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3 **Guam Power Authority**
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8 **BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

9 IN THE MATTER OF:)

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

DOCKET NO. 94-04

PETITION FOR CONTRACT REVIEW

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

19 **BACKGROUND**

20 The Guam Power Authority awarded pursuant to IFB GPA-089-05 a contract to supply
21 diesel engine cylinder oil to Shell Guam, Inc. for the period October 1, 2005, to September 30,
22 2006, with an option to extend for three (3) additional one (1) year terms. The third and final
23 extension of the contract ends September 30, 2009. The CCU in Resolution 2009-18 has
24 approved GPA's request for approval of the procurement of a new diesel engine cylinder
25 lubricating oil contract.

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 procurement for Supply of
Diesel Engine Cylinder Lubricating Oil to GPA. In support of this Petition, GPA hereby

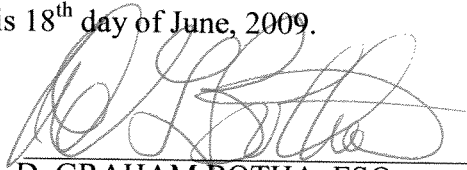
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1 provides the PUC with Consolidated Commission on Utilities (CCU) Resolution No. 2009-18,
2 which authorizes the General Manager to proceed with the procurement for Supply of Diesel
3 Engine Cylinder Lubricating Oil to GPA. Said resolution and its exhibits are attached herein as
4 Exhibit A, and incorporated by reference herein as if fully set forth. The exhibits include a copy
5 of the draft Invitation for Bid, together with a CD setting forth additional information.

6 **CONCLUSION**

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

10 **RESPECTFULLY SUBMITTED** this 18th day of June, 2009.

11 

12
13 **D. GRAHAM BOTHA, ESQ.**
14 **GPA Legal Counsel**

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**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

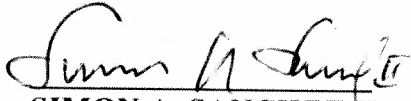
NOW THEREFORE, BE IT RESOLVED, by the Consolidated Commission on Utilities, subject to the review and approval of the Guam Public Utilities Commission, as follows:

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.

1
2
3 **SO RESOLVED AND DULY AND REGULARLY ADOPTED** this 28th
4 day of April, 2009.

5
6 **Certified by:**

Attested by:

7
8
9 
10 **SIMON A. SANCHEZ II**

11 
12 **GLORIA B. NELSON**

13 Chairperson
14 Consolidated Commission on Utilities

15 Secretary
16 Consolidated Commission on Utilities

17
18
19 **SECRETARY'S CERTIFICATE**

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

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

27
28 Ayes: 3

29
30 Nays: 0

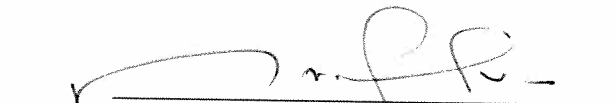
31
32 Absent: 2

33
34 Abstain: 0

35
36 As of the date of this certification, said original resolution has not been
37 amended, modified, or rescinded since the date of its adoption, and the same is now
38 in full force and effect.

39
40 **SO CERTIFIED** this 28th day of April, 2009.



47 
48 **GLORIA B. NELSON**
49 Secretary
50 Consolidated Commission on Utilities



GUAM POWER AUTHORITY

ATURIDÅT ILEKTRESEDÅT GUAHAN
P.O.BOX 2977 • AGANA, GUAM U.S.A. 96932-2977

Felix P. Camacho
Governor

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

Michael W. Cruz, M.D.
Lieutenant Governor

Accountability • Impartiality • Competence • Openness • Value

INVITATION FOR BID (IFB) NO.: GPA- 019-09

DESCRIPTION: Supply of Diesel Engine Cylinder Lubricating Oil to GPA

SPECIAL REMINDERS TO PROSPECTIVE BIDDERS

Bidders are reminded to read the Sealed Bid Solicitation and Instructions, and General Terms and Conditions attached to the IFB to ascertain that all of the following requirements checked below are submitted in the bid envelope two (2) copies, one (1) original, at the date and time for bid opening.

