittal Procedures

- a) Transmit each submittal with a transmittal letter.
- b) Sequentially number the transmittal forms. Resubmittals shall have original number with an alphabetic suffix.
- c) Identify Project, Contractor, Subcontractor, or Supplier; pertinent drawing sheet and detail number, and GPA specification number as appropriate.
- d) Schedule submittals to expedite the Project and deliver to GPA. Coordinate submission of related items.
- e) Identify variations from Contract Documents and GPA specifications which may be detrimental to successful performance of the completed Work.
- f) Revise and resubmit submittals as required. Identify all changes made since previous submittal.
- g) Distribute copies of reviewed submittals to concerned parties. Instruct parties to promptly report any inability to comply with provisions.
- h) GPA shall be allowed two (2) weeks to review and approve submittals without affecting the Contract completion date. Delays in delivery due to submittals that are disapproved during this review period are the responsibility of the Contractor.
- i) Submittals returned to the Contractor as approved shall be considered authorization to proceed with the work. The approval of GPA shall in no way abrogate the requirements of GPA specifications. Review of drawings, methods of work, or information regarding materials or equipment the Contractor proposes to provide, shall not relieve the Contractor of its responsibility for errors therein and shall not be regarded as an assumption of risks or liability by GPA or by any officer, employee, or subcontractor thereof, and the Contractor shall have no claim under the contract on account of the failure, or partial failure, of the method of work, material, or equipment so reviewed. A mark of "NO EXCEPTIONS TAKEN" or "MAKE CORRECTIONS NOTED" shall mean that GPA has no objection to the Contractor, upon its own responsibility, using the plan or method of work proposed, or providing the materials or equipment proposed.
- j) If a submittal indicates a departure from the contract requirements which the GPA Project Engineer finds to be in the interest of GPA and to be so minor as not to involve a change in the contract price

or time for performance, he may approve the submittal. Any such submittal shall be clearly indicated in the transmittal form as deviating from the contract requirements.

4.59.2. Manufacturer's Data

Submittals for each manufactured item shall include manufacturer's descriptive literature, equipment drawings, diagrams, performance and characteristic curves, and catalog cuts. Each submittal shall include the manufacturer's name, trade name, catalog model or number, nameplate data, size, layout dimensions, capacity, specification reference, applicable Federal, Military and Industry specification references, and all other information necessary to establish contract compliance.

4.60. As-Built Drawings and As-Built Record of Materials

A contract set of drawings shall be maintained at the site with all changes or deviations from the original drawings neatly marked thereon in brightly contrasting color. This shall be a separate set of drawings not used for construction purposes which shall be kept up to date as the job progresses and shall be made available for inspection by the Contracting Officer at all times. Upon completion of the contract this set of drawings and a copy in AutoCAD format shall be delivered to the Contracting Officer.

A record of materials used shall also be provided that indicates the material description, manufacturer, model number, quantity, specification and installed location.

4.61. Meetings

4.61.1. Pre-Construction Conference

The Pre-Construction Conference shall be scheduled after the Notice of Award to designate the personnel representing the parties in Contract. Procedures and processing of submittals, substitutions, applications for payment, proposal requests, change orders, field decisions and Contract close-out procedures may also be discussed.

4.61.2. Progress Meetings

Weekly progress meetings shall be held throughout the duration of the project. GPA may request additional meetings if deemed necessary. Such meetings shall be attended by the CONTRACTOR either via phone or in person, by all active subcontractors and by GPA. The purpose of the meetings will be to discuss current work progress, design or construction issues, interface issues, and potential changes to the schedule. The CONTRACTOR shall make arrangements for meetings, prepare agenda with copies for participants, preside at meetings, record minutes, and distribute copies within two days to GPA, participants, and those affected by decisions made.

The CONTRACTOR shall submit to GPA monthly reports on actual work progress. Such reports shall be submitted to GPA prior to the scheduled work progress meetings. The narrative shall contain a description of current and anticipated delaying factors, if any, impact of possible delaying factors, and proposed corrective actions. The reports shall be submitted as supporting documents for progress payments.

4.62. Contract Closeout

4.62.1. Substantial Completion Date

- a) When the Contractor considers the entire work ready for its intended use, the Contractor shall, in writing to the Engineer, certify that the entire work is substantially complete and request that the Engineer concur and establish a date of substantial completion.
- b) Within 5 days the Contractor and the Engineer shall complete an inspection of the work to determine the status of the completion. If the Engineer does not consider the work substantially complete, the Engineer will notify the Contractor in writing giving the Engineer's reasons therefore. The Contractor may appeal this decision.
- c) If the Engineer considers the work substantially complete, the Engineer will concur in writing to the Contractor that the work is substantially complete and shall therein fix the date of substantial completion. In addition, a list of any deficiencies requiring completion or correction before final inspection will be attached to the Certificate of Substantial Completion. This list of deficiencies (punch list) shall be completed by the Contractor within 10 days after receipt of the Certificate of Substantial Completion and list of deficiencies. The Engineer will not make the final inspection until all work, including the correction of such deficiencies, final clean-up, and such extra work as may be ordered by the Engineer, has been completed by the Contractor and all sub- contractors.
- d) Definition of Substantial Completion: The date of substantial completion of a project or specified area of the project is the date when construction is sufficiently completed and in accordance with the contract documents, as modified by any change orders agreed to by the parties, to permit the Guam Power Authority to occupy the project or specified area of the project for the use for which intended.

