

Multi-Step Bid

No. GPA-048-09

PERFORMANCE MANAGEMENT CONTRACT
FOR THE
GUAM POWER AUTHORITY
FUEL BULK STORAGE FACILITY AND PIPELINES



Volume I

Commercial Terms & Conditions

JULY 2009

- DRAFT AS OF JUNE 9, 2009 -

TABLE OF CONTENTS

Section	Description	Page
1.	INTRODUCTION.....	1
1.1.	INVITATION FOR BID (IFB) DOCUMENT ORGANIZATION	2
1.2.	PROJECT OVERVIEW AND SCOPE	3
1.2.1.	GPA Overview.....	3
1.2.2.	Fuel Bulk Storage Facility Overview.....	3
1.2.3.	Scope of the Performance Management Contract.....	3
1.3.	IFB DOCUMENT MEDIA.....	4
2.	INSTRUCTIONS TO BIDDERS.....	5
2.1.	CORRESPONDENCE	5
2.1.1.	Language.....	5
2.1.2.	Commercial and Technical Correspondence.....	5
2.2.	EXAMINATION OF TECHNICAL AND FUNCTIONAL REQUIREMENTS AND TENDER DOCUMENTS	5
2.3.	PLANT TOURS.....	6
2.4.	SOLICITATION AMENDMENT.....	6
2.5.	FAMILIARITY WITH LAWS	6
2.6.	COST OF BIDDING	6
2.7.	BASIS OF PRICE/COST DATA FURNISHED WITH TECHNICAL PROPOSALS	6
2.8.	PRICE/COST DATA.....	7
2.9.	DOCUMENTS EXECUTED OUTSIDE GUAM.....	7
2.10.	STEP ONE PROCEDURES	7
2.10.1.	Submission of Bids	7
2.10.2.	Proposal Submittal	9
2.10.3.	Technical Proposal Submission Date	12
2.10.4.	Proposal Changes During Bid Process	12
2.10.5.	Evaluation of Technical Proposals	12
2.11.	STEP TWO PROCEDURES.....	13
2.11.1.	Request for Price Proposal/Offer and Performance Guarantees.....	13
2.11.2.	Preliminary Examination of Priced Offer	14
2.11.3.	Evaluation Criteria and Comparison of Priced Offers.....	14
2.12.	GENERAL PROPOSAL GUIDELINES AND REQUIREMENTS	14
2.12.1.	Amendments to the Tender Document.....	14
2.12.2.	Proprietary Data	14
2.12.3.	Acceptance of Proposals	15
2.12.4.	Solicitation Cancellation or Delay	15
2.12.5.	Disqualification of BIDDER.....	15
2.12.6.	False Statements In Proposal.....	16
2.13.	AWARD OF CONTRACT	16
2.14.	BID AND PERFORMANCE BOND REQUIREMENTS	16
2.14.1.	Performance Bond Form, Amount and Duration	16
2.14.2.	Requirement for Performance Bond Execution by a Guam Licensed Surety Company	17
2.14.3.	Bid Bond Form and Amount.....	17
3.	PROPOSAL FORMS.....	18
3.1.	TECHNICAL PROPOSAL FORMS	18
3.1.1.	Document Receipt Checklist.....	18
3.1.2.	Proposal Submittal Checklist.....	19
3.1.3.	Major Shareholders Disclosure Affidavit	19
3.1.4.	Non-collusion Affidavit.....	19

TABLE OF CONTENTS

Section	Description	Page
3.1.5.	Local Procurement Preference Application	19
3.2.	PRICE PROPOSAL FORM.....	19
3.2.1.	Annual Fixed Management Fee Price and O&M Spending/Cost Data Sheet	19
3.2.2.	Performance Guarantee Proposal.....	19
4.	CONDITIONS OF CONTRACT.....	20
4.1.	DEFINITIONS.....	20
4.1.1.	Approved	20
4.1.2.	Approved As Revised	20
4.1.3.	Change Order	20
4.1.4.	Seller	20
4.1.5.	Day.....	20
4.1.6.	Delivery Time	20
4.1.7.	Defective.....	20
4.1.8.	Drawings.....	21
4.1.9.	Effective Date of the Contract Agreement.....	21
4.1.10.	ENGINEER.....	21
4.1.11.	ENGINEER's Instructions.....	21
4.1.12.	General Manager.....	21
4.1.13.	Goods	21
4.1.14.	Modification.....	21
4.1.15.	OWNER.....	21
4.1.16.	Point of Delivery	21
4.1.17.	Project	22
4.1.18.	PURCHASER	22
4.1.19.	Contract Agreement (Agreement).....	22
4.1.20.	Contract Documents.....	22
4.1.21.	Procurement Officer.....	22
4.1.22.	CONTRACTOR.....	22
4.1.23.	SITE or Site.....	22
4.1.24.	Special Services	22
4.1.25.	Territory	22
4.2.	AGREEMENT	23
4.3.	INDEMNITY	23
4.4.	SHIPMENT, DELIVERY, AND ACCEPTANCE OF GOODS.....	24
4.5.	ACCOUNTING	24
4.6.	WAIVER OF CLAIMS	24
4.7.	SUPERVISION AND COORDINATION BY CONTRACTOR.....	25
4.8.	SUBSTITUTIONS	25
4.9.	DOCUMENTATION AND DRAWINGS	25
4.10.	CONTINUING PERFORMANCE.....	26
4.11.	ACCESS TO GOODS IN PRODUCTION	26
4.12.	EXPEDITING.....	27
4.13.	COMPLIANCE WITH LAW	27
4.14.	PRICE ADJUSTMENT	27
4.14.1.	Price Adjustment Methods.....	27
4.14.2.	Submission of Cost or Pricing Data	28
4.15.	CHANGES.....	28
4.15.1.	Change Order	28
4.15.2.	Time Period for Claim	28
4.15.3.	Claims Barred After Final Payment	28

