



GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUAHAN
P.O. BOX 2977 HAGATNA, GUAM U.S.A. 96932-2977

September 17, 2009

AMENDMENT NO.: IV

TO

INVITATION FOR BID NO.: GPA-050-09

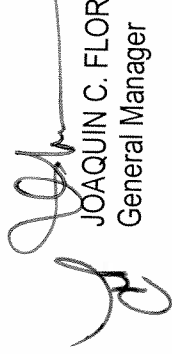
FOR

LOW SULFUR DIESEL FUEL OIL #2 TO GPA'S ELECTRIC GENERATING POWER PLANTS:
DEDEDO DIESEL PLANT AND COMBUSTION TURBINES
(Dededo CT, Macheche CT, Yigo CT, and Marbo CT)

Prospective Bidders are hereby notified of the following:

**Bid Opening date is changed from 2:30 P.M., September 21, 2009 to now read 2:30 P.M.,
September 25, 2009.**

All other Terms and Conditions in the bid package remain unchanged and in full force.



JOAQUIN C. FLORES, P.E.
General Manager



GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUAHAN
P.O. BOX 2977 HAGATNA, GUAM U.S.A. 96932-2977

September 15, 2009

AMENDMENT NO.: III

TO

INVITATION FOR BID NO.: GPA-050-09

FOR

**LOW SULFUR DIESEL FUEL OIL #2 TO GPA'S ELECTRIC GENERATING POWER PLANTS:
DEDEDO DIESEL PLANT AND COMBUSTION TURBINES
(Dededo CT, Macheche CT, Yigo CT, and Marbo CT)**

Prospective Bidders are hereby notified of the following response to inquiries received from Mobil Oil Guam, Inc. dated August 28, 2009, and Inclusions/Exclusions to subject bid invitation:

QUESTION:

1. 3.02 Government Laws and Regulations – should GPA be unable to obtain an exemption it places an unfair burden on the Contractor to meet a requirement which is not within its control which GPA by its inability to obtain an exemption further validates an uncontrollable event. To not provide remedy to the Contractor provides the burden of compliance squarely on the Contractor. We request a termination with notice clause should GPA be unable to obtain a waiver and the Contractor is unable to provide the required fuel within reason.

And

- 3.03 Specification – should GPA wish to alter any of the specifications, it places a burden on the Contractor to meet the change or suffer a penalty. Since we supply a majority of the power plants in this region any changes to accommodate special specifications for GPA will created significant costs to store GPA's product in dedicated tanks both onshore and in-transit. Therefore we request that this section allow a termination with notice clause that relieves the Contractor should GPA wish to pursue the change in specification but it becomes prohibitive for the Contractor.

ANSWER:

Please revise Article III, Section 3.02 Government Laws and Regulations and Section 3.03 Specifications as follows:
Section 3.02 Government Laws and Regulations:

(a) If at any time during the term of the contract the Government of the United States or the Territory of Guam enacts laws or issues regulations which would prevent **GPA** from burning the type of fuel oil to be supplied hereunder, **GPA** shall use its best efforts to obtain an exemption. In the event **GPA** cannot obtain an exemption from such laws and regulations, **CONTRACTOR** shall use his best efforts to furnish **GPA** substitute fuel oil which complies with such governmental laws and regulations at the same price set out herein, or if unreasonable, at a price to be renegotiated by the parties. If the substitute fuel oil causes an increase or decrease in **CONTRACTOR'S** cost of performance of the Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly. Any claim of **CONTRACTOR** for adjustment under this section must be asserted in writing within thirty (30) days from date of receipt by **CONTRACTOR** of the notification of substitute fuel oil in compliance with Government laws, rules and regulations. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this Contract entitled "Disputes". In the event that the **CONTRACTOR** cannot furnish **GPA** with fuel that complies with governmental laws and regulations despite its best efforts, the **CONTRACTOR** shall provide **GPA** a 90-day notice for contract termination. **CONTRACTOR** shall continue providing **GPA** with fuel meeting the original specifications until **GPA** acquires a new contract for supply of fuel that meets new specifications. Only in the event that the parties cannot mutually agree upon the price at which **CONTRACTOR** is to furnish such substitute fuel oil, and **CONTRACTOR** refuses to provide such substitute fuel oil at the Contract price set out herein shall **GPA** then have the option of purchasing from other sources fuel oil at a lower price than that offered by **CONTRACTOR** in such negotiations which complies with such laws and regulations, but in any event, the **CONTRACTOR** shall have no recourse, other than those specified herein.

SECTION 3.03. SPECIFICATIONS.

Should **GPA** wish to alter any of the specifications set out in Section 2.01, method of shipment, terms of delivery, for good cause, it shall give written notice to **CONTRACTOR** within thirty (30) days. If such changes cause an increase or decrease in **CONTRACTOR'S** cost of performance of Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly. Any claim by **CONTRACTOR** for adjustment under this section must be asserted in writing within thirty (30) days from the date of receipt by **CONTRACTOR** of the notification of changed specifications. **CONTRACTOR** and **GPA** shall, in good faith, negotiate an equitable adjustment pursuant to the change in specifications. If **CONTRACTOR** and **GPA** fail to agree on the adjustment to be made within thirty (30) days after **CONTRACTOR** receives notice of altered specifications, or if **CONTRACTOR** is unwilling to meet the altered specifications, the parties shall be subject to "Disputes" clause. In the event that the **CONTRACTOR** cannot furnish **GPA** with fuel that complies with the alterations in any of the specifications requested by **GPA** despite its best efforts, the **CONTRACTOR** shall provide **GPA** a 90-day notice for contract termination. **CONTRACTOR** shall continue providing **GPA** with fuel meeting the original specifications until **GPA** acquires a new contract for supply of fuel that meets new specifications.

QUESTION:

2. 2.01

Product and Quality – We are unable to provide the specification attached to this letter only (Attachment A) and have made a ready comparison of the specifications requested by GPA and request that GPA allow consideration of Mobil's specifications which are the same specifications supplied to most of the power plants in this region.

ANSWER:

The Guam Power Authority maintains the specification as listed. Mobil's specifications may be accepted as long as they are within the limits specified by GPA.

GPA also requests the following from Mobil:

- 1) Mobil to include Gravity (API at 60 deg F) and Guaranteed Heating Value data (MMBTU/bbl) for Characteristics to be tested and provided – these specifications are used for calculating heat rates and efficiency necessary for ensuring optimum plant performance.
- 2) Meet GPA's Neutralization No., Total Acid NO. mgKOH/ g sample Specification Limit of 0.2 (Maximum).

QUESTION:

3. 2.02

Quantity and Quality Assurance – GPA's fuel storage tank receiving meters shall be utilized to determine the quantity of fuel received by GPA. Quantity shall be based on received volume corrected to standard to standard sixty degrees Fahrenheit (60Deg). Conversion to be made in accordance with the ASTM-IP Petroleum Measurement Tables (IP-200), Table 6B. Mobil already invoices at 60 Deg. Our loading rack meter is calibrated quarterly by a properly accredited independent company using ASTM standards. Further our trucks are sealed and GPA can verify that seals are intact as well as inspect the loading meter ticket report prior to accepting any delivery. We request a waiver of this requirement and allowance to use the loading meter ticket along with sealed compartment mitigating controls.

In the event the above request is not accepted, kindly inform date of last meter calibration and frequency in the past three years. And also please inform of methods and contractor utilized.

Also stated, is that Appropriate Certificate of Quality Reports (COQ) shall also accompany each delivery. Mobil utilizes refinery COQ and the test form the tank clearing. Should the bid be awarded to Mobile, we will utilize refinery COQ as Appropriate Certificate of Quality Reports (COQ). Please let us know if this is acceptable.

ANSWER:

Amendment II includes a revision for COQ requirements that addresses the question in the 3rd paragraph.

Meter readings from supplier shall be accepted as long as meter has been calibrated, and the same meter should be used for all deliveries. GPA shall request supplier to provide calibration information and tolerance level for supplier's meter. Difference between GPA meter and Supplier meter readings should also not exceed the tolerance level specified on the meters to ensure accurate meter reading.

GPA is planning to adopt a 0.25% variance standard (based on a Department of Defense standard) for Fuel Deliveries and Receipts. We currently have a bid for the management of our Fuel Facilities and Pipelines, which includes a project for ensuring this variance standard. We will be requesting the contractor awarded our bid for the management of our Fuel Facilities and Pipelines to design, construct, and operate a new fuel metering, systems, and processes to support this standard. This standard may be revisited upon further engineering analysis. Until the meters are installed, GPA cannot enforce the 0.25%. The Bid is currently ongoing. There, we will use, whatever meters provided by the diesel supply that are calibrated to an NIST standard.

4. **OPTIONAL BID OFFER:**

Option bid offer is changed to read:

In **Part B. Bid Submittal Documents I. Bid Offer**, please include an Optional Bid for 500 PPM (Low Sulfur) Diesel Fuel. This has been included in the bid for information only. Information given shall be used should GPA decide to adopt 0.05% Sulfur Diesel Fuel Oil as the primary fuel choice for the plants in this bid. Attached in this amendment is a copy of the ASTM Standard for this fuel type, which shall be used by GPA for evaluation of the optional bid offer, pending manufacturer's recommendations for 500 PPM Diesel Fuel Specifications. Please refer to Grade No. 2-D S500. GPA is requesting each bidder to provide a copy of their 500 PPM Diesel Fuel Specifications along with the bid.

5. **Bid Opening date is changed from 2:30 P.M., September 16, 2009 to now read 2:30 P.M., September 21, 2009.**

All other Terms and Conditions in the bid package remain unchanged and in full force.


JOAQUIN C. FLORES, P.E.
General Manager

Optional Bid Offer: for 500 PPM Diesel

Delivery Site: Dededo Diesel Power Plant and
Combustion Turbine Power Generating Plants
(Dededo CT, Macheche CT, Yigo CT and Marbo CT)

OFFER: (in words) _____

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

Delivery Method: _____

The OPTIONAL BID PRICE is the sum of the Bid Reference Price for 0.05%S Gas Oil plus the Fixed Service Fee for this type of fuel. The Bid Reference Price shall be \$1.576 per US Gallon, the average effective price of the Platt's Marketscan Price Assessments for Gas Oil 0.5%S., FOB Singapore Cargoes, for January 6, 2009 (Table A).

Should GPA proceed with this option, Invoice Price shall be the average of the high and low prices reported for Gas Oil 0.05%S for all the price postings of the previous month in Platt's Marketscan Price Assessment, FOB Singapore Cargoes, plus the fixed service fee.



TABLE 1 Detailed Requirements for Diesel Fuel Oil^a

Property	ASTM Test Method ^b	Units									
		No. 1-D 318	No. 1-D 3500 ^c	No. 1-D 38	No. 1-D 5000 ^c	No. 2-D 816	No. 2-D 5000 ^c	No. 2-D 3800 ^c	No. 3-D 500 ^c	No. 4-D ^d	
Flash Point, °C, min.	D 93	38	38	38	52 ^e	52 ^e	52 ^e	52 ^e	52 ^e	58	
Water and Sediment, % vol, max	D 2709 D 1768	0.06	0.06	0.06	0.06	0.06	0.06	0.06	0.06	0.06	
Neutralization one of the following requirements shall be met: 1 Physical Distillation Distillation Temperature, °C 90 % , % vol recovered min max	D 98	288	288	288	288	288	288	288	288	288	
2 Saturated Distillation Distillation Temperature, °C 90 % , % vol recovered min max	D 2892	304	304	304	304	304	304	304	304	304	
Kinematic Viscosity, mm ² /g at 40°C min max	D 446	1.3	1.3	1.3	1.9 ^f	1.9 ^f	1.9 ^f	1.9 ^f	1.9 ^f	1.9 ^f	
Ash % mass, max	..	2.4	2.4	2.4	4.1	4.1	4.1	4.1	4.1	4.1	
Sulfur, ppm (ppm) ^g max	D 492	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	
% mass, max	D 5488	18	..	..	18	..	..	..	..	..
% mass, max	D 2622 ^h	..	0.05	..	..	..	..	..	..	..
Copper strip corrosion rating max 3 h at 50°C	D 129	No. 3	No. 3	No. 3	No. 3	No. 3	No. 3	No. 3	No. 3	No. 3	
Calorific number, MJ ^g One of the following properties must be met:	D 813	40 ⁱ	40 ⁱ	40 ⁱ	40 ⁱ	40 ⁱ	40 ⁱ	40 ⁱ	40 ⁱ	40 ⁱ	
(1) Calorific value, min.	D 979-90 ^j	46	40	..	46	40	..	46	40	..	
(2) Anomalous % vol, max	D 1316 ^k	35	35	..	35	35	..	35	35	..	
Cloud point, °C, max	D 2500	..	..	..	..	..	..	..	..	..
LIFT/CIPP, °C, max	D 453W D 6371	..	..	..	..	..	..	..	..	..
Fluorobenzene carbon residue on 10 % distillation residue, % mass, max	D 324	0.15	0.15	0.15	0.15	0.35	0.35	0.35	0.35	..	
Leakdown, ppm ^l @ 80°C, min ^m , max	D 5078	500	500	500	500	500	500	500	500	500	

^a To meet special operating conditions, modifications of individual limiting requirements may be agreed upon between purchaser, seller, and manufacturer.
^b The test methods included are the approved reference methods. Other acceptable methods are indicated in 4.1.
^c Under United States regulations, if Grades No. 1-D 5000 or No. 2-D 5000 are sold for use in emergency purposes, they are required by 28 CFR Part 48 to contain the eye solvent fluid 164 at a concentration approximately equivalent to 3.3 by volume based on the total eye solvent fluid 164 of the lot must be conducted.
^d Under United States regulations, Grades No. 1-D 5000, No. 2-D 5000, and No. 4-D are required by 40 CFR Part 60 to contain a sulfonate amount of the eye solvent fluid 164 up to a maximum of 0.05 by mass. Under international requirements, they are required by 28 CFR Part 48 to contain the eye solvent fluid 164 at a



GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUAHAN
P.O. BOX 2977 HAGATNA, GUAM U.S.A. 96932-2977

September 09, 2009

AMENDMENT NO.: II

TO

INVITATION FOR BID NO.: GPA-050-09

FOR

**LOW SULFUR DIESEL FUEL OIL #2 TO GPA'S ELECTRIC GENERATING POWER PLANTS:
DEDEDO DIESEL PLANT AND COMBUSTION TURBINES
(Dededo CT, Macheche CT, Yigo CT, and Marbo CT)**

Prospective Bidders are hereby notified of the following response to inquiries received from Shell Guam, Inc. dated August 18, 2009, Mobil Oil Guam, Inc. dated August 28, 2009, and Inclusions/Exclusions to subject bid invitation:

Shell Guam, Inc. dated 8/18/2009:

QUESTION:

1. Estimated contracted volumes have been inconsistent from IFB 036-03 and 037-07. What is normalized volume based on 3-year averages? To ensure reliability of supply of product to GPA, we request rolling six (6) month forecasts.

