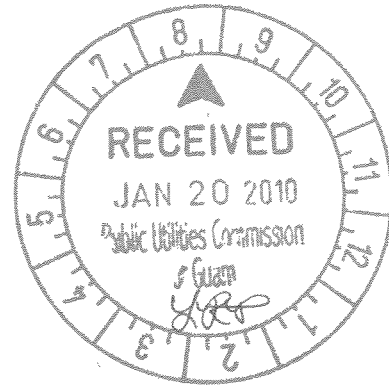


1 **D GRAHAM BOTHA, ESQ.**  
2 **Legal Counsel**  
3 **Guam Power Authority**  
4 **1911 Route 16, Suite 227**  
5 **Harmon, Guam 96913**  
6 **Ph: (671) 648-3203/3002**  
7 **Fax: (671) 648-3290**



8 **BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

9 IN THE MATTER OF: )

10 The Application of the Guam Power Authority )  
11 to Approve the Contract for Supply of Diesel )  
12 Engine Cylinder Lubricating Oil to GPA. )

**DOCKET NO. 94-04**

**PETITION FOR CONTRACT REVIEW**

13 \_\_\_\_\_ )  
14 **COMES NOW**, the GUAM POWER AUTHORITY (GPA), by and through its counsel  
15 of record, D. GRAHAM BOTHA, ESQ., and hereby files GPA's Petition for the Public Utilities  
16 Commission of Guam to review and approve the Contract for Supply of Diesel Engine Cylinder  
17 Lubricating Oil to Shell Guam, Inc., as follows:

18 **BACKGROUND**

19 The Guam Power Authority awarded pursuant to IFB GPA-089-05 a contract to supply  
20 diesel engine cylinder oil to Shell Guam, Inc. for the period October 1, 2005, to September 30,  
21 2006, with a final extension through November 2009. The CCU in Resolution 2009-18 has  
22 approved GPA's request for approval of the procurement of a new diesel engine cylinder  
23 lubricating oil contract. The CCU in Resolution 2009-47 approved the award for the supply of  
24 diesel engine cylinder oil under IFB GPA-019-09 to Shell Guam, Inc., as the lowest most  
25 responsive bidder.

26 **DISCUSSION**

27 GPA hereby petitions the PUC, pursuant to the Contract Review Protocol for the Guam  
28 Power Authority, approved by the PUC, to review and approve the Contract for Supply of Diesel

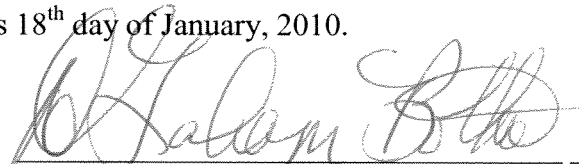
**COPY**

1 Engine Cylinder Lubricating Oil with Shell Guam, Inc. In support of this Petition, GPA hereby  
2 provides the PUC with Consolidated Commission on Utilities (CCU) Resolution No. 2009-47,  
3 which authorizes the General Manager to enter into a contract for the Supply of Diesel Engine  
4 Cylinder Lubricating Oil with Shell Guam, Inc. Said resolution and its exhibits are attached  
5 herein as Exhibit A, and incorporated by reference herein as if fully set forth.

6 **CONCLUSION**

7 The PUC should approve GPA's request to proceed with the Contract for Supply of  
8 Diesel Engine Cylinder Lubricating Oil with Shell Guam, Inc. Cylinder Lubricating Oil is  
9 essential to the operation of the Cabras power plants, and a contract is reasonable, prudent, and  
10 necessary.

11 **RESPECTFULLY SUBMITTED** this 18<sup>th</sup> day of January, 2010.

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14 D. GRAHAM BOTHA, ESQ.  
15 GPA Legal Counsel  
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**CONSOLIDATED COMMISSION ON UTILITIES**

**RESOLUTION NO. 2009-47**

**AUTHORIZING THE MANAGEMENT OF THE GUAM POWER AUTHORITY  
TO PROCEED WITH THE AWARD OF A CONTRACT FOR THE SUPPLY OF  
DIESEL ENGINE CYLINDER LUBRICATING OIL UNDER IFB GPA-019-09**

WHEREAS, GPA (Authority) desires to enter into a Diesel Engine Cylinder Lubricating Oil Supply Contract in accordance with the invitation for bid (IFB)GPA-019-09; and

WHEREAS, GPA's previous Cylinder Oil supply contract was awarded to Shell Guam Inc. in October 2006, expired in September 2009, and was extended until November 2009; and

WHEREAS, the Authority has issued an invitation for bids for a three (3) year supply Contract for Diesel Engine Cylinder Lubricating Oil to meet the Authority's cylinder lubricating oil supply requirements; and

WHEREAS, GPA will award the bid to the lowest most responsive bidder whose bid conforms to the material aspects of the invitation and is in the best interests of the rate payers and the Authority; and

WHEREAS, the procurement officer has provided adequate public announcement for such fuel supply services invitation for bids to suppliers; and

WHEREAS, the Authority intends to issue an award of the Cylinder Oil Contract to Shell, Guam Inc. ( the CONTRACTOR) as the lowest most responsive bidder for a three (3) year cylinder oil supply Contract with two (2) year options that will meet the needs of GPA, with additional options for supplying cylinder oil to MEC and providing additional inventory of 30,000 gallons; and

