

**Invitation For Multi-Step Re-Bid**

**No. GPA-015-22**

**PERFORMANCE MANAGEMENT CONTRACT**

**FOR THE**

**GUAM POWER AUTHORITY  
BULK FUEL STORAGE FACILITY**



**Volume IV**

**CONTRACT**

<b>SECTION 36. INDEMNITY .....</b>	<b>36</b>
<b>SECTION 37. GPA INSURANCE.....</b>	<b>36</b>
<b>SECTION 38. WAIVER OF SUBROGATION.....</b>	<b>36</b>
<b>SECTION 39. ACCIDENT PREVENTION .....</b>	<b>37</b>
<b>SECTION 40. RESPONSIBILITY OF PMC TO ACT IN EMERGENCY.....</b>	<b>37</b>
<b>SECTION 41. FORCE MAJEURE.....</b>	<b>37</b>
<b>SECTION 42. ATTORNEY'S FEES AND COSTS .....</b>	<b>38</b>
<b>SECTION 43. CONTRACT BINDING EFFECT.....</b>	<b>38</b>

**CONTRACT**

**(PMC)**

**GUAM POWER AUTHORITY**

**IFB No. GPA-015-22**  
**PERFORMANCE MANAGEMENT CONTRACT**  
**FOR THE**  
**GUAM POWER AUTHORITY BULK FUEL STORAGE FACILITY**

**FORMAL CONTRACT**

This Agreement and Formal Contract ("Contract"), is made and entered into on the \_\_\_\_ day of \_\_\_\_, 2022 by and between:

\_\_\_\_ (PMC) \_\_\_\_\_, hereinafter referred to as "**PMC**", duly organized, licensed, registered and qualified to do business in Guam with its principal address at \_\_\_\_\_;

- and -

**Guam Power Authority**, hereinafter referred to as the "**Authority**" or "**GPA**", a Public Corporation with its office located at the Gloria Nelson Public Service Building, 688 Route 15, Fadian Mangilao Guam;

**RECITALS**

WHEREAS, GPA desires to maintain uninterrupted fuel supply to its Power Plants;

WHEREAS, GPA seeks to improve the management and operations of its Bulk Fuel Storage Facility;

WHEREAS, the current contract for the management of the Bulk Fuel Storage Facility will expire on September 30, 2023; and

WHEREAS, the Consolidated Commission on Utilities has determined that the hiring of **PMC** is a preferred option for GPA to improve the management and operation of the Bulk Fuel Storage Facility;

WHEREAS, the Guam Public Utilities Commission has, through stipulation, ordered that GPA obtain a PMC for Bulk Fuel Storage Facility;

WHEREAS, GPA seeks to engage the professional services and assistance of **PMC** to provide operations, maintenance, and management services, budgeting, procurement, training and such other services as are specified herein;

WHEREAS, GPA has provided adequate public announcement of the need for such services through an Invitation for Bid (IFB) describing the type of services required and specifying the type of information and data required of each offeror;

WHEREAS, GPA has issued a Multi-Step Invitation For Bid for the Performance Management Contract for the GPA Bulk Fuel Storage Facility, GPA-015-22; and

WHEREAS, **PMC** submitted a bid for the Performance Management Contract for the GPA Bulk Fuel Storage Facility;

WHEREAS, GPA, upon evaluation of the submitted bid proposals, determined that **PMC** is the most responsive bidder to provide the services set forth in the IFB;

WHEREAS, **PMC** is fully willing to provide, and is capable of providing, the management, operations, maintenance and repair services set forth in the IFB and Agreement in accordance with the terms and conditions thereof;

NOW, THEREFORE, in consideration of the above premises and the mutual promises set forth herein and the terms and conditions hereinafter set forth and for other good and valuable consideration, receipt of which is hereby acknowledged; **PMC** and GPA hereby agree as follows:

#### **SECTION 1. DEFINITIONS**

**"\$"** The term "\$" refers to currency in U.S. dollars.

**"ASTM"** The term "ASTM" shall mean the American Society for Testing and Materials.

**"API"** The term "API" shall mean the American Petroleum Institute.

**"Approved"** The word "Approved," when applied by ENGINEER to PMC'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.

**"Approved As Revised"** The words "Approved As Revised," when applied by ENGINEER to PMC's drawings or documents shall mean that the drawings or documents are approved as defined above,

**MS IFB GPA-015-22 (Re-Bid)**  
**Volume IV: Contract**

---

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.

**"Barrel"** The term "Barrel" means a volume equivalent to 42 U.S. gallons.

**"Change Order"** A written instrument to PMC 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).

**"Contract"** The term "Contract" means the Performance Management Contract for the GPA Bulk Fuel Storage Facility executed as a result of this IFB.