ANSWER:

The table below illustrates actual consumption in gallons, along with basic statistical values.

	Baseloads	TEMES	TENJO	FAST TRACKS
2008	138,854.23	2,252,937.80	1,911,565.85	192,525.00
2007	106,905.71	4,027,679.64	846,928.58	26,843.52
2006	59,914.52	709,231.14	1,302,085.37	35,878.59
AVE	101,891.49	2,329,949.53	1,353,526.60	85,082.37
STDEV	39,708.01	1,660,564.13	534,179.54	93,157.65
Est. QTY	200,000	2,500,000	1,400,000	280,000
STANDARDIZED	2.47	0.10	0.09	2.09

QUESTION:

2. In instances of multiple deliveries to one location, would GPA accept one CoQ for the entire batch?

ANSWER:

Yes, but each delivery should be accompanied by a copy of the COQ. Please also refer to Amendment to Section 2.02 Quantity and Quality Assurance above.

QUESTION:

3. **CONTRACTOR'S INSURANCE**

PART B, SECTION II ARTICLE III, E., EXCESS LIABILITY

GPA requests Excess Liability with Limits of \$5M and is requesting as an additional insured.

- a. If Contractor's General Commercial Liability Insurance exceeds Excess liability limits, will GPA grant a waiver of this requirement?
- b. Will GPA sign a mutual Waiver of Subrogation, in favor of Shell?

ANSWER:

- a. No. The Excess Liability policy will sit on top of the General Commercial Liability, Auto Liability, Employer's Liability and such.

- b. No. The Waiver of Subrogation that GPA is asking for pertains to the Workers Compensation, General Liability, Auto Liability, Pollution Liability, and Excess Liability insurance policies that the Contractor must provide. The Waiver will prevent the Contractor's insurance company from subrogating against GPA in the event of a loss where the insurance company believes that GPA is negligent. It is standard practice for the Owner to receive a Waiver of Subrogation from a Contractor.

QUESTION:

4. **BID GUARANTEE:**

- a. **SPECIAL REMINDER TO PROSPECTIVE BIDDERS** lists "Letter of Credit" as form a bid guarantee however Part A, Section II, Instructions, Procedures, and Requirements, Item 8 (Page 12 of 62) and Part A, Section III, Bid Bond (page 14 of 62) does not list Letter of Credit as an option. Please clarify inconsistency.
- b. Part A, Section II, Instructions, Procedures, and Requirements, Item 9 (Page 12 of 62) shows performance bond is 15% of annual cost of the contract bid price; however, Part A, Section III, Bid Bond (page 14 of 62) lists \$1 million as performance bond amount. Please correct inconsistency.

ANSWER:

- BID GUARANTEE (15% of the Total Annual Cost of the Premium Fee) may be in the form of the following:

- a. Cash, Bank Draft, Cashier's Check or Certified Check
- b. Letter of Credit or
- c. Surety Bond – Valid only if accompanied by:
 - 1. Current Certificate of Authority issued by the Insurance Commissioner;
 - 2. Power of Attorney issued by the Surety to the Resident General Agent;
 - 3. Power of Attorney issued by two (2) major officers of the Surety to whomsoever is signing on their behalf.
- d. Wire Transfer

- PART A, Section III, Bid Bond (Page 14 of 62)- Verbiage is changed from "We agree to forfeit said amount in the event of our company's failure to enter into a Contract and furnish

performance bond (format as per Attachment A) in the amount of One Million (\$1,000,000.00) Dollars within fifteen (15) days after a Notice of Award has been issued to our company as the lowest responsible bidder **to now read** "We agree to forfeit said amount in the event of our company's failure to enter into a Contract and furnish performance bond (format as per Attachment A) in the amount of about FIFTEEN PERCENT (15%) of the total annual cost of the CONTRACT BID PRICE OFFER."

QUESTION:

5. **PERFORMANCE BOND**

- a. Part A, Section II, Instructions, Procedures, and Requirements, Item 9 (Page 12 of 62) requires the performance bond in the form of a surety. Will GPA accept a standby Letter of Credit issued by a financial institution in lieu of a surety?

ANSWER:

A Letter of Credit issued by a financial institution within the United States is acceptable.

QUESTION:

6. **SECTION 3.15, CONTRACTOR'S INSURANCE**

Will GPA sign a mutual Waiver of Subrogation, in favor of Contractor?

ANSWER:

Please refer to "ANSWER" to QUESTION NO. 3.

Mobil Oil Guam, Inc.

QUESTION:

7. **SECTION 1: SUMMARY OF SOLICITATION**

Performance Bonds – Per the bid bond form this amount would be forfeited if Mobil did not provide a performance bond in the amount of \$1M. However, the performance bond form does not provide a bond amount of \$1M, but 15% of the total annual cost of the contract which would take into account both the premium fee and reference price of \$1.543 a gallon. The reference to \$1M in the bid bond should be corrected.

Section 8 of the solicitation refers to the "premium fee". Section 1.03 of the contract refers to the "service fee". Are these the same thing?

ANSWER:

PERFORMANCE BOND- Please refer to "ANSWER" to QUESTION NO. 4.

Section 8- "Premium Fee" is now changed to read "Fixed Service Fee."

PART B: BID SUBMITTAL DOCUMENTS

SECTION II: FUEL OIL SUPPLY CONTRACT

QUESTION:

8. 1.03

Contract Price – The contract price "shall be inclusive of all costs and liabilities required to fulfill the contract". Is the contract price inclusive of taxes? If so, what taxes are applicable to the sale of fuel supplied under the contracts with GPA?

ANSWER:

Refer to Section 1.06 – Payment of Taxes and other Government Charges.

QUESTION:

9. 2.01

Product and Quality – We are unable to provide the specification attached to this letter only (Attachment A) and have made a ready comparison of the specifications requested by GPA and request that GPA allow consideration of Mobil's specifications which are the same specifications supplied to most of the power plants in this region.

ANSWER:

The Guam Power Authority maintains the specification as listed.

QUESTION:

10. 2.02

Quantity and Quality Assurance – GPA's fuel storage tank receiving meters shall be utilized to determine the quantity of fuel received by GPA. Quantity shall be based on received volume corrected to standard to standard sixty degrees Fahrenheit (60Deg). Conversion to be made in accordance with the ASTM-IP Petroleum Measurement Tables (IP-200), Table 6B. Mobil already invoices at 60 Deg. Our loading rack meter is calibrated quarterly by a properly accredited independent company using ASTM standards. Further our trucks are sealed and GPA can verify that seals are intact as well as inspect the loading meter ticket report prior to accepting any delivery. We request a waiver of this requirement and allowance to use the loading meter ticket along with sealed compartment mitigating controls.

In the event the above request is not accepted, kindly inform date of last meter calibration and frequency in the past three years. And also please inform of methods and contractor utilized.

Also stated, is that Appropriate Certificate of Quality Reports (COQ) shall also accompany each delivery. Mobil utilizes refinery COQ and the test form the tank clearing. Should the bid be awarded to Mobile, we will utilize refinery COQ as Appropriate Certificate of Quality Reports (COQ). Please let us know if this is acceptable.

ANSWER:

Section 2.02: Quantity and Quality, Insert the following after the 6th paragraph:
Certificate of Quality (COQ) reports shall indicate test results form representative samples taken at the Contractor's Guam storage facility after each receipt of product in the tank as sampled and tested by a certified independent third-party laboratory testing facility.

QUESTION:

11. 3.02

Government Laws and Regulations – should GPA be unable to obtain an exemption it places an unfair burden on the Contractor to meet a requirement which is not within its control which GPA by its inability to obtain an exemption further validates an uncontrollable event. To not provide remedy to the Contractor provides the burden of compliance squarely on the Contractor. We request a termination with notice clause should GPA be unable to obtain a waiver and the Contractor is unable to provide the required fuel within reason.

ANSWER:

A response to this question is forthcoming.

QUESTION:
12. 3.03

Specification – should GPA wish to alter any of the specifications, it places a burden on the Contractor to meet the change or suffer a penalty. Since we supply a majority of the power plants in this region any changes to accommodate special specifications for GPA will create significant costs to store GPA's product in dedicated tanks both onshore and in-transit. Therefore we request that this section allow a termination with notice clause that relieves the Contractor should GPA wish to pursue the change in specification but it becomes prohibitive for the Contractor.

ANSWER:
Contract language shall remain as written.

QUESTION:
13. 3.13

Transportation – Please clarify the meaning of this provision and what is intended. Also reference to 3.13 and 3.14 may be incorrect as there is no. 3.14.

ANSWER:
Please refer to Number 16.

QUESTION:
14. 4.02

Failure to Pay – this section conflicts with section 1.05, Terms of Payment, which require Contractor to provide GPA with 30 day credit terms. However, section 4.02, is in conflict as it allows GPA up to 90 days before the bidder can stop delivering. In section 4.01, in the event of non-payment by GPA after 30 days of invoice receipt, bidders are required to give GPA 30 day notice to correct the default and if not corrected bidders can terminate but only after providing 30 day notice of termination. This culminates to a total of 90 days. We request that GPA align its payment terms to 30 days from invoice date or will GPA recognize late payment interest?

ANSWER:

Contract language shall remain as written. GPA may recognize late payment interest based on the Prompt Payment Act.

QUESTION:
15. OTHER

During the Manenggon site visit on Friday, August 22, 2009, the road condition to the site raises safety concerns over the ability to delivery and driver safety. This was also raised in previous invitation for bids, during which GPA commented that the road was going to be repaired. Please advise if there are plans to repair the Manenggon delivery road route, as it will impact the ability to deliver safely to the site.

For clarification, will the bid be awarded per location or per IFB?

ANSWER:

GPA shall try to coordinate with other Government Agencies in the repair of the portion of the road in question. During the meantime, Contractor can utilize the other access road coming from Ordot leading into the Manenggon Plant.

For GPA-050-09, Bid shall be awarded per Location.

16. In **Part B. Bid Submittal Documents I. Bid Offer**, please include an Optional Bid for **each Delivery Site** for 500 PPM (Low Sulfur) Diesel Fuel. This has been included in the bid for information only. Information given shall be used should GPA decide to adopt 0.05% Sulfur Diesel Fuel Oil as the primary fuel choice for the plants in this bid. :

Optional Bid Offer for Delivery Site: for 500 PPM Diesel

OFFER: (in words) _____

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

Delivery Method: _____

The OPTIONAL BID PRICE is the sub of the Bid Reference Price for 0.05%S Gas Oil plus the Fixed Service Fee for this type of fuel. The Bid Reference Price shall be \$1.576 per US Gallon, the average effective price of the Platt's Marketscan Price Assessments for Gas Oil 0.5%S., FOB Singapore Cargoes, for January 6, 2009 (Table A).

Should GPA proceed with this option, Invoice Price shall be the average of the high and low prices reported for Gas Oil 0.05%S for all the price postings of the previous month in Platt's Marketscan Price Assessment, FOB Singapore Cargoes, plus the fixed service fee.

17. In **Section 2.02. Quantity and Quality Assurance**, please replace sixth paragraph as follows: "Appropriate Certificate of Quality Reports (COQ) shall also accompany each delivery. The Source Tank for each delivery should be indicated in the delivery receipt. All GPA Specifications should be indicated on the COQ to compare with the results. Quality must comply with the quality requirements specified under Section 2.01 as a condition for acceptance of delivery."

18. In **Section 3.13. Transportation**, please replace language to now read as follows: "All risk of loss, costs and liabilities prior to the time of passage of title of the fuel oil shall be on the Contractor. However, Contractor and GPA's right and duties under Section 3.12 and Section 3.13 do not supersede or control the provisions of Section 3.05 – Force Majeure."

All other Terms and Conditions in the bid package remain unchanged and in full force.



JOAQUIN C. FLORES, P.E.
General Manager



GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUAHAN
P.O. BOX 2977 HAGATNA, GUAM U.S.A. 96932-2977

August 25, 2009

AMENDMENT NO.: I

TO

INVITATION FOR BID NO.: GPA-050-09

FOR

**LOW SULFUR DIESEL FUEL OIL #2 TO GPA'S ELECTRIC GENERATING POWER PLANTS:
DEDEDO DIESEL PLANT AND COMBUSTION TURBINES
(Dededo CT, Macheche CT, Yigo CT, and Marbo CT)**

Prospective Bidders are hereby notified of the following response to inquiries received from Shell Guam, Inc. dated August 18, 2009, Mobil Oil Guam, Inc. dated August 23, 2009, and Inclusions/Exclusions to subject bid invitation:

Shell Guam, Inc. dated 8/18/2009:

QUESTION:

1. Statement of Qualification & Descriptive Literature is not a checked box; however it is mentioned in the written requirements of the IFB. Do we submit documents or not?

ANSWER:

Documents on Statement of Qualification, Descriptive Literature shall be submitted.

QUESTION:

2. In any Supply Chain Logistics Arrangement, a minimum lead time is required to nominate a vessel to carry product and secure adequate supply. Would GPA accept that we could only secure minimum inventory required as per contract after the minimum lead time upon formal award?

ANSWER:

Yes.

QUESTION:

3. For the term of the contract period, GPA is requiring the Contractor to maintain 30-day minimum supply inventory. At the end of the contract period, will GPA purchase all 30-day minimum supply inventory?

ANSWER:

Yes, upon mutually agreeable terms.

QUESTION:

4. Estimated contracted volumes have been inconsistent from IFB 036-03 and 037-07. What is normalized volume based on 3-year averages? To ensure reliability of supply of product to GPA, we request rolling six (6) month forecasts.

ANSWER:

Total Diesel Consumption volumes for the past two fiscal years are shown in the table below. These are diesel consumption for all GPA plants in this bid. Rolling six-month forecasts can be provided by GPA upon contract award.