4.62.2. Final Inspection Date

- a) When the Contractor has completed work listed on the punch list or when the 10-day punch list period expires, whichever comes first, the Engineer will set a definite date for final inspection. The Engineer and Contractor will then make a final inspection of the project, again noting any deficiencies that remain. The Engineer will again notify the Contractor in writing of all particulars in which this inspection reveals that the work is incomplete or defective. The Contractor shall remedy such deficiencies within 5 days of written notice.
 - b) If such deficiencies are not corrected within 5 days after receipt of the written notice listing deficiencies, the Owner may, without further notice to the Contractor, take whatever steps it deems necessary to correct those deficiencies. Such steps may include, but are not limited to, the correction of defects by Owner provided forces or by others. Thereafter, all direct and indirect costs of the Owner in exercising such rights will be charged against the Contractor and a unilateral change order issued incorporating the necessary revisions in the contract documents and ordering that such costs be deducted from monies due or becoming due the Contractor. Such indirect or direct costs shall include in particular, but without limitation to, compensation for additional professional services required, and all cost of repair and replacement of the work of others destroyed or damaged by correction, removal, or replacement of the Contractor's deficient work.
 - c) The Contractor will not be allowed an extension of contract time because of any delay in performance of the work attributable to the exercise of the Owner's rights hereunder.
 - d) Upon correction of all deficiencies, the Engineer will notify the Contractor and Owner in writing of the date upon which the work was considered complete.
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4.62.3. Final Acceptance

- a) A Certificate of Completion for the project, submitted by the Engineer and approved by the Owner, shall constitute final acceptance of the work.
- b) Final acceptance shall not constitute acceptance of any unauthorized or defective work or material, nor shall progress estimates be construed as acceptance of any work under this contract. The Owner shall not be barred from requiring the Contractor to remove, replace, repair, or dispose of any unauthorized or defective work or from recovering damages for any such work or material.
- c) Submit final Application for Payment identifying total adjusted Contract Sum, previous payments, and sum remaining due.

4.62.4. Final Cleaning

- a) Execute final cleaning prior to final inspection.
- b) Clean equipment and fixtures to a sanitary condition.
- c) Clean filters of operating equipment.
- d) Clean debris from roofs, downpours, and drainage systems.
- e) Clean site; sweep paved areas, rake clean landscaped surfaces.
- f) Remove waste and surplus materials, rubbish, and construction facilities from the site.

4.62.5. Correction Period

- a) If within a year after the date of Final Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any work is found to be defective, the Contractor shall promptly, without cost to the Owner and in accordance with the Owner's written instructions: (i) correct such defective work, or, if it has been rejected by the Owner, remove it from the site and replace it with work that is not defective, and (ii) satisfactorily correct or remove and replace any damage to other work the work of others resulting therefrom. If the Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, the Owner may have the defective work corrected or the rejected work remove and replaced, and all claims, costs, losses and damages caused by resulting from such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by the Contractor.
- b) Where defective work (and damage to other work resulting therefrom) has been corrected, removed or replaced under this paragraph 4.62.5, the correction period hereunder with respect to such work will be extended for an additional period of two years after such correction or removal and replacement has been satisfactorily completed.

- c) Contractor shall furnish a warranty period performance bond. The bond shall be for an amount equal to 15% of the Contract Price and shall remain in effect for the entire warranty period. Receipt by the Owner of the warranty period bond shall be a prerequisite for release of the construction period performance bond.

4.62.6. Final Report

Two (2) hard copies and one (1) electronic copy of final reports shall be submitted to GPA after testing and commissioning are completed. The report shall include but not limited to:

- a) Summary of Work Performed
- e) Inspection and Test Criteria
- f) All test results
- g) List of materials used
- h) As-built drawings
- i) Commissioning Reports
- j) Recommendations

4.63. Quality Control

4.63.1. Quality Control Requirements

All testing shall be divided into three (3) categories as follows:

- a) Field tests made at, or in the vicinity of, the jobsite in connection with the actual work, including but not limited to concrete batch plants, asphalt batch plants, and similar establishments directly involved in the work.
- b) Factory tests at the point of manufacture of various products which are shipped to the jobsite as a unit, including by not limited to, such items as electrical equipment, as required by the Engineer.
- c) Certified tests made by approved testing agencies on material and/or equipment, which is to be incorporated into structures under the contract. These tests are those such as are performed by Factory Mutual, Underwriters' Laboratories, Inc., and others.
 - i. Field Tests by the Contractor: The Contractor shall perform all field testing specifically required by the "Applicable Publications" referenced in the contract specification. Cost of testing shall be borne by the Contractor. He shall furnish all equipment, instruments, qualified personnel and facilities necessary to perform all tests required by the contract documents. Testing services shall be performed by the Contractor or acquired by the Contractor through a qualified commercial testing laboratory. If a commercial testing laboratory is retained to perform tests under this contract, all test reports shall be performed by the Contractor or acquired by the Contractor through a qualified commercial testing laboratory. If a commercial testing laboratory is retained to perform tests under this contract, all tests reports shall be certified by a representative of the testing laboratory, who is authorized to sign certified test reports for the laboratory. Test reports shall include the acceptable value for each specification item, the actual test results obtained, the methods

used, and a statement that the product conforms (or does not conform to the specification requirements).