WHEREAS, the award of the Contract to Shell, Guam Inc. is consistent and pursuant with the written determinations by the Procurement Officer, that Shell, Guam Inc. is the most qualified responsive bidder;

WHEREAS, the award of the Contract to Shell, Guam Inc. for the Bid Offers specified (Enclosure A) and estimated supply quantities amounts to approximately \$1,600,000.00 per year; and


WHEREAS, the CCU in Resolution No. 2009-18 authorized GPA to begin the procurement for diesel fuel which was approved by the PUC on July 27, 2009;

**NOW THEREFORE, BE IT RESOLVED**, by the Consolidated Commission on Utilities, subject to the review and approval of the Guam Public Utilities Commission, as follows:

As of the date of this certification, said original resolution has not been amended, modified, or rescinded since the date of its adoption, and the same is now in full force and effect.

**SO CERTIFIED** this 27<sup>th</sup> day of October, 2009.



  
For **GLORIA B. NELSON**  
Secretary  
Consolidated Commission on Utilities

- 1) The General Manager of GPA is authorized to enter into a three-year (3-year), with two additional one year options for the Diesel Engine Cylinder Oil Supply Agreement with Shell Guam, Inc. The Agreement shall commence on December 01, 2009 and expire on November 30, 2012, with options to extend for two (2) additional one (1) year terms.
  
- 2) The General Manger of the Guam Power Authority is hereby authorized an increase in obligating authority from \$250,000 to \$1,600,000 per year to enter into and execute such agreements and documents necessary for a contact with Shell Guam Inc.

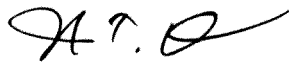
**SO RESOLVED AND DULY AND REGULARLY ADOPTED** this 27<sup>th</sup> day of October, 2009.

**Certified by:**



**SIMON A. SANCHEZ H**  
 Chairperson  
 Consolidated Commission on Utilities

**Attested by:**



**GLORIA B. NELSON**  
 Secretary  
 Consolidated Commission on Utilities

**SECRETARY'S CERTIFICATE**

**I, Gloria B. Nelson**, Secretary for the Consolidated Commission on Utilities do hereby certify that the foregoing is full, true, and correct copy of the resolution duly adopted at a regular meeting of the members of Guam's Consolidated Commission on Utilities, duly and legally held at the meeting place thereof on October 27, 2009, at which meeting of all said members had due notice and at which at least a majority thereof were present, and

At said meeting said resolution was adopted by the following vote:

Ayes:                          3      

Nays:                          0      

Absent:                       2      

Abstain:                      0

ENCLOSURE A:  
 Estimated Quantity and Amounts  
 (ANNUAL)

	Current	Premium	Ref. Price	BID \$/gal	Estimated QTY	Estimated Annual AMOUNT
Cylinder Oil	6.95	3.733	2.757	6.49	240,000	\$ 1,557,600.00
Option 1: Include MEC Delivery		0.552	2.757	6.465	480,000	\$ 3,103,200.00
Option 2: Include 30,000 Addl. Inventory		0.71	2.757	6.47	270,000	\$ 1,746,900.00
Option 3: Include options 1 and 2		0.278	2.757	6.455	510,000	\$ 3,292,050.00

PURCHASES & STORES DIVISION  
GUAM POWER AUTHORITY  
ABSTRACT OF BIDS

Procurement Number: GPA-07-03-07  
Bidding Date: Sept. 11, 2007  
Closing Time: 3:00 PM

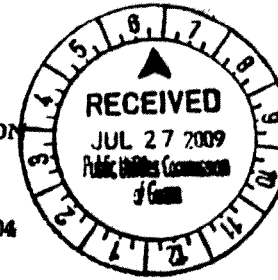
ITEM NO.	QTY	UNIT	Option (a)		Option (b)		Option (c)	
			Per gallon As Needed	Per gallon As Needed	Per Gallon As Needed	Per Gallon As Needed		
Supply of Diesel Engine Cylinder Lubricating Oil								
1) TAT Petroleum Services			\$7.75	\$7.75	\$7.75	\$7.75		
Bid Bond: BD-BD-GUM-2007-1064								
A/c. acc. #; Cash of \$200,000; Major Share; New Coll; Bus. Lic. LP, Lika								
2) Shell Guam			\$5.490	\$4.465	\$6.470	\$6.465		
Passive Co: 088,620 \$36,000.00;								
LC # 5282049 \$235,000.00; Major Share; New Coll; Bus Lic; LP, Lika								
3) BRH Technologies Const. Co. Ltd.			\$7.877	\$7.677	\$7.700	\$7.687		
Cash: Co: 032244 \$15,200.00;								
Major Share; New Coll; Bus Lic; LP; Lika								

\*Lowest bidder must be able to provide a response to the information requested under any business interruption, and meet the terms of all conditions stated herein.

Submitted by: James C. Co.  
Date: 9/11/07

LOWEST RESPONSIVE BIDDER  
The Bid  
Only the  
Bidder That Lowest Responsive Bidder Has to  
Respond to certain items or offering  
Number of Awards:

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN THE MATTER OF:

DOCKET 94-04

The Application of the Guam Power Authority  
to Approve the Procurement of Supply of  
Diesel Engine Cylinder Lubricating Oil to  
GPA.