TABLE OF CONTENTS

Section	Description	Page
4.15.4.	Other Claims Not Barred.....	28
4.16.	CONTRACT PRICE	28
4.17.	PAYMENT MILESTONES AND SCHEDULE.....	29
4.18.	FORCE MAJEURE	30
4.18.1.	Invocation of Force Majeure	30
4.18.2.	Delivery Time and Force Majeure	30
4.19.	WARRANTY	31
4.20.	TESTS AND INSPECTIONS	31
4.21.	REMEDYING DEFECTIVE GOODS.....	32
4.21.1.	Remedying Defective Special Services.....	32
4.21.2.	Cost of Remedying Defects.....	32
4.22.	STOP WORK ORDER	33
4.22.1.	Order to Stop Work.....	33
4.22.2.	Cancellation or Expiration of the Order	33
4.22.3.	Termination of Stopped Work.....	34
4.23.	TERMINATION FOR CONVENIENCE.....	34
4.23.1.	Termination.....	34
4.23.2.	CONTRACTOR's Obligations.....	34
4.23.3.	Right to Supplies.....	34
4.23.4.	Compensation Under Termination for Convenience.....	35
4.24.	TERMINATION FOR DEFAULTS	37
4.24.1.	Default.....	37
4.24.2.	CONTRACTOR's Duties	37
4.24.3.	Compensation.....	37
4.24.4.	Excuse for Nonperformance or Delayed Performance.....	37
4.24.5.	Erroneous Termination for Default	38
4.24.6.	Additional Rights and Remedies	38
4.25.	DISPUTES.....	38
4.26.	CONSEQUENTIAL DAMAGES	38
4.27.	NOTICES	39
4.28.	COMPUTATION OF TIME.....	39
4.29.	LANGUAGE AND TRADE TERMS.....	39
4.30.	GOVERNING LAW	39
4.31.	NON-WAIVER.....	39
4.32.	SEVERABILITY	40
4.33.	RIGHTS AND REMEDIES	40
4.34.	NEW MATERIAL	40
4.35.	CLAIMS BASED ON THE GENERAL MANAGER'S ACTION OR OMISSIONS	40
4.35.1.	Limitations of Clause	41
4.35.2.	Standards of Design and Workmanship	41
4.36.	STANDARD WORK SCHEDULE	42
4.37.	INTERFERENCE WITH OPERATION	42
4.38.	RELEASE OF INFORMATION	42
4.39.	LIENS.....	42
4.40.	TITLE.....	42
4.41.	INSURANCE.....	43
4.42.	CONTRACTORS AND SUBCONTRACTORS INSURANCE.....	43
4.42.1.	Indemnification	44
4.42.2.	Certificate of Insurance	44
4.42.3.	Insurance Company and Agent	44
4.43.	GPA INSURANCE	44
4.44.	WAIVER OF SUBROGATION.....	44

1. Introduction

The Guam Power Authority (GPA), hereinafter referred to as GPA, is inviting Private Management Teams to participate in the bid of a Multi-Step Bid for a Performance Management Contractor (PMC), hereinafter referred to as PMC or CONTRACTOR, to manage, operate, and maintain all GPA Fuel Operations.

The PMC shall be responsible for the following general items:

- Management, Operation, and Maintenance of the GPA Fuel Bulk Storage Facility and Pipelines;
- Providing uninterrupted transfer of fuel oil product to GPA-owned and contracted facilities and locations as directed by GPA;
- Ensuring proper balance of fuel reception, delivery and consumption
- Engineering Assessment and recommendations for overall facility improvements and system upgrades;
- Accomplishment of Capital Improvement Projects;
- Fuel Inventory and Loss Control Management;
- Oil Spill and Emergency Response;
- Review and update of: Standard Operating Procedures; Facility Spill Response Plan and Spill Prevention, Control and Countermeasure Plan;
- Timely update of plans upon the introduction and adoption of any new federal and local laws and regulations;
- Compliance with tank System Operation and Maintenance Workplan;
- Compliance with all requirements of the Oil Pollution Act of 1990 (OPA 90 Act);
- Meeting Specified Performance Standard Objectives including but not limited to Pipeline Losses;
- Environmental Compliance and Homeland Security Compliance; and
- Other Responsibilities and Duties as cited in the Invitation for Bid Documents.

This bid shall be a Two Step process. Step One will establish a Qualified Bidders List (QBL) based on acceptable submitted Proposals (or Unpriced Technical Offers). Step Two will evaluate the Priced Offers from the vendors identified on the QBL and award a contract. Step One is the period from IFB announcement through Notification of Qualified BIDDERS. Step Two is the period after completion of the Technical Proposal Evaluation and notification of the QBL to the contract award date.

GPA will qualify the BIDDERS based on their proposal and the Qualitative Scoring Workbook Sheet. The BIDDERS selected will be notified and GPA will proceed with the second step of the bid process to open the sealed proposal price offers.

GPA will perform a comprehensive evaluation of each proposal and select the BIDDER with the best proposal based on the submitted Price Proposal Evaluation Workbook Sheet. If the selected vendor cannot proceed with the contract, GPA may elect to 1) go to the next best BIDDER or 2) cancel the BID.

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

Table 1: Bid Milestones

Bid Process	Milestone	From Date	To Date
	Bid Announcement	7/13/2009	7/17/2009
	Bid Documents Available	7/13/2009	8/12/2009
	Submit Questions	7/13/2009	7/29/2009
	Mandatory Fuel Tour	7/20/2009	7/20/2009
	Cut Off Date for Receipt of Questions	7/29/2009	7/29/2009
	GPA Review and Answer Questions	7/29/2009	8/5/2009
	Vendor Prepare Bids	7/13/2009	8/12/2009
	Fuel Tour (Optional)	7/26/2009	7/26/2009
	Cut Off Date for Receipt of Bids/Bid Opening	8/13/2009	8/13/2009 2:00 PM
Step One:	Technical Proposal (Bid) Evaluation	8/14/2009	8/24/2009
	Determine & Notify Qualified Bidders	8/14/2009	8/25/2009
Step Two:	Cut Off Date for Receipt/Opening of Price Proposal	9/1/2009	9/1/2009 2:00 PM
	Evaluation of Price Proposal	9/1/2009	9/2/2009
	Evaluation Approval/Recommendation	9/3/2009	9/15/2009
	Contract Terms Negotiation	9/15/2009	9/17/2009
	Contract Approval & Award	9/21/2009	9/29/2009
	Contract Signing	9/30/2009	9/30/2009
	Transition Period/Contract Mobilization	10/1/2009	10/31/2009
	Contract Commencement	11/1/2009	11/1/2009

1.1. Invitation for Bid (IFB) Document Organization

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

- Volume I — Commercial Terms and Conditions
- Volume II — Technical and Functional Requirements
- Volume III — Fuel Bulk Storage Facility Technical Description
- Volume IV — Proposal Scoring Mechanism
- Volume V — Appendices

In addition, the IFB documents include two sets of electronic spreadsheets (Microsoft Excel Workbooks):

- Qualitative Proposal Scoring.xls
- Price Proposal Evaluation.xls.

BIDDERS are reminded to submit the Price Proposal Evaluation Workbook in a separate sealed envelope marked “PRICE PROPOSAL” for Step Two of the IFB process.

1.2. Project Overview and Scope

This section describes the Performance Management Contract (CONTRACT) in general functional terms. Volume II, Technical and Functional Requirements, shall describe the contractual relationship between GPA and the PMC in greater detail.

The CONTRACT between the PMC and GPA shall be constructed as a Fixed Management Fee Contract, whereby the parties establish the mutually agreed contract and performance guarantees. In addition, the CONTRACT shall include provisions for operations and maintenance supplies and services and the inventory management and control of Fuel Bulk Storage Facility material and oil inventory.

1.2.1. GPA Overview

GPA is a public utility corporation that provides electric power service throughout the entire island of Guam. GPA, in conjunction with Private Partners, operates and maintains 13 power plants, with a total rated capacity of 552.4 MW. The authority also has installed and maintains an estimated combined total of 188 miles of 115 kV and 34.5 kV transmission lines and an estimated 495 miles of primary distribution lines, and 26 substations. In addition, the authority operates and maintains a total capacity of 18 MW for emergency generators to support 128 Guam Waterworks Authority water and sewage pump stations and sewage treatment facilities situated at various locations throughout the island and 10 portable units.

GPA is comprised of several departments or divisions, which include Executive/Administrative, Finance, Computer Services (ISD), Engineering, Strategic Planning and Operation Research Division, Procurement, Planning & Regulatory (Environmental), Safety, Human Resources, Customer Service, Facilities, Generation, Transmission & Distribution (T&D), and Transportation. Majority of the departments are located in a central office building, however T&D, Generation, and Transportation Offices and buildings are located throughout the island.