GPA-050-09

	FY 2007	FY 2008	FY 2009 (thru May09)
Gals	754,470	702,237	290,920

Est. Qty for Bid	3,000,000	gallons
	71,429	barrels

QUESTION:

5. Language states, "Option to extend the contract for two (2) additional one (1)-year terms, renewable annually, with mutual agreement of both parties with same terms & conditions as the base term". We request GPA to consider amending the language to allow for service fee adjustments after the base term in the event market conditions changed significantly (i.e. freight cost).

ANSWER:

Amendment includes an option for Contract Escalation/De-escalation to address this inquiry.

QUESTION:

6. The date & number provided in "Bid Reference Price" and Table A are conflicting. Please clarify bid reference date and price per US gallon.

ANSWER:

Reference date shall be: January 6, 2009. Reference Price remains the same.

QUESTION:

7. In fairness to Contractor and GPA, Contractor requests title transfer for pipeline deliveries be at the flange of the GPA pipeline connecting to the last flange of the Contractor's pipeline at their interconnection. Title transfer for tank truck deliveries, using Contractor's hose, title transfers at the flange/hose connection-GPA end of hose.

ANSWER:

Amendment I includes additional details regarding title transfers.

QUESTION:

8. For orders and deliveries made outside of normal working hours of 0800-1700 H Monday to Friday, would we be able to bill GPA for all overtime costs incurred?

ANSWER:

No. Please refer to GPA requirements in Section 1.04.

QUESTION:

9. Metals testing are outside the scope of Standard Product Quality Testing for diesel fuel oil. Kindly advise if GPA is willing to waive these requirements.

ANSWER:

GPA amends the requirements to exclude Metals testing as a standard test.

QUESTION:

10. Contract reads "The Authority may require the supplier to conduct additional tests as may be required for plant's performance/efficiency evaluation". Please clarify what tests will be conducted.

ANSWER:

These additional tests are for product quality or characteristics that may be required for efficiency evaluation, performance evaluation, or to comply with GEPA and other requirements. An example would be testing for Metals.

QUESTION:

11. In instances of multiple deliveries to one location, would GPA accept one CoQ for the entire batch?

ANSWER:

Response is forthcoming.

QUESTION:

12. Please define miscalibration and acceptable tolerance levels, plus or minus percentage.

ANSWER:

Acceptable tolerance levels shall be +/- 0.25%, or current meter accuracy levels, whichever is higher.

Miscalibration shall be defined as any measurement exceeding 0.25% or the accuracy level of the meter.

QUESTION:

13. Contractor is required to maintain a thirty-day (30 day) inventory at Contractor's own storage facility. Please clarify whether this means requirement is specifically for GPA.



ANSWER:

Yes, the 30-day inventory is specifically for GPA.

QUESTION:

14. In the event of severe typhoon or other calamities, Contractor is to guarantee uninterrupted supply of up to one million (1,000,000) gallons. If this is the case, then the total number of gallons required is:
1. 250,000 gallons for the Dededo Diesel and Combustion Turbine Plants
 2. 1,000,000 gallons in case of typhoon or other calamities
 - a. Total no. of gallons is 1,250,000 gallons

What is the correct 30-day minimum inventory required? 250,000 gallons or 1,250,000 gallons?

ANSWER:

Specifications as to the 30-day minimum inventory and supply in the event of severe typhoon or other calamities are discussed in Section 3.01 Security.

QUESTION:

15. Contractor requests language changed "Should either party wish to alter any of the specifications set out in Section 2.01, method of shipment, terms of delivery, for good cause, changes in specifications will be mutually agreed upon by both parties.

ANSWER:

Language shall remain as is, but amend the number of days as follows:

1. Change first sentence to: "Should **GPA** wish to alter any of the specifications set out in Section 2.01, method of shipment, terms of delivery, for good cause, it shall give written notice to **CONTRACTOR** within **sixty (60) days**."
2. Change third sentence to: "Any claim by **CONTRACTOR** for adjustment under this section must be asserted in writing within **sixty (60) days** from the date of receipt by **CONTRACTOR** of the notification of changed specifications.
3. Change fifth sentence to: "If **CONTRACTOR** and **GPA** fail to agree on the adjustment to be made within **sixty (60) days** after **CONTRACTOR** receives notice of altered specifications, or if **CONTRACTOR** is unwilling to meet the altered specifications, the parties shall be subject to "Disputes" clause."

Mobil Oil Guam Inc., dated 08/23/09:

QUESTION:

16. While we understand that the deadline for questions and bid closing is scheduled for August 24, 2009 and September 03, 2009 respectively. Mobil would like to request for an extension of both deadlines with a final submission on September 24, 2009. As the pre-bid was held last Thursday, August 20, 2009 and the initial site visit on Friday, August 21, 2009, an extension is necessary for us to thoroughly review the two bid packages to determine any concerns or clarifications we may have regarding the supply of fuel, and specific site concerns.

ANSWER:

Deadline for receipt of questions is changed from August 24, 2009 to now read August 28, 2009.

Bid Opening date is changed from 2:30 P.M., September 03, 2009 to now read 2:30 P.M., September 16, 2009.

INCLUSIONS/EXCLUSIONS to Subject Bid Invitation:

17. Special Reminders to Prospective Bidders – Cover Page. Please check the boxes for Statement of Qualification and Descriptive Literature .
18. In **Section 1.02, Term**, add the following sentence to the paragraph: "If contract agreement shall be renewed, GPA and the Contractor shall meet and discuss the terms and conditions of the agreement six (6) months before the termination date."
19. In **Section 3.14, Safety**, replace first sentence with: "The Contractor recognizes the concern of GPA that no **diesel fuel oil product or related materials** or substances provided under this contract shall in any way jeopardize the health or safety of GPA employees.
20. In **Section 3.15 Contractor's Insurance subsections J**, replace first sentence with: "The Contractor shall indemnify and hold GPA free and harmless from all injuries and damages to persons or properties as a result of and relative to **diesel fuel oil** deliveries, including the cost of enforcement of the indemnity, actually and proximately caused by the Contractor or its agents and employees in the performance of the terms of the Contract."
21. In **Section 3.15 Contractor's Insurance subsections K**, replace first two sentences with: "The Contractor shall be responsible for any and all oil spills caused by or as a result of the performance of **diesel fuel oil** deliveries. The Contractor shall recover or remove, or cleanup as appropriate, any **diesel fuel oil** spilled by the contractor, its agents or assigns upon the performance of this Contract. Clean-up operations shall commence immediately within twelve (12) hours and be completed within a reasonable time."
22. In **Section 1.03 Contract Price a. Bid Reference Price**, replace first paragraph with: "The Bid Reference Price shall be \$1.543 per US gallon, the average effective price of Platt's Market scan Price Assessments for Gas Oil 0.5%S., FOB Singapore cargoes, for **January 6, 2009** (Table A)."
23. In **Section 3. Contract Price Determination**; please include the following section after **Invoice Price Determination** paragraph:

CONTRACT PRICE ESCALATION/DE-ESCALATION CLAUSE:

In the event that Contractor or GPA request for a contract price modification during the extension/renewal years, both parties may negotiate and agree on the extension/renewal contract price.

24. In **Section 2.01 Product and Quality**, please amend Fuel Specification Table to exclude Metals Testing from the standard tests.
25. In **Section 3.01 Security**, add the following requirement:

"Contractor shall deliver fuel to GPA via the delivery method specified in the bid offer. For security of supply in the event that delivery cannot be completed using the method specified, Contractor is required to deliver to GPA using alternate delivery methods to guarantee fuel delivery within twenty-four (24) hours."

26. In **Section 1.04 Fuel Oil Delivery**, amend the second paragraph as follows:
"Title to fuel shall pass from the CONTRACTOR to GPA when the fuel oil has passed the GPA pipeline flange or hose connecting the tanker truck delivery hose and the GPA storage tanks. If using GPA's hose, then title transfers at the tanker truck discharge flange or coupling where hose is connected. For pipeline deliveries, title to fuel shall pass from CONTRACTOR to GPA at the interconnection of GPA and the CONTRACTOR, at the flange of the GPA pipeline connecting to the last flange of the Contractor's Pipeline. The CONTRACTOR shall be available to deliver the fuel to the point of delivery as designated by GPA within twenty-four (24) hours notice of receiving a request. CONTRACTOR must be available to receive and accept delivery requests during the hours of 7:00 AM and 5:00 PM daily, including weekends and holidays.

27. In **Section 1.04 Fuel Oil Delivery**, amend the fourth paragraph as follows: "Contractor must exercise its best efforts to deliver fuel to GPA to meet operational requirements regardless of the estimates provided by GPA. Contractor must also exercise its best efforts to deliver fuel to GPA to meet operational requirements regardless of the delivery method specified in the bid offer, and must deliver fuel within twenty-four (24) hours from the original scheduled delivery date and time."

All other Terms and Conditions in the bid package remain unchanged and in full force.




RANDALL V. WIEGAND
Acting General Manager



GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUAHAN
P.O. BOX 2977 • AGANA, GUAM U.S.A. 96932-2977

Felix P. Camacho
Governor

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

Michael W. Cruz, M.D.
Lieutenant Governor

Accountability	Impartiality	Competence	Openness	Value
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INVITATION FOR BID (IFB) NO.: GPA-050-09

DESCRIPTION: Low Sulfur Diesel Fuel Oil #2 to GPA's Electric Generating Power Plants: Dededo Diesel Plant and Combustion Turbines (Dededo CT, Macheche CT, Yigo CT, and Marbo CT)

SPECIAL REMINDERS TO PROSPECTIVE BIDDERS

Bidders are reminded to read the Sealed Bid Solicitation and Instructions, and General Terms and Conditions attached to the IFB to ascertain that all of the following requirements checked below are submitted in the bid envelope, two (2) copies of the executed Contract and five (5) copies of responsive materials, at the date and time of bid opening.

(XX) BID GUARANTEE (15% OF THE TOTAL ANNUAL COST OF THE PREMIUM FEE) May be in the form of;

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

() STATEMENT OF QUALIFICATION;

() SAMPLES;

() BROCHURES/DESCRIPTIVE LITERATURE;

(XX) NON-COLLUSION AFFIDAVIT;

(XX) AFFIDAVIT OF DISCLOSURE OF MAJOR SHAREHOLDERS – Affidavits must comply with the following requirements:

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

(XX) OTHER REQUIREMENTS:

Guam Business License (applicable to IFB) and other additional requirements stated in IFB package must be submitted at the time of bid opening.

*****Restriction against Sex Offenders Employed by Service Providers to Government of Guam from Working on Government of Guam Property, 5GCA Section 5253, enacted by P.L. 28-24 and amended by P.L. 28-98:**

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

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


On this _____ day of _____ 2009, I, _____, acknowledge receipt of this authorized representative of _____ special reminder to prospective bidders with the above referenced IFB.

Bidder Representative's Signature

BID INVITATION & AWARD

ISSUING OFFICE:

GUAM POWER AUTHORITY
PROCUREMENT MANAGEMENT MATLS. SUPPLY
GPA CENTRAL OFFICE, 1st. Floor
1911 Route 16
Harmon, Guam 96911


JOAQUIN C. FLORES, P.E. DATE 8/5/09
General Manager

DATE ISSUED: August 07, 2009

BID INVITATION NO.: GPA-050-09

INSTRUCTION:

*** MANDATORY PRE-BID CONFERENCE: 2:00 P.M., August 20, 2009

This BID shall be submitted in duplicate and sealed to the issuing office above no later than (Time) 2:30 P.M.
(Date) September 03, 2009, and shall be publicly opened. Bid submitted after the time and date specified above shall be rejected. See attached Solicitation Instructions Conditions for details.

BID FOR: Low Sulfur Diesel Fuel Oil#2 (Dededo CT, Macheche CT, Yigo CT, and Marbo CT)

SPECIFICATION: See Attached

DESTINATION: See Above

REQUIRED DELIVERY DATE: See Attached

NOTE TO BIDDERS:

This bid is subject to the attached General Terms and Conditions of the Invitation For Bids.

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

INDICATE WHETHER: INDIVIDUAL

PARTNERSHIP

CORPORATION

INCORPORATED IN:

NAME AND ADDRESS OF BIDDER:

SIGNATURE AND TITLE OF PERSON AUTHORIZED
TO SIGN THIS BID:

AWARD: CONTRACT NO.:

AMOUNT:

DATE:

ACCEPTED AS TO ITEMS NUMBERED:

CONTRACTING OFFICER:

CHIEF PROCUREMENT OFFICER

NAME AND ADDRESS OF CONTRACTOR:

SIGNATURE AND TITLE OF PERSON AUTHORIZED
TO SIGN THIS CONTRACT:



GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUAHAN
P.O. BOX 2977 HAGATNA, GUAM U.S.A. 96932-2977

August 05, 2009

Dear Interested Bidder:

Attached herewith please find the **AUTHORITY'S** Invitation for Bids (IFB), GPA-050-09 relative to the supply of **Low Sulfur Diesel Fuel Oil #2** to GPA's electric generating power plants: **Dededo Diesel Plant and Combustion Turbines (Dededo CT, Macheche CT, Yigo CT, and Marbo CT)**, to commence on October 01, 2009 and shall continue until the midnight of September 30, 2012. The supply Contract is subject to extension at GPA's option to extend the contract for two (2) additional one (1) year terms, renewable annually, with the mutual agreement of both parties, unless sooner terminated in accordance with the provisions hereof or canceled due to unavailability of funds.

The IFB is divided into two (2) parts:

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

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

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

Sincerely,

JOAQUIN C. FLORES, P.E.
GENERAL MANAGER

ATTACHMENTS:

GUAM POWER AUTHORITY

INVITATION FOR BID

GPA-050-09

TO SUPPLY DIESEL FUEL OIL FOR ELECTRIC POWER GENERATION

**Dededo Diesel Generators
and
Combustion Turbines
(Dededo CT, Macheche CT, Yigo CT, and Marbo CT)**

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(To be provided by interested bidders)**

IFB-GPA-050-09

PART A. THE SOLICITATION

- I. BACKGROUND AND SUMMARY OF SOLICITATION**
- II. INSTRUCTIONS, PROCEDURES, AND REQUIREMENTS**
- III. BID BOND**
- IV. PERFORMANCE BOND**

I. SUMMARY OF SOLICITATION

1. BACKGROUND.

The Guam Power Authority ("GPA" or "AUTHORITY") of Hagatna, Guam, is a public corporation and an autonomous agency of the Government of Guam. GPA is the sole provider of electric service on the Island of Guam. At present, all of the electricity on Guam is produced in various oil-fired plants most of which are owned by GPA. GPA's present Diesel Fuel Oil Supply Contract for the following locations: **Dededo Diesel Generator and Combustion turbine Plants (Dededo CT, Macheche CT, Yigo CT, and Marbo CT)**, will expire on September 30, 2009, and the AUTHORITY desires to initiate the necessary procedures for the solicitation and securing of a new Fuel Oil Supply Contract.