- ii. **Factory Tests:** The Engineer will arrange for factory tests when they are required.
- iii. **Manufacturer's Certified Tests:** Certified tests on materials to be incorporated into the work will be acceptable, provided they are performed by the manufacturer or by Government approved agencies or laboratories, show that the material conform to the specification, and that the tests and certification meet the requirements of the paragraph entitled "Certificates and Certifications" below.
- iv. **Government Approval of Laboratories:** All laboratory work performed under this contract shall be done by a laboratory approved by the Government, whether the laboratory is employed by the Contractor or by others, or is owned and operated by the Contractor. The basis of approval includes the following:
 1. Laboratories performing work in connection with concrete, steel and bituminous material must conform to American Society for Testing and Materials (ASTM) designation E632-77.
 2. Laboratories performing work not in connection with concrete, steel or bituminous material must conform to Sections 3 and 4 of ASTM designation E329-77.

4.63.2. Inspection

All inspections shall be divided into two (2) categories as follows:

- a) Field inspection is that inspection in the vicinity of the jobsite which when performed properly, will result in the complete compliance of all work-in-place with the contract drawings and specifications.
- b) Factory inspection is that inspection of the point of manufacture of the various products which are shipped to the jobsite, including but not limited to, such items as electrical equipment.

4.63.3. Contractor Field Inspections

The Contractor or his designated representative shall inspect all work under this contract.

4.63.4. Factory Inspection

The Contracting Officer will arrange for factory inspection when it is required.

4.63.5. Shop Drawings and Catalog Cuts

All shop drawings, and catalog cuts required by the technical sections of the contract specifications shall be approved by the Engineer.

4.63.6. Identification

Each item which is to be incorporated into the contract shall be clearly marked and identified in the catalog cut submittals, and shall be cross-referenced to the contract drawings and specifications so as to identify clearly the use for which it is intended.

4.63.7. Samples

Samples of materials shall be prepared and submitted as required. The Contractor shall check and approve all samples of materials and/or equipment proposed for incorporation into the project. The samples shall be identified as to their intended use, and shall be accompanied by a letter of certification from the Contractor stating that the samples comply with the contract drawings and specifications.

4.63.8. Certificates and Certifications

Manufacturer's certification may be furnished by the Contractor, on items of materials and equipment incorporated into the work, only when this method will assure full compliance with the provisions of the contract, as determined by the Government. Pre-printed certifications will not be acceptable. All certifications shall be in the original. The original of all manufacturer's certifications shall name the appropriate item of equipment or material, specification, standard or other document specified as controlling the quality of that item and shall have attached thereto certified copies of the test reports upon which the certifications are based.

4.63.9. Record of Inspections

The Contractor shall maintain, on a day-to-day basis, a record of all inspections and field test performed with a certification that all work is in conformance with contract requirements.

4.63.10. Recalibration of Equipment

Equipment requiring recalibration shall be subject to recalibration at the request of the Engineer. Such recalibration shall be performed by the Contractor at his expense.

4.64. Safety Requirements

4.64.1. References

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by the basic designation only.

a) AMERICAN NATIONAL STANDARDS INSTITUTE (ANSI)

ANSI A10.14 (1991) Construction and Demolition Operations - Requirements for Safety Belts, Harnesses, Lanyards and Lifelines for Construction and Demolition Use

ANSI Z359.1 (1992) Safety Requirements for Personal Fall Arrest Systems

b) CODE OF FEDERAL REGULATIONS (CFR)

29 CFR 1910.120 Hazardous Waste Operations and Emergency Response

- c) CORPS OF ENGINEERS (COE)
COE EM-385-1-1 (1996) Safety and Health Requirements Manual
- d) NATIONAL FIRE PROTECTION ASSOCIATION (NFPA)
NFPA 70 (1996) National Electrical Code
NFPA 241 (1996) Safeguarding Construction, Alteration, and Demolition Operations