- (XX) **BID GUARANTEE (15% OF THE ANNUAL COST OF BID PREMIUM FEE AMOUNT)**
May be in the form of;
- a. Cashier's Check or Certified Check
 - b. Letter of Credit
 - c. Surety Bond – Valid only if accompanied by:
 - 1. Current Certificate of Authority issued by the Insurance Commissioner;
 - 2. Power of Attorney issued by the Surety to the Resident General Agent;
 - 3. Power of Attorney issued by two (2) major officers of the Surety to whoever is signing on their behalf.
- () STATEMENT OF QUALIFICATION;
- () SAMPLES;
- () BROCHURES/DESCRIPTIVE LITERATURE;
- (XX) NON-COLLUSION AFFIDAVIT;
- (XX) AFFIDAVIT OF DISCLOSURE OF MAJOR SHAREHOLDES – Affidavits must comply with the following requirements:
- a. The affidavit must be signed within 60 days of the date the bid is due;
 - b. Date of signature of the person authorized to sign the bid and the notary date must be the same.
 - c. First time affidavit **must** be an **original** – If copy, indicate Bid Number/Agency where original can be obtained.

(XX) OTHER REQUIREMENTS:

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

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

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

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

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

Bidder Representative’s Signature

BID SPECIFICATIONS No. GPA-019-09

FOR

SUPPLY OF

DIESEL ENGINE CYLINDER LUBRICATING OIL



JOAQUIN C. FLORES, P.E.
General Manager

ANDRIANO E. BALAJADIA
AGMO

ANDRIANO E. BALAJADIA
Manager of Generations (A)

IFB GPA-091-09

SUPPLY OF DIESEL ENGINE CYLINDER LUBRICATING OIL

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I. INVITATION TO BID

The Governor of Guam, through the Guam Power Authority, is soliciting bids under GPA-019-09 for the **Supply of Diesel engine Cylinder Lubricating Oil**. Interested Parties are required to submit two (2) copies and one (1) original of their sealed bids to the Guam Power Authority, Procurement Office located 1911 Route 16, Harmon, Guam, no later than _____ on _____. Bids will be publicly opened and read aloud shortly afterwards in the Procurement Conference Room, 1st Floor, GPA Central Building, 1911 Route 16, Harmon, Guam.

The Contract shall be for three (3) years to commence on or about October 01, 2009. All bids must be accompanied by a bid security in the amount of 15% of the total bid amount. Bid security can be made by a surety bid bond or a cash deposit in the form of a certified or cashier's check made payable to the Guam Power Authority. A non-refundable amount of _____ is required as payment for each set of invitation for bids documents which can be obtained from the Procurement Office commencing on _____. A receipt of payment should be obtained from the cashier at the Customer Services Department, 1st Floor, GPA Central Building, 1911 Route 16, Harmon, Guam before applying for the bid documents.

All interested parties are hereby on notice that minority business enterprises will be afforded full opportunity to submit bids in response to the invitation and will not be discriminated against on the grounds of race, color and national origin in consideration for an award.

The right is reserved to reject any or all bids and to waive any imperfection in the bids in the interest of the Guam Power Authority.

A **pre-bid conference** will be held on _____ at _____ at the GPA Procurement Conference Room. An investigation to allow prospective bidders to familiarize themselves with said project will be conducted on _____ at _____. All prospective bidders are encouraged to be present at both the pre-bid conference and the site investigation.

JOAQUIN C. FLORES, P.E.
General Manager

II. INSTRUCTIONS TO BIDDERS

1. RECEIPT AND OPENING OF BIDS

Interested parties shall submit two (2) copies and one (1) original of their sealed bids under reference IFB No. GPA-019-09 for the **Supply of Diesel Engine Cylinder Lubricating Oil**. Sealed bids will be received by the Guam Power Authority at the GPA Procurement Office until _____, _____. Bids will be publicly opened in the GPA Procurement Conference Room, 1st. Floor, GPA Main Office Building.

Bids shall be made on the forms furnished by the Guam Power Authority and shall be enclosed in a sealed envelope addressed to the General Manager of the Guam Power Authority and endorsed with the name of the bidder and the title **“IFB No. GPA-019-09 : Supply of Diesel Engine Cylinder Lubricating Oil”**.

Attention is called to the fact that bidders not only offer to assume the obligations and liabilities imposed upon the Contractor in the form of the contract, but expressly make certain of the representations and warrants made therein. No effort is made to emphasize any particular provision of the contract, but bidders must familiarize themselves with every provision and its effects.