**"Contract Agreement (Agreement)"** The written agreement between GPA and PMC 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.

**"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.

**"Contracting Officer"** The term "Contracting Officer" as used herein means the General Manager of the Guam Power Authority and shall include his authorized representatives.

**"PMC"** The term "PMC" as used herein means the Performance Management Contractor, the party or parties who or which shall have duly entered into a contract with the Guam Power Authority to perform the work herein contemplated or his or their authorized assignee.

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

**"Delivery Time"** The total number of days or the dates stated in the Agreement for furnishing the Goods and/or Special Services.

**"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.

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

**"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.

**"ENGINEER"** Wherever the words "ENGINEER" or "ENGINEERS" appear in the CONTRACT Documents, it shall mean the Guam Power Authority's Manager of Generation or Manager of Engineering and shall include his authorized representatives duly appointed as "ENGINEER". GPA shall assign several ENGINEERS as required to cover specialized areas of expertise.

**"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.

**"Forms Enclosed"** The copies of the Formal Contract and Bid Bond, enclosed herewith are incorporated in these General Conditions by reference and are made a part hereof to the same extent as though fully set forth herein.

**"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.

**"Goods"** All property required to be furnished by PMC under the procurement documents.

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

**"Notice"** The term "Notice" as used herein shall mean and include all written notice demands, instructions, claims, approvals and disapprovals required to obtain compliance with contract requirements. Any written notice by either party to the contract shall be sufficiently given if delivered to or at the last known business address of the person, firm, or corporation constituting the other party to the contract, or to his, their, or its duly authorized agent, representative, or officers, or when enclosed in a postage prepaid envelope addressed to such last known business address and deposited in a United States mail box.

**MS IFB GPA-015-22 (Re-Bid)**  
**Volume IV: Contract**

---

The PMC must provide and maintain a post office address within Guam and file the same with the Contracting Officer.

**"OWNER"** The term "Owner", "GPA" or "Authority" as used herein means the Guam Power Authority, and shall include the Governor of Guam, and/or his authorized representatives.

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

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

**"Procurement Officer"** The General Manager of the Guam Power Authority or the General Manager's designee.

**"PURCHASER"** The Guam Power Authority with whom PMC has entered into the Contract Agreement.

**"Seller"** The PMC.

**"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 Bulk Fuel Storage Facility as delineated in Volume II Technical and Functional Requirements and Volume III GPA Bulk Fuel Storage Facility Technical Description.

**"Special Services"** Services to be furnished by PMC at the GPA Bulk Fuel Storage Facility as required by the Contract Agreement.

**"Territory"** The Territory of Guam.

## **SECTION 2. PURPOSE AND SCOPE OF SERVICES**

### **2.1 Purpose.**

The PMC agrees to provide all the services as required under Volumes I Commercial Terms and Conditions, Volume II Technical and Functional Requirements, and Volume III Facility Technical Description of the Solicitation herein and Guam Power Authority (GPA) agrees to pay for all the services rendered in the amount as stipulated in Section 6. The services to manage, operate, and maintain the GPA Bulk Fuel Storage Facility will commence on or about October 01, 2023. By awarding this contract, GPA's goal is to ensure uninterrupted fuel transfer from the Bulk Fuel Storage Facility to the GPA Power Plants, as well as to improve the management, operations and maintenance of GPA's Fuel Transfer and Inventory Operations and Bulk Fuel Storage Facility.



**2.2 Scope of Services.**

The GPA Bulk Fuel Storage Facility consists of two (2) bulk storage tanks of 269,000 barrels nominal capacity. An Operations Building adjacent to the pump station is available for the PMC to conduct business during the course of the contract. PMC shall be responsible for the following:

- (a) Overall management, operation, and maintenance of the GPA Bulk Fuel Storage Facility to provide fuel oil product transfer and management to GPA facilities and locations as needed;
- (b) Assist GPA in the completion of Major Repairs and Capital Improvement Projects through project management, project coordination or as otherwise instructed by GPA, in the capacity of Bulk Fuel Storage Facility Operator;
- (c) Engineering assessment and recommendations for overall plant improvements;
- (d) Review, development and update of:
  - (i) Plant Standard Operating Procedures, as required;
  - (ii) Annual update of the Facility Spill Response Plan and Spill Prevention, Control and Countermeasure Plan (SPCC);
  - (iii) Timely update of plans upon the introduction and adoption of any new federal and local laws and regulations;
- (e) Meet specified performance