4.64.2. Definitions

- a) Certified Industrial Hygienist. An industrial hygienist is an individual who is certified by the American Board of Industrial Hygiene.
- b) Certified Safety Professional. A safety manager, safety specialist, or safety engineer that has passed the CSP exam administered by the Board of Certified Safety Professionals.
- c) Confined Space. A space which by design has limited openings for entry and exit, unfavorable natural ventilation which could contain or produce dangerous air contaminants, and which is not intended for continuous employee occupancy, engulfment or any other recognized safety or health hazard. Confined spaces include, but are not limited to storage tanks, process vessels, pits, silos, vats, degreasers, reaction vessels, boilers, ventilation and exhaust ducts, sewers, tunnels, underground utility vaults, and pipelines.
- d) Multi-employer work site (MEWS). The prime contractor is the "controlling authority" for all work site safety and health of the subcontractors.
- e) Recordable Occupational Injuries or Illness. An occupational injury or illnesses which result in serious injuries, lost workday cases, non-fatal cases or significant mishaps.
- f) Serious Injuries & Fatalities. Regardless of the time between the injury and death or the length of the illness; hospitalization of three or more employees; or property damage in excess of \$200,000.
- g) Lost Workday Cases. Injuries, other than fatalities, that results in lost workdays.
- h) Non-Fatal Cases. Cases without lost workdays which result in transfer to another job or termination of employment, or require medical treatment (other than first aid) or involve property damage in excess of \$10,000 but less than \$200,000 or involve: loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost workday cases.
- i) Health and Safety Plan (HASP). The HASP is the Navy equivalent Army term of SHP or SSHP used in COE EM-385-1-1. "USACE" property and equipment specified in COE EM-385-1-1 should be interpreted as Government property and equipment.
- j) Safety Officer. The superintendent or other qualified or competent person who is responsible for the on-site safety required for the project. The contractor quality control person cannot be the safety officer, even though the QC has safety inspection responsibilities as part of the QC duties.

- k) Significant Contractor Mishap. A contractor mishap which involves falls of 4 feet or more, electrical mishaps, confined space mishaps, diving mishaps, equipment mishaps, and fire mishaps which result in a lost time injury, or property damage of \$10,000 or more, but less than \$200,000; or when fire department or emergency medical treatment (EMT) assistance is required.
- l) Medical Treatment. Treatment administered by a physician or by registered professional personnel under the standing orders of a physician. Medical treatment does not include first aid treatment provided by a physician or registered personnel.
- m) First Aid. A one-time treatment, and follow-up visit for the purpose of observation, of minor scratches, cuts, burns, splinters, and so forth, which do not ordinarily require medical care, even though provided by a physician or registered professional personnel.
- n) Lost Workdays. The number of days (consecutive or not) after, but not including, the day of injury or illness during which the employee would have worked but could not do so; that is, could not perform all or part of his normal assignment during all or any part of the workday or shift; because of the occupational injury or illness.

4.64.3. Submittals

Submit the following in accordance with the submittal procedures:

- a) Accident Prevention Plan (APP)

Submit at least 15 calendar days prior to start of work at the job site, make APP site specific, Notice to Proceed will be given after Government finds the APP acceptable.

- b) Activity Hazard Analysis (AHA)

Submit the AHA for the preparatory phase as a part of the APP. Submit subsequent AHA for each major phase of work at least 15 calendar days prior to the start of that phase. Format subsequent AHA as amendments to the APP.

- c) Health and Safety Plan (HASP)

Allow 30 calendar days for review by GPA construction safety manager.

- d) Records

Reports. Submit reports as their incidence occurs, in accordance with the requirements of the paragraph entitled, "Reports."

4.64.4. Quality Assurance

- a) Qualifications

- i. Qualifications of Safety Officer:

- 1. Ability to manage the on-site contractor safety program through appropriate management controls,

2. Ability to identify hazards and have the capability to expend resources necessary to abate the hazards.
3. Must have worked on similar types of projects that are equal to or exceed the scope of the project assigned with the same responsibilities.

ii. Qualifications of Qualified Person, Confined Space Entry:

The qualified person shall be capable by education and specialized training of anticipating, recognizing, and evaluating employee exposure to hazardous substances or other unsafe conditions in a confined space. This person shall be capable of specifying necessary control and protective action to ensure worker safety.

b) Meetings

i. Preconstruction Conference

The safety officer shall attend the preconstruction conference.

ii. Meeting on Work Procedures

Meet with Contracting Officer to discuss work procedures and safety precautions required by the HASP. Ensure the participation of the Contractor's superintendent, the Quality Control, and the CSP or CIH.

iii. Weekly Safety Meetings

Hold weekly. Attach minutes showing contract title, signatures of attendees and a list of topics discussed to the QC Contractor Quality Control daily report.

c) Crane Safety Requirements

The contractor shall comply with specific activity regulations pertaining to crane safety and operation, and shall notify the contracting officer, in advance of any cranes entering the activity. The contractor shall comply with ASME B30.5 for mobile cranes, and ASME B30.22 for articulating boom cranes.

i. Crane Certificate of Compliance

Prior to cranes entering federal activities, a certificate of compliance form the contractor shall be completed and submitted to the contracting officer. The certificate of compliance shall certify that the crane and rigging gear meets applicable OSHA regulations. The specific OSHA regulation applying to the crane shall be cited on the certification. The contractor shall also certify that all of its crane operators working on federal activity have been trained not to bypass safety devices during lifting operations. A copy of the certification submitted to the contracting officer shall be posted in the crane. Attached at the end of this specification section is a certification form to be used for this purpose.

ii. Crane Weight Handling Equipment Accident Report

The contractor shall provide the contracting officer within 30 days of any accident a Weight Handling Equipment Accident Report using the form provided at the end of this specification section. The contractor shall notify the contracting officer as soon as practical, but not later than four hours, after an accident involving a fatality, in-patient hospitalization, overturned crane, collapsed boom, or any other major damage to the crane or adjacent property. The contractor shall secure the accident site and protect evidence unit released by the contracting officer. The contractor shall conduct an accident investigation to establish the root cause(s) of the accident. Crane operations shall not proceed until cause is determined and corrective actions have been implemented to the satisfaction of the contracting officer. These notifications and reporting requirements are in addition to those required under other parts of this project specification and the provisions of the "Accident Prevention" clause of the contract.