GPA is hereby soliciting bids for a Diesel Fuel Oil Supply Contract for a three (3) year term, to provide and deliver the required fuel supply with the first delivery estimated to commence on or about October 01, 2009 in order to ensure the continuous availability of fuel oil supply for all electric generating power plants. The Authority reserves the right to extend the contract for two (2) additional one (1) year terms, renewable annually, with the mutual agreement of both parties, unless sooner terminated in accordance with the provisions hereof or canceled due to unavailability of funds.

II. INSTRUCTIONS, PROCEDURES AND REQUIREMENTS FOR BIDDERS.

1. TIME AND SCHEDULE.

The deadline for the submission of sealed bids is **September 3, 2009, at 2:30 P.M.** Two (2) copies of the executed Contract and five (5) copies of responsive materials (information pertaining to bidder responsibility) must be received (not postmarked) by GPA no later than that date and hour. It is advisable to use courier services to expedite delivery of your offer.

2. ADDRESS.

Please transmit responsive materials to:

(By Mail)

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

(By Courier)

GUAM POWER AUTHORITY
Procurement Office
Route 16, Harmon
Dededo, Guam 96912

JAMIE L.C. PANGELINAN
Supply Mgmt. Administrator
TELEPHONE: (671)648-3054/3055
TELEFAX: (671)648-3165

JAMIE L.C. PANGELINAN
Supply Mgmt. Administrator
TELEPHONE: (671)648-3054/3055
TELEFAX: (671)648-3165

The envelope on lower left corner should be marked "**SEALED BID FUEL OIL SUPPLY,**

IFB GPA-050-09 OPENING DATE, September 3, 2009 at 2:30 P.M."

3. FORM.

All bids must be in writing and must be signed by an officer of the bidder having **AUTHORITY** to bind the company. Offers submitted in response to this solicitation shall be in terms of United States Currency and in the English language. The bids should respond in organized fashion to all the requirements of this Invitation for Bids and should also indicate the bidders lowest price. Bidders must submit along with their bids, the completed and signed Contract, Offer, Bid Bond and information pertaining to the responsibility of Bidder. Failure to submit any of these bid submittal documents shall be grounds to declare a bid non-responsive.

4. **RECEIPTS, REGISTRATION OF BIDS AND CONFIDENTIALITY.**

The sealed bids shall be opened publicly on **September 3, 2009 at 2:30 P.M.**, in the Guam Power Authority Procurement Conference Room.

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

5. **MODIFICATION OR WITHDRAWAL OF BIDS.**

Bids may be modified or withdrawn by written notice received in the office of GPA prior to the time and date set for the opening scheduled for **September 3, 2009, at 2:30 P.M.** [There shall be no modifications and/or withdrawals after the opening date of bids].

6. **LATE BIDS, LATE WITHDRAWALS AND LATE MODIFICATIONS.**

Any bid received after the time and date set for receipt of bids is late. Any withdrawal or modification of a bid received after **2:30 P.M., September 3, 2009**, is late. No late bid, late modification, or late bid, late modification, or late withdrawal will be considered.

7. **AWARD.**

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

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

- (1) Price and contract cost;
 - (2) Whether the bidder's ultimate offer meets and conforms with the announced requirements of **GPA** in all material respects;
 - (3) Previous Experience in meeting requirements of a similarly sized or larger contract;
 - (4) Financial Strength and
 - (5) Overall clarity and presentation of bid and plan to supply fuel to GPA, i.e. how supplier will obtain fuel, how fuel will be delivered to GPA, alternative supply source, etc.;
 - (6) Whether the bidder has:
 - (a) the appropriate financial, material, equipment, facility, and personnel resources and expertise, necessary to indicate its capability to meet all Contractual requirements;
 - (b) satisfactory references;
 - (c) qualified legally to Contract with the territory; and
- B. Bidder is responsible for providing adequate information on operating experience and on financial status (i.e. annual report with audited financial statements) and references for use in evaluating its capabilities.
- C. In addition to the evaluation criteria, GPA may require submission of descriptive literature, technical data, or other material. It may also require accomplishing any of the following prior to award:
- (1) inspection or testing of a product prior to award for such characteristics, as quality or workmanship;
 - (2) examination of such product as to compatibility, grade, appearance, texture, or
 - (3) other examinations to determine whether it conforms with any other purchase description requirements.

8. **BID BOND**.

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

9. **PERFORMANCE BONDS.**

The successful bidder shall submit to the **GPA** a performance bond in the amount of about FIFTEEN PERCENT (15%) of the total annual cost of the CONTRACT BID PRICE OFFER and be made payable to the **GPA** in the form of a surety issued by a company with a A.M. Best credit rating of "AA"- or better within fifteen (15) days after a Notice of Award is issued to the successful bidder. For the purposes of this solicitation, the requirement of a performance bond is essential to the best interest of **GPA**. A performance bond is required in order to assure that **CONTRACTOR** will perform the terms and conditions of the Contract, and that **CONTRACTOR** will provide against direct or indirect damages that may be suffered or claimed on account of such delivery of fuel oil supply throughout the term of the Contract. The required performance bond shall be in substantially the same form as that prescribed in Appendix "A" of this Bid Invitation. Any deviation from the prescribed format must be approved by **GPA** in advance. Failure to furnish a performance bond at the time specified above and in the manner as provided shall immediately void the contract.

10. **CANCELLATION OF SOLICITATION; DELAYS.**

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

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

(a) **Rejection of all Bids.**

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

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

(b) **Rejection of Individual Bids.**

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

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

III. BID BOND

BID BOND

The Contractor certifies and agrees that the attached Low Sulfur Diesel Fuel Oil Supply Contract was signed by a person(s) duly authorized to enter into a Contract on behalf of our company.

Enclosed herewith is a bid bond submitted in the amount of _____

United States Dollars made payable to the Guam Power Authority in the form of:

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

Name of Bank:

Location:

Account Number:

We agree to forfeit said amount in the event of our company's failure to enter into a Contract and furnish performance bond (format as per Attachment A) in the amount of One Million (\$1,000,000) Dollars within fifteen (15) days after a Notice of Award has been issued to our company as the lowest responsible bidder.

We offer and certify, as part of our bid, the information pertaining to responsibility as required by Section II, Paragraph 7 of the Invitation. The information herein provided consist of the

following: (Describe briefly)

See attached letter

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

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

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

Respectfully submitted,

(S E A L)

ATTEST: _____

BIDDER

WITNESS: _____

ADDRESS _____

Individual trading in own name _____

Individual trading under firm name _____

Co-partners trading under firm name _____

Corporation-State of _____

Principal Office Address:

IV. PERFORMANCE BOND

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that _____,
as Principal, hereinafter called **CONTRACTOR**, and _____, a
corporation hereinafter called Surety, are held and firmly bound unto the Guam Power Authority
as Oblige, in the amount of FIFTEEN PERCENT (15%) OF THE TOTAL ANNUAL COST of
the **BID PRICE OFFER**, and the payment whereof **CONTRACTOR** and Surety bind
themselves, their heirs, executors, administrators, successors and assigns, jointly and severally,
firmly by these presents.

WHEREAS, CONTRACTOR has by written agreement dated _____, 2009
, entered into a Low Sulfur Diesel Fuel Oil Supply Contract with the Guam Power Authority for
supply of fuel oil for electric power generation for a THREE (3) YEAR term in accordance with
forms and specifications prepared by **GPA** which Contract is by reference made a part hereof,
and is hereinafter referred to as the "Contract".

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

Whenever **CONTRACTOR** shall be and is declared by **GPA** to be in default under the Contract, **GPA** having performed its obligations thereunder, the Surety may promptly remedy the default or shall promptly:

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

Signed and sealed this ____ day of _____, 2009.

(Principal)

(Seal)

(WITNESS)

(TITLE)

(WITNESS)

(TITLE)

(Bonding Company)

IFB-GPA-050-09

PART B: BID SUBMITTAL DOCUMENTS

I. OFFER

II. FUEL OIL SUPPLY CONTRACT

NOTICE

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

I. BID OFFER.

OFFER of _____ (company) DATED _____

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

_____, the undersigned do hereby declare that have carefully examined Invitation for Bid IFB-GPA-050-09 and do hereby agree to furnish the supply of diesel fuel oil (fuel quality as referred to Sect. 2.01 Article 2 of the Contract) for electric power generation for a THREE (3) year term, with renewal options, in accordance with the attached Fuel Oil Supply Contract (the "Contract") terms, conditions and specifications. The Contract price per gallon delivered to Guam Power Authority inclusive of all costs and liabilities incurred prior to delivery for the duration of the Contract is offered as follows:

BID OFFER:

OFFER : (in words) _____

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

Delivery Method: _____

Respectfully submitted,

(PRINT NAME & Signature) _____ DATE

BIDDER/ OFFEROR, Duly Authorized
REPRESENTATIVE OF COMPANY

ADDRESS:



II. FUEL OIL SUPPLY CONTRACT

PREAMBLE

THIS CONTRACT, shall be executed on the date of award, by and between **GUAM POWER AUTHORITY**, a public corporation, hereinafter referred to as "AUTHORITY" or "GPA", and _____, hereinafter referred to as "CONTRACTOR":

WITNESSETH:

RECITALS

WHEREAS, AUTHORITY has issued an Invitation For Bid for a three (3) year supply contract, Invitation For Bid, GPA-050-09, for the supply of the **AUTHORITY'S** low sulfur diesel fuel oil requirements to the following locations: **Dededo Diesel Generator and Combustion Turbine Plants (Dededo CT, Macheche CT, Yigo CT, and marbo CT) .**

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

WHEREAS, if CONTRACTOR specified herein has been awarded the Contract, **AUTHORITY** and **CONTRACTOR** have agreed upon about three (3) year supply Contract that will meet the needs of the **AUTHORITY**;

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

ARTICLE I

SECTION 1.01. FUEL OIL TO BE SUPPLIED.

CONTRACTOR agrees to furnish and **GPA** agrees to accept and pay for all of **GPA's** diesel fuel oil requirements for power generating plants in Guam for the term of the contract. The estimated total fuel oil requirement is approximately three million gallons per year (3,000,000 gal/yr). The first delivery of fuel oil pursuant to the Contract is anticipated to be on or about October 01, 2009.

Notwithstanding any estimated quantity set forth herein, the **CONTRACTOR** shall be required to supply all fuel oil, reasonably required by **GPA**.

SECTION 1.02. TERM.

The Contract Term shall be for three (3) years to commence on October 1, 2009 and shall continue until midnight of September 30, 2012 and with **GPA's** option to extend the contract for two (2) additional one (1) year term, renewable annually, with mutual agreement of both parties with the same terms and conditions as the base term, unless earlier terminated in accordance with the provisions hereof or cancelled due to unavailability of funds.

SECTION 1.03. CONTRACT PRICE.

The Contract price in U.S. dollars per gallon (\$/gal) for all diesel fuel oil delivered to **GPA** shall be inclusive of all costs and liabilities required to fulfill the contract. The **BID PRICE** is the sum of the **SERVICE FEE** plus the **REFERENCE PRICE**.

The price invoiced to the Guam Power Authority shall be adjusted according to the periodic price changes in Platt's Oilgram Spot Price Assessments.

BID REFERENCE PRICE:

The bid reference price shall be \$1.543 per U.S. gallon, the average effective price of the Platt's Marketscan Price Assessments for Gas Oil 0.5% S., FOB Singapore cargoes, for January 02, 2009 (Table A).

The Contract price shall increase or decrease on a cent-for-cent basis by the amount per barrel based from Platt's Marketscan Price Assessments, FOB Singapore cargoes for "**Gas Oil 0.5% S.**", (Conversion Factor: 42 gallons per barrel).

BID OFFER:

The BIDDERS shall provide bid offers on a price per gallon basis for all types of deliveries available to the bidder in each Delivery Site, such as by Tanker Truck delivery or Pipeline Delivery.

Delivery Site: Dededo Diesel Power Plant and

Combustion Turbine Power Generating Plants

(Dededo CT, Macheche CT, Yigo CT, and Marbo CT).

OFFER : \$ _____/gal (in three decimal places)

Type of Delivery: _____

INVOICE PRICERICE DETERMINATION:

The invoice price for the fuel delivered in any month shall be the average of the posted (high and low) prices reported for Gas Oil 0.5% S *for all of the price postings of the previous month* in the Platt's Oilgram Marketscan Price Assessment for Singapore cargoes, also referred to as the invoice **Reference Price**, plus the **Fixed Service Fee**.

SECTION 1.04. FUEL OIL DELIVERY.

All fuel must be delivered to the plant sites covered in this contract: **Dededo Diesel Generating Plant and Combustion Turbine Power Generating Plants (Dededo CT, Macheche CT, Yigo CT, and Marbo CT).**

Title to the fuel shall pass from the **CONTRACTOR** to **GPA** when the fuel oil has passed the **GPA** pipeline flange connecting the tanker truck delivery hose and the **GPA** storage tanks. The **CONTRACTOR** shall be available to deliver the fuel to the point of delivery as designated by **GPA** within twenty-four (24) hours notice of receiving a request. **CONTRACTOR** must be available to receive and accept delivery requests during the hours of 7:00 A.M. and 5:00 P.M. daily, including weekends and holidays.

The **CONTRACTOR** shall provide transfer pumps at its delivery trucks and/or whatever else may be necessary to deliver fuel to **GPA** storage tanks to the height of 45 feet. Fuel deliveries shall be on an "on call" basis and shall be during the hours of 7:00 A.M. and 11:00 P.M. daily, including weekends and holidays.

CONTRACTOR must exercise its best efforts to deliver fuel to **GPA** to meet operational requirements regardless of the estimates provided by **GPA**.

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

SECTION 1.05. TERMS OF PAYMENT.

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

SECTION 1.06. PAYMENT OF TAXES AND OTHER GOVERNMENT CHARGES.