2. PLANS AND SPECIFICATIONS

Plans, specifications and bid forms may be obtained at the Procurement Office, Guam Power Authority for the purchase price of _____ for each set. There will be no refunds.

This invitation for bids consists of the following documents:

- a) Bid Invitation Documents
 1. Invitation for Bid
 2. Instructions to Bidders

- b) Bid Submittal Documents
 1. Bid Form
 2. Bid Bond
 3. Non-Collusion Affidavit
 4. Major Shareholders Disclosure Affidavit

- c) Contract Documents

3. **PREPARATION OF BID**

The bidder must submit his bid on the forms furnished by the Guam Power Authority. All blank spaces in the bid forms must be correctly filled in where indicated and the bidder must state the prices (both in words and numerals) for which he proposes to do each item of the work contemplated or furnish each item of the materials required. In case of conflict between words and numerals, the words, unless obviously incorrect, will govern.

The bidder shall incorporate all costs associated with the staffing, operation, maintenance, and incidentals (utilities, permits, applications, etc.) as necessary, in his bid price proposal.

The bidder shall sign his bid in the blank space provided therefore. If this bid is made by a partnership or corporation, the name and address of the partnership or corporation shall be shown, together with the names and addresses of the partners or officers. If the bid is made by a partnership, it must be acknowledged by one of the partners, if made by a corporation by one of the authorized officers thereof.

4. **BID INQUIRY**

Discrepancies, omissions, or doubts as to the meaning of bid submittal documents, contract provisions and technical specifications should be communicated in writing to the General Manager of the Guam Power Authority for interpretation. Bidders should act promptly and allow sufficient time for a reply to reach them. Every interpretation made to a bidder will be in the form of an addendum to the Invitation for Bids documents which, if issued, will be sent as promptly as practicable to all persons to whom the bid documents have been issued. All such addenda shall become part of the contract documents.

5. **SUBMISSION OF BIDS**

(a) The bidder is required to bid on all items called for in the Bid Form.

(b) Bids shall be submitted on the forms furnished or copies thereof, and shall be signed in ink. Erasures or other changes in a bid must be explained or noted over the signature of the bidder. Bids containing any conditions, omissions, unexplained erasures or alterations or items not called for in the proposal or irregularities of any kind shall be rejected by the GPA as being incomplete.

(c) Each bid must give the full business address of the bidder and be signed by him with his usual signature. Bids by partnerships must furnish the full names of all partners and must be signed in the name of the partnership by one of the members of the partnership or by an authorized representative followed by the signature and designation of the person signing. Bids by corporations must be signed with the legal

name of the corporation, followed by the name of the State of incorporation and by the signature and designation of the president, secretary, or other person authorized to bind it in the matter. The name of each person signing shall also be typed or printed below the signature. A bid by a person who affixes to his signature the word "president", (agent or other designation, without disclosing his principal), may be held to the bid. When requested by GPA, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished.

6. **BID SECURITY**

Bids shall be accompanied by a bid guarantee deposit of not less than fifteen percent (15%) of the total annual cost of the bid premium fee amount for which an award can be made. Bid guarantee may be bid bond (form enclosed), certified check or cashier's check. Bid bond shall be signed by the bidder, two major officers of the Surety and Resident General Agent, if the Surety is a foreign or alien surety and shall be accompanied with copies of current Certificate of Authority to do business on Guam issued by the Department of Revenue and Taxation, Power of Attorney issued by the Surety to the Resident General Agent and Power of Attorney issued by two major officers of the Surety to whoever is signing on their behalf. Certified check or cashier's check must be issued by a banking institution licensed to do business on Guam and shall be made payable to the Guam Power Authority. Such bid bond or check shall be submitted with the understanding that it shall guarantee that the bidder will not withdraw his bid for a period of sixty (60) calendar days after the scheduled closing time for the receipt of bids; that if his bid is accepted, he will enter into a formal contract with GPA in accordance with the form of agreement included as a part of the contract documents. The bid guarantee shall be returned to all except the three lowest bidders within three days after the formal opening of bids. The bid guarantee of the second and/or third low bidder shall be returned thirty (30) calendar days after the bid opening date upon request, provided that he has not been notified by GPA of the acceptance of his bid prior to the date of such request. The bid guarantee of the lowest qualified bidder shall be returned within forty eight (48) days after the Guam Power Authority and the qualified bidder have executed the contract.