1.2.2. Fuel Bulk Storage Facility Overview

The Fuel Bulk Storage Facility is wholly owned by the Guam Power Authority and operated by the current Contractor, Pettera, Inc. GPA completed construction and commissioned Fuel Facility in 1976. The facility holds 500,000 barrels residual fuel oil capacity.

A full description of the facility can be found in Volume III.

1.2.3. Scope of the Performance Management Contract

The PMC shall utilize best operation and maintenance practices, training, and management techniques to accomplish key performance indicators (KPIs) for Fuel Bulk Storage Facility such as:

- No Fuel Transfer Interruptions
- Pipeline and Storage Losses (GPA Target = 0.25%)
- Timely Repairs of Equipment
- No Oil Spills
- 100% Environmental Compliance

In addition to the KPIs, the CONTRACT scope includes functional requirements that cover several key areas related to the operations and maintenance of the Fuel Bulk Storage Facility:

- Financing;
- O&M and Capital Budgeting;
- Staffing;
- Operations;
- Maintenance;
- Capital Improvement Projects;
- Operations and Maintenance of Goods and Services;
- Contract Terms;
- Communications and Reporting.

1.3. IFB Document Media

The five-volume set of IFB documents and all Amendments to this IFB shall be made available to BIDDERS in electronic forms including:

- CD-ROM (inclusive of electronic spreadsheets);
- Downloadable files posted on the Internet at <http://www.guampowerauthority.com/procurement/index.html>

2. Instructions to Bidders

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

This is a multi-step bid procurement. In Step One, only the submitted Technical Proposals will be evaluated. In Step Two, the Price Offers based upon Technical Proposals that are determined to be acceptable, either initially or as a result of discussions, will be considered for award.

2.1. Correspondence

2.1.1. Language

The official language of Guam is English. The bid and all accompanying documents shall be in English.

2.1.2. Commercial and Technical Correspondence

Any prospective BIDDER desiring an explanation or interpretation of the solicitation, commercial terms, Technical Specification, etc., must make a request in writing to GPA at the address listed below, referencing the Invitation for Bid No.

ATTENTION: JOAQUIN C. FLORES
GENERAL MANAGER

GUAM POWER AUTHORITY
POST OFFICE BOX 2977
HAGATNA, GUAM 96932-2977

FAX: 1 (671) 648-3165

In addition, BIDDERS may also make this request by writing to the GPA PMC Procurement Officer at gpa-pmc-ifb@gpagwa.com.

All inquiries must be received by Procurement no later than July 29, 2009. Oral explanations or instructions given will not be binding. Any information given to a prospective BIDDER concerning a solicitation will be furnished promptly to all parties recorded by Procurement as having received the Invitation for Bid as an amendment to the solicitation if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective BIDDERS.

2.2. Examination of Technical and Functional Requirements and Tender Documents

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

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

2.3. Plant Tours

All prospective BIDDERS are required, at their own expense, to visit Guam and the Fuel Bulk Storage Facility site to study local conditions, facilities available, craft wages, roads, communications, and transport facilities available. BIDDERS should also acquaint themselves with the relevant laws, rules, and regulations of Guam.

For the purpose of familiarizing BIDDERS with the Fuel Bulk Storage Facility, GPA will schedule mandatory Farm Tour on May 07, 2009. Additional Farm Tours (optional) will also be scheduled on May 14, 2009. Arrangements for all tours shall be made by written correspondence with the GPA PMC Procurement Officer via facsimile or email.

2.4. Solicitation Amendment

Any amendment, modification or addendum issued by the Guam Power Authority, prior to the opening of the proposals, for the purpose of changing the intent of the Technical and Functional Requirements, clarifying the meaning or changing any of the provisions of this Invitation for Bid, shall be binding to the same extent as if written in the tender documents.

Any addendum issued will be made available to all BIDDERS via mail, fax, e-mail or posting to the GPA Website at <http://www.guampowerauthority.com/procurement/index.html>. The BIDDERS shall acknowledge receipt of the amendment by a signature on one copy, which is to be returned to the GPA Procurement Manager. Acknowledgement may also be made by fax or e-mail.

2.5. Familiarity With Laws

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

2.6. Cost of Bidding

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

2.7. Basis of Price/Cost Data Furnished with Technical Proposals

The Vendors are required to submit their price offers as found in the MS EXCEL Workbook, Price Proposal Evaluation.xls with their technical proposals in a **separate sealed envelope marked "PRICE PROPOSAL" and indicating the date and time of bid package remittance.** The

vendors are required as part of the data requirements to furnish a fixed management fee, an O&M Spending Budget, and Performance Guarantees for each year of the contract as specified in the IFB documents.

2.8. Price/Cost Data

BIDDERS shall provide prices/costs in U.S. Dollars. The BIDDER shall provide any equipment and material prices on the basis of CIF to the Guam job site unloaded and shall provide a breakdown of the price/cost data.

The Price/Cost Data Sheet is contained in Appendix G and the MS EXCEL Workbook found in the CD #1.

2.9. Documents Executed Outside Guam

The Power of Attorney, performance bond guarantee, and documents defining the constitution of the joint venture, consortium, company or firm, if executed outside Guam, whether required to be submitted with the proposals or after the award of the contract, must be authenticated by a Notary Public or other official authorized to witness sworn statements. For those electing to use the Electronic Proposal Submittal Process, receipt of an electronic copy of these documents will suffice to meet the submittal deadline. However, the original must be sent to GPA and post-marked no later than the proposal due day.

2.10. Step One Procedures

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

2.10.1. Submission of Bids

2.10.1.1. Proposal Contents

Each Proposal shall contain a complete and clear description of the proposed fixed management fees, BIDDER management organization allocated for the CONTRACT, technologies, methodologies, key performance indicator guarantees and all resources at its disposal that the BIDDER will use to meet all functional requirements as set forth in the tender documents. Each proposal shall include the following:

- Cover and proposal checklist forms defined in Appendix A;
- Responses and supporting information to the questions raised in the Qualitative Scoring Workbook;
- Completed electronic copy of the **Proposal Evaluation Workbook in a separate sealed envelope marked "PRICE PROPOSAL"**; and,
- Supplementary information described below.

Each proposal shall be submitted in the format and quantities outlined elsewhere.

2.10.1.2. Responses and Supporting Information to Qualitative Questions

The BIDDER shall provide all responses and supporting information in writing to answer the questions raised in the Qualitative Scoring Workbook.

2.10.1.3. Electronic Copies of the Proposal Scoring Workbook

BIDDERS shall complete and submit one electronic copy each of the Qualitative Scoring Workbook and the Price Proposal Evaluation Workbook in **separate sealed envelopes**.

2.10.1.4. Supplementary Information

Each BIDDER shall submit with their proposal all the supplementary information required by the tender documents. The information submitted must be in sufficient detail and clarity to permit a complete comparison of the proposal with the Technical Specifications. The supplementary information included with each Proposal shall include the following:

1. A sufficient number of drawings, diagrams, catalogs, illustrations, and such other information as necessary to clearly support responses to the Qualitative requirements.
2. A PMC organization chart with the qualifications of each key project position category, plus a listing of the number of employees by category and their percent commitment on the CONTRACT for each calendar year over the lifetime of the contract. Categories shall include project management, engineering, analysis, programming, training, and field support.
3. Three or more client references and project description summaries for work performed under similar scope to this project.