ORDER

This matter comes before the Guam Public Utilities Commission upon the Petition of the Guam Power Authority [GPA] to procure the supply of diesel engine cylinder lubricating oil. As indicated by the PUC Legal Counsel Report filed herein, the present contract for the supply of diesel engine cylinder oil with Shell Guam Inc. expires on September 30, 2009. GPA estimates that it need two hundred and forty thousand gallons of diesel engine cylinder lubrication oil per year for its Cabras Units No. 3 & 4, and an additional two hundred and forty thousand gallons per year for MEC Units No. 8 & 9.<sup>1</sup> Unless GPA is allowed to procure two diesel engine cylinder lubricating oil contracts, it will be unable to maintain the essential supply of cylinder lubricating oil for the operation of the Cabras and MEC power plants.

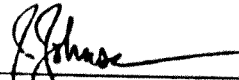
Upon consideration of the record herein, the Petition of GPA, the PUC Legal Counsel Report, and for good cause shown, upon motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby ORDERS that:

1. The June 18, 2009, Petition of GPA for Supply of Diesel Engine Cylinder Lubricating Oil IFB, is hereby approved.
2. Since GPA must maintain its supply of diesel engine cylinder lubricating oil for the operation of its power plants, it is reasonable, prudent and necessary for GPA to proceed with the procurement for the supply of diesel engine cylinder lubricating oil.
3. Since the final price for the cylinder lubricating oil contract will only be known after the contractor is selected and the contract executed, GPA shall submit the final contract to the PUC for review and approval.

<sup>1</sup> IFB No. GPA-019-09, Supply of Diesel Engine Cylinder Lubricating Oil, pgs. 24-25.

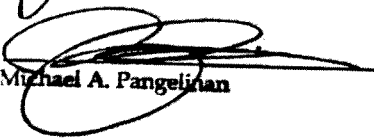
4. GPA is ordered to pay the Commission's regulatory fees and expenses, including, without limitation, consulting and counsel fees and the fees and expenses of conducting the hearing proceedings. Assessment of PUC's regulatory fees and expenses is authorized pursuant to 12 GCA §§12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

Dated this 27<sup>th</sup> day of July, 2009.

  
\_\_\_\_\_  
Jeffrey E. Johnson  
Chairman

  
\_\_\_\_\_  
Rowena E. Perez

  
\_\_\_\_\_  
Joseph M. McDonald

  
\_\_\_\_\_  
Michael A. Pangelinan



**CONSOLIDATED  
COMMISSION ON UTILITIES**

Guam Power Authority • Guam Waterworks Authority  
P.O. BOX 2977 • Agana, Guam 96932

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**CONSOLIDATED COMMISSION ON UTILITIES**

**RESOLUTION NO. 2009-18**

**AUTHORIZING THE MANAGEMENT OF THE  
GUAM POWER AUTHORITY (GPA) TO PROCEED WITH THE  
PROCUREMENT OF CYLINDER OIL**

**WHEREAS**, Guam Power Authority Cabras 3&4 Slow Speed Diesel Units cannot operate without cylinder oil; and

**WHEREAS**, GPA's present cylinder oil contract is expiring September 30, 2009, without remedy of further extension; and

**WHEREAS**, the cumulative cost of the present cylinder oil contract through March of the current fiscal year is \$4,966,812 as shown in Exhibit A indicates that the next contract will also exceed the GPA General Manager's Procurement Authority of \$250,000; and

**WHEREAS**, the cumulative cost of the present cylinder oil contract through March of the current fiscal year is \$4,966,812 as shown in Exhibit A indicates that the next contract will also exceed the \$1,500,000 Guam Public Utilities Commission procurement protocol threshold for GPA, thus, GPA is required to seek authorization for this procurement from the Guam Public Utilities Commission; and

**WHEREAS**, Exhibit B represents the pre-final draft of the procurement documents for an Invitation for Bid (IFB-GPA-019-09) for the procurement of cylinder oil; and

**WHEREAS**, GPA desires to issue an Invitation for Bid (IFB-GPA-019-09) for the procurement of cylinder oil; and

**NOW THEREFORE, BE IT RESOLVED**, by the Consolidated Commission on Utilities, subject to the review and approval of the Guam Public Utilities Commission, as follows:

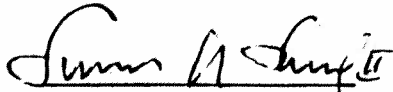
1. The Consolidated Commission on Utilities hereby authorizes GPA to proceed with the petition to Guam Public Utilities Commission for the issuance of the Invitation for Bid to procure cylinder oil.

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**SO RESOLVED AND DULY AND REGULARLY ADOPTED** this 28<sup>th</sup> day of April, 2009.