Should the successful bidder fail or refuse to execute and deliver the contract and performance and payment bonds required within fifteen (15) calendar days after acceptance of his bid by the Government, he shall forfeit to the Government of Guam as liquidated damages for such failure or refusal the security deposited with his bid.

7. **COMPETENCY OF BIDDERS**

The Government may require bidders to present satisfactory evidence that he has sufficient experience and he is fully prepared with necessary capital, material, machinery and skilled workmen and supervision staff to carry out the contract satisfactorily.

Accordingly, the Contractor must submit for review the following statements:

- a) Experience on similar work.
- b) Past performance of firm in accomplishing government projects in agreed time.
- c) Availability of plant, machinery and other equipment necessary for work.
- d) Quality of work presently performed for Government of Guam or other agencies.
- e) Contractor's diligence in carrying out responsibility.
- f) Record of good owner-contractor relationship.
- g) Previous record of bids qualification.
- h) Quality of personnel and areas of their performance.
- i) Record of past performance of government contracts including record of default and nonpayment of obligations.
- j) Possession of Government of Guam appropriate contractor's license.
- k) Financial resources.

Financial resources report shall be dated not more than six (6) months prior to bid opening, must be prepared by a certified accountant and shall contain at least the following information:

- a) Total Assets
- b) Total Liabilities
- c) Total Current Assets
- d) Total Current Liabilities
- e) Bonding Capability

Any bidder who at the time of bidding is determined liable to pay liquidated damages for delay in completion of the last two works contracted from the Government of Guam will be automatically rejected.

8. NON-COLLUSION AFFIDAVIT

Each person submitting a bid for any portion of the work covered by the bid documents shall execute an affidavit, in the form provided with the bid, to the effect that he has not colluded with any other person, firm or corporation in regards to any bid submitted. Such affidavit shall be attached to the bid.

9. REPRESENTATION REGARDING GRATUITIES AND KICKBACKS

The bidder, offeror or contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth in Section 11-206 (Gratuities and Kickbacks) of the Guam Procurement

Regulations.

10. **REPRESENTATION REGARDING ETHICAL STANDARDS FOR GOVERNMENT EMPLOYEES AND FORMER GOVERNMENT EMPLOYEES**

The bidder, offeror or contractor represents that it has not knowingly influenced and promises that it will not knowingly influence a government employee to breach any of the ethical standards set forth in Chapter 11 (Ethics in Public Contracting) of the Guam Procurement Act.

11. **DISCLOSURE OF MAJOR SHAREHOLDERS**

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

b) Failure by any bidder to submit the Major Shareholders Disclosure Affidavit on the form furnished by the Guam Power Authority shall result in the disqualification of his bid.

12. **MODIFICATIONS PRIOR TO DATE SET FOR OPENING BIDS**

The right is reserved, as the interest of the Government may require, to revise the specifications or drawings or both prior to the date set for opening bids. Such revisions, if any, will be announced by an addendum or addenda to this invitation for bid. If the addenda are of a nature which requires material changes in quantities or prices to be bid or both, the date set for opening bids may be postponed by such number of days as in the opinion of the issuing officer will enable bidders to revise their bids. In such cases, the addendum will include an announcement of the new date for opening bids.

13. **WITHDRAWAL OF BIDS**

Bids may be withdrawn on written or telegraphic request received from bidders prior to the time fixed for opening. Negligence on the part of the bidder in preparing the bid confers no right to the withdrawal of the bid after it has been opened.

14. PUBLICITY OF BIDS

At the time fixed for the opening of bids, the contents of the bids will be made public for the information of bidders and others properly interested who may be present either in person or by representation.

15. RECEIPT AND OPENING OF BIDS

(a) Bids will be opened publicly at the time and place stated in the invitation for bids. The officer whose duty it is to open them will decide when the specified time has arrived and bids received thereafter will not be considered. No responsibility will be attached to any officer for the premature opening of a bid not properly addressed and identified.

(b) Telegraphic bids will not be considered, but modifications by telegraph of bids already submitted will be considered if received prior to time set for opening.

16. RIGHT TO ACCEPT AND REJECT BIDS

GPA reserves the unqualified right, in its sole and absolute discretion, to reject any and all bids, or to accept that bid or combination of bids, if any, which in its sole and absolute judgment will under all circumstances best serve the Government's interests. In the event that the successful bidder fails to execute the contract upon his part or to furnish a satisfactory performance and payment bond, the Government, after declaring forfeited the security deposit of such bidder, reserves the option to accept the bid of any other bidder within fifteen (15) calendar days from such default, in which case such acceptance shall have the same effect as to such bidder as though he was the originally successful bidder.

