

0017034

SECTION 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 BP SINGAPORE PTE. LIMITED, hereinafter referred to as "CONTRACTOR":

WITNESSETH:

RECITALS

WHEREAS, **AUTHORITY** has issued an Invitation For Bid for a THREE (3) year term fuel supply Contract, Invitation For Bid, **IFB-GPA- 028 -06**, for the supply of **AUTHORITY** 's fuel oil requirements; and

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 a THREE (3) year term fuel supply Contract that will meet the needs of the **AUTHORITY** and with **GPA**'s option to extend for TWO (2) additional ONE (1) year terms, renewable annually, under the same terms and conditions of the base Contract provided hereto, with mutual agreement of both parties, unless sooner terminated in accordance with the provisions hereof or canceled due to unavailability of funds, which is to be

proven to the satisfaction of the **CONTRACTOR**.

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** residual fuel oil requirements for power generating plants in Guam for the term of the Contract. The **estimated** total fuel oil requirement is about THREE MILLION BARRELS PER YEAR (3,000,000 bbls/yr). Minimum purchase under the Contract is estimated at TWO MILLION BARRELS PER YEAR (2,000,000 bbls/yr). Contractor shall be the supplier of about 98% of **GPA's** residual fuel oil requirements during the contract period. **GPA** shall have the right to purchase locally re-processed used oil to meet the remaining 2% of **GPA's** residual fuel oil requirements. The first delivery of fuel oil pursuant to the Contract is anticipated to be *after* February 01, 2007.

<u>Grades of Fuel</u>	<u>Estimated Quantity</u>
High Sulfur Fuel Oil (HSFO), 2.00% S. Max.	1,800,000 barrels
Low Sulfur Fuel Oil (LSFO), 1.19% S. Max.	1, 200,000 barrels

Section 1.02. TERM.

The Contract Term shall be for THREE (3) years and shall commence after 00:01 hour

February 01, 2007, and shall continue until midnight of January 31, 2010, and with GPA's option to extend the Contract for TWO (2) additional ONE (1) year terms, to be renewed annually, under the same terms and condition provided hereto, with mutual agreement of both parties, unless sooner terminated in accordance with the provisions hereof or canceled due to unavailability of funds. The contractual obligation of GPA and CONTRACTOR is subject to the availability of funds, which is to be proven to the satisfaction of the Contractor.

Section 1.03. CONTRACT PRICE.

The total contract price in U.S. Dollars per FORTY TWO (42) gallon barrel for all residual fuel oil delivered **DES**, GUAM (discharge port) pursuant to Section 1.04 of the Fuel Oil Supply Contract to GPA shall be **inclusive** of all costs and liabilities incurred prior to delivery at discharge port, Cabras Island, Guam. **BID PRICE OFFER** shall be entered on Section 1.03 of Article I of the signed (bid offeror) Fuel Oil Supply Contract.

DES (EX-SHIP) provisions .

Under this term, the **CONTRACTOR** quotes a price including the cost of the goods, the marine insurance, and all transportation charges to the designated point of destination (**GPA**). Under this quotation, the **CONTRACTOR** must:

- (1) provide and pay for transportation to named point of destination (**GPA**);
- (2) pay applicable taxes or charges levied on the cargo outside of Guam;
- (3) provide and pay for marine insurance;
- (4) provide war risk insurance ;
- (5) obtain and dispatch promptly to **GPA**, or its agent, a clean bill of lading , and also

- insurance policy or negotiable insurance certificate;
- (6) provide GPA with certificates of origin, or any documents issued in the country of origin, or of shipment, or both, which GPA may require for importation of goods and, where necessary, for their passage in transit into another country.

The CONTRACT PRICE shall be the BID PRICE OFFER calculated as the BID REFERENCE PRICE plus the Contractor's FIXED PREMIUM FEE in U.S. dollars per FORTY TWO (42) gallon barrel for all residual fuel oil delivered to GPA at the Port of Guam.