**Certified by:**

**Attested by:**



**SIMON A. SANCHEZ II**  
Chairperson  
Consolidated Commission on Utilities



**GLORIA B. NELSON**  
Secretary  
Consolidated Commission on Utilities

**SECRETARY'S CERTIFICATE**

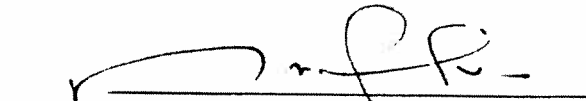
I, **Gloria B. Nelson**, Secretary for the Consolidated Commission on Utilities do hereby certify that the foregoing is full, true, and correct copy of the resolution duly adopted at a regular meeting of the members of Guam's Consolidated Commission on Utilities, duly and legally held at the meeting place thereof on September 09, 2008, at which meeting of all said members had due notice and at which at least a majority thereof were present, and

At said meeting said resolution was adopted by the following vote:

Ayes:	<u>3</u>
Nays:	<u>0</u>
Absent:	<u>2</u>
Abstain:	<u>0</u>

As of the date of this certification, said original resolution has not been amended, modified, or rescinded since the date of its adoption, and the same is now in full force and effect.

**SO CERTIFIED** this 28th day of April, 2009.



**GLORIA B. NELSON**  
Secretary  
Consolidated Commission on Utilities

**EXHIBIT A – Present Cylinder Oil Contract Expenses through March 31, 2009**

Cylinder Oil Contract Expenses by Fiscal Year	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009 (Thru March)
	\$ 724,718	\$ 975,409	\$ 1,083,678	\$ 726,355	\$ 880,715	\$ 575,937
Cumulative Cylinder Oil Contract Expenses at the End of Each Fiscal Year	\$ 724,718	\$ 1,700,127	\$ 2,783,805	\$ 3,510,160	\$ 4,390,875	\$ 4,966,812

### III. FORMAL CONTRACT

## SUPPLY OF DIESEL ENGINE CYLINDER LUBRICATION OIL

### P R E A M B L E

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

### W I T N E S E T H:

### R E C I T A L S

**WHEREAS**, The Guam Power Authority ["GPA" or "Authority"] of Guam is a public corporation and an autonomous agency of the Government of Guam; and

**WHEREAS**, GPA's present Diesel Engine Cylinder lubrication oil Supply Contract will expire on **September 30, 2009**; and

**WHEREAS**, the Authority desires to solicit and secure a new Diesel Engine Cylinder Lubrication Oil Supply Contract; and

**WHEREAS**, the Authority has issued an Invitation for Bid under IFB GPA-019-09 for a Three (3) year contract for the Supply of Diesel Engine Cylinder Lubrication Oil; and

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

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

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

## SECTION 1

### SECTION 1.01. DEFINITIONS:

- (a) "Barrel" shall mean a volume equivalent to 42 gallons at standard sixty degrees Fahrenheit.
- (b) "Day" and "Month" mean a calendar day and month respectively.
- (c) "Product" shall mean Diesel Engine Cylinder Lubrication Oil product satisfying the contract specifications.
- (d) "Gallon" shall mean a volume equivalent to 231 cubic inches at standard sixty degrees Fahrenheit.
- (e) "GPA" or "Authority" shall mean the Guam Power Authority including its Independent Power Producers (IPP).
- (f) "MEC" or "MEC 8 & 9" shall mean the Marianas Energy Corporation, an IPP of GPA.
- (g) "Receiving facility" shall mean the Cabras Units 3 & 4 and MEC Units 8 & 9 Power Plants.
- (h) "Ton" or "MT" shall mean a weight in metric ton equivalent to 2,204.62 English pounds. 1 MT conversion as used in this contract shall be equivalent to 282.5 (U.S.) gallons.
- (i) "\$" refers to United States Dollars.

### SECTION 1.02: PRODUCT TO BE SUPPLIED.

Contractor agrees to furnish and deliver all the required diesel engine cylinder lubrication oil supply for the Authority, and GPA agrees to accept and pay for all diesel engine cylinder lubrication oil delivered to GPA, meeting the Diesel Engine Cylinder Lubrication Oil specification requirements for the term of the Contract.

The estimated diesel engine cylinder lubrication oil requirements for the power stations are as follows:

1. **CABRAS UNIT NOS. 3 & 4":**  
**TWO HUNDRED FORTY THOUSAND GALLONS PER YEAR**  
**(240,000 gal/yr).**
2. **MEC UNIT NOS. 8 & 9":**  
**TWO HUNDRED FORTY THOUSAND GALLONS PER YEAR**  
**(240,000 gal/yr). (Optional)**

The diesel engine cylinder lubrication oil supply requirement for four units in any month is approximately about 40,000 gallons and may exceed 60,000 gallons quantity depending upon such demand on the Cabras Unit nos. 3 & 4 and MEC Unit Nos. 8 & 9. The estimated annual minimum purchase for each location is approximately about **ONE HUNDRED FIFTY THOUSAND GALLONS (150,000 gals)**.

GPA is also considering the construction of an additional storage tank with which to store cylinder oil inventory.

Notwithstanding any estimated quantity set forth herein, the **CONTRACTOR** shall be responsible in supplying all Diesel Engine Cylinder Lubrication Oil, reasonably required by **GPA**, even if such quantities exceed the estimates provided above.