17. AWARD OF CONTRACT

(a) The contract will be awarded as soon as possible to the lowest responsive and responsible bidder, provided it is in the best interest of the Government to accept his bid.

(b) GPA reserves the right to waive any informality in bids received when such waiver is in the best interest of the Government. The Government also reserves the right to accept any item in the bid and to reject any item in the bid unless otherwise specified by GPA.

18. **PERFORMANCE AND PAYMENT BOND**

The successful bidder must deliver to the Guam Power Authority an executed performance and payment bond (forms enclosed) in an amount at least equal to fifteen percent (15%) of the annual cost of the accepted total bid amount as security for the faithful performance of the contract and security for the payment of all persons performing labor and furnishing materials in connection with this contract. The sureties of all bonds shall be such surety company or companies as are approved by GPA and as are authorized to transact business in Guam. The bonds must be approved by GPA prior to execution of the formal contract.

Should the successful bidder fail or refuse to execute and deliver the contract and performance and payment bonds required within fifteen (15) calendar days after acceptance of his bid by the Government, he shall forfeit to the Government of Guam as liquidated damages for such failure or refusal the security deposited with his bid.

19. **CANCELLATION OF AWARD**

The Government reserves the right to cancel the award of any contract at any time before the execution of same.

BID FORM

Date: _____

To: _____

Gentlemen:

The undersigned (hereafter called the Bidder), a _____

(Corporation, Partnership or Individual)

organized and/or licensed to do business under the laws of _____, hereby proposes and agrees to provide necessary **Supply of Diesel Engine Cylinder Lubricating Oil**, all in accordance with the specifications and other contract documents prepared by the Guam Power Authority for the sum of :

Bid Price Offer:

Amount in Words : _____ per gallon

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

The undersigned has examined the specifications and other contract documents and is familiar with the local conditions at the place where the Contract is to be performed.

The bid security attached, without endorsement, in the sum of not less than fifteen percent (15%) of the total annual amount of the bid premium fee, is furnished to the Government as a guarantee that the contract will be executed and a performance and payment bond furnished within fifteen (15) calendar days after the acceptance of the bid of the undersigned. In the event that the undersigned bidder shall fail to execute the contract and furnish a satisfactory performance and payment bond under the conditions and within the time specified in this bid, the bid security shall be forfeited as liquidated damages for the delay and additional work and costs caused thereby in obtaining another bidder. The undersigned hereby agrees that the amount of the attached bid security is a reasonable forecast of potential damages and is not a penalty.

If written notice of the acceptance of this bid is mailed, telegraphed or delivered to the undersigned within sixty (60) calendar days after the opening thereof, the undersigned agrees to execute the form of agreement included as one of the contract documents, and to furnish a

performance and payment bond in an amount equal to one hundred percent (100%) of the contract amount within fifteen (15) calendar days after receipt of such notice.

The undersigned understands that GPA reserves the right to reject any or all bids or to waive any informality or technicality in any bids in the interest of the Government.

Attached hereto is an affidavit as proof that the undersigned has not engaged into any collusion with any person with respect to this bid or any other bid or the submitting of bids for the contract for which this bid is submitted.

RESPECTFULLY SUBMITTED BY:

(CONTRACTOR)

(BY)

(TITLE)

(BUSINESS ADDRESS)

NON-COLLUSION AFFIDAVIT

A F F I D A V I T

(Prime Bidder)

GUAM)ss

_____, being first duly sworn, deposes and says:

That I am _____, _____,

(a partner or officer of the firm of, etc.)

that I am the party making the foregoing bid, that such bid is genuine and not collusive or fictitious, that said bidder has not colluded, conspired, connived or agreed, directly or indirectly, with any bidder or person, to put in a fictitious bid or to refrain from bidding, and has not in any manner, directly or indirectly, sought by an agreement or collusion, or communication or conference, with any person to fix the bid price of affiant or of any other bidder, or to fix any overhead, profit or cost element of said bid price, or of that of any other bidder, or to secure any advantage against the Government of Guam or any other bidder, or to secure any advantage against the Government of Guam or any person interested in the proposed contract; and that all statements in bid are true.