Submittal of the following supplementary information is mandatory. **GPA shall automatically disqualify any proposal submitted without the supplementary information listed below:**

4. A copy of the BIDDER's Articles of Incorporation or other applicable forms concerning business organization (i.e. partnership, sole proprietorship, etc.) and By-Laws;
5. Affidavit of Disclosure of Major Shareholder (Appendix D);
6. Audited financial information on BIDDER's firm and all subcontractors that will be used in the performance of GPA Fuel Operations Management. This information shall be complete for the last five-years. BIDDERS must include their Dunn and Bradstreet Number or Other Major Credit Rating Agency rating.
7. Certificate of Good Standing to conduct business in jurisdiction of residence;
8. Non-collusion Affidavit (Appendix E);
9. Information regarding outstanding claims against the BIDDER, if any; and,

10. Bid Bond (Appendix J)

11. Current Guam Business License (applicable to this multi-step IFB and other additional requirements) shall be submitted at the time of bid closing.

2.10.2. Proposal Submittal

2.10.2.1. Manual And Electronic Options For Proposal Submittal

BIDDERS shall execute the submittal of their proposals using one and only one of the following procedures:

- Manual;
- Electronic.

Each prospective BIDDER will be given an ftp account and password on the <http://www.guampowerauthority.com/procurement/index.html> domain and up to 50 MB of storage space on the server hosting that domain. If the BIDDER elects to submit his proposal electronically, he may do so by uploading his proposal via ftp in an acceptable electronic format.

2.10.2.2. Non-repudiation Issues

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

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

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

2.10.2.3. Signature of BIDDER

A duly authorized person must sign the BIDDER's proposals. All names shall be typed or printed below the signature. A proposal submitted by a corporation must bear the seal of the corporation,

be attested to by its Secretary, and be accompanied by necessary Power-of-Attorney documentation.

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

Wherever a legal signature is required, receipt of an electronic signature will suffice to meet the submittal deadline for those electing to use the Electronic Proposal Submittal process. The original signed documents must be reproduced electronically and be placed in the submitted compressed archive file. However, the original documents must be sent to GPA via post or courier and post-marked no later than the bid-opening date. In addition, GPA receipt and acceptance of an electronic scanned copy of Notarized documents in Adobe Acrobat PDF with the compressed archive submitted prior to the opening of bids as meeting the proposal deadline. However, the original documents must be sent to GPA via post or courier and post-marked no later than the bid-opening date.

2.10.2.4. Manual Proposal Submittal Package Format And Handling

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

BIDDERS are required to submit one original and six (6) bound copies of their proposal including one completed electronic copy on one disk of the Qualitative Scoring Workbook and another on another disk of the Price Proposal Evaluation Workbook. The BIDDERS are advised to keep a copy of the completed Workbooks and test the electronic copy on disk prior to sending it off to GPA.

2.10.2.5. Marking and Packaging of Proposals

As a general rule, the manually submitted Proposals shall be submitted in separate sealed packages with the following information clearly marked on the outside of each side:

- 1) "TECHNICAL (UNPRICED) PROPOSAL" OR "PRICE PROPOSAL"
- 2) "PERFORMANCE MANAGEMENT CONTRACT - GPA FUEL OPERATIONS";
- 3) The BIDDER's Name;
- 4) INVITATION FOR BID NUMBER;

- 5) CLOSING DATE and TIME (Guam Standard Time).
- 6) Addressed As follows:

ATTENTION: JOAQUIN C. FLORES
GENERAL MANAGER
GUAM POWER AUTHORITY
POST OFFICE BOX 2977
HAGATNA, GUAM 96932-2977

If the BIDDER's Proposal cannot fit within one box or chooses to submit more than one box, each box must be labeled with the following:

- i. Box Number Within the Set of Submitted Boxes
- ii. The Total Number of Boxes Submitted.

2.10.2.6. Receipt and Handling of Manually Submitted Proposals

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

GPA procurement personnel and the BIDDERS must ensure that the outside of the sealed package is stamped received using the GPA Procurement Stamp. In addition, GPA procurement personnel must officially log the time and date that the BIDDER's sealed proposal package has been received.

2.10.2.7. Electronic Proposal Submittal Package Format and Handling

This section describes the proposal package format and content required by GPA that is specific to electronic submittal of proposals. The Electronic IFB Proposal Submittal Process is characterized by a preponderance of the submitted material in intangible electronic form that is delivered by an electronic agent of the BIDDER to an authorized electronic agent of the Guam Power Authority. The electronic agents are machines.

GPA and the BIDDER shall manage the Electronic IFB Submittal Process to address non-repudiation, security and confidentiality using the following:

- Manually executed signatures and printed media documents;
- Digital Signatures and certificates;
- Chain of custody receipts;
- Manual time-stamps for all printed documents received by GPA;
- Machine generated Fax confirmation reports;
- Secure notification e-mail;
- E-mail receipt notification;
- Electronic Postings on the guampowerauthority.com domain;

- Password protected and encrypted electronic files;
- Electronic delivery of IFB proposals to a disclosed, secured electronic ftp folder;
- Physically and electronically secured computers for storage of IFB materials.

GPA makes no warranties on these processes manual or electronic.

2.10.2.8. Electronic Proposal Submittal Package Format and Handling

The BIDDER must submit his entire proposal by performing the following:

- Creating a password protected, single compressed archive of his proposal using PKWARE's PKZIP 4.5 using a digital signature
- By uploading this archived entire proposal to his assigned account.

The digital signature must have the same force of law as that of signature of a person duly authorized to commit the BIDDER to its proposal. By its use of this digital signature, the BIDDER commits itself to its proposal and signifies that it has been delivered to GPA whole, complete and unaltered.

The BIDDER shall send the password to only the following authorized GPA persons via e-mail:

The GPA Procurement Officer at gpa-pmc-afb@gpagwa.com.

The BIDDER shall send this password prior to August 13, 2009, Guam Standard Time. In addition, the BIDDER shall send directions on how to retrieve the protected files from the archive, and an assurance that the BIDDER has tested the archive files.

2.10.3. Technical Proposal Submission Date

The Technical Proposal opening date and time is August 13, 2009, 2:00 p.m. Guam standard time. This opening time and date is also referred to as the Proposal submittal deadline or submittal date. Technical Proposals shall not be accepted after the proposal opening date.

2.10.4. Proposal Changes During Bid Process

Changes may be made to the Technical Proposal(s) prior to the proposal submittal due date.

2.10.5. Evaluation of Technical Proposals

After the Close of the Technical Proposal submission date, GPA will evaluate the Proposals.

GPA will use the score from the Qualitative Scoring Workbook to evaluate the contents of Proposals and categorize the Proposals as:

- a. acceptable;

- b. potentially acceptable, that is reasonable susceptible of being made acceptable; or
- c. unacceptable. The Procurement Officer shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

The Procurement Officer may initiate Step Two if there are sufficient acceptable Unpriced Technical Proposals to assure effective price competition in the second phase without technical discussions. If the Procurement Officer finds that such is not the case, the Procurement Officer shall issue an amendment to this Invitation for Bid or engage in technical discussions with BIDDERS as set forth below.