**GRADE OF OIL: SAE 50 (DIESEL ENGINE CYLINDER LUBRICATION OIL)**

**Delivery sites: SLOW SPEED DIESEL ENGINE POWER PLANTS**

**1. CABRAS UNITS 3 & 4**

**Optional Delivery Site:**

**2. MARIANAS ENERGY CORPORATION (MEC 8 & 9)**

**Cabras Island, Piti, Guam**

**Additional Storage (Tentative):**

**2. CYLINDER OIL STORAGE**

**Cabras Island, Piti, Guam**

**SECTION 1.03 : CONTRACT 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 of twelve (12) months per renewal term, unless earlier terminated in accordance with the provisions hereof or cancelled due to unavailability of funds. The contractual obligation of **GPA** and **CONTRACTOR** is subject to the availability of funds. In the event funds are not available for any succeeding month, the remainder of such contract shall be cancelled and the **CONTRACTOR** shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the diesel engine cylinder lube oil delivered under the Contract. **GPA** shall notify **CONTRACTOR** within sixty (60) days if funds are unavailable.

**SECTION 1.04: CONTRACT PRICE.**

The Contract price per U.S. gallon delivered to the Authority shall be **inclusive** of all costs and liabilities incurred prior to delivery to GPA. The **CONTRACT PRICE** shall be the **BID PRICE OFFER** calculated as the **BID REFERENCE PRICE** plus the Contractor's **FIXED SERVICE FEE**. GPA prefers that the Fixed Service Fee be broken down into various components reflecting the different costs of shipping, storage and land delivery.

**BID REFERENCE PRICE:**

The **BID REFERENCE PRICE** shall be the Product Cost consisting of blended components of base Oils **150SN, 500SN, and 150BS** published in the Independent Commodity Information Service- London Oil Report (ICIS-LOR), **Asia Pacific ICIS-Singapore Postings** for the month of **January 2, 2009**. Component blend shall be 35%w 150SN, 50%w 500SN, and 15%w 150BS.

Conversion factor shall be 282.5 (U.S.) gallons per metric ton.

<u>JANUARY 2, 2009</u>	<u>150SN</u>	<u>500SN</u>	<u>150BS</u>
ICIS-Singapore Posting, Avg (\$/MT)	735.0	760.0	1150.0
Component Blend (%w)	<u>35%</u>	<u>50%</u>	<u>15%</u>
Component Cost (\$/MT)	257.25	380.00	172.50

Product Cost (\$/MT) = Total Component Cost = \$809.75 MT

**BID REFERENCE PRICE** = \$809.75 MT = **\$2.866/gallon**

**FIXED SERVICE FEE:**

The **FIXED SERVICE FEE** shall be the **CONTRACTOR'S** service fee to deliver the product to GPA.

**BID PRICE OFFER:**

The **BID PRICE OFFER** shall be the sum of the **BID REFERENCE PRICE** and the **FIXED SERVICE FEE**.

**BID PRICE OFFER:**

Amount in Words: Six dollars + fourty <sup>five</sup> <sub>1 m</sub> ~~five~~ Cents per gallon

Amount in Figures (in three decimal places): \$ 6.490 / gal

**Bid Price Offers for Additional Options**

**Bid Price Offer should GPA Consider Inclusion of MEC Plant Delivery:**  
Amount in Words: Six dollars + forty six point five cents per gallon  
Amount in Figures (in three decimal places): \$ 6.465 / gal

**Bid Price Offer should GPA Consider Additional Storage Tank(s)  
(approx.30,000 gal.):**  
Amount in Words: Six dollars + forty seven cents per gallon  
Amount in Figures (in three decimal places): \$ 6.470 / gal

**Bid Price Offer should GPA Consider Inclusion of MEC Plant Delivery  
and Additional Storage Tank(s):**  
Amount in Words: Six dollars + forty five point five cents per gallon  
Amount in Figures (in three decimal places): \$ 6.455 / gal

The CONTRACT PRICE shall increase or decrease on a cent-for-cent basis by the amount per gallon based from official documentation reported by the Independent Commodity Information Service- London Oil Report (ICIS-LOR) , **Asia Pacific ICIS-Singapore Postings**.

**(a) Total Contract Price for the first three (3) year term:**

The amount to be reflected shall be based on the BID PRICE OFFER submitted within the tender document.

**(b) 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 term.

**SECTION 1.05. INVOICE PRICE DETERMINATION**

The Contract price invoiced to the Guam Power Authority shall be adjusted according to the periodic price changes in the Independent Commodity Information Service- London Oil Report (ICIS-LOR), **Asia Pacific ICIS-Singapore Postings**. The invoice price shall be based on average of the prior month's postings.

INVOICE PRICE CALCULATION FORMULA

INVOICE PRICE = Reference Price (Prior Month's Average) + Fixed Premium Fee

SAMPLE data and calculation:

***Delivery Month: February 2009***

Prior Month: January (preceding delivery month)

Reference Price:

Prior Month (JAN 2009)

ICIS-Singapore Posting (S/MT)

(Average of all postings for Jan 2009)

JAN 2009	Asia Pacific ICIS ex-Tank Singapore, US\$/MT								
	150SN			500SN			150BS		
	Low	High	Avg	Low	High	Avg	Low	High	Avg
Jan 06	700	770	735	720	800	760	1100	1200	1150
Jan 13	700	770	735	720	800	760	1100	1200	1150
Jan 20	700	770	735	720	800	760	1070	1200	1135
Jan 27	610	630	620	620	650	635	1000	1050	1025
Average			706			729			1115
Component Blend, wt%			35%			50%			15%
Component Cost, US\$/MT			247.19			364.38			167.25

Product Cost = Total Component Cost = 247.19 + 364.38 + 167.25 = \$778.82 per MT

Reference Price = \$778.82 per MT = \$2.757 per gallon

Fixed Service Fee:

Fixed Service Fee = \$0.800 per gallon (sample price)

A breakdown of the Fixed Service Fee should be provided by the contractor to GPA.