BID PRICE OFFERS:

Bid Offer (DES EX-SHIP Guam):

Item (a): **High Sulfur Fuel Oil (HSFO) : (2.00 % Sulfur Max) :**

\$ 60.679 per barrel (in three decimal places)

(Offer in words) Sixty dollars, sixty-seven and nine tenths cents

Item (b): **Low Sulfur Fuel Oil (LSFO) : (1.19 % Sulfur Max) :**

\$ 64.164 per barrel (in three decimal places)

(Offer in words) Sixty-four dollars, sixteen and four tenths cents

BID REFERENCE PRICE:

Platt's Singapore Products Assessment for Fuel Oil Cargoes "HSFO 180 Cst"
Reference Date: May 02, 2006 (Schedule A)

	<u>Low (\$/MT)</u>	<u>High (\$/MT)</u>
HSFO 180 CST	\$365.46	\$365.50

The following is a sample calculation of the mean price for HSFO 180 cst published in the **Platt's Marketscan, Singapore Products Assessments** for Fuel Oil Cargoes for May 02, 2006. The conversion factor used under this Contract is 6.60 barrels per metric ton.

$$\begin{aligned} \text{Mean Singapore Spot} &= \text{Low} + \text{High Price Assessments:} \\ &= \frac{\$365.46 + \$365.50}{2} \text{ per Metric Ton (MT)} \\ &= \$365.48 \text{ per Metric Ton (MT)} \\ &= \$55.376 \text{ per barrel} \end{aligned}$$

Edy

(Schedule A)

Asia-Pacific/Arab Gulf Marketscan

Volume 25 / No 81 / May 2, 2006

Asia Products \$/bbl

Singapore

FOB Singapore MOPS strip Premium/discount

Gasoline 97 unleaded +93.01 - 93.05+ +24.37/24.41+

Gasoline 95 unleaded +90.03 - 90.07+ +21.39/21.43+

Gasoline 92 unleaded +88.51 - 88.55+ +19.87/19.91+

Naphtha +68.95 - 68.99+ +68.62 - 68.66+

Spot naphtha +69.07 - 69.11+ 0.40/0.50

Kerosene +89.71 - 89.75+ +89.61 - 89.65+ 0.08/0.12

Gasoil 50 ppm +96.91 - 96.95+ -11.28/11.32-*

Gasoil 0.05% sulfur +91.01 - 91.05+ 5.38/-5.42 *

Gasoil 0.25% sulfur +90.51 - 90.55+ -4.88/4.92-*

Gasoil Reg 0.5% sulfur +86.81 - 86.85+ +85.61 - 85.65+ -1.18/1.22-

Demurrage Clean (\$) +27500.00

MTBE (\$/mt) +685.00 - 690.00+

Fuel oil 180 CST 2% (\$/mt) +374.48 - 374.52+

HSFO 180 CST (\$/mt) +365.46 - 365.50+ +364.23 - 364.27+ 1.21/1.25

HSFO 380 CST (\$/mt) +356.23 - 356.27+ +354.98 - 355.02+ 1.23/1.27

Demurrage Dirty (\$) 25000.00

Ex-Wharf 180 CST +368.00-370.00+

Ex-Wharf 380 CST +358.00-360.00+

LSWR Mixed/Cracked +60.30 - 60.40+ 0.75/1.25 **

*Spread to FOB Singapore naphtha: * Differential to FOB Singapore Gasoil Reg 0.5%; ** Differential to Pertamina mixed/cracked formula*