Further, affiant sayeth naught.

Signature of

Bidder, if the bidder is an individual;
Partner, if the bidder is a partnership;
Officer, if the bidder is a corporation.

Subscribed and sworn to before me

this _____ day of _____, _____.

NOTARY PUBLIC

My commission expires _____, _____.

**SPECIAL PROVISION
FOR
MAJOR SHAREHOLDERS DISCLOSURE AFFIDAVIT**

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

Excerpt from P.L. 18-44:

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

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

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

MAJOR SHAREHOLDERS DISCLOSURE AFFIDAVIT

GUAM)ss.

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

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

<u>Name</u>	<u>Address</u>	<u>Percentage of Shares Held</u>
_____	_____	_____
_____	_____	_____

Total Number of Shares: _____

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

<u>Name</u>	<u>Address</u>	<u>Amount of Commission Gratuity or Other Compensation</u>
_____	_____	_____

Further, affiant sayeth naught.

Date: _____

 Signature of individual if bidder is a sole proprietorship;
 Partner, if the bidder is a partnership; Officer, if the bidder is a corporation.

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

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

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that _____
_____.

(Name of Contractor)

as Principal, hereinafter called the Principal and _____

(Name of Surety)

a duly admitted insurer under the laws of the Guam, as Surety, hereinafter called the Surety, are held and firmly bound unto the Guam Power Authority for the sum of _____ Dollars

(\$ _____), for payment of which sum will and truly to be made, the said Principal and the said Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for _____
_____.

NOW THEREFORE, if the Guam Power Authority shall accept the bid of the Principal and the Principal shall not withdraw said bid within sixty (60) calendar days after the opening of bids, and shall within fifteen (15) calendar days after the prescribed forms are presented to him for signature, enter into a Contract with the Guam Power Authority in accordance with the terms of such bid and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter into such Contract and give such bond or bonds, if the Principal shall pay to the Guam Power Authority the difference, not to exceed the amount hereof, between the amounts specified in said bid and such larger amount for which the Guam Power Authority may in good faith contract with another party to perform work covered by said bid or an appropriate liquidated amount as specified in the Invitation for Bids then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this _____ day of _____, _____.

(PRINCIPAL)

(SEAL)

(WITNESS)

(TITLE)

(MAJOR OFFICER OF SURETY)

(MAJOR OFFICER OF SURETY)

(TITLE)

(TITLE)

(RESIDENT GENERAL AGENT)

NOTICE

Please find the Bid Submittal documents, Formal Contract and Bid Offer. This FORMAL CONTRACT MUST be filled out, properly signed and returned to GPA as part of your response. Please be also advised of the requirement of furnishing the bid bond in the designated amount and the information pertaining to responsibility and other requirements specified in the Solicitation that must be submitted together with the aforementioned documents. Bidders need not submit Part A-the Solicitation however, Appendix "A" - Performance Bond must be submitted by the successful and most responsive bidder in accordance with this solicitation.

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 _____ 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).**

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**
2. **MARIANAS ENERGY CORPORATION (MEC 8 & 9)**
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 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 2009</u>	<u>150SN</u>	<u>500SN</u>	<u>150BS</u>
ICIS-Singapore Posting, Avg (\$/MT) (Average of all postings for Jan 2009)	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: _____ **per gallon**

Amount in Figures (in three decimal places): \$ _____ **/ 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)	<u>150SN</u>	<u>500SN</u>	<u>150BS</u>
ICIS-Singapore Posting (\$/MT) (Average of all postings for Jan 2009)	\$735.0	\$760.0	\$1,150.0
Component Blend (%w)	<u>35%</u>	<u>50%</u>	<u>15%</u>
Component Cost (\$/MT)	257.25	380.00	172.50

Product Cost = Total Component Cost = \$809.75 per MT

Reference Price = \$809.75 per MT = \$2.866 per gallon

Fixed Service Fee:

Fixed Service Fee = \$0.080 per gallon (sample price)

INVOICE PRICE:

Invoice Price = Reference Price (Previous Month Average Price) + Fixed Service Fee

= (\$2.866 + \$0.080) per gallon

Invoice Price = \$2.946 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 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.**

(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.

(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

The list may not be complete, as oils from other companies can be equally suitable.