INVOICE PRICE:

Invoice Price = Reference Price (Previous Month Average Price) + Fixed Service Fee  
 = (\$2.757 + \$0.800) per gallon

Invoice Price = \$3.557 per gallon

This is the invoice price for fuel delivered to GPA for the sample month.

SECTION 1.06. ICIS-LOR SUBSCRIPTION

CONTRACTOR must be a current subscriber or, within fifteen (15) calendar days after award of Contract, shall become a subscriber to the Independent Commodity Information Service-London Oil Report (ICIS-LOR) for Singapore Market, as official document for the invoice reference pricing data. Contractor is required to submit copies of such documents on a monthly basis which must be received by GPA no later than 5 days after the end of the each month prior to the report month.

SECTION 1.07. PRODUCT DELIVERY.

(a) All Diesel Engine Cylinder Lubrication Oil must be delivered to the plant sites covered in this contract: CABRAS UNIT Nos. 3 & 4 and MEC UNIT Nos. 8 & 9 POWER PLANTS(Optional).

(b) Title to the diesel engine cylinder lubrication oil and custody thereof shall pass from the Contractor to GPA when the diesel engine cylinder lubrication oil has passed the GPA pipeline flange connecting the tanker truck delivery hose and GPA storage tanks. Contractor will be responsible for all risk of loss, cost and liabilities prior to the time of passage of title of Diesel Engine Cylinder Lubrication Oil.

(c) The Contractor shall be available to deliver the diesel engine cylinder lubrication oil to the GPA within twenty-four (24) hours upon request. Diesel engine cylinder lubrication oil deliveries shall be "on call basis" and shall be during the hours of 7:00 A.M. to 11:00 P.M. daily, including Sundays and holidays.

(d) Contractor must exercise its best efforts to deliver diesel engine cylinder lubrication oil to GPA to meet operational requirements.

(e) All risk of loss, cost and liabilities prior to the time of passage of title of the Diesel Engine Cylinder Lubrication Oil shall be on the **CONTRACTOR**.

SECTION 1.08: TERMS OF PAYMENT.

(a) Invoices for Diesel Engine Cylinder Lubrication Oil delivered pursuant to quantity

(Diesel Engine Cylinder Lubrication Oil receipts) and quality prescribed under the terms of this Contract, shall be submitted on a monthly basis.

(b) The payment term is thirty days (net) and the Authority shall promptly make payments within a reasonable time not to exceed a period of THIRTY (30) calendar days from the receipt of the lube oil invoice.

(c) All payments shall be based upon the received quantity.

**SECTION 1.09. WARRANTY AND CLAIMS.**

(a) **CONTRACTOR** shall provide both express and implied warranties of merchantability and warrants that the Diesel Engine Cylinder Lubrication Oil shall meet the specifications prescribed herein under Section 2.01 and other pertinent sections.

(b) 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 lube oil as specified in Section 1.04.

(c) If the lube 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 2****SECTION 2.01: PRODUCT AND QUALITY**

The Diesel Engine Cylinder Lubrication Oil delivered under this Contract should meet the physical and chemical characteristics as described in the following table:

**PRODUCT SPECIFICATION: DIESEL ENGINE CYLINDER LUBRICATION OIL**

CHARACTERISTICS	SPECIFICATION LIMITS
SAE Number	50
Specific Gravity 15/15 °C, Minimum	0.940
Pour Point, °C, Minimum	-9
Flash Point, °C, Minimum	250
Viscosity @ 40 °C, cSt, Minimum	247
Viscosity @ 100 °C, cSt, Minimum	21
Sulfated Ash, wt%, Maximum	8.8
Total Base Number, mg KOH/g, Minimum	70
Guaranteed Heating Value, MBTU/lb	REPORT

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

- (a) CONTRACTOR must comply with all special provisions stipulated in Diesel Engine Cylinder Lubrication Oil Supply Contract.
- (b) CONTRACTOR shall provide, at no cost to GPA, oil analysis kits for full oil analysis. A full oil analysis shall be provided for each 500 hours of operation per unit for each location.
- (c) CONTRACTOR shall provide, at no cost to GPA, Annual Technical Service visits and training to assist GPA in operational excellence.
- (d) The list below indicates international brands of oils that generally have given satisfactory results when applied in MAN B & W diesel engine types (heavy fuel operation).

<u>Company</u>	<u>Product Brand</u>
Elf-Lub.	Talusia XT 70
BP	CLO 50-M
Castrol	Cyltech 80
Cheron	Delo Cyloil Special
Exxon	Exxmar X 70
Fina	Vegano 570
Mobil	Mobilgard 570
Shell	Alexia 50
Texaco	Taro Special

(e) The CONTRACTOR shall provide GPA with a list of clients using the CONTRACTOR's product.

**SECTION 2.02: QUANTITY AND QUALITY ASSURANCE**

Any existing pump system and storage tank installed at the receiving facility shall be used to transfer the Diesel Engine Cylinder Lubrication Oil delivered by Contractor.