Singapore paper

Balance May * Jun Jul

Naphtha +68.63/68.67+ +68.58/68.62+ +68.58/68.62+

Kero +89.58/89.62+ +89.58/89.72+ +90.18/90.22+

Gasoil Reg 0.5% +85.98/86.02+ +84.63/84.67+ +84.18/84.22+

HSFO 180 CST +364.23/364.27+ +364.23/364.27+ +367.48/367.52+

HSFO 380 CST +354.98/355.02+ +354.98/355.02+ +358.23/358.27+

** 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 +91.67 - 91.71+

Gasoline 95 RON unleaded * +86.50 - 86.54+ +93.19 - 93.23+

Naphtha LR2 (\$/mt) +611.01-612.51+

Naphtha (\$/mt) +606.37-607.87+ 9.50/10.50 +644.75 - 646.25+

Naphtha 2nd 1/2 Jun (\$/mt) +647.00 - 647.50+

Naphtha 1st 1/2 Jul (\$/mt) +645.75 - 646.25+

Naphtha 2nd 1/2 Jul (\$/mt) +644.75 - 645.25+

Kerosene +87.02 - 87.06+ 1.08/1.12 +91.86 - 91.90+

Kerosene LR2 +87.59 - 87.63+

Gasoil 0.05% sulfur +90.26 - 90.30+ -9.78/9.82-

Gasoil 0.25% sulfur +84.76 - 84.80+ -4.28/4.32-

Gasoil +83.96 - 84.00+ 3.48/3.52

Gasoil LR2 +84.56 - 84.60+

Gasoil *** +99.26 - 99.30+

HSFO 180 CST (\$/mt) +353.71-353.75+ +376.76-376.80+

HSFO 380 CST (\$/mt) +344.48-344.52+ +-10.00/-9.00+

** FOB Jebel Ali; **Spot differential to MOPAG quotes; ***Netback from FOB Singapore Gasoil 50ppm, Discount to FOB AG*

HSFO 180 CST quotes

INVOICE PRICE DETERMINATION:

(a) **High Sulfur Fuel (HSFO), 2.00% S Max:**

The invoice price per barrel for the **High Sulfur Fuel Oil (HSFO)** is the sum of :

- (i) The arithmetic average of the mean-price assessments determined assessments defined below, and
- (ii) The Contractor's **FIXED PREMIUM FEE** for **HSFO**.

FIXED PREMIUM FEES is equal to the difference between the **BID PRICE OFFER** and the **BID REFERENCE PRICE**.

The arithmetic average shall be that of the mean prices posted during the calendar month prior (preceding) to the month in which the Bill of Lading date falls.

(b) **Low Sulfur Fuel Oil (LSFO), 1.19% S Max:**

The invoice price per barrel for the **Low Sulfur Fuel Oil (LSFO)** is the sum of :

- (i) The arithmetic average of the mean-price assessments determined assessments defined below, and
- (ii) The Contractor's **FIXED PREMIUM FEE** for **LSFO**.

FIXED PREMIUM FEES is equal to the difference between the **BID PRICE OFFER** and the **BID REFERENCE PRICE**.

The arithmetic average shall be that of the mean prices posted during the

calendar month prior (preceding) to the month in which the Bill of Lading date falls.

The invoice shall be issued based on bill of lading quantity.

Section 1.04. FUEL OIL DELIVERY.

Title to the fuel oil and custody thereof shall pass from **CONTRACTOR** to **GPA** when the fuel oil has passed the vessel's permanent flange hose connection at the discharge port. Product temperature shall be maintained between one hundred five to one hundred fifteen degrees Fahrenheit (105 °F -115 °F) on arrival and during the discharge at Guam Port.

Section 1.05. TERMS OF PAYMENT.

Payment shall be made in U.S. Dollars Funds without off-set, deduction, or counter-claim within THIRTY (30) calendar days (30-days net term) after the Bill of Lading date provided vessel tenders its NOR at Guam Port within FIFTEEN (15) days after the B/L date, otherwise it extends day by day (B/L date inclusive). In case payment due on Bank holiday or Saturday in Guam, payment shall be made immediately preceding banking day. However, should payment due falls on Sunday or Monday bank holiday in Guam, payment shall be made on the immediately following banking day. This payment transaction will be secured by an **IRREVOCABLE LETTER OF CREDIT (L/C)** which will be opened by **GPA** at a first class international bank mutually agreeable to both **GPA** and the **CONTRACTOR**.