All fuels under the terms of this Contract are exempt from the Territory of Guam Liquid Fuel Tax and the Territory of Guam Gross Receipts Tax as provided by 12 G.C.A., Section 8115. **CONTRACTOR** shall be responsible for filing appropriate tax returns or other filings and requesting rebates, credits, drawbacks or exemptions.

In the event any liquid fuel tax or gross receipts tax or other tax including, but not limited to, excise tax, duty, toll, fee, charge for other exaction or the amount equivalent thereto, and any increase thereof, now or hereafter imposed, levied or assessed by the United States Government, the Government of Guam, the Port Authority of Guam, or other instrumentality or agency thereof in connection with and as a result of the sale of fuel oil herein provided for is collectible or payable by **CONTRACTOR**, (except taxes, penalties, fees or other charges that may be imposed on **CONTRACTOR** because of **CONTRACTOR'S** failure to make proper tax filings including requests for credits, exemptions, drawbacks or rebates) it shall be paid by **GPA** as part of the fuel price set forth herein, on demand by **CONTRACTOR**. Any such payment shall be in addition to the price otherwise herein provided for.

Notwithstanding these provisions, should the payment of any such charges described in this section be unduly burdensome to **GPA**, it shall be grounds for re-negotiation for an equitable adjustment in price, pursuant to Section 3.02 herein, without prejudice to the generality of that clause.

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

SECTION 1.07. WARRANTY AND CLAIMS.

CONTRACTOR shall provide both express and implied warranties of merchantability and warrants that the fuel oil shall meet the specifications prescribed herein under Article II and other pertinent sections.

Claims against the **CONTRACTOR** on account of weight, quality, defects in, loss or damage to product shall be given in writing by **GPA** within thirty days (30) from date of delivery of fuel oil as specified in Section 1.04.

If the fuel oil fails to meet the specifications herein, **CONTRACTOR** shall be liable for any direct damages including, but not limited to, compensation and such damages shall not affect other remedies provided for in the Contract, procurement laws, rules and regulations.

SECTION 1.08. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA.

Should it be determined at any time during the Contract term that the data submitted as part of the bid made by **CONTRACTOR** or subsequent pricing were inaccurate, incomplete, or non-current, then Contract price or prices shall be adjusted to exclude any sums by which it shall be determined by **GPA** that such price or prices were increased as a result of such inaccurate, incomplete or non-current data.

TABLE A. BID REFERENCE PRICE DOCUMENT

www.platts.com

Asia-Pacific/Arab Gulf

Marketscan

January 06, 2009

Singapore

	FOB Singapore	MOPS strip	Premium/discount
Gasoline 97 unleaded	+55.92 - 55.96+		+14.90/14.94+
Gasoline 95 unleaded	+50.31 - 50.35+		+9.30/9.34+
Gasoline 92 unleaded		+47.29 - 47.33+	6.27/6.31
Gasoline 92 unleaded		+46.28/46.32+	0.99/1.03
Naphtha	+41.37 - 41.41+	+41.00 - 41.04+	
Spot naphtha	+40.80 - 40.84+		+0.25/-0.15+
Kerosene	+65.60 - 65.64+	+66.33 - 66.37+	+0.75/-0.71+
Gasoil 10 ppm	+68.34 - 68.38+		3.58/3.62*
Gasoil 50 ppm	+67.79 - 67.83+		3.03/3.07*
Gasoil 0.05% sulfur	+66.19 - 66.23+		+1.43/1.47+*
Gasoil 0.25% sulfur	+65.59 - 65.63+		+0.83/0.87+*
Gasoil Reg 0.5% sulfur (\$/bbl)	+64.79 - 64.83+	+64.74 - 64.78+	+0.03/0.07+
BioDiesel (\$/mt)	+600.00 - 600.50+		
Demurrage Clean (\$)	25500.00		
MTBE (\$/mt)	+501.00 - 503.00+		
Fuel oil 180 CST 2% (\$/mt)	+263.98 - 264.02+		
HSFO 180 CST (\$/mt)	+253.98 - 254.02+	+251.98 - 252.02+	+1.98/2.02+
HSFO 380 CST (\$/mt)	+246.99 - 247.03+	+243.39 - 243.43+	+3.58/3.62+
Demurrage Dirty (\$)	-27000.00		
Ex-Wharf 180 CST	+270.50 - 271.50+		
EX-Wharf 380 CST	+262.50 - 263.50+		
LSWR Mixed/Cracked	+35.68 - 35.72+		

Spread to FOB Singapore naphtha: * Differential to FOB Singapore Gasoil Reg 0.5%; ** Assessment is FOB Indonesia.
Diff to Pertamina mixed-cracked formula

-1.12/-1.08**

Singapore paper

	Balance Jan *	Feb	Mar
Naphtha	+41.43/41.47+	+40.28/40.32+	+39.48/39.52+
Reforming spread -	4.83/4.87 - 5.98/6.02		-7.18/7.22
Naphtha Japan	NA/NA	374.75/375.25	372.25/372.75
Mogas 92 uni	+46.28/46.32+	+46.28/46.32+	+46.68/46.72+
Kero	+65.97/66.01+	+66.92/66.96+	+68.12/68.16+
Gasoil Reg 0.5%	+64.93/64.97+	+64.43/64.47+	+64.98/65.02+
HSFO 180 CST	+252.73/252.77+	+250.73/250.77+	+254.23/254.27+
HSFO 380 CST	+244.33/244.37+	+241.83/241.87+	+245.33/245.37+

* Bal Month swaps will be assessed from the 1st till 15th of the month, in February from 1st till 14th of the month.

Arab Gulf / Japan

	FOB Arab Gulf	Premium/discount*	C+F Japan
Gasoline unleaded	+47.88 - 47.92+	+3.89 - 3.93+	+49.41 - 49.45+
Gasoline 95 RON unleaded *		+4.96 - 5.00+ **	+52.43 - 52.47+
Naphtha LR2 (\$/mt)	+354.63 - 360.13+	11.50/12.50	+379.25 - 384.75+
Naphtha (\$/mt)	+351.73 - 357.23+	9.00/10.00	372.25 - 372.75
Naphtha MOPJ Strip			+390.75 - 391.25+
Naphtha 2nd 1/2 Feb (\$/mt)			+384.25 - 384.75+
Naphtha 1st 1/2 Mar (\$/mt)			+379.25 - 379.75+
Naphtha 2nd 1/2 Mar (\$/mt)			+67.43 - 67.47+
Kerosene	+63.51 - 63.55+	+2.18/2.22+	
Kerosene LR2	+63.89 - 63.93+		
Gasoil 0.05% sulfur	+67.08 - 67.12+	6.48/6.52-	
Gasoil 0.25% sulfur	+63.38 - 63.42+	2.78/2.82	
Gasoil	+62.58 - 62.62+	1.98/2.02	
Gasoil LR2	+62.98 - 63.02+		+68.20 - 68.24+^^

ARTICLE II**SECTION 2.01. PRODUCT AND QUALITY.**

The fuel oil delivered hereunder shall have the physical and chemical characteristics as described in the following tables:

FUEL SPECIFICATION: PRODUCT: DIESEL FUEL Oil No. 2

Characteristics	Specification Limits	Test Method
Gravity, API @ 60 deg F	32-42	D- 1298
Flash Point, PMCC, deg. F.	140 Min.	D- 93
Sulfur Content, Wt. %	0.50 Max.	D- 129
Appearance, @Ambient Temp	Clear & Bright	Visual
Pour Point, Deg. F.	50 Max.	D- 97
Cetane Index No. (calculated)	47 Min.	D- 976
Water & Sediments, By centrifuge, Vol %	0.050 Max.	D- 1798
Carbon Residue, 10% Bottom, Wt. %	0.200 Max.	D- 189
Corrosion, Copper strip, 3 hrs @ 212 deg. F.	ASTM No.1 Max.	D- 130
Ash Content, Wt. %	0.01 Max.	D- 482
Neutralization No., Total Acid No., mg KOH/gm sample	0.200 Max.	D- 974
Color, ASTM Color	2.0 Max.	D-15000
Guaranteed Heating Value, MMBTU/bbl. Metals, Ppm	5.700 Min. Report	D- 240 Baird AE

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

Test Methods shall be in conformance with the prescribed procedures set forth by the American Society For Testing and Materials (ASTM) Standards for Petroleum Products, Lubricants, and Fossil Fuels. Alternate test method shall be subject to GPA's approval.

SECTION 2.02. QUANTITY AND QUALITY ASSURANCE.

GPA's fuel storage tank receiving meter shall be utilized to determine the quantity of fuel received by **GPA**. Quantity shall be based on received volume corrected to standard sixty degrees Fahrenheit (60 °F). Conversion to be made in accordance with the ASTM-IP Petroleum Measurement Tables (IP-200), Table 6B.

In the event that GPA's meter is not available, **CONTRACTOR'S** tanker truck or loading rack meters shall be utilized to determine the quantity of fuel received by **GPA**. Initial and final meter readings shall be machine-stamped on the delivery tickets and must be acknowledged by the authorized receiving facility representative.

CONTRACTOR shall have its meters calibrated no less than annually starting at the commencement of the contract period and **CONTRACTOR** shall furnish GPA a copy of the certificate of calibration no later than 5 days after the scheduled calibration due date.

In the event of a dispute over the accuracy of the **CONTRACTOR's** meters, an independent third party mutually agreeable to both parties will be brought in to perform a recalibration. In the event of a miscalibration, the costs shall be borne by the **CONTRACTOR**. Any loss incurred by **GPA** as a result of miscalibration of meters shall be negotiated and returned to the **AUTHORITY**.

Delivery tanker truck compartments and valves must be properly sealed as a condition of acceptance for delivery. Seal numbers shall be indicated on the delivery ticket with the initials of the supplier dispatch officer. Deliveries with tampered seals shall be rejected.

Appropriate Certificate of Quality Reports (COQ) shall also accompany each delivery. Quality must comply with the quality requirements specified under Section 2.01 as a condition for acceptance of delivery.

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

SECTION 2.03. GUARANTEED HEATING VALUE.

If the heating value of the fuel oil delivered by **CONTRACTOR** is less than specified in Section 2.01, **CONTRACTOR** shall furnish and deliver without charge an additional quantity of fuel oil necessary to make the total BTU supplied equal to the heating value of the total quantity first

delivered (in barrels) times the heating value specified in Section 2.01.

ARTICLE III

SECTION 3.01. SECURITY.

Contractor is required to maintain a minimum of thirty (30) days inventory estimated at 250,000 gallons at the Contractor's own storage facility.

For security of supply in the event of severe typhoon or other calamities, Contractor shall prioritize delivery to GPA and guarantee uninterrupted supply of fuel up to approximately 1,000,000 gallons during the recovery period.

CONTRACTOR reserves the right to supply fuel oil meeting **GPA** specifications from any lawful source. In the event that supplies are taken from such other places, then the price to Guam will remain the same as established in Section 1.03.

SECTION 3.02. GOVERNMENT LAWS AND REGULATIONS.

- (a) If at any time during the term of the contract the Government of the United States or the Territory of Guam enacts laws or issues regulations which would prevent **GPA** from burning the type of fuel oil to be supplied hereunder, **GPA** shall use its best efforts to obtain an exemption. In the event **GPA** cannot obtain an exemption from such laws and regulations, **CONTRACTOR** shall use his best efforts to furnish **GPA** substitute fuel oil which complies with such governmental laws and regulations at the same price set out herein, or if unreasonable, at a price to be renegotiated by the parties. If the substitute fuel oil causes an increase or decrease in **CONTRACTOR'S** cost of performance of the Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly. Any claim of **CONTRACTOR** for adjustment under this section must be asserted in writing within thirty (30) days from date of receipt by **CONTRACTOR** of the notification of substitute fuel oil in compliance with Government laws, rules and regulations. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this Contract entitled "Disputes". However, nothing in this clause shall excuse the **CONTRACTOR** from proceeding with the Contract fuel oil specifications as changed in order to comply with Government laws, rules and regulations. Only in the event that the parties cannot mutually agree upon the price at which **CONTRACTOR** is to furnish such substitute fuel oil, and **CONTRACTOR** refuses to provide such substitute fuel oil at the Contract price set out herein shall **GPA** then have the option of purchasing from other sources fuel oil at a lower price than that offered by **CONTRACTOR** in such negotiations which complies with such laws and regulations, but in any event, the **CONTRACTOR** shall have no recourse, other than those specified herein.

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

SECTION 3.03. SPECIFICATIONS.

Should **GPA** wish to alter any of the specifications set out in Section 2.01, method of shipment, terms of delivery, for good cause, it shall give written notice to **CONTRACTOR** within thirty (30) days. If such changes causes an increase or decrease in **CONTRACTOR**'s cost of performance of Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly. Any claim by **CONTRACTOR** for adjustment under this section must be asserted in writing within thirty (30) days from the date of receipt by **CONTRACTOR** of the notification of changed specifications. **CONTRACTOR** and **GPA** shall, in good faith, negotiate an equitable adjustment pursuant to the change in specifications. If **CONTRACTOR** and **GPA** fail to agree on the adjustment to be made within thirty (30) days after **CONTRACTOR** receives notice of altered specifications, or if **CONTRACTOR** is unwilling to meet the altered specifications, the parties shall be subject to "Disputes" clause. However, nothing in this clause shall excuse the **CONTRACTOR** from proceeding with the Contract fuel oil specifications as changed.

SECTION 3.04. PERMITS AND RESPONSIBILITIES.

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

SECTION 3.05. FORCE MAJEURE.

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

- (a) War, etc.
War, hostilities, acts of public enemy or belligerents, sabotage, blockade, revolution, insurrection, riot or disorder;
- (b) Restraints.
Arrest or restraint of princes, rulers or peoples;
- (c) Confiscation.
Expropriation, requisition, confiscation or nationalization;
- (d) Rationing.
Embargoes, export or import restrictions or rationing or allocation, whether imposed by law, decree or regulation or by voluntary cooperation of industry at the insistence or request of any governmental **AUTHORITY** or person purporting to act therefor;

- (e) Regulations.
Interference by restriction or onerous regulations imposed by civil or military authorities, whether legal or de facto and whether purporting to act under some constitution, decree, law or otherwise;
- (f) Acts of God.
Acts of God, fire, frost or ice, earthquake, storm, lightning, tide, tidal wave, or peril of the sea, accident of navigation or breakdown or injury of vessels;
- (g) Loss for Tankers.
Loss of tanker tonnage due to sinking by belligerents or to governmental taking whether or not by formal requisition;
- (h) Accidents.
Accidents to or adjuncts of shipping navigation;
- (i) Strikes.
Epidemics, quarantine, strikes or combination of workmen, lockouts, or other labor disturbances;
- (j) Explosions.
Explosion, accidents by fire or otherwise to wells, pipes, storage facilities, refineries, installations, machinery;
- (k) Taking by Government.
Unavailability of fuel because of the election of the government of the country of its origin to take royalty product in kind;
- (l) Mechanical Breakdown.
Unavailability of **GPA's** electric generating plant and any, or all, appurtenances thereto, including transmission and distribution facilities, due to any mechanical failure, inability to operate as designed, emergency outages of equipment or facilities for the purpose of making repairs to avoid breakdown thereof or damage thereto other than regularly scheduled repairs or regular maintenance; or

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

This section does not relieve the **CONTRACTOR** of providing adequate insurance coverage for the protection of **GPA**.