4.64.5. Accident Prevention Plan (APP)

Prepare the APP in accordance with the required and advisory provisions of COE EM-385-1-1 including Appendix A, "Minimum Basic Outline for Preparation of Accident Prevention Plan," and as modified herein. Include the associated AHA and other specific plans, programs and procedures listed on Pages A-3 and A-4 of COE EM-385-1-1, some of which are called out below.

a) Contents of the Accident Prevention Plan

- i. Name and safety related qualifications of safety officer (including training and any certifications).
- ii. Qualifications of competent and of qualified persons.
- iii. Identify of the individual who will complete exposure data (hours worked); accident investigations, reports and logs; and immediate notification of accidents to include subcontractors.
- iv. Emergency response plan. Conform to COE EM-385-1-1, paragraph 01.E and include a map denoting the route to the nearest emergency care facility with emergency phone numbers. Contractor may be required to demonstrate emergency response.
- v. Confined Space Entry Plan. Identify the qualified person's name and qualifications, training, and experience. Delineate the qualified person's authority to direct work stoppage in the event of hazardous conditions. Include procedure for rescue by contractor personnel and the coordination with emergency responders. (If there is no confined space work, include a statement that no confined space work exists and none will be created.)
- vi. Hazardous Material Use. Provisions to deal with hazardous materials, pursuant to the Contract Clause "FAR 52.223-3, Hazardous Material Identification and Material Safety Data." And the following:
 1. Inventory of hazardous materials to be introduced to the site with estimated quantities.
 2. Plan for protecting personnel and property during the transport, storage and use of the materials

3. Emergency procedures for spill response and disposal, including a site map with approximate quantities on site at any given time. The site map will be attached to the inventory, showing where the hazardous substances are stored
4. Material Safety Data Sheets for inventoried materials not required in other section of this specification.
5. Labeling system to identify contents on all containers on-site.
6. Plan for communicating high health hazards to employees and adjacent occupants.
- vii. Hazardous Energy Control Plan. For hazardous energy sources, comply with COE EM-385-1-1, paragraph 12.A.07.
- viii. Critical Lift Procedures. Weight handling critical lift plans will be prepared and signed in accordance with COE EM-385-1-1, paragraph 16.c.18.
- ix. Alcohol and Drug Abuse Plan
 1. Describe plan for random checks and testing with pre-employment screening in accordance with the DFAR Clause subpart 252.223-7004, "Drug Free Work Force."
 2. Description of the on-site prevention program
- x. Fall Protection Plan. The plan shall be site specific and protect all workers at elevations above 6 feet.
- xi. Site Demolition Plan. The safety and health aspects prepared in accordance with Section 02220, "Site Demolition"

4.64.6. Activity Hazard Analysis (AHA)

Prepare for each phase of the work. As a minimum, define activity being performed, sequence of work, specific hazards anticipated, control measures to eliminate or reduce each hazard to acceptable levels, training requirements for all involved, and the competent person in charge of that phase of work. For work with fall hazards, including fall hazards associated with scaffold erection and removal, identify the appropriate fall arrest systems. For work with materials handling equipment, address safeguarding measures related to materials handling equipment. For work requiring excavations, include excavation safe guarding requirements. The appropriate AHA shall be reviewed and attendance documented by Contractor at the preparatory, initial, and follow-up phases of Quality Control inspection.

4.64.7. Health and Safety Plan (HASP)

Prepare as required by 29 CFR 1910.120 and COE EM-385-1-1.

- a) Qualified Personnel

Retain a Certified Industrial Hygienist (CIH) or a Certified Safety Professional (CSP) to prepare the HASP, conduct activity hazard analyses, and prepare detailed plan for demolition, removal, and disposal of materials. Retain the CIH or CSP for duration of contract.

b) Contents

In addition to the requirements of COE EM-385-1-1, Table 28-1, the HASP must include:

- i. Interface of trades involved in the construction.
- ii. Sequencing of work.
- iii. Disposal plan.
- iv. Protective equipment.
- v. Pollution control.

4.64.8. Drug Prevention Program

Conduct a proactive drug and alcohol use prevention program for all workers, prime and subcontractor, on the site. Ensure that no employees either use illegal drugs or consume alcohol during work hours. Ensure no employees under the influence of drugs or alcohol during work hours. After accidents, collect blood, urine or saliva specimens and test injured employee influence. A copy of the test shall be made available to the Contracting Officer upon request.