In the event that a duly executed Letter of Credit (LC) is amended or cancelled due to error or adjustments caused by the **CONTRACTOR**, the **CONTRACTOR** shall reimburse **GPA** for any penalties for the amendment or cancellation of the LC.

The **CONTRACTOR** shall endeavor to assist **GPA** to revise the payment due dates if requested by **GPA** accordingly.

Section 1.06. PAYMENT OF TAXES AND OTHER GOVERNMENT CHARGES.

All fuels under the terms of this Contract are exempt from the Government of Guam Liquid Fuel Tax and the Government of Guam Gross Receipts Tax as provided by 12 G.C.A., Section 8115. 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 renegotiation for an equitable adjustment in price, pursuant to Section 3.03 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 warrants that the fuel oil shall meet the specifications prescribed herein under Article II and other pertinent sections. If the fuel oil fails to meet the specifications herein, **CONTRACTOR** shall be liable for any direct damages resulting therefrom.

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

Claims against the **CONTRACTOR** for direct costs incurred on account of their negligent actions shall be given in writing together with all supporting documents, invoices and correspondence by **GPA** within thirty days (30) from date of delivery on Guam of that particular cargo of fuel oil to which the claim relates as specified in Section 1.04.

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** were inaccurate, incomplete, or non-current, the 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.

ARTICLE II

Section 2.01. PRODUCT AND QUALITY.

Table of Physical and Chemical characteristics of the cargo.

<u>Ref Item</u>	<u>Item description</u>	<u>Unit of Measure</u>	<u>Approved Test method</u>	<u>Acceptable alternate Test methods</u>	<u>Minimum allowed Value</u>	<u>Maximum allowed Value</u>	<u>Comments</u>
F.1	Sulphur content	% mass	ASTM D 4294	ASTM D 2622	N/A	HSFO = 2.00 LSFO = 1.19	
F.2	Pour Point	Deg C	ASTM D 97	N/A	N/A	21	
F.3	Flash Point	Deg C	ASTM D 93	N/A	66	N/A	
F.4	Fire Point	Deg C	ASTM D 92	N/A	94	N/A	
F.5	Viscosity – Saybolt Universal Seconds	Seconds at 100 °F	ASTM D 445 converted with ASTM D 2161	N/A	600	1500	
F.6	Sediment by Extraction	% mass	ASTM D 473	N/A	N/A	0.50	
F.7	Water by Distillation	% Volume	ASTM D 95	N/A	N/A	0.50	
F.8	Vanadium Content	Parts per million	ASTM D 5708	a)UOP 800 b) ASTM D 5184 c)ASTM D 5863 d) IP 501/ e) IP 433 / ISO 14597 f) IP 470 g) IP465/EN 13131	N/A	80	
F.9a	Silicon Content	Parts per million	ASTM D 5184	a) IP 470 b) IP377 / ISO 10487 c) IP 501	N/A	Combined Al + Si not to exceed 80	
F.9b	Aluminium Content	Parts per million	ASTM D 5184	a) IP 470 b) IP377 / ISO 10487 c) IP 501	N/A	individual results to be reported separately	
F.10	Gross heating Value	Million BTU per US Bbl)	ASTM D 240	N/A	5.9	N/A	See comments below

<u>Ref Item</u>	<u>Item description</u>	<u>Unit of Measure</u>	<u>Approved Test method</u>	<u>Acceptable alternate Test methods</u>	<u>Minimum allowed Value</u>	<u>Maximum allowed Value</u>	<u>Comments</u>
F.11	Carbon Residue - Micro carbon	% mass	ASTM D 4530	a) ASTM D 5245 b) ASTM D 189 (see note A)	N/A	15	Note a = CCR result shall be converted using table in method to RCR equivalent
F.12	Ash	% mass	ASTM D 482	N/A	N/A	0.10	
F.13c	Total sediment - accelerated	% mass	ISO 10307-2	N/A	N/A	0.15	
F.18	Compatibility	a) Cleanliness ratio b) Compatibility ratio	ASTM D 4740	N/A	N/A	a) 2 b) 2	(a) to be reported from loadport. (b) to be determined on arrival Guam unless otherwise notified in the specific instance. Note F.18
F.20	API gravity	-	ASTM D 287	ASTM D 1298 and conversion	14.0	23.0	

Note F.10: Contractor will guarantee a minimum of 6.0 for the 6-shipment weighted average of Gross Heating Value. This weighted average will be calculated on basis of results as tested at the load port and applied to shipments one through six, seven through twelve, thirteen through eighteen and so on.