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

2.10.5.1. Discussions of Proposals

GPA may conduct discussions with any BIDDER to determine such BIDDERS qualifications for further consideration and explore with the BIDDER the scope and nature of the required services, method of performance and the relative utility of alternative methods of approach. During the course of such discussions, the Procurement Officer shall not disclose any information derived from a technical offer to any other BIDDER.

Each BIDDER is requested not to contact GPA on any matter relating to its proposal, from the time of submission of the Proposals to the time the contract is awarded, except to respond to inquiries by GPA.

2.10.5.2. Notice of Unacceptable Proposal

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

2.11. Step Two Procedures.

Upon completion of evaluation of Technical Proposals, qualified bidders will be notified and GPA will proceed with the Step Two of the multi-step bid.

2.11.1. Request for Price Proposal/Offer and Performance Guarantees

Each selected BIDDER from the Qualified Bidders list will be notified and GPA will open their submitted Price Offer in the MS EXCEL workbook Priced Proposal Evaluation.xls. GPA will

select a vendor based on a comprehensive evaluation of the price offer and performance guarantees as specified in Volume IV.

2.11.1.1. Proposal Changes During Bid Process

Changes may be made to the Price Offer prior to the proposal submittal due date.

2.11.1.2. Proposal Validity

All price/cost data submitted with the BIDDERS' proposals shall remain firm and open for acceptance for a period of not less than six (6) months after the Proposal submittal date defined elsewhere and thereafter shall be subject to renewal by mutual agreement between the BIDDER and GPA. BIDDER shall state the actual date of expiration in their proposal.

2.11.2. Preliminary Examination of Priced Offer

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

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

2.11.3. Evaluation Criteria and Comparison of Priced Offers

GPA will evaluate and compare the Priced Offers for Bidder's Technical Proposals that were determined during Step One to be responsive to the tender document requirements. GPA's evaluation of price offers shall compare Fixed Management Fees, O&M Spending Budget and performance guarantees. The Scoring Mechanism is further explained in Volume IV.

2.12. General Proposal Guidelines And Requirements

2.12.1. Amendments to the Tender Document

GPA may elect to change the IFB documents in whole or part. GPA shall send all Amendments to the IFB documents via fax and/or e-mail. In addition, GPA will make all Amendments available on the Internet at <http://www.guampowerauthority.com/procurement/index.html>.

2.12.2. Proprietary Data

For the purposes of this solicitation and submitted proposals, the laws, rules and regulations of Territory of Guam governing confidentiality shall govern. BIDDERS may designate those portions of the Proposal that contain trade secrets or other proprietary data that are to remain confidential.

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

2.12.3. Acceptance of Proposals

GPA reserves the right to reject any or all proposals and to waive minor informalities if it appears in GPA's best interest to do so.

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

2.12.4. Solicitation Cancellation or Delay

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

- a) The supplies and services being provided are no longer required;
- b) The solicitation did not provide consideration of other factors of significance to the Territory;
- c) All otherwise acceptable proposals received have clearly unreasonable price/cost data;
- d) There is reason to believe that the proposals may not have been independently arrived at in open competition, may have been collusive and may have been submitted in bad faith;

Any individual proposal may be rejected in whole or in part when in the best interest of the Territory.

2.12.5. Disqualification of BIDDER

When, for any reason, collusion or other anticompetitive practices are suspected among BIDDERS or offerors, a notice of the relevant facts shall be transmitted to the Guam Attorney General.

BIDDERS suspected of collusion or other anticompetitive practices may be suspended or debarred from participating in future procurement opportunities for a specified period.

2.12.6. False Statements In Proposal

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

2.13. Award of Contract

The contract will be awarded to the BIDDER evaluated as being qualified and with the best-priced proposal.

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

The successful BIDDER shall provide the required Performance Bond within ten (10) working days of receipt of the GPA Notice of Intent to Award.

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

2.14. Bid and Performance Bond Requirements

2.14.1. Performance Bond Form, Amount and Duration

The required performance bond shall be in the form as prescribed in Appendix B. At the beginning of the CONTRACT and at the beginning of each GPA Fiscal Year during which the CONTRACT is in effect, the PMC shall provide and maintain a performance bond in the amount equal to:

- (1) the Annual Fixed Management Fee

for that full or partial fiscal year within the term of the contract. If the PMC is declared by GPA to be in default under the CONTRACT, GPA may exercise any or all rights and remedies it possesses under the provisions of the performance bond.

The GPA Fiscal Year begins on October 1 and ends on September 30 of the following calendar year.

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

The PMC shall provide a Performance Bond executed by a surety company licensed to do business on Guam. A list of surety companies licensed to do business on Guam is provided in Appendix C.

2.14.3. Bid Bond Form and Amount

A bid bond for an amount of \$150,000.00 (USD) is required and may be in the following form:

- a. Cash, Bank Draft or Certified Check made payable to the Guam Power Authority;
- b. By wire transfer to Guam Power Authority (Account Name - Guam Power Authority Revenue Account), Account No. 0601-007247, Routing No. 121405115, Bank of Guam, P. O. Box BW, Hagatna, Guam 96932
- c. Letter of Credit;
- d. Surety Bond – valid if accompanied by:
 - (1) Current Certificate of Authority to do business on Guam issued by the Department of Revenue and Taxation;
 - (2) Power of Attorney issued by the Surety to the Resident General Agent
 - (3) Power of Attorney issued by two (2) major officers of the Surety to whoever is signing on their behalf.

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

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

3. Proposal Forms

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

The following forms in Appendices A, D, E, and J and MS EXCEL Workbooks must be completed:

- a) Appendix A, Proposal Checklists
- b) Appendix B, Performance Bond
- c) Appendix C, List of Surety Companies Licensed To Do Business In Guam
- d) Appendix D, Major Shareholders Disclosure Affidavit
- e) Appendix E, Non-collusion Affidavit
- f) Appendix F, Performance Compensation and Guarantees
- g) Appendix G, Fuel Measurement Variance Evaluation
- h) Appendix I, Fuel Specifications
- i) Appendix J, Bid Bond Form and Instructions
- j) Appendix K, Local Procurement Preference Application
- k) Qualitative Proposal Scoring.xls
- l) Price Proposal Evaluation.xls

These Forms and Workbooks will be available in electronic format in the CD-ROM provided to BIDDERS and on the web site <http://www.guampowerauthority.com/procurement/index.html>.

3.1. Technical Proposal Forms

The following referenced forms are contained in Appendix A, Appendix D, Appendix E, and Appendix K shall be completed and submitted with the Proposal.

3.1.1. Document Receipt Checklist

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

3.1.2. Proposal Submittal Checklist

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

3.1.3. Major Shareholders Disclosure Affidavit

The BIDDER shall fill out the Major Shareholders Disclosure Affidavit form in Appendix D and submit it with its Proposal.

3.1.4. Non-collusion Affidavit

The BIDDER shall fill out the Non-collusion Affidavit form in Appendix E and submit it with its Proposal.

3.1.5. Local Procurement Preference Application

The BIDDER shall fill out and sign the Local Procurement Preference Application in Appendix K and submit it with its Proposal.