SECTION 3.06. NOTICE TO OTHER PARTY.

Either party whose obligations may be affected by any of the forces or causes set out in Section 3.05, supra, shall promptly notify the other party in writing, giving full particulars thereof as soon as possible after the occurrence of such force or cause. Such party shall exercise due diligence to remove such cause with all reasonable dispatch and to resume performance at the earliest practicable time.

SECTION 3.07. PAYMENT REQUIRED.

Notwithstanding the provisions of Section 3.05, supra, **GPA** shall not be relieved of any obligation to make payments for any fuel delivered to **GPA** tanks hereunder, however, during the force majeure condition the obligation shall be suspended, except for fuel oil deliveries made prior to the force majeure condition.

SECTION 3.08. PRORATION OR EQUITABLE ALLOCATION.

If any of the events enumerated in Section 3.05, supra, have occurred, **CONTRACTOR** shall prorate or otherwise allocate in a fair and equitable manner among its customers, including **GPA**, the supplies of fuel oil **CONTRACTOR** has available for delivery at the time of the occurrence or for the duration of such event taking into account **GPA**'s unique situation as Guam's total dependence on fuel oil.

SECTION 3.09. ALTERNATE SUPPLY.

In the event **CONTRACTOR** is unable to fulfill its obligations under this Contract as a result of any negligence on part of the Contractor, **GPA** may at its sole discretion seek an alternative source of fuel oil. If the cost of fuel during such period of negligence shall exceed the Contract price as provided in Section 1.03, the **CONTRACTOR** shall be liable to **GPA** for the difference.

SECTION 3.10. RESUMPTION OF PERFORMANCE.

If **CONTRACTOR** is prevented from delivering or **GPA** is prevented from receiving all or any fuel to be sold under the Contract for the reasons which fall within the provisions of Section 3.05, supra, then the party so prevented shall, as to the remainder of the fuel not affected thereby, promptly resume performance of the Contract. No curtailment or suspension of deliveries or payment under the causes listed in Section 3.05, supra, shall operate to extend the term of or terminate the Contract unless the occurrence of force majeure will materially impair, for an indefinite period of time, the parties' ability to perform the Contract.

SECTION 3.11. DISPUTES.

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

SECTION 3.12. INDEMNITY.

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

SECTION 3.13. TRANSPORTATION.

CONTRACTOR' and GPA's rights and duties under Section 3.13 and 3.14 do not supersede or control the provisions of Section 3.05 Force Majeure.

SECTION 3.14: SAFETY.

The Contractor recognizes the concern of GPA that no lube oil product or related materials or substances provided under this contract shall in any way jeopardize the health or safety of GPA employees. In order to fully protect the safety of GPA employees, the Contractor shall, prior to providing any oil product or related materials or substances to GPA hereunder, certify in writing to GPA that the oil product and any other material or matter to be provided to GPA, does not contain any "hazardous materials", "hazardous substances" or "toxic substances". For purposes of this section, the foregoing quoted terms shall have those meanings defined in applicable federal or local statutes, which may include, but is not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act

("CERCLA"), the Clean Air Act, the Clean Water Act, the Hazardous Materials Transportation Act, the Occupational Safety and Health Act, and the Toxic Substances Control Act.

Prior to the delivery of any oil or other product or material, the Contractor shall provide GPA with the Material Safety Data Sheet (MSDS). GPA seeks to ensure that the Contractor will not use or cause to deliver hazardous, dangerous or toxic oil products or other materials which would require GPA to provide special personnel protective equipment or gear for its employees.

SECTION 3.15: CONTRACTOR'S INSURANCE.

A. INSTRUCTIONS: Contractor shall not commence work under this contract until he has obtained all insurance required under this section and such insurance has been approved by GPA, nor shall the Contractor allow any Subcontractor to commence work on his subcontract until all similar insurance required of the Subcontractor has been so obtained and approved.

B. WORKMEN'S STATUTORY COMPENSATION INSURANCE AND EMPLOYER'S LIABILITY INSURANCE: The Contractor shall take out and maintain during the life of this Contract the applicable statutory Workmen's Compensation Insurance with an insurance company authorized to write such insurance and in the applicable State or Territory covering all his employees, and in the case of any work sublet, the Contractor shall require the Subcontractor similarly to provide statutory Workmen's Compensation Insurance for the latter's employees. The Contractor shall secure and maintain, during the life of this Contract, Employer's Liability Insurance with a limit of **\$500,000** with an insurance company authorized to write such insurance in all states or territories where the Contractor will have employees located in the performance of this Contract. Contractor shall provide a Waiver of Subrogation in favor of GPA via endorsement to the Workers Compensation policy.

C. COMMERCIAL GENERAL LIABILITY:

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

- (a) Bodily Injury Limits: \$ 1,000,000 Each Person
- (b) Property Damage Limits: \$ 1,000,000 Each Occurrence
 \$ 2,000,000 Aggregate

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

- (a) The property damage coverage shall include a Broad Form Property Damage Endorsement.
- (b) Contractual Liability coverage shall be included.
- (c) Protective Liability coverage shall be included to protect the Contractor against claims arising out of operations performed by his Subcontractors.
- (d) Products Liability and/or Completed Operations coverage shall be included.
- (e) GPA shall be an additional insured on Commercial General Liability policy.
- (f) Contractor shall grant Waiver of Subrogation in favor of GPA.

D. AUTOMOBILE LIABILITY INSURANCE:

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

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

Property Damage Limits:	\$ 1,000,000 Each occurrence
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E. POLLUTION LIABILITY INSURANCE:

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

F. EXCESS LIABILITY

Excess Liability with limits of \$5,000,000. GPA shall be an additional insured. Contractor shall grant Waiver of Subrogation in favor of GPA.

G. CERTIFICATE OF INSURANCE:

The Contractor shall furnish GPA with two (2) copies of a Certificate of Insurance evidencing policies required in Paragraphs B, C, D, E, and F above. Such certificates shall specifically indicate that the Commercial General Liability Insurance includes all extensions of coverage required in Paragraph C., Subparagraph 2. above. Such certificate shall specifically state that the insurance company or companies issuing such insurance policies shall give GPA at least thirty (30) days written notice in the event of cancellation of or material change in any of the policies. If coverage on said certificate(s) is shown to expire prior to completion of all terms of this Contract, the Contractor shall furnish a Certificates of Insurance evidencing renewal of such coverage to GPA. The Certificates of Insurance shall clearly show this Contract number.

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

H. SUBCONTRACTOR'S INSURANCE:

The Contractor shall require each of his Subcontractors to take out and maintain during the life of his Subcontract, the same insurance coverage required of the Contractor under Paragraphs B, C, D, E, and F above, including the extensions of coverage required under Paragraph C., Subparagraph 2, above. Each Subcontractor shall furnish to the Contractor two (2) copies of a Certificate of Insurance and such certificate shall contain the same information required in Paragraph C. above. The Contractor shall furnish one (1) copy of the certificate to GPA.

I. INSURANCE COMPANY AND AGENT:

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

J. INDEMNITY:

The Contractor shall indemnify and hold GPA free and harmless from all injuries and damages to persons or properties as a result of and relative to diesel engine cylinder lubrication oil deliveries, including the cost of enforcement of the indemnity, actually and proximately caused by the Contractor or its agents and employees in the performance of the terms of the Contract.

K. OIL SPILL RESPONSIBILITIES:

The Contractor shall be responsible for any and all oil spills caused by or as a result of the performance of diesel engine cylinder lubrication oil deliveries. The Contractor shall recover or remove, or cleanup as appropriate, any diesel engine cylinder lubrication oil spilled by the contractor, its agents or assigns upon the performance of this Contract. Clean-up operations shall commence immediately within twelve (12) hours and be completed within a reasonable time. In the event the Contractor fails to complete the clean-up operations within reasonable time, GPA may conduct such clean up and the Contractor shall reimburse the Authority for any and all costs reasonably incurred for the clean-up operations. All clean-up operations shall be in accordance with applicable Federal or Territorial laws, rules and regulations, and will only be acceptable upon the approval of Guam EPA.

In the event of an oil spill, the Contractor shall immediately notify GPA and Guam EPA authorities, and said Contractor shall immediately initiate clean up and continue such clean up until completion.

ARTICLE IV

SECTION 4.01: FAILURE TO SUPPLY.

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

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

SECTION 4.02. FAILURE TO PAY.

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

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

SECTION 4.03. FAILURE TO COMPLY WITH LAWS.

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

SECTION 4.04. DEFAULT.

(a) Default.

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

(b) Compensation.

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

(c) Erroneous Termination for Default.

If, after notice of termination of the **CONTRACTOR'S** right to proceed under the provisions of this clause, it is determined for any reason that the **CONTRACTOR** was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Section 3.05 relating to Force Majeure of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination for convenience had been issued pursuant to Section 4.05.

(d) Additional Rights and Remedies.

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

SECTION 4.05. ATTORNEYS FEES.

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

SECTION 4.06. TERMINATION FOR CONVENIENCE.

(a) Termination.

The delivery of fuel oil supply under this Contract may be terminated by **GPA** in accordance with this clause in whole, or from time to time in part, whenever **GPA** shall determine that such termination is in the best interest of **GPA**, or whenever **GPA** because of technological developments ceases to use Diesel Fuel Oil, as described in the specifications contained in Section 2.01, as the principal source for power generation.

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

(b) CONTRACTOR'S Obligations.

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

(c) Compensation.

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

under subparagraph (2) shall not duplicate payments under this subparagraph:

- (i) fuel oil Contract prices for supplies or services accepted under the Contract by **GPA**;
- (ii) costs incurred in preparing to perform and performing the terminated portion of the delivery of fuel oil plus a fair and reasonable profit on such portion of the delivery (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted fuel oil supplies or services; provided, however, that if it appears that the **CONTRACTOR** would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
- (iii) costs of settling and paying claims arising out of the termination of Contracts or orders pursuant to paragraph (2) of this clause. These costs must not include costs paid in accordance with subparagraph (3)(ii) of this paragraph;
- (iv) the reasonable settlement costs of the **CONTRACTOR** including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract for the termination and settlement of contracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the **CONTRACTOR** under this subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the **CONTRACTOR** reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under the Uniform Commercial clause.

SECTION 4.07. REMEDIES CUMULATIVE.

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

ARTICLE V

SECTION 5.01. COVENANT AGAINST CONTINGENT FEES.

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

SECTION 5.02. NOTICE.

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

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

CONTRACTOR:

Address: _____

Telefax: _____

SECTION 5.03. INTEREST OF OTHER PARTIES.

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

SECTION 5.04. ASSIGNMENT.

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

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

SECTION 5.05. TIME.

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

SECTION 5.06. AMENDMENT AND WAIVER.

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

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

SECTION 5.07. DESCRIPTIVE HEADINGS.

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

SECTION 5.08. GOVERNING LAW.

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

for the resolution of any dispute or difference or claims between the parties in connection with the Contract, and to service of process by registered mail. The **CONTRACTOR** agrees to accept the jurisdiction of the Superior Court of the Territory of Guam for the resolution of any claims including but not limited to, claims for consequential, special or punitive damages. Judgment upon any award rendered by the Superior Court of the Territory of Guam may be entered in any court of any country having jurisdiction, and such award shall be binding upon the parties. The **CONTRACTOR** waives all rights against **GPA** to claim consequential, special or punitive damages.

SECTION 5.09. DEFINITIONS.

- (a) "Barrel" shall mean 42 U.S. gallons.
- (b) "Day" and "month" mean a calendar day and month respectively.
- (c) "Fuel Oil" means a liquid hydrocarbon product satisfying the specifications in Section 2.01, *supra*.
- (d) "Gallon". As used in the Contract, "gallon" shall mean a U.S. standard gallon of 231 cubic inches at sixty degrees Fahrenheit.
- (e) "Receiving facility" means the **Dededo Diesel Plant and Combustion Turbine Plants (Dededo CT, Macheche CT, Yigo CT, and Marbo CT)**.
- (f) "Ton" means a metric ton of 2204.62 English pounds.
- (g) "\$" refers to United States Dollars.

SECTION 5.10. RELATIONSHIP OF PARTIES.

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

SECTION 5.11. NUMBER AND GENDER.

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

SECTION 5.12. SUCCESSORS IN INTEREST.

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

SECTION 5.13. PARTIAL INVALIDITY.

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

SECTION 5.14. EQUAL OPPORTUNITY CLAUSE.

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

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

ARTICLE VI

SECTION 6.01. BINDING EFFECT.

This contract is binding upon the **CONTRACTOR** only if **CONTRACTOR** has been awarded the contract in response to the IFB GPA-050-09 This contract is subject to the approval of **GPA** and the Public Utilities Commission and it shall not be binding on part of **GPA** until such approval is made as evidenced by the signatories below.

Joaquin C. Flores, P.E. General Manager
GUAM POWER AUTHORITY

DATE

Simon A. Sanchez II, Chairman
Consolidated Commission on Utilities

DATE

CONTRACTOR, DULY AUTHORIZED
REPRESENTATIVE OF COMPANY

DATE

APPROVED AS TO FORM:

LEGAL COUNSEL, GUAM POWER AUTHORITY



Felix P. Camacho
Governor

Michael W. Cruz, M.D.
Lieutenant Governor

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

Accountability	Impartiality	Competence	Openness	Value
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SPECIAL PROVISION
FOR
MAJOR SHAREHOLDERS DISCLOSURE AFFIDAVIT

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

Excerpt from P.L. 18-44:

Section 44. A new section 6961.3 is added to the Government Code to read.