Note F.18: Contractor shall assist GPA to ensure that each shipment of fuel oil is compatible with a representative sample of the previous shipment of the same grade. Testing for compatibility will be conducted at load port according to the test method ASTM D-4740 mutually agreed between both parties and the Contractor will guarantee spot rating of 2 or better.

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

Section 2.02. QUANTITY AND QUALITY ASSURANCE.

- (a) Inspection of fuel oil cargo loading and discharge to determine quantity and quality shall be witnessed and or conducted by the appointed third party independent Inspector mutually acceptable to **GPA** and the **CONTRACTOR**. Such independent inspector shall also perform or witness the required sampling, gauging, and inspection of vessel and shore tanks before and after loading at load port as well as discharge port, Guam. Final determination shall be based on the discharge port findings. All quantity calculations and correction to volume at sixty (60) degree (Fahrenheit) shall be in accordance with the ASTM-IP Petroleum Measurement Tables, Table 6 – the latest edition published shall be applicable. All costs and charges for the inspections for the load port shall be borne by the **CONTRACTOR**, and costs at the discharge port shall be equally shared by **GPA** and the **CONTRACTOR**.
- (b) Load port samples from individual shore loading tanks shall be sampled by the independent inspector who shall perform or witness the required tests for quality certification prior to loading. Shore tank composite shall be tested and the quality must conform to the specifications under Section 2.01 of the contract. Vessel's composite samples from all vessel's cargo compartments shall also be obtained by the inspector for the consignee, **GPA**, in care of the ship's master. All Samples shall be equally divided into THREE (3) parts, sealed, properly identified, and designated with the required "Chain of Custody of Samples" documentations.
- (c) The quality of the cargo to be delivered shall be determined by an independent inspector mutually acceptable to **GPA** and the **CONTRACTOR** and is to be based on the ship



composite samples taken at the port of discharge. The independent inspector shall sample ship's cargo compartments for ship composite, in such a manner as to secure samples which are representative of the entire cargo. Discharge tanks samples and ship's composite samples shall be divided into THREE (3) parts. One part shall be for **CONTRACTOR** and TWO (2) parts shall be for **GPA**, and **GPA** shall utilize one sample for recertification and reserve the other sample as a retained referee sample. All samples shall be retained for not less than ONE HUNDRED TWENTY (120) days after delivery. In the event of dispute as to quality, analysis of the ship composite samples taken at the discharge port shall be made by an independent inspector, which analysis shall be final and binding upon both parties.

Section 2.03. SEDIMENT AND WATER.

Quantity deduction shall be allowed for Water by Distillation and/or Sediment by Extraction in excess of the maximum specified in Section 2.01.

Section 2.04. 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.

Section 2.05. QUANTITY DETERMINATION.

Quantity determination shall be performed by the third party independent inspector mutually acceptable to **GPA** and the **CONTRACTOR** based from the load port shore tanks gauges as to be reflected as Bill of Lading quantity NET barrels at sixty degrees Fahrenheit (60 °F). All quantities must be corrected to volume at sixty degrees Fahrenheit (60 °F) in accordance with the ASTM-IP Petroleum Measurement Tables, Table 6B, the latest edition published shall be applicable.

Quantity certification prepared by independent inspector shall be final and binding upon both parties. In the event that the variances between the B/L quantity and the discharge port (shore tanks) receipts, the **AUTHORITY** shall pay (absorb) for a quantity shortfall up to ONE-HALF PERCENT (0.50 %) of the barrel established quantity; shortages beyond the 0.5% shall be covered by the **CONTRACTOR**.