4.64.9. Fall Hazard Prevention Program

a) Scaffolds

Delineate the fall protection requirements necessary during the erection and dismantling operation of scaffolds used on the project in the fall protection plan and activity hazard analysis for the phase of work.

b) Training

Institute a fall protection program. As part of the Fall Protection Program, contractor shall provide training for each employee who might be exposed to fall hazards.

4.64.10. Duties of the Safety Officer

- a) Ensure construction hazards are identified and corrected.
- b) Maintain applicable safety reference material on the job site.
- c) Maintain a log of safety inspections performed.

4.64.11. Display of Safety Information

Display the following information in clear view of the on-site construction personnel:

- a) Map denoting the route to the nearest emergency care facility with emergency phone numbers.
- b) AHA
- c) Sign with number of hours worked since last lost workday accident.

4.64.12.Site Safety Reference Materials

Maintain safety-related references applicable to the project, including those listed in the article "References." Maintain applicable equipment manufacturers' manuals.

4.64.13.Emergency Medical Treatment

Contractors will arrange for their own emergency medical treatment. Government has no responsibility to provide.

4.64.14.Reports

- a) Reporting Reports

For OSHA recordable accidents, the prime contractor will conduct a suitable investigation and provide to the Contracting Officer within 5 calendar days of the accident.

- b) Notification

Notify Contracting Officer, within 4 hours, of any accident meeting the definition of OSHA recordable occupational injury or illness. Information shall include Contractor name; contract title; type of contract; name of activity, installation or location where mishap occurred; date and time of mishap; names of personnel injured; extent of property damage, if any; and brief description of mishap (to include type of construction equipment used, PPE used, etc.). In addition to OSHA reporting requirements, initial notification shall be made of any accident involving significant mishaps.

- c) Monthly Exposure Report

Monthly exposure reporting, to the Contracting Officer is required to be attached to the monthly billing request. This report is a compilation of employee-hours worked each month for all site workers, both prime and subcontractor.

- d) OSHA Citations and Violations

Provide the Contracting Officer with a copy of each OSHA citation, OSHA report and Contractor response. Correct violations and citations promptly and provide written corrective actions to the Contracting Officer.

4.64.15.Fall Protection Anchorage

Fall protection anchorages, used by contractors to protect their people, will be left in place and so identified for continued customer use.

4.64.16. Construction

Comply with COE EM-385-1-1, NFPA 241, the accident prevention plan, the activity hazard analysis and other related submittals and activity fire and safety regulations.

a) Hazardous Material Exclusions

Notwithstanding any other hazardous material used in this contract, radioactive materials or instruments capable of producing ionizing/non-ionizing radiation as well as materials which contain asbestos, mercury or polychlorinated biphenyls, di-isocyanates, lead-based paint are prohibited. Exceptions to the use of any of the above excluded materials may be considered by Contracting Officer upon written request by Contractor.

b) Unforeseen Hazardous Material

If additional material, not indicated, that may be hazardous to human health upon disturbance during construction operations is encountered, stop that portion of work and notify the Contracting Officer immediately. Within 14 calendar days the Government will determine if the material is hazardous. If material is not hazardous or poses no danger, the Government will direct the Contractor to proceed without change. If material is hazardous and handling of the material is necessary to accomplish the work, the Government will issue a modification pursuant to "FAR 52.243-4, Changes" and "FAR 52.236-2, Differing Site Conditions."

4.64.17. Pre-Outage Coordination Meeting

Contractors are required to apply for utility outages a minimum of 15 days in advance. As a minimum, the request should include the location of the outage, utilities being affected, duration of outage and any necessary sketches.

4.64.18. Personnel Protection

a) Hazardous Noise

Provide hazardous noise signs, and hearing protection, where ever equipment and work procedures produce sound-pressure levels greater than 85 dBA steady state or 140 dBA impulses, regardless of the duration of the exposure.

b) Fall Protection

Enforce use of the fall protection device named for each activity in the AHA all times when an employee is on a surface 6 feet or more above lower levels. Personal fall arrest systems are required when working from an articulating or extendible boom, scissor lifts, swing stages, or suspended platform. Fall protection must comply with ANSI A10.14.

c) Personal Fall Arrest Device

Equipment, subsystems, and components shall meet ANSI Z359.1, Personal Fall Arrest Systems. Only a full-body harness with a shock absorbing lanyard is an acceptable personal fall arrest device. Body belts may only be used as positioning devices only such as for steel reinforcing assembly.