Section 6961.3 Disclosure of Major Shareholders. As a condition of bidding, any partnership, sole proprietorship or corporation doing business with the Government of Guam shall submit an affidavit executed under oath that lists the name and address of any person who has held more than ten percent (10%) of outstanding interest or shares in said partnership, sole proprietorship or corporation at any time during the twelve (12) month period immediately preceding submission of a bid. The affidavit shall contain the number of shares or the percentage or all assets of such partnership, sole proprietorship or corporation which have been held by each such person during the twelve (12) month period. In addition, the affidavit shall contain the amounts of any such commission, gratuity or other compensation. The affidavit shall be open and available to the public for inspection and copying.

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

MAJOR SHAREHOLDERS OF DISCLOSURE AFFIDAVIT

TERRITORY OF GUAM)

HAGATNA, GUAM)

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

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

Table with 4 columns: Name, Address, Total number of shares, Percentage of Shares Held. Contains 4 rows of blank lines for entry.

Total number of shares

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

Table with 4 columns: Name, Address, Total number of shares, Amount of Commission Gratuity or other Compensation. Contains 4 rows of blank lines for entry.

Further, affiant sayeth naught.

Date: _____ Signature of individual if bidder/offeror is a sole Proprietorship; Partner, if the bidder/offeror is a Partnership Officer, if the bidder/offeror is a corporation.

Subscribed and sworn to before me this _____ day of _____, 20_____.

Notary Public _____ In and for the Territory of Guam My commission expires _____

NON-COLLUSION AFFIDAVIT

Guam)
Hagatna)ss:
)

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

1. That I am the _____ of _____
(Title) (Name of Bidding/RFP Company)
2. That in making the foregoing proposal or bid, that such proposal or bid is Genuine and not collusive or sham, that said bidder/offeror has not colluded, Conspired, connived or agreed, directly or indirectly, with any bidder or person, to put in a sham or to refrain from bidding or submitting a proposal and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the bid price of affiant or any other bidder, or to secure any overhead, project or cost element of said bid price, or of that of any bidder, or to secure any advantage against the GUAM POWER AUTHORITY or any person interested in the proposed contract; and That all statements in said proposal or bid are true.
3. This affidavit is made in compliance with 2 Guam Administrative Rules and Regulations §§3126(b).

(Declarant)

SUBSCRIBED AND SWORN to me before this _____ day of _____, 2009

)Seal(

Notary Public



GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUAHAN

P.O. BOX 2977 • AGANA, GUAM U.S.A. 96910-2977

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Accountability • Impartiality • Competence • Openness • Value

LOCAL PROCUREMENT PREFERENCE APPLICATION

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

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

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

- () (a) A licensed bonafide manufacturing business that adds at least twenty-five percent (25%) of the value of an item, not to include administrative overhead, suing workers who are U.S. Citizens or lawfully admitted permanent residents or nationals of the United States, or persons who are lawfully admitted to the United States to work, based on their former citizenship in the Trust Territory for the Pacific Islands; or
- () (b) A business that regularly carries an inventory for regular immediate sale of at least fifty percent (50%) of the items of supplies to be procured; or
- () (c) A business that has a bonafide retail or wholesale business location that regularly carries an inventory on Guam of a value of at least one half of the value of the bid or One Hundred Fifty Thousand Dollars (\$150,000) whichever is less, of supplies and items of a similar nature to those being sought; or
- () *(d) A service actually in business, doing a substantial business on Guam, and hiring at least 95% U.S. Citizens, lawfully admitted permanent residents or nationals of the United States, or persons who are lawfully admitted to the United States to work, based on their citizenship in any of the nations previously comprising the Trust Territory of the Pacific Islands.

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

1. I _____, representative for _____, have read the requirements of the law cited above and do hereby qualify and elect to be given the **LOCAL PROCUREMENT PREFERENCE** for Bid No. **GPA** _____. By filling in this information and placing my signature below, I understand that General Services Agency and GPA will review this application and provide me with a determination whether or not the 15% preference will be applied to this bid.
2. I _____, representative for _____, have read the requirements of the law cited above, and do not wish to apply for the Local Procurement Preference for Bid No. **GPA** _____.

Bidder Representative Signature

Date: _____

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

GOVERNMENT OF GUAM

GENERAL TERMS AND CONDITIONS

SEALED BID SOLICITATION AND AWARD

Only those Boxes checked below are applicable to this bid.

- 1. AUTHORITY:** This solicitation is issued subject to all the provision of the Guam Procurement Act (5GCA, Chapter 5) and the Guam Procurement Regulations (copies of both are available at the Office of the Compiler of Laws, Department of Law, copies available for inspection at General Services Agency). It requires all parties involved in the Preparation, negotiation, performance, or administration of contracts to act in good faith.
- 2. GENERAL INTENTION:** Unless otherwise specified, it is the declared and acknowledged intention and meaning of these General Terms and Conditions for the bidder to provide the Government of Guam (Government) with specified services or with materials, supplies or equipment completely assembled and ready for use.
- 3. TAXES:** Bidders are cautioned that they are subject to Guam Income Taxes as well as all other taxes on Guam Transactions. Specific information on taxes may be obtained from the Director of Revenue and Taxation.
- 4. LICENSING:** Bidders are cautioned that the Government will not consider for award any offer submitted by a bidder who has not complied with the Guam Licensing Law. Specific information on licenses may be obtained from the Director of Revenue and Taxation.
- 5. LOCAL PROCUREMENT PREFERENCE:** All procurement of supplies and services where possible, will be made from among businesses licensed to do business on Guam in accordance with Section 5008 of the Guam Procurement Act (5GCA, Chapter 5) and Section 1-104 of the Guam Procurement Regulations.
- 6. COMPLIANCE WITH SPECIFICATIONS AND OTHER SOLICITATION REQUIREMENTS:** Bidders shall comply with all specifications and other requirements of the Solicitation.
- 7. "ALL OR NONE" BIDS:** Unless otherwise allowed under this Solicitation, "all or none" bids may be deemed to be non-responsive. If the bid is so limited, the Government may reject part of such proposal and award on the remainder.
- NOTE:** By checking this item, the Government is requesting all of the bid items to be bidden or none at all. **The Government will not award on an itemized basis.** Reference: Section 3-301.06 of the Guam Procurement Regulations.
- 8. INDEPENDENT PRICE DETERMINATION:** The bidder, upon signing the Invitation for Bid, certifies that the prices in his bid were derived at without collusion, and acknowledge that collusion and anti-competitive practices are prohibited by law. Violations will be subject to the provision of Section 5651 of that of the Guam Procurement Act. Other existing civil, criminal or administrative remedies are not impaired and may be in addition to the remedies in Section 5651 of the Government Code.
- 9. BIDDER'S PRICES:** The Government will consider not more than two (2) (Basic and Alternate) item prices and the bidder shall explain fully each price if supplies, materials, equipment, and/or specified services offered comply with specifications and the products origin. Where basic or alternate bid meets the minimum required specification, cost and other factors will be considered. Failure to explain this requirement will result in rejection of the bid.
- 10. BID ENVELOPE:** Envelope shall be sealed and marked with the bidder's name, Bid number, time, date and place of Bid Opening.
- 11. BID GUARANTEE REQUIREMENT:** Bidder is required to submit a Bid Guarantee Bond or standby irrevocable Letter of Credit or Certified Check or Cashier's Check in the same bid envelope to be held by the Government pending award. The Bid Guarantee Bond, Letter of Credit, Certified Check or Cashier's Check must be issued by any local surety or banking institution licensed to do business on Guam and made payable to the ~~GPA~~ GPA in the amount of ~~200,000,000.00~~ 15% of the total annual cost of the contract bid price offer. Personal Checks will not be accepted as Bid Guarantee. If a successful Bidder (contractor) withdraws from the bid or fails to enter into contract within the prescribed time, such Bid guarantee will be forfeited to the Government of Guam. Bids will be disqualified if not accompanied by Bid Bond, Letter of Credit, Certified Check or Cashier's Check. Bidder must include in his/her bid, valid copies of a Power of Attorney from the Surety and a Certificate of Authority from the Government of Guam to show proof that the surety company named on the bond instrument is authorized by the Government of Guam and qualified to do business on Guam. For detailed information on bonding matters, contact the Department of Revenue and Taxation. Failure to submit a valid Power of Attorney and Certificate of Authority on the surety is cause for rejection of bid (GPR Section 3-202.03.3).
- 12. PERFORMANCE BOND REQUIREMENT:** The Bidder may be required to furnish a Performance Bond on Government Standard Form BB-1 or standby irrevocable Letter of Credit or Certified Check or Cashier's Check payable to GPA 15% of ~~the total annual cost of the contract bid price offer~~ the total annual cost of the contract bid price offer

percent (see above %) of the contract prices as security for the faithful performance and proper fulfillment of the contract. In the event that any of the provisions of this contract are violated by the contractor, the Chief Procurement Officer shall serve written notice upon both the contractor and the Surety of its intention to terminate the contract. Unless satisfactory arrangement or correction is made within ten (10) days of such notice the contract shall cease and terminate upon the expiration of the ten (10) days. In the event of any such termination, the Chief Procurement Officer shall immediately serve notice thereof upon the Surety. The Surety shall have the right to take over and perform the contract, provided, however, that if the Surety does not commence performance thereof within 10 days from the date of the mailing

of notice of termination, the Government may take over and prosecute the same to complete the contract or force account for the account and at the expense of the contractor, and the contractor and his Surety shall be liable to the Government for any excess cost occasioned the Government thereby (GPR Section 3-202.03.4).

- 13. PERFORMANCE GUARANTEE:** Bidders who are awarded a contract under this solicitation, guarantee that goods will be delivered or required services performed within the time specified. Failure to perform the contract in a satisfactory manner may be cause for suspension or debarment from doing business with the Government and to enforce Section 12 of these General Terms and Conditions. In addition, the Government will hold the Vendor liable and will enforce the requirements as set forth in Section 41 of these General Terms and Conditions.
- 14. SURETY BONDS:** Bid and Performance Bonds coverage must be signed or countersigned in Guam by a foreign or alien surety's resident general agent. The Surety must be an Insurance Company, authorized by the Government of Guam and qualified to do business in Guam. Bids will be disqualified if the Surety Company does not have a valid Certificate of Authority from the Government of Guam to conduct business in Guam.
- 15. COMPETENCY OF BIDDERS:** Bids will be considered only from the such bidders who, in the opinion of the Government, can show evidence of their ability, experience, equipment, and facilities to render satisfactory service.
- 16. DETERMINATION OF RESPONSIBILITY OF BIDDERS:** The Chief Procurement Officer reserves the right for securing from bidders information to determine whether or not they are responsible and to inspect plant site, place of business, and supplies and services as necessary to determine their responsibility in accordance with Section 15 of these General Terms and Conditions (GPR Section 3-401).
- 17. STANDARD FOR DETERMINATION OF LOWEST RESPONSIBLE BIDDER:** In determining the lowest responsible offer, the Chief Procurement Officer shall be guided by the following:
- a) Price of Items offered.
 - b) The ability, capacity, and skill of the Bidder to perform.
 - c) Whether the Bidder can perform promptly or within the specified time.
 - d) The quality of performance of the Bidder with regards to awards previously made to him.
 - e) The previous and existing compliance by the Bidder with laws and regulations relative to procurement.
 - f) The sufficiency of the financial resources and ability of the Bidder to perform.
 - g) The ability of the bidder to provide future maintenance and services for the subject of the award
 - The compliance with all of the conditions to the Solicitation.
- 18. TIE BIDS:** If the bids are for the same unit price or total amount in the whole or in part, the Chief Procurement Officer will determine award based on Section 3-202.15.2, or to reject all such bids (GPR Section 3-202.15.2).
- 19. BRAND NAMES:** Any reference in the Solicitation to manufacturer's Brand Names and number is due to lack of a satisfactory specification of commodity description. Such preference is intended to be descriptive, but not restrictive and for the sole purpose of indicating prospective bidders a description of the article or services that will be satisfactory. Bids on comparable items will be considered provided the bidder clearly states in his bid the exact articles he is offering and how it differs from the original specification.
- 20. DESCRIPTIVE LITERATURE:** Descriptive literature(s) as specified in this solicitation must be furnished as a part of the bid and must be received at the date and time set for opening Bids. The literature furnished must clearly identify the item(s) in the Bid. The descriptive literature is required to establish, for the purpose of evaluation and award, details of the product(s) the bidder proposes to furnish including design, materials, components, performance characteristics, methods of manufacture, construction, assembly or other characteristics which are considered appropriate. Rejection of the Bid will be required if the descriptive literature(s) do not show that the product(s) offered conform(s) to the specifications and other requirements of this solicitation. Failure to furnish the descriptive literature(s) by the time specified in the Solicitation will require rejection of the bid.
- 21. SAMPLES:** Samples of item(s) as specified in this solicitation must be furnished as a part of the bid and must be received at the date and time set for opening Bids. The sample(s) should represent exactly what the Bidder proposes to furnish and will be used to determine if the item(s) offered complies with the specifications. Rejection of the Bid will be required if the sample(s) do not show that the product(s) offered conform(s) to the specifications and other requirements of this solicitation. Failure to furnish the sample(s) by the time specified in the Solicitation will require rejection of the Bid.
- 22. LABORATORY TEST:** Successful bidder is required to accompany delivery of his goods with a Laboratory Test Report indicating that the product he is furnishing the Government meets with the specifications. This report is on the bidder's account and must be from a certified Testing Association.
- 23. AWARD, CANCELLATION & REJECTION:** Award shall be made to the lowest responsible and responsive bidder, whose bid is determined to be the most advantageous to the Government, taking into consideration the evaluation factors set forth in this solicitation. No other factors or criteria shall be used in the evaluation. The right is reserved as the interest of the Government may require to waive any minor irregularity in bids received. The Chief Procurement Officer shall have the authority to award, cancel, or reject bids, in whole or in part for any one or more items if he determines it is in the public interest. Award issued to the lowest responsible bidder within the specified time for acceptance as indicated in the solicitation, results in a bidding contract without further action by either party. In case of an error in the extension of prices, unit price will govern. It is the policy of the Government to award contracts to qualified local bidders. The Government reserves the right to increase or decrease the quantity of the items for award and make additional awards for the same type items and the vendor agrees to such modifications and additional awards based on the bid prices for a period of thirty (30) days after original award. No award shall be made under this solicitation which shall require advance payment or irrevocable letter of credit from the government (GPR Section 3-202.14.1).
- 24. MARKING:** Each outside container shall be marked with the Purchase Order number, item number, brief item description and quantity. Letter marking shall not be less than 3/4" in height.