ARTICLE III

Section 3.01. SECURITY OF SUPPLY.

For security of supply, **CONTRACTOR** reserves the right to supply fuel oil meeting **GPA** specifications from any 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 above.

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 product quality 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, unless **GPA** grants a further period of time before the date **GPA** is required to make payment. **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.

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 by either party to carry out or observe any of the terms or conditions



of the Contract shall, except in relation to obligations to make payments under the Contract, give rise to any claim against that party in question or be deemed a breach of the Contract if such failure or omission arises from any cause reasonably beyond the control of that party, including but without prejudice to the generality of the foregoing:

- (a) War, etc. War, hostilities, acts of public enemy or belligerents, sabotage, blockade, revolution, insurrection, riot or disorder;
- (b) Restraints. Arrest or restraint of princes, rulers or peoples;
- (c) Confiscation. Expropriation, requisition, confiscation or nationalization;
- (d) Rationing. Embargoes, export or import restrictions or rationing or allocation, whether imposed by law, decree or regulation or by voluntary cooperation of industry at the insistence or request of any governmental authority or person purporting to act therefore;
- (e) Regulations. Interference by restriction or onerous regulations imposed by civil or military authorities, whether legal or de facto and whether purporting to act under some constitution, decree, law or otherwise;
- (f) Acts of God. Acts of God, fire, frost or ice, earthquake, storm, lightning, tide, tidal wave, or peril of the sea, accident of navigation or breakdown or injury of vessels;
- (g) Loss for Tankers. Loss of tanker tonnage due to sinking by belligerents or to governmental taking whether or not by formal requisition;
- (h) Accidents. Accidents to or adjuncts of shipping navigation;
- (i) Strikes. Epidemics, quarantine, strikes or combination of workmen, lockouts, or other labor disturbances;
- (j) Explosions. Explosion, accidents by fire or otherwise to wells, pipes, storage facilities, refineries, installations, machinery;
- (k) Taking by Government. Unavailability of fuel because of the election of the government of the country of its origin to take royalty product in kind;
- (l) Other Events. Any event, matter or thing wherever occurring and whether or not of the same class or kind as those set forth, which shall not be reasonably within the control and without the fault or negligence of the party affected thereby.

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

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 Guam dock/**GPA** tanks hereunder; however, during the force majeure condition the obligation shall be suspended, except for fuel oil deliveries made prior to the force majeure condition.

Section 3.08. PRORATION OR EQUITABLE ALLOCATION.

If any of the events enumerated in Section 3.05 supra have occurred, Contractor shall be

entitled to reduce delivery hereunder to such extent as the Contractor shall reasonably determine and the Contractor shall take reasonable efforts to assist GPA in acquiring an alternative source of supply.

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 the part of the Contractor, **GPA** may seek an alternative source of fuel oil so long as such condition of negligence shall exist. 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 provided always that GPA shall use all reasonable efforts to mitigate their loss and damage, if any.

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. If circumstances falling under Section 3.05 supra continue to be in force for more than 30 days, the Contractor shall have the right to terminate the contract after 60 days from the date of giving written notice to GPA.

Section 3.11. DISPUTES.

Any dispute arising out of or in connection with this Contract, including any question

regarding its existence, validity or termination, and which are not resolved by mutual agreement shall be referred to the Superior Court of the Territory of Guam.

Section 3.12: CONTRACTOR'S INSURANCE

Section is deleted

Section 3.13: INDEMNITY

No action or proceedings whatsoever shall be brought under the Contract against either party unless notice in writing is given to the other party, together with all supporting evidence and/or documentation, within one (1) year after the date of bill of lading or the date of the alleged occurrence giving rise to the claim, whichever is the earlier, failing which any liability shall be completely extinguished and the parties shall be forever discharged from all liability whatsoever and howsoever arising.