- (a) If the Contractor finds this system unsatisfactory, alternative methods may be considered by GPA but shall be at the expense and liability of the Contractor.
- (b) The Diesel Engine Cylinder Lubrication Oil shall be supplied in bulk and will be unloaded by the Contractor's own staff into the GPA Storage Tanks. Due to the enormous quantities being considered, drum delivery will not be accepted unless under special request and authorization by the Authority.
- (c) Measurement of the quantity of each delivery of Diesel Engine Cylinder Lubrication Oil shall be determined by a flow meter installed on the inlet to the GPA bulk storage tank.
- (d) In the event that a flowmeter is not available at the receiving facility, Contractor shall provide its own meter and shall be used for quantity determination at no cost to GPA.
- (e) The flow meter reading will be verified by the receiving facility prior to the beginning and after completion of delivery to verify the exact quantity of product received into the GPA tanks.
- (f) Periodic flow meter calibration by the Contractor is required and shall be performed by certified independent third party inspector acceptable to GPA. Calibration shall be conducted every six (6) months or less, as may be necessary, starting at the beginning of the contract period. A copy of the certificate of calibration must be provided to the Authority no later than 5 calendar days after the due date of calibration.

- (g) The Contractor shall ensure the delivery of cylinder lubrication oil to maintain an inventory level at the plant site at a minimum of forty percent (40%) of the total tankage capacity. Contractor shall exercise every effort to replenish diesel engine cylinder lubrication oil supply at each site to a maximum inventory as possible. The contractor is further required to maintain at its **own storage facility**, a minimum inventory of 20-days supply requirement.
- (h) Contractor is required to install seal(s) on delivery tankers and must remain intact as a condition for acceptance of product deliveries. Individual seal numbers must be recorded in the delivery tickets and each numbers initialed by the terminal dispatch officer for verification by the receiving facility.
- (i) Contractor must provide a copy of the certificate of quality of Diesel Engine Cylinder Lubrication Oil issued by a reputable testing facility at no cost to GPA. Certificate of quality must accompany each product delivery to GPA and must conform with the requirements referenced under Section 2.01.
- (j) GPA reserves the right to require the Contractor to have the product tested in a Guam facility at no cost to GPA. The Contractor shall be responsible for the expenses for this test.

### SECTION 3

#### SECTION 3.01. SECURITY.

**CONTRACTOR** may secure supply of the diesel engine cylinder lubrication oil meeting **GPA** specifications from any lawful source. In the event that supplies are taken from such other places, then the price as invoiced to **GPA** will remain at the same Contract Price established in Section 1.03.

#### SECTION 3.02: GOVERNMENT LAWS AND REGULATIONS

This Contract as executed shall be governed and construed in accordance with the laws, statutes and regulations of the Territory of Guam.

(a) 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.

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

#### SECTION 3.03: TAXES and OTHER GOVERNMENT CHARGES

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

#### SECTION 3.04. SPECIFICATIONS.

Should **GPA** wish to alter any of the specifications set out under Section 2.01, terms of delivery, for good cause, it shall give written notice to **CONTRACTOR** within thirty (30) days.

(a) If such change(s) 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.

(b) 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.

(c) **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 for the Supply of Diesel Engine Cylinder Lubrication Oil with specifications as changed.

**SECTION 3.05. PERMITS AND RESPONSIBILITIES.**

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

**SECTION 3.06. FORCE MAJEURE.**

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

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

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 3.07. NOTICE TO OTHER PARTY.**

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

**SECTION 3.08. PAYMENT REQUIRED.**

Notwithstanding the provisions of Section 3.06, **GPA** shall not be relieved of any obligation to make payments for any Diesel Engine Cylinder Lubrication Oil delivered to **GPA** tanks hereunder, however, during the force majeure condition the obligation shall be suspended, except for Diesel Engine Cylinder Lubrication Oil deliveries made prior to the force majeure condition.

**SECTION 3.09. PRORATION OR EQUITABLE ALLOCATION.**

If any of the events enumerated in Section 3.06, have occurred, **CONTRACTOR** shall prorate

or otherwise allocate in a fair and equitable manner among its customers, including **GPA**, the supplies of Diesel Engine Cylinder Lubrication 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 Diesel Engine Cylinder Lubrication Oil.

**SECTION 3.10. ALTERNATE SUPPLY.**

In the event **CONTRACTOR** is unable to fulfill its obligations under this Contract as a result of any negligence on part of the Contractor OR FAILURE TO MEET **GPA's** requirement, **GPA** may at its sole discretion seek an alternative source of Diesel Engine Cylinder Lubrication Oil. If the cost of lube oil during such period exceeds the Contract price as provided in Section 1.03, the **CONTRACTOR** shall be liable to **GPA** for the difference in cost.

**SECTION 3.11. RESUMPTION OF PERFORMANCE.**

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

**SECTION 3.12. DISPUTES.**

All controversies between **GPA** and the **CONTRACTOR** which arise under, or are by virtue of, this Contract and which are not resolved by mutual agreement, shall be decided by **GPA** pursuant to Guam Procurement laws and regulations.