- (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 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 installed in the receiving facility, Contractor shall provide its own meter 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 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 cause by or arise out of:

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

C. PUBLIC LIABILITY INSURANCE:

1. The Contractor shall maintain, during the life of this Contract, such Public 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 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: \$ 500,000 Each Person
- (b) Property Damage Limits: \$ 500,000 Each Occurrence
\$1,000,000 Aggregate

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

- (a) The coverage shall be provided under a Comprehensive General Liability form of policy or similar thereto.
- (b) The property damage coverage shall include a Broad Form Property Damage Endorsement.
- (c) Contractual Liability coverage shall be included.
- (d) Protective Liability coverage shall be included to protect the Contractor against claims arising out of operations performed by his Subcontractors.
- (e) Products Liability and/or Completed Operations coverage shall be included.

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. The minimum acceptable limits of liability to be provided by such Automobile Liability Insurance shall be as follows:

- Bodily Injury Limits: \$ 500,000 Each Person

\$1,000,000 Each Occurrence

Property Damage Limits: \$ 500,000 Each occurrence

E. 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.

F. 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. and D. 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.

G. 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.

H. 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.

I. 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.

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

Date

SIMON SANCHEZ III
Chairman, Consolidated Commission on Utilities

Date

Contractor's duly Authorized Representative

Date

Attested as to form:

GRAHAM BOTHA
Legal Counsel
Guam Power Authority

Date

Account No. _____

Amount: _____

PERFORMANCE AND PAYMENT BONDS

KNOW ALL MEN BY THESE PRESENTS that _____

(Name of Contractor)

herein after called the Contractor and _____

(Name of Surety)

a corporation duly organized under the laws of the State of _____

(hereafter referred to as: "Surety") authorized to transact business in Guam as Surety, are held and firmly bound unto the Guam Power Authority, as obligee, for use and benefit of claimants as herein below defined, in the amount of _____

_____ Dollars (\$) for the payment whereof the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Contractor has by written agreement dated _____, 20____, entered into a Contract with the Guam Power Authority for the _____

in accordance with Drawings and Specifications prepared by the Guam Power Authority, which Contract is by reference made a part hereof, and is hereafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Contractor shall promptly and faithfully perform said Contract, and shall promptly make payment to all claimants as hereinafter defined for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

- A. The Surety hereby waives notice of any alteration or extension of the time made by the Guam Power Authority provided the same is within the scope of the Contract.

- B. Whenever Contractor shall be and is declared to be in default under the Contract by the Guam Power Authority, and the Guam Power Authority has performed its Contract obligations, the Surety may promptly remedy the default or shall promptly:
1. Complete the Contract in accordance with its terms and conditions; or
 2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by the Guam Power Authority and the Surety of the lowest responsive, responsible bidder, arrange for a Contract between such bidder and the Authority, and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less than balance of the Contract price, but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price", as used in this paragraph shall mean the total amount payable by the Guam Power Authority to Contractor under the Contract and any amendments thereto, less the amount properly paid by the Guam Power Authority to Contractor. No right of action shall accrue on this bond to or for the use of any person or corporation other than the Guam Power Authority or successors of the Authority.
- C. A claimant is defined as one having a direct contract with the Contractor, or with a sub-contractor of the Contractor for labor, material, or both, used or reasonably required for use in the performance of the Contract labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
- D. The above-named Contractor and Surety hereby jointly and severally agree with the Guam Power Authority that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) calendar days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Guam Power Authority shall not be liable for the payment of any costs or expenses of any such suit.
- E. No suit or action shall be commenced hereunder by a claimant:
1. Unless claimant, other than one having a direct contract with the Contractor, shall have given written notice to any two of the following:

The Contractor, the Guam Power Authority, or the Surety above named, within ninety (90) calendar days after such claimant did or performed that

last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be personally served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Contractor at any place the principal maintains an office or conducts its business.

2. After the expiration of one (1) year following the date on which the last of the labor was performed or material was supplied by the party bringing suit.
3. Other than in a court of competent jurisdiction in and for Guam.

F. The amount of the payment bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens, which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

SIGNED AND SEALED THIS _____ day of _____ 2009.

IN THE PRESENCE OF:

(Note: If the Principals are Partners, each must execute the Bond)

(WITNESS)

(CONTRACTOR) (SEAL)

(TITLE)

(MAJOR OFFICER OF SURETY)

(MAJOR OFFICER OF SURETY)

(TITLE)

(TITLE)

(RESIDENT GENERAL AGENT)