Body belts are not authorized as a personal fall arrest device. Harnesses must have upper middle back "D" rings for proper body suspension during a fall. Lanyard must be fitted with a double locking snap hook attachment. Webbing, straps, and ropes must be of synthetic fiber or wire rope.

d) Scaffolding

Employees shall be provided with a safe means of access to the work area on the scaffold. Climbing of any scaffold braces or supports not specifically designed for access is prohibited. Contractor shall ensure that scaffold erection is performed by employees that are qualified. Do not use scaffold without the capability of supporting at least four times the maximum intended load or without appropriate fall protection as delineated in the accepted fall protection plan. Minimum platform size shall be based on the platform not being greater in height than four times the dimension of the smallest width dimension for rolling scaffold. Some Baker type scaffolding has been found not to meet these requirements. Stationary scaffolds must be attached to structural building components to safeguard against tipping forward or backward. The first tie-in shall be at the height equal to 4 times the width of the scaffold base.

e) Use of Material Handling Equipment

- i. Material handling equipment such as forklifts shall not be modified with work platform attachments for supporting employees unless specifically delineated in the manufactures printed operating instructions. Crane supported work platforms shall only be used in extreme conditions if the Contractor proves that using any other access to the work location would provide a greater hazard to the workers.
- ii. Cranes must be equipped with Load Indicating Devices, anti-two blocks devices, load, boom angle moment indicating indicators.
- iii. Christmas-tree lifting (multiple rigged materials) is not allowed.

f) Excavations

The competent person for excavation shall be on site when work is being performed in excavation, and shall inspect excavations prior to entry by workers. Individual must evaluate for all hazards, including atmospheric, that may be associated with the work, and shall have the resources necessary to correct hazards promptly.

g) Conduct of Electrical Work

Underground electrical spaces must be certified safe for entry before entering to conduct work. Cable intended to be cut must be positively identified and de-energized prior to performing each cut. Perform all high voltage cutting remotely. When racking in or live switching of circuit breakers, no additional person other than the switch operator will be allowed in the space during the actual operation. Plan so that work near energized parts is minimized to the fullest extent possible. Use of electrical outages clear of any energized electrical sources is the preferred method. When working in energized substations, only qualified electrical workers shall be permitted to enter. When work requires Contractor to work near energized circuits as defined by the NFPA 70, high voltage personnel must use personnel protective equipment that includes, as a minimum, electrical hard hat, safety shoes, insulating gloves with leather protective sleeves, fire retarding shirts, coveralls,

face shields, and safety glasses. Insulating blankets, hearing protection, and switching suits may be required, depending on the specific job and as delineated in the Contractor AHA.

4.64.19. Accident Scene Preservation

For serious accidents, ensure the accident site is secured and evidence is protected remaining undisturbed until released by the Contracting Officer.

4.64.20. Field Quality Control

a) Inspections

Include safety inspection as a part of the daily Quality Control inspections required in Section 01400, "Quality Control."

4.64.21. Traffic Work

All work around/involving roadways, to include roadway excavations and utility crossings, will be conducted in accordance with Manual of Uniform Traffic Control Devices. Contractors shall provide and ensure appropriate road closure and detour signs are established as necessary for motor traffic management. All road closures shall be coordinated with the Contracting Officer in advance. Self-illuminated (lighted) barricades shall be provided during hours of darkness. Brightly-colored (orange) vests are required for all personnel working in roadways. Road closures shall require a road closure plan showing the location of signage.

4.64.22. Station Regulations

Contractor is responsible to adhere to all station regulations and obtain all necessary permits and outage approvals prior to commencement of that work activity.

4.64.23. Station Permits

Permits are required for, but not necessarily limited to, welding, digging, and burning. Allow 7 calendar days for processing of the application.

4.64.24. Temporary Barricades

Contractor shall provide for barricading around all work areas to prevent public access.

4.64.25. Fencing

Fencing shall be provided along the construction site at all open excavations and tunnels to control access by unauthorized people. Fencing must be installed to be able to restrain a force of at least 200 pounds against it.

4.64.26. Signs

Place warning signs at the construction area perimeter designating the presence of construction hazards requiring unauthorized persons to keep out. Signs must be placed on all sides of the project, with at least

one sign every 300 feet. All points of entry shall have signs designating the construction site as a hard hat area.

4.65. Environmental Protection

4.65.1. Definitions of Contaminants

- a) Sediment: Soil and other debris that has been eroded and transported by runoff water.
- b) Solidwaste: Rubbish, debris, garbage, and other discarded materials resulting from industrial, commercial, and agricultural operations, and from community activities' such material having insufficient liquid content to be free flowing.
- c) Rubbish: A variety of combustible and noncombustible wastes such as ashes, waste materials that result from construction or maintenance and repair work, leaves and tree trimmings.
- d) Chemical Wastes: Includes salts, acids, alkalies, herbicides, pesticides, petroleum-derived products and organic chemicals.
- e) Sewage: Water-carried waste products from residences, public buildings, institutions or other buildings, including excrementitious or other discharge from the bodies of human beings or animals, together with such ground water infiltration and surface water as may be present.
- f) Garbage: Refuse and scraps resulting from preparation, cooling, dispensing, and consumption of food.
- g) Asbestos and Asbestos Materials: Asbestos means actinolite, amosite, anthophyllite, chrysotile, crocidolite, and tremolite. Asbestos materials means asbestos or any material containing asbestos such as asbestos waste, scrap, debris, bags, containers, equipment, and asbestos-contaminated clothing consigned for disposal. Friable asbestos material requires a Waste Disposal Permit. Submit one (1) copy of Guam Environmental Protection Agency (GEPA) permit or license which reflects such agency's approval of the disposal plan as being in compliance with their waste disposal regulations.