- 25. SCHEDULE FOR DELIVERY:** Successful bidder shall notify the GPA DEDEDO WAREHOUSE at (671)635-2073, at least twenty-four (24) hours before delivery of any item under this solicitation.
- 26. BILLOFSALE:** Successful Supplier shall render Bills of Sale for each item delivered under this contract. Failure to comply with this requirement will result in rejection of delivery. The Bill of Sale must accompany the items delivered but will not be considered as an invoice for payment. Supplier shall bill the Government in accordance with billing instructions as indicated on the Purchase Order.
- 27. MANUFACTURER'S CERTIFICATE:** Successful bidder is required, upon delivery of any item under this contract, to furnish a certificate from the manufacturer indicating that the goods meet the specifications. Failure to comply with this request will result in rejection of delivery.
- 28. INSPECTION:** All supplies, materials, equipment, or services delivered under this contract shall be subject to the inspection and/or test conducted by the Government at destination. If in any case the supplies, materials, equipment, or services are found to be defective in material, workmanship, performance, or otherwise do not conform with the specifications, the Government shall have the right to reject the items or require that they be corrected. The number of days required for correction will be determined by the Government.
- 29. MOTOR VEHICLE SAFETY REQUIREMENTS:** The Government will only consider Bids on motor vehicles which comply with requirements of the National Traffic and Motor Vehicle Safety Act of 1966 (Public Law 89-563) and Clean Air Act as amended (Public Law 88-206), that are applicable to Guam. Bidders shall state if the equipment offered comply with these aforementioned Federal Laws.
- 30. SAFETY INSPECTION:** All motor vehicles delivered under this contract must pass the Government of Guam Vehicle Inspection before delivery at destination.
- 31. GUARANTEE:**
- a) **Guarantee of Vehicle Type of Equipment:**
The successful bidder shall guarantee vehicular type of equipment offered against defective parts, workmanship, and performance, for a period of not less than one (1) year after date of receipt of equipment. Bidder shall also provide service to the equipment for at least one (1) year. Service to be provided shall include, but will not be limited to tune-ups (change of spark plugs, contact points and condensers) and lubrication (change of engine and transmission oil). All parts and labor shall be at the expense of the bidder. All parts found defective and not caused by misuse, negligence or accident within the guarantee period shall be repaired, replaced, or adjusted within six (6) working days after notice from the Government and without cost to the Government. Vehicular type of equipment as used in this context shall include equipment used for transportation as differentiated from tractors, backhoes, etc.
 - b) **Guarantee of Other Type of Equipment:**
The successful bidder shall guarantee all other types of equipment offered, except those mentioned in 31 a, above, against defective parts, workmanship, and performance for a period of not less than three (3) months after date of receipt of equipment. Bidder shall also provide service to the equipment for at least three (3) months. All parts found defective within that period shall be repaired or replaced by the Contractor without cost to the Government. Repairs, adjustments or replacements of defective parts shall be completed by the Contractor within six (6) working days after notice from the Government.
- 32. REPRESENTATION REGARDING ETHICS IN PUBLIC PROCUREMENT:** The bidder or contractor represents that it has not knowingly influenced and promises that it will not knowingly influence a Government employee to breach any of the ethical standards and represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth on Chapter 11 (Ethics in Public Contracting) of the Guam Procurement Act and in Chapter 11 of the Guam Procurement Regulations.
- 33. REPRESENTATION REGARDING CONTINGENT FEES:** The contractor represents that it has not retained a person to solicit or secure a Government contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business (GPR Section 11-207).
- 34. EQUAL EMPLOYMENT OPPORTUNITY:** Contractors shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that employees are treated equally during employment without regards to their race, color, religion, sex, or national origin.
- 35. COMPLIANCE WITH LAWS:** Bidders awarded a contract under this Solicitation shall comply with the applicable standard, provisions, and stipulations of all pertinent Federal and/or local laws, rules, and regulations relative to the performance of this contract and the furnishing of goods.
- 36. CHANGE ORDER:** Any change order issued relative to awards made under this solicitation will be subject to and in accordance with the provisions of Section 6-101.03.1 of the Guam Procurement Regulations.
- 37. STOP WORK ORDER:** Any stop work order issued relative to awards made under this solicitation will be subject to and in accordance with the provisions of Section 6-101.04.3 of the Guam Procurement Regulations.
- 38. TERMINATION FOR CONVENIENCE:** Any termination order for the convenience of the Government issued relative to awards made under this solicitation will be subject to and in accordance with the provisions of Section 6-101.10 of the Guam Procurement Regulations.
- 39. TIME FOR COMPLETION:** It is hereby understood and mutually agreed by and between the contractor and the Government that the time for delivery to final destination or the timely performance of certain services is an essential condition of this contract. If the contractor refuses or fails to perform any of the provisions of this contract within the time specified in the Purchase Order (from the date Purchase Order is acknowledged by vendor), then the contractor is in default. Defaults will be treated subject to and in accordance with the provisions of Section 6-101-08 of the Guam Procurement Regulations.

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

41. LIQUIDATED DAMAGES: When the Contractor is given notice of delay or nonperformance as specified in Paragraph 1 (Default) of the Termination for Default Clause of this contract and fails to cure in the time specified, the contractor shall be liable for damages for delay in the amount of one-fourth of one percent (1%) of outstanding order per calendar day from date set for cure until either the territory reasonably obtains similar supplies or services if the contractor is terminated for default, or until the contractor provides the supplies or services if the contractor is not terminated for default. To the extent that the contractor's delay or nonperformance is excused under Paragraph 40 (Excuse for Nonperformance or Delayed Performance) of the Termination for Default Clause of this contract, liquidated damages shall not be due the territory. The contractor remains liable for damages caused other than by delay (GPR Section 6-101.09.1).

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

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

Name: _____ Title: _____

Address: _____ Telephone: _____

GOVERNMENT OF GUAM

SEALED BID SOLICITATION INSTRUCTIONS

- 1. BID FORMS:** Each bidder shall be provided with two (2) sets of Solicitation forms. Additional copies may be provided upon request. Bidders requesting additional copies of said forms will be charged per page in accordance with Section 6114 of the Government Code of Guam. All payments for this purpose shall be by cash, certified check or money order and shall be made payable to the General Services Agency (EO 86-24).
- 2. PREPARATIONS OF BIDS:**
 - a) Bidders are required to examine the drawings, specifications, schedule, and all instructions. Failure to do so will be at bidder's risk.
 - b) Each bidder shall furnish the information required by the Solicitation. The bidder shall sign the Solicitation and print or type his name on the Schedule. Erasures or other changes must be initiated by the person signing the bid. Bids signed by an agent are to be accompanied by evidence of his authority unless such evidence has been previously furnished to the issuing office.
 - c) Unit price for each unit offered shall be shown and such price shall include packing unless otherwise specified. A total shall be entered in the amount column of the Schedule for each item offered. In case of discrepancies between a unit price and extended price, the unit price will be presumed to be correct.
~~XXXXX SUPPLIES OR SERVICES OTHER THAN those specified WILL NOT BE CONSIDERED~~
 - d) ~~Time, if stated as a number of days, means calendar days and will include Saturdays, Sundays, and holidays beginning the day after the issuance of a Notice to Proceed. Time stated ending on a Saturday, Sunday or Government of Guam legal holiday will end at the close of the next business day.~~
- 3. EXPLANATION TO BIDDERS:** Any explanation desired by a bidder regarding the meaning or interpretation of the Solicitation, drawings, specifications, etc., must be submitted in writing and with sufficient time allowed for a written reply to reach all bidders before the submission of their bids. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective bidder concerning a Solicitation will be furnished to all prospective bidders in writing as an amendment to the Solicitation if such information is necessary for bidders in submitting bids on the Solicitation or if the lack of such information would be prejudicial to uninformed bidders.
- 4. ACKNOWLEDGEMENT OF AMENDMENTS TO SOLICITATIONS:** Receipt of an amendment to a Solicitation by a bidder must be acknowledged by signing an acknowledgement of receipt of the amendment. Such acknowledgement must be received prior to the hour and date specified for receipt of bids.
- 5. SUBMISSION OF BIDS:**
 - a) Bids and modifications thereof shall be enclosed in sealed envelopes and addressed to the office specified in the Solicitation. The bidder shall show the hour and date specified in the Solicitation for receipt, the Solicitation number, and the name and address of the bidder on the face of the envelope.
 - b) Telegraphic bids will not be considered unless authorized by the Solicitation. However, bids may be modified or withdrawn by written or telegraphic notice, provided such notice is received prior to the hour and date specified for receipt (*see paragraph 6 of these instructions*).
 - c) Samples of items, when required, must be submitted within the time specified, unless otherwise specified by the Government, at no expense to the Government. If not destroyed by testing, samples will be returned at bidder's request and expense, unless otherwise specified by the Solicitation.
 - d) Samples or descriptive literature should not be submitted unless it is required on this Solicitation. Regardless of any attempt by a bidder to condition the bid, unsolicited samples or descriptive literature will not be examined or tested at the bidder's risk, and will not be deemed to vary any of the provisions of this Solicitation.
- 6. FAILURE TO SUBMIT BID:** If no bid is to be submitted, do not return the Solicitation unless otherwise specified. A letter or postcard shall be sent to the issuing office advising whether future Solicitations for the type of supplies or services covered by this Solicitation are desired.
- 7. LATE BID, LATE WITHDRAWALS, AND LATE MODIFICATIONS:**
 - a) **Definition:** Any bid received after the time and date set for receipt of bids is late. Any withdrawal or modification of a bid received after the time and date set for opening of bids at the place designated for opening is late (*Guam Procurement Regulations Section 3-202.11.1*).
 - b) **Treatment:** No late bid, late modification, or late withdrawal will be considered unless received before contract award, and the bid, modification, or withdrawal would have been timely but for the action or inaction of territorial personnel directly serving the procurement activity (*Guam Procurement Regulations Section 3-202.11.2*).
- 8. DISCOUNTS:**
 - a) Notwithstanding the fact that prompt payment discounts may be offered, such offer will not be considered in evaluating bids for award unless otherwise specified in the Solicitation. However, offered discounts will be taken if payment is made within the discount period, even though not considered in the evaluation of bids.
 - b) In connection with any discount offered, time will be computed from date of delivery and acceptance of the supplies to the destination as indicated in the purchase order or contract. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the Government check.
- 9. GOVERNMENT FURNISHED PROPERTY:** No material, labor or facilities will be furnished by the Government unless otherwise provided for in the Solicitation.

- 10. SELLERS' INVOICES:** Invoices shall be prepared and submitted in quadruplicate (*one copy shall be marked "original"*) unless otherwise specified. Invoices shall be **"certified true and correct"** and shall contain the following information: Contract and order number (if any), item numbers, description of supplies or services, sizes, quantities, unit prices, and extended total. Bill of lading number and weight of shipment will be shown for shipments made on Government bills of lading.
- 11. RECEIPT, OPENING AND RECORDING OF BIDS:** Bids and modifications shall be publicly opened in the presence of one or more witnesses, at the time, date, and place designated in the Invitation for Bids. The name of each bidder, the bid price, and such other information as is deemed appropriate by the Procurement Officer, shall be read aloud and recorded, or otherwise made available. The names and addresses of required witnesses shall be recorded at the opening. The opened bids shall be available for public inspection except to the extent the bidder designates trade secrets or other proprietary data to be confidential as set forth in accordance with Section 12, below. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. Prices, makes and models or catalogue numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary (*Guam Procurement Regulations Section 3-202.12.2*).
- 12. CONFIDENTIAL DATA:** The Procurement Officer shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. If the parties do not agree as to the disclosure of data, the Procurement Officer shall inform the bidders in writing what portions of the bid will be disclosed and that, unless the bidders protest under Chapter 9 of the Guam Procurement Act (*P.L. 16-124*), the bids will be so disclosed. The bids shall be opened to public inspection subject to any continuing prohibition on the disclosure of confidential data (*Guam Procurement Regulations Section 3-202.12.3*).
- 13. MULTI-STEP SEALED BIDDING:**
- a) It is defined as a two-phase process consisting of a technical first-phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the territory, and a second-phase in which those bidders whose technical offers are determined to be acceptable during the first-phase have their priced bids considered. It is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtained the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to evaluate and determine the acceptability of technical offers.
 - b) In addition to the requirements set forth in the General Terms and Conditions and the Special provisions, the following applies:
 - 1) only unpriced technical offers are requested in the first phase;
 - 2) priced bids will be considered only in the second phase and only from bidders whose unpriced technical offers are found acceptable in the first phase;
 - 3) the criteria to be used in the evaluation are those specified in the Special Provisions and the General Terms and Conditions;
 - 4) the territory, to the extent the Procurement Officer finds necessary, may conduct oral or written discussion of the unpriced technical offers;
 - 5) the bidders, may designate those portions of the unpriced technical offers which contain trade secrets or other proprietary data which are to remain confidential; and,
 - 6) the service being procured shall be furnished generally in accordance with the bidder's technical offer as found to be finally acceptable and shall meet the requirements of the Invitation for Bids.
 - c) **RECEIPT AND HANDLING OF UNPRICED TECHNICAL OFFERS.**
Unpriced technical offers shall not be opened publicly, but shall be opened in front of two or more procurement officials. Such offers shall not be disclosed to unauthorized persons. Bidders may request nondisclosure of trade secrets and other proprietary data identified in writing.
 - d) **EVALUATION OF UNPRICED TECHNICAL OFFERS.**
The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bids. The unpriced technical offers shall be categorized as:
 - 1) acceptable;
 - 2) potentially acceptable, that is, reasonably susceptible of being made acceptable; or
 - 3) unacceptable. The Procurement Officer shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.
 - e) The Procurement Officer may initiate Phase Two of the procedure if, in the Procurement Officer's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without technical discussions. If the Procurement Officer finds such is not the case, the Procurement Officer shall issue an amendment to the Invitation for Bids or engage in technical discussions as set forth in Subsection 3-202.20.5 of this Section.
- e)** Upon the completion of Phase One, the Procurement Officer shall invite each acceptable bidder to submit a price bid. Upon submission of prices, the Procurement Officer shall prepare the final evaluation and reconsideration for the Chief Procurement Officer's approval.