3.2. Price Proposal Form

3.2.1. Annual Fixed Management Fee Price and O&M Spending/Cost Data Sheet

The qualified BIDDERS shall complete the Annual Fixed Management Fee Price and O&M Spending/Cost Data Sheet contained in the MS EXCEL Workbook Price Proposal Evaluation.xls. This workbook outlines the BIDDER's Annual Fixed Management Fee, O&M Spending proposal and performance guarantees.

Qualified BIDDERS shall proposed a Fixed Management Fee and an O&M budget based on the object codes as specified in the form for each contract year.

3.2.2. Performance Guarantee Proposal

The BIDDER shall complete the Performance Guarantee Proposal contained in the same workbook above. This workbook outlines the BIDDER's minimum performance guarantees.

4. Conditions of Contract

4.1. Definitions

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

4.1.1. Approved

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

4.1.2. Approved As Revised

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

4.1.3. Change Order

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

4.1.4. Seller

The CONTRACTOR

4.1.5. Day

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

4.1.6. Delivery Time

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

4.1.7. Defective

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

4.1.8. Drawings

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

4.1.9. Effective Date of the Contract Agreement

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

4.1.10. ENGINEER

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

4.1.11. ENGINEER's Instructions

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

4.1.12. General Manager

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

4.1.13. Goods

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

4.1.14. Modification

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

4.1.15. OWNER

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

4.1.16. Point of Delivery

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

4.1.17. Project

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

4.1.18. PURCHASER

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

4.1.19. Contract Agreement (Agreement)

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

4.1.20. Contract Documents

The Contract Agreement, Bonds (where required), these General Conditions, any Supplementary Conditions, the Specifications, the Drawings and any other documents specifically identified in the Contract Agreement, together with all Modifications issued after execution of the Contract Agreement.

4.1.21. Procurement Officer

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

4.1.22. CONTRACTOR

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

4.1.23. SITE or Site

The SITE is the area where the Project is to be constructed or executed. In this case, the SITE is the GPA Fuel Bulk Storage Facility as delineated in Volume II Technical and Functional Requirements and Volume III GPA Fuel Bulk Storage Facility Technical Description.

4.1.24. Special Services

Services to be furnished by CONTRACTOR at the GPA Fuel Facility as required by the Contract Agreement.

4.1.25. Territory

The Territory of Guam.

4.2. Agreement

Prior to entering into a formal agreement, GPA and CONTRACTOR shall resolve and document any differences between the CONTRACTOR's proposal and the tender documents.

The Agreement between GPA and CONTRACTOR shall consist of the tender documents, as resolved by the CONTRACTOR's final negotiated Proposal and by GPA amendments, and the CONTRACTOR's proposal, as adjusted by a prioritized list of documents generated during the evaluation and negotiation processes and agreed to and acknowledged in writing by both parties. These documents may consist of, but are not limited to, written answers to questions, letters, and written clarifications to the proposal.

Any formal contract document shall reference GPA tender documents and the CONTRACTOR's proposal. No oral understanding or statement shall modify the Agreement. Changes to the above documents can only be made in accordance with the procedure for modifications as defined in **Section 4.15 Changes**.

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

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

All materials, equipment, and services that may reasonably be inferred from the tender documents, as being required to produce the intended result will be supplied whether or not specifically called for. When words that have a well-known technical or trade meaning are used to describe materials, equipment, or services, such words will be interpreted in accordance with such meaning. Reference to standard specifications, manuals, or codes of any technical society, organization or association, or to the code of any Governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, or code in effect on the effective date of the Agreement except as may be otherwise specifically stated in the Specification or Agreement. ENGINEER as provided in **Section 4.1.11 ENGINEER's Instructions** shall issue clarifications and interpretations of the tender documents.

4.3. Indemnity

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

4.4. Shipment, Delivery, and Acceptance of Goods

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

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

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

4.5. Accounting

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

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

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

4.6. Waiver of Claims

The making and acceptance of final payment will constitute:

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

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

4.7. Supervision and Coordination by CONTRACTOR

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

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

CONTRACTOR shall perform all such activities as an independent contractor and not as an agent of GPA. When others furnish materials and equipment for assembly by the CONTRACTOR, CONTRACTOR shall receive, unload, store, and handle it and become responsible therefore as though CONTRACTOR was furnishing such materials and/or equipment under the Agreement.

4.8. Substitutions

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

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

4.9. Documentation and Drawings

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

At the time of each submission, CONTRACTOR shall in writing call ENGINEER's attention to any deviations that the drawings or documents may have from the requirements of the Specification or Contract Documents. CONTRACTOR shall also direct specific attention in

writing to revisions other than the corrections called for by ENGINEER on previous submittals. CONTRACTOR's submission of any drawing or document bearing CONTRACTOR's approval shall constitute a representation to GPA and ENGINEER that CONTRACTOR assumes full responsibility for having determined and verified the design criteria, quantities, dimensions, installation requirements, materials, catalog numbers, and similar data and that CONTRACTOR has reviewed or coordinated each drawing or document with the requirements of the Contract Documents.

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

GPA and/or ENGINEER shall have the right to reproduce any and all drawing, prints, or other data or documents received from CONTRACTOR that are considered necessary for engineering, construction, or other purposes, despite any notice to the contrary appearing on the item. When a drawing or document approval is required by the Specifications, CONTRACTOR shall not commence production of any part of the Goods affected thereby until such drawing or document has been reviewed and approved by ENGINEER.

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

4.10. Continuing Performance

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

4.11. Access to Goods in Production

CONTRACTOR shall provide representatives of GPA, testing agencies, and governmental agencies with jurisdictional interests proper and safe access to Goods in the process of production at reasonable times as is necessary for the performance of their functions in connection with the Contract Documents.

4.12. Expediting

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

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

4.13. Compliance with Law

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

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

4.14. Price Adjustment

4.14.1. Price Adjustment Methods

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

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

4.14.2. Submission of Cost or Pricing Data

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

4.15. Changes

4.15.1. Change Order

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

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

4.15.2. Time Period for Claim

Within 30 days after receipt of a written change order under **Paragraph 4.15.1 Change Order**, unless the Procurement Officer extends such period in writing or e-mail, The CONTRACTOR shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the CONTRACTOR's claim unless the Territory is prejudiced by the delay in notification.

4.15.3. Claims Barred After Final Payment

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

4.15.4. Other Claims Not Barred

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

4.16. Contract Price

The Contract Price constitutes the total consideration to be paid by GPA to THE CONTRACTOR for the complete delivery of the Goods, Special Services, and for performing other services in connection therewith in accordance with the Contract Documents as amended by the parties pursuant to the Agreement. Unless expressly provided otherwise in the Contract Documents, the Contract Price is not subject to escalation in respect of materials and/or labor cost or any other factor or variation in rates of exchange, and all duties, responsibilities, and obligations assigned to

or undertaken by THE CONTRACTOR shall be at its expense without change in the Contract Price. Charges, fees, CONTRACTOR's profit, and all other expense shall be deemed to be included in the Contract Price. Furthermore, the Contract Price includes management fees and incentive/penalty payments. Therefore, the Contract Price is dynamic but bounded.