- (a) **CONTRACTOR** may pursue applicable remedies under the Guam Procurement Law and regulations and the Government Claims Act.
- (b) 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.
- (c) The **CONTRACTOR** waives all rights against **GPA** to claim consequential, special or punitive damages.

**SECTION 3.13. INDEMNITY.**

(a) **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.

(b) **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.

**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: 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

**E. POLLUTION LIABILITY INSURANCE:**

Pollution Liability Insurance covering third party bodily injury and property damage including coverage for clean-up cost with minimum limits of \$5,000,000.

**F. EXCESS LIABILITY WITH LIMITS OF \$ 5,000,000.00:**

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. and D. above. Such certificates shall specifically indicate that the Public 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.

## SECTION 4

### SECTION 4.01: FAILURE TO SUPPLY.

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

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

### SECTION 4.02. FAILURE TO PAY.

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

(a) terminate the Contract effective thirty (30) days after receipt by **GPA** of written notice if not first cured; or

(b) continue to supply Diesel Engine Cylinder Lubricating 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 lube 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. In the event of termination in whole or in part, **GPA** may procure the lubrication oil supply from another source whenever it deems appropriate.

(b) Compensation. The Authority shall pay for lube oil delivered to GPA provided such deliveries are received at the time of receipt of **GPA's** notice of termination for default.

(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 4.05. TERMINATION FOR CONVENIENCE.**

(a) Termination. The delivery of Diesel Engine Cylinder Lubrication 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 Engine Cylinder Lubrication Oil, as described in the specifications contained in Section 2.01.

Any such termination shall be effected by delivery to the **CONTRACTOR** of a written Notice of Termination specifying the extent to which supply of lube 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 Diesel Engine Cylinder Lubrication Oil supply delivery and on the date set in the Notice of Termination the **CONTRACTOR** will stop delivery of lube oil to the extent specified. The **CONTRACTOR** shall also terminate outstanding orders and contracts, if any, as they relate to the portion/s or part of the Contract of the terminated Contract and contracts, if any, connected with the terminated lube oil supply delivery.

(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 Diesel Engine Cylinder Lubrication Oil 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) Diesel Engine Cylinder Lubrication 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 Diesel Engine Cylinder Lubrication 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 Diesel Engine Cylinder Lubrication 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 code.

#### **SECTION 4.06. REMEDIES CUMULATIVE.**

Each and all remedies available to a party in the event of the other party's failure to comply

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

**SECTION 5**

**SECTION 5.01. COVENANT AGAINST CONTINGENT FEES.**

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

**SECTION 5.02. NOTICE.**

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

**GPA:** General Manager  
Guam Power Authority  
Post Office Box 2977  
Hagatna, Guam 96932  
TELEFAX: (671) 648-3290

**CONTRACTOR:** Shell Guam Inc.  
Suite 100-643 Chalan Suro Aptopio  
Tamuning Guam 96913  
**Telefax:** 1-671-649-4353

**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, the right of such party to require such performance by the other. Nor shall any such failure to object constitute a waiver or estoppel with respect to any succeeding failure of performance.

**SECTION 5.07. DESCRIPTIVE HEADINGS.**

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

**SECTION 5.08. GOVERNING LAW.**

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

Judgment upon any award rendered by the Superior Court of the Territory of Guam may be

entered in any court of any country having jurisdiction, and such award shall be binding upon the parties. The **CONTRACTOR** waives all rights against **GPA** to claim consequential, special or punitive damages.

**SECTION 5.09. 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 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 5.13. 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. The **CONTRACTOR** agrees to post in conspicuous places, available to

(b) Employees and applicants for employment, notices to be provided by the **GPA** setting

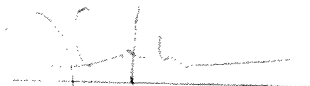
forth the provisions of this equal opportunity clause.

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


**SECTION 6**

**SECTION 6.01. BINDING EFFECT.**


This Contract is binding upon the Contractor only if Contractor has been awarded the Contract in response to the **IFB GPA-019-09**. This Contract is subject to the approval of the Consolidated Commission on Utilities (CCU), and shall be binding only upon such approval is made as evidenced by the signatories below.

  
\_\_\_\_\_  
JOAQUIN C. FLORES, P.E.  
General Manager, Guam Power Authority

11/20/09  
Date

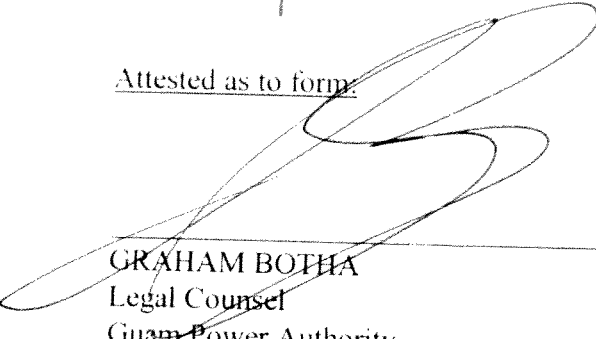
  
\_\_\_\_\_  
SIMON SANCHEZ III  
Chairman, Consolidated Commission on Utilities

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Contractor's duly Authorized Representative

11/20/09  
Date

Attested as to form:

  
\_\_\_\_\_  
GRAHAM BOTHA  
Legal Counsel  
Guam Power Authority

11/20/09  
Date