Except as expressly provided in the Agreement, neither CONTRACTOR nor GPA shall be liable, whether in contract or in tort or otherwise, for any consequential, indirect or special losses or damages of any kind (including but not limited to loss of profit, loss of use and loss of interest) whether foreseeable or not, arising out of or in any way connected with the Contract, its implementation, performance of or failure to perform the Contract.

Section 3.14: TRANSPORTATION.

Nomination Procedures:

The AUTHORITY shall nominate and advise the CONTRACTOR of the 10-day delivery date range not later than 30 days before the 1st calendar day of the delivery month. The AUTHORITY and CONTRACTOR shall mutually agree to narrow down to a 5-day delivery date range 21 days prior to the 1st day of the 5-day delivery date range.

(a) **CONTRACTOR** shall arrange for the transportation of the fuel oil from loading port to the Guam dock, and give **GPA** at least FIFTEEN (15) days prior notice of the approximate arrival date of each tanker.

All risk of loss, cost and liabilities prior to the time of passage of title of the fuel oil to shall be on the **CONTRACTOR**. **CONTRACTOR** or its agents shall further arrange for the use of pier receiving facilities' Manager (Shell, Guam), U.S. Coast Guard, U.S. Custom and Immigration inspections, Guam Commercial Port authorities, Guam tug services, Port stevedores services, and others as necessary for the safe berthing of fuel tankers. **GPA** shall exercise due diligence and make its best effort to assist **CONTRACTOR** arrange for safe berthing facilities to accommodate vessels with a maximum draft of FIFTY FEET (50') at Shell dock F-I. **GPA** shall provide the **CONTRACTOR** an estimated quantity to be delivered approximately THIRTY (30) days from estimated delivery date.

GPA shall provide written notification to the **CONTRACTOR** as the final delivery quantity approximately THIRTY (30) days before the delivery date which will also be specified in this final notice. **GPA estimates** a single delivery requirement in the range of TWO HUNDRED THIRTY THOUSAND TO TWO HUNDRED EIGHTY THOUSAND BARRELS (230,000 -280,000 bbls). The delivery maybe a single cargo of either LSFO or HSFO, or a split SEGREGATED cargo of both LSFO and HSFO, as determined by GPA.

(b) **Tanker nomination procedures:**

The **AUTHORITY** shall advise the contractor of projected "tankers' schedule and quantities per slate" THIRTY (30) days before the commencement of the contract, and **CONTRACTOR** agrees to provide all fuel requirements of **GPA** as advised and all succeeding cargo requirements thereafter.

b-1 Vessel Specification

All vessels nominated by the Contractor for fuel oil deliveries to GPA shall MEET Shells' vessel vetting requirements and be pre-approved by the F-1 dock facility manager, Shell Guam, Inc. The Contractor or its agents shall be responsible in seeking vessel clearance from Shell. In the event that vessels owned or chartered by the Contractor do not meet the Shell specification, Contractor shall have the vessel shortfalls corrected or have another vessel nominated and ensure that a suitable vessel is cleared for timely delivery of cargo to GPA.

(c) **Ship Laytime and Demurrage:**

Ship laytime of thirty-six (36) hours at the discharge port, to commence six (6) hours after the tender of Notice of Readiness (NOR) or when the vessel is all fast (berths) whichever occurs first, and to cease upon last cargo hose disconnection.

In case the vessel arrives at night time (after 5:00 P.M.), the NOR shall be tendered at 7:00 A.M. the next day.

c-1 Ship Demurrage: If laytime allowed is exceeded, GPA shall be liable to pay the **CONTRACTOR** demurrage. However, any delay due to breakdown of the vessel's equipment or

failure by vessel to comply with the requirements of the discharge port with respect to equipment aboard, shall not be counted or included in the laytime used for calculating demurrage. Demurrage cost if payable by GPA shall be as per Charter Party rates and terms and the Contractor shall furnish GPA with a copy of such Charter Party if requested. Such charges must be submitted to GPA within 90 days after of Bill of Lading date.

CONTRACTOR's 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 3.15: COORDINATION - AMMUNITION UNLOADING.