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

4.17. Payment Milestones and Schedule

Payment milestones have been selected to clearly identify the actual status of the portion of the Work completed rather than anticipated project progress schedules. Payments will be based on actual completion of each milestone event, where applicable, and not on the scheduled completion date. When a change in the Agreement is approved, the total contract price will be altered to the new total, and the remaining milestone payments will be adjusted.

Milestones shall not be scheduled more frequently than once every month. GPA will not approve a milestone payment until all preceding milestones have been approved. GPA will make payments within thirty (30) days from receipt and approval of the invoice for the completed milestone.

The payment milestones for monies due to the CONTRACTOR from GPA are as follows:

- Fixed Monthly Management Fees;
- GRSL and Insurance Fees;
- Reimbursement Payments for Operations and Maintenance related expenditures for Fuel Bulk Storage Facility as agreed to and scheduled between GPA and the CONTRACTOR.
- Reimbursement Payments for Operations and Maintenance related expenditures for the Fuel Pipelines as agreed to and scheduled between GPA and the CONTRACTOR.
- Reimbursement Payments for Capital Improvement Projects (CIP) related expenditures as agreed to and scheduled between GPA and the CONTRACTOR.

The payment milestones for monies due to GPA from the CONTRACTOR are as follows:

- Penalty Compensation Payments due to CONTRACTOR's failure to meet the Fuel Measurement Variance Target;
- Payments due to Contractor's failure to meet equipment reliability responsibilities;
- Payments due to Contractor's failure to meet Facility Security responsibilities;
- Expenses resulting from minor repairs or penalties due to :
 - Oil spills
 - Non-Compliance with Environmental, Local and Federal Regulations
 - Other responsibilities stated in the bid documents.

4.18. Force Majeure

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

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

Should the circumstances of *Force Majeure* continue over a period of ninety (90) days, GPA has the right, if no other understanding is reached, to terminate the whole Agreement or any part thereof in accordance with Paragraph 4.28. Any delay or failure in performing the obligations under the Contract Documents of the parties hereto shall not constitute default under the Purchase Contract or give rise to any claim for damages or loss or anticipated profits if, and to the extent, such delay or failure is caused by Force Majeure, and if a claim is made therefore.

4.18.1. Invocation of Force Majeure

The party invoking Force Majeure shall perform the following:

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

4.18.2. Delivery Time and Force Majeure

Only a Change Order may change contractual Delivery Times. THE CONTRACTOR as provided in **Paragraph 4.15** and its sub-paragraphs shall file all claims for an extension in the Delivery Time.

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

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

4.19. Warranty

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

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

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

Any part(s) supplied in replacement of the defective part(s) of the Goods or any Goods repaired pursuant to the provisions of this Paragraph shall be supplied or repaired on the same terms and conditions as provided for herein for the supply of the Goods and in particular a new warranty period shall apply. Such new warranty period shall expire on the date twelve (12) months from the date of such replacement or repair or on the expiration date of the warranty for the original Goods that were replaced or repaired, whichever is later.

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

4.20. Tests and Inspections

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

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

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

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

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

4.21. Remedying Defective Goods

If at any time after GPA's acceptance of delivery under Paragraph 4.4, and before expiration of the correction period under **Paragraph 4.19**, GPA determines that the Goods are defective, THE CONTRACTOR shall, upon written notice from GPA, do all things necessary, at its expense, to make good the defects as soon as possible after being notified to do so by GPA. THE CONTRACTOR warrants that THE CONTRACTOR, unless otherwise agreed, shall remedy any defects.

It is understood, that if so instructed by GPA, THE CONTRACTOR shall make shipment by the fastest available method.

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

4.21.1. Remedying Defective Special Services

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

4.21.2. Cost of Remedying Defects

All direct, indirect, and other costs of correcting, removing, and replacing defective Goods or of obtaining Special Services elsewhere and of exercising GPA's rights and remedies under

Paragraph 4.4, 4.19, and other sections as they apply, will be charged against THE CONTRACTOR and, if incurred prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents and a reduction in the Purchase Price, or if incurred after final payment, an appropriate amount will be paid by THE CONTRACTOR to GPA. Such direct, indirect, and other costs will include, in particular but without limitation, compensation for additional professional services required and all costs of repair and replacement of Goods, or property of GPA or others destroyed or damaged by correction, removal, or replacement of defective Goods. THE CONTRACTOR shall not be allowed an extension of the Delivery Time because of any delay in performance attributable to the exercise by GPA of GPA's rights and remedies under this paragraph.

4.22. Stop Work Order

4.22.1. Order to Stop Work

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

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

4.22.2. Cancellation or Expiration of the Order

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

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

4.22.3. Termination of Stopped Work

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

4.23. Termination for Convenience

4.23.1. Termination

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

4.23.2. CONTRACTOR's Obligations

The CONTRACTOR shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the CONTRACTOR will stop work to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Procurement Officer may direct the CONTRACTOR to assign the CONTRACTOR's right, title, and interest under terminated orders or subcontracts to the GPA. The CONTRACTOR must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

4.23.3. Right to Supplies

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

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

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

4.23.4. Compensation Under Termination for Convenience

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

- a) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for Convenience together with cost or pricing data to the extent required by **Section 3-403 (Cost or Pricing Data) of the Guam Procurement Regulations** bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Procurement Officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph (c) of this Paragraph.
- b) The Procurement Officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data to the extent required by **Section 3-403 (Cost or Pricing Data) of the Guam Procurement Regulations** and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by GPA, the proceeds of any sales of supplies and manufacturing materials, and the contract price of the work not terminated.
- c) Absent complete agreement under Subparagraph (b) of this Paragraph, the Procurement Officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under Subparagraph (b) shall not duplicate payments under this subparagraph:
 - i. Contract prices for supplies or services accepted under the contract;
 - ii. Costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted supplies or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - iii. Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to **Paragraph 4.23.2** of this clause. These costs must not include costs paid in accordance with other subparagraphs of this Paragraph;
 - iv. The reasonable settlement costs of the CONTRACTOR including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract for the termination and settlement of subcontracts there under, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract. The total sum to be paid to the CONTRACTOR under this Subparagraph shall not exceed the total contract price plus the reasonable

settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph (b) of this Paragraph, and the contract price of work not terminated.

- d) Cost claimed, agreed to, or established under subparagraph (b) and (c) of this Paragraph shall be in accordance with **Chapter 7 (Cost Principles) of the Guam Procurement Regulations. 13 GCA 2796 (UCCG)** states:

2706. SELLER's Resale Including contract for Resale

- (1) Under the conditions stated in **Section 2703** on CONTRACTOR's remedies, the CONTRACTOR may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the CONTRACTOR may recover the difference between the resale price and the contract price together with an incidental damages allowed under the provisions of this division (Section 2710), but less expenses saved in consequence of the buyer's breach.
- (2) Except as otherwise provided in Subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the CONTRACTOR. Sale may be as a unit or in parcels and at any time and place and on any terms, but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.
- (3) Where the resale is at private sale the CONTRACTOR must give the buyer [i.e., GPA] reasonable notification of his intention to resell.
- (4) Where the resale is at public sale:
 - (01) Only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and
 - (02) It must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the CONTRACTOR must give the buyer [i.e., GPA] reasonable notice of the time and place of the resale; and,
 - (03) If the goods are not to be within the view of those attending the sale, the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective BIDDERS; and
 - (04) The CONTRACTOR may buy.