4.65.2. Environmental Protection Requirements

- a) Provide and maintain during the life of the contract, environmental protection as defined herein. Provide environmental protective measures as required to control pollution that develops during normal construction practice.
- b) Provide also environmental protective measures required to correct conditions that develop during the construction of permanent or temporary environmental features associated with the project. Comply with all federal and local statutes and regulations pertaining to environmental protection.

4.65.3. Submittals

- a) Environmental protection Plan: Submit two (2) copies of the proposed Environmental Protection Plan (EPP) to the Guam Environmental Protection Agency (GEPA) and 2 copies to the Contracting Officer for review and approval no later than 10 calendar days after receipt of the Notice to Proceed

(NTP) with work under this project. Review of the plan by the Contracting Officer and GEPA will be accomplished simultaneously.

The Contractor shall not undertake any clearing, grubbing, earthwork, and excavations until the EPP has been approved by the GEPA and the Contracting Officer.

- b) Solid waste Disposal Permit: Submit one (1) copy of local permit or license which reflects Guam Environmental Protection Agency's (GEPA) approval of the disposal plan as being in compliance with their solid waste disposal regulations.
- c) The Contractor must submit an approved Erosion Control Plan (ECP) to Guam EPA to be implemented and maintained throughout the duration of the project.

4.65.4. Protection of Natural Resources

The natural resources within the project boundaries and outside the limits of permanent work performed under this contract shall be preserved in their existing condition or restored to an equivalent or improved condition upon completion of the work. Confine construction activities to areas defined by the work schedule, drawings, and specifications.

- a) Land Resources: Except in areas indicated to be cleared, do not remove, cut, deface, injure, or destroy trees or shrubs without special permission from the Contracting Officer.

Protection: Protect existing trees which are to remain and which may be injured, bruised, defaced, or otherwise damaged by construction operations. Remove displaced rocks from uncleared areas. Protect monuments, markers, and works of art.

- b) Repair or Restoration: Repair or restore to their original condition all trees or other landscape features scarred or damaged by the equipment or operations. Obtain approval of the repair or restoration from the Contracting Officer prior to its initiation.
- c) Temporary Construction: At the conclusion of the project, obliterate all signs of temporary construction facilities such as work areas, stockpiles of excess or waste materials, and all other vestiges of construction.
- d) Water Resources: Perform all work in such a manner that any adverse environmental impact on water resources is reduced to a level acceptable to the Contracting Officer.
- e) Oily and Other Hazardous Substances: Take special measures to prevent oily or other hazardous substances from entering the ground, drainage areas, or local bodies of water.

4.65.5. Control and Disposal of Solid, Chemical and Sanitary Wastes

Pick up solid waste and place in containers which are emptied on a regular schedule. The preparation, cooking, and disposing of food are strictly prohibited on the project site. Conduct handling and disposal of waste to prevent contamination of the site and other areas. On completion, leave areas clean and natural looking. Remove signs of temporary construction and activities incidental to construction of the permanent work in place.

- a) Disposal of Rubbish and Debris: Dispose of rubbish and debris in accordance with the requirements specified herein.

Remove rubbish and debris from the project site and dispose of it in compliance with federal and local requirements.

- b) Garbage Disposal: Place garbage in appropriate containers and transport such refuse to an approved landfill for disposal at least once per week. As an alternative, the Contractor may arrange for weekly pickup and disposal service either with the Government of Guam or a privately-owned garbage collection service. The Contractor shall pay all fees associated with obtaining and maintaining garbage collection and disposal services.
- c) Sewage, Odor, and Pest Control: Dispose of sewage through connection to the public sewage system. Where such system is not available, use chemical toilets or comparably effective units and periodically empty waste into the public sanitary sewage system. Include provisions for pest control and elimination of odors.
- d) Chemical Waste: Store chemical waste in corrosion resistant containers labeled to identify type of waste and date filled. Remove containers from the project site, and dispose of chemical waste in accordance with federal, state, and local regulations. For oil and hazardous material spills which may be large enough to violate federal and local regulations, notify the Contracting Officer immediately and take measures as instructed by the Contracting Officer, at no additional costs.
- e) Petroleum Products: Conduct fueling and lubricating of equipment and motor vehicles in a manner that affords the maximum protection against spills and evaporation. Dispose of lubricants to be discarded and excess oil in accordance with approved procedures meeting federal and local regulations.

4.65.6. Dust Control

Keep dust down at all times, including non-working hours, weekends, and holidays. Sprinkle or treat, with dust suppressors, the soil at the site, haul roads, and other areas disturbed by operations. No dry brooming is permitted. Instead use vacuuming, wet mopping, wet sweeping, or wet power brooming. Air blowing is permitted only for cleaning non-particulate debris, such as steel reinforcing bars. No sandblasting is permitted unless dust therefrom is confined. Only wet cutting of concrete blocks, concrete, and asphalt is permitted. No unnecessary shaking of bags is permitted where bagged cement, concrete mortar, and plaster is used.

4.65.7. Noise

When available, make the maximum use of "low-noise emission products" as certified by Guam Environmental Protection Agency.