- (a) The **CONTRACTOR** is hereby advised and agrees that the unloading of fuel oil is not permitted during the time that the unloading or loading of ammunition is taking place at the U.S. Navy's ammunition wharf.
- (b) Coordination to prevent conflict in unloading between ammunition and fuel oil will be effected jointly by responsible parties representing the U.S. Navy, the Port Authority, **GPA** and the **CONTRACTOR**. Any charges that may result because of demurrage caused by delay in discharge of fuel oil related to ammunition unloading or loading will be borne by the **GPA**, provided that notice of arrival of tanker is given to **GPA** by the **CONTRACTOR** or **its agents fifteen days** (15) days prior to vessel ETA Guam. In absence of such notice any delay costs shall be borne solely by the **CONTRACTOR**.



ARTICLE IV

Section 4.01: 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. **CONTRACTOR** may, at its option, do either of the following:

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

Section 4.02: FAILURE TO COMPLY WITH LAWS.

In the event the **CONTRACTOR** 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 otherwise constitute endangerment of the health, safety and welfare of the citizens of the Territory of Guam, **GPA** may at its sole discretion terminate this Contract upon THIRTY (30) days written notice.



SECTION 4.03: DEFAULT.

(a) **Default.**

If the CONTRACTOR refuses or fails to perform any of their obligations under this Agreement, GPA shall notify the CONTRACTOR in writing within 30 days of the breach. If the CONTRACTOR does not remedy the breach within 30 days of the date of notification, GPA may by giving written notice to the CONTRACTOR terminate the Agreement in whole or suspend taking of delivery under the Contract.

In the event of termination or suspension under this provision, GPA reserves the right to procure fuel oil supply from another source immediately at the prevailing market rate and the CONTRACTOR shall be liable for the difference between the contract price and the prevailing market price at the time of termination or suspension.

(b) **Compensation.**

GPA shall pay for fuel oil delivered to Guam Dock and shall be obliged to accept delivery of and pay for cargo in transit to Guam as scheduled provided cargo meets specifications

(c) **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 4.04: 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 4.05. TERMINATION FOR CONVENIENCE.

Section is deleted.

Section 4.06: REMEDIES CUMULATIVE.

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

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:

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



CONTRACTOR: BP Singapore Pte. Limited
1 Harbour Front Avenue
02-01 Keppel Bay Tower
Singapore, 098632
Phone: +65 6371 8888
Fax: +65 6371 8855

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** 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 or his designee, of the Consolidated Commission on Utilities is required to bind the **AUTHORITY**.

Failure by either party to object to any failure of performance by the other party of any provision of the Contract shall not constitute a waiver of, or stop 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 Invitation 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,

only 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 in accordance with the laws of the Superior Court of the Territory of Guam. The Contractor agrees to accept the jurisdiction of the Superior Court of the Territory of Guam for the resolution of any claims. 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.

Section 5.09: 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 5.10: 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 5.11: 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 5.12: PARTIAL INVALIDITY.

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

Section 5.13: 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 - 028 -06**. 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, GENERAL MANAGER
GUAM POWER AUTHORITY (GPA)

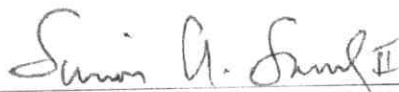
1/30/07
DATE



EDMUND LAU, TRADING MANAGER
BP SINGAPORE PTE. LIMITED

 **BP SINGAPORE PTE LIMITED**
1, HARBOURFRONT AVENUE
#02-01 KEPPEL BAY TOWER
SINGAPORE 098632

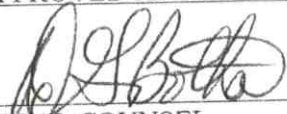
30th JAN 2007
DATE



SIMON A. SANCHEZ II, CHAIRMAN,
GUAM POWER AUTHORITY (GPA)


2/6/07
DATE

APPROVED AS TO FORM:



LEGAL COUNSEL
GUAM POWER AUTHORITY

2/6/07
DATE