- (5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer [i.e., GPA] even though the CONTRACTOR fails to comply with one or more of this section's requirements.
- (6) The CONTRACTOR is not accountable to the buyer [i.e., GPA] for any profit made on any resale. A person in the position of a CONTRACTOR (**Section 2707**) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (Subsection 3) of Section 2711."

4.24. Termination for Defaults

4.24.1. Default

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

4.24.2. CONTRACTOR's Duties

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

4.24.3. Compensation

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

4.24.4. Excuse for Nonperformance or Delayed Performance

Except with respect to defaults of subcontractors, the CONTRACTOR shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the CONTRACTOR to make progress in the prosecution of the work hereunder which endangers such performance) if the CONTRACTOR has notified the Procurement Officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; act of the Territory and any other governmental entity in its sovereign restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the supplies or services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the contract requirements. Upon request of the CONTRACTOR, the Procurement Officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the GPA under the clause entitled "Termination For Convenience", Paragraph 4.23. (As used in the Paragraph of this clause the term "subcontractor" means subcontractor at any tier.)

4.24.5. Erroneous Termination for Default

If, after notice of termination of the CONTRACTOR's right to proceed under the provisions of this clause, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph 4.24.4(Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for Convenience of GPA, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for Convenience of GPA, the contract shall be adjusted to compensate for such termination and the contract modified accordingly subject to the CONTRACTOR's rights under Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations.

4.24.6. Additional Rights and Remedies

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

4.25. Disputes

All controversies between GPA and the CONTRACTOR, which arise under, or are by virtue of, this contract and which are not resolved by mutual agreement, shall be resolved under Guam Procurement Law and the Government Claims Act.

4.26. Consequential Damages

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

4.27. Notices

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

4.28. Computation of Time

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

4.29. Language and Trade Terms

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

4.30. Governing Law

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

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

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

4.31. Non-waiver

GPA shall not consider any provisions of this Agreement waived unless GPA gives notice of such waiver in writing. Even if such notice has been given, such waiver shall not be construed as being a waiver of any other past or future right of GPA under the provisions of this Agreement, unless otherwise expressly stipulated therein. Failure of GPA to insist upon strict performance of any of the terms and conditions hereof, or failure or delay of GPA to insist upon strict performance of any of the terms and conditions hereof, or failure or delay of GPA to exercise any acts, rights, or remedies provided herein or by law shall not relieve CONTRACTOR of liability under any guarantees or of obligations under the Agreement and shall not be deemed a waiver of any right of GPA to insist upon strict fulfillment of the Agreement or of any of GPA's rights or remedies as to the Goods or special services furnished.

4.32. Severability

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

4.33. Rights and Remedies

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

4.34. New material

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

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

If any action or omission on the part of the General Manager, or his/her designee, requiring performance changes within the scope of the contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion,

the CONTRACTOR shall continue with performance of the contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

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

4.35.1. Limitations of Clause

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

4.35.2. Standards of Design and Workmanship

The finished Work shall be complete in all respects. The intent of the Specifications is to acquire or purchase management services, training, operations and maintenance materials and services, and supply and inventory management and control. All hardware shall be manufactured, fabricated, assembled, finished, and documented with quality workmanship throughout, and all of

its components shall be new and suitable for the purposes specified, All firmware/software shall be designed, implemented, tested, and documented in accordance with the best and recognized correct practices and shall be suitable for the purpose specified. All work shall conform to industry best practices.

4.36. Standard Work Schedule

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

4.37. Interference with Operation

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

4.38. Release of Information

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

4.39. Liens

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

4.40. Title

Title to any of the hardware, firmware, and software, management practices, training and other documents and/or processes required by GPA to continue the improved management, operations and maintenance of the GPA Fuel Bulk Storage Facility and Pipelines will pass to GPA upon placement of the equipment within GPA's premises prior to commencement of its installation, subject to GPA's inspection thereof.

The CONTRACTOR shall retain title and be responsible for movement of the equipment from the delivery carrier onto the premises and the subsequent unpacking of the equipment.

If, for any reason, the Work is terminated prior to its completion, the title to all the Work performed to that time including all hardware, firmware, software, management practices, training and other documents and/or processes required by GPA to continue the improved management, operations and maintenance of the GPA Fuel Bulk Storage Facility and Pipelines, whether in the CONTRACTOR's facility, in transit, or on GPA's premises, shall immediately pass to GPA.

4.41. Insurance

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

4.42. Contractors and Subcontractors Insurance

Prior to commencing the work, contractor shall obtain and thereafter maintain during the course of the work Insurance with companies acceptable to GPA. The contractor shall not allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved. The limits of insurance shall be as follows unless a higher limit is required by statute:

1. General Liability including products, completed operations and contractual coverage for this Agreement in the amount of \$1,000,000 combined limit. GPA shall be an additional insured. Waiver of subrogation shall be granted in favor of GPA.
2. Auto Liability covering bodily injury and property damage in the amount of \$1,000,000 combined single limit. GPA shall be an additional insured. Waiver of subrogation shall be granted in favor of GPA.
3. Pollution Liability in the amount of \$5,000,000.00 per occurrence. GPA shall be an additional insured. Waiver of subrogation shall be granted in favor of GPA.
4. Professional Liability or Architects and Engineers Liability in the amount of \$1,000,000.
5. Excess Liability with limits of \$5,000,000 or higher. GPA shall be an additional insured. Waiver of subrogation shall be granted in favor of GPA.
6. Worker's Compensation and Employer's Liability – Statutory limits and \$1,000,000/\$1,000,000/\$1,000,000 respectively. Add Waiver of Subrogation endorsement in favor of GPA.
7. Builder's Risk or Installation Floater, when applicable, is to be furnished by Contractor, which shall include GPA as named insured.

4.42.1. Indemnification

The Contractor shall indemnify, defend and hold harmless owner against all loss, damage, or expense (including reasonable attorney's fees incurred by owner) arising out of the performance of the work, including injury or death to any person or persons resulting from the acts or omission of the Contractor or the Contractor's employees, servants, agents or subcontractors and from mechanics and materialism liens

4.42.2. Certificate of Insurance

Contractor shall furnish certificates of insurance and waiver of subrogation endorsement to GPA prior to commencement of work showing evidence of such coverage, including the statement to the effect that cancellation or termination of the insurance shall not be effective until at least (10) days after receipt of written notice to GPA. At all times Contractor's insurance shall be primary to any other insurance that may be carried by GPA. The statement of limits of insurance coverage shall not be construed as in any way limiting the Contractor's liability under this agreement. GPA shall be an additional insured on all liability coverage and certificates of insurance shall clearly indicate such.

4.42.3. Insurance Company and Agent

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

4.43. GPA Insurance

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

4.44. Waiver of Subrogation

The parties hereby release each other and their respective officers, employees, and agents from all loss or damage to the Premise property, machinery and equipment and to the fixtures, personal

property, equipment and improvements of either GPA or PMC in or on the Property, notwithstanding that any such loss or damage may be due to or result from the negligence of either of the parties or their respective officers, employees or agents. This waiver does not apply to maintenance and repair assumed under this contract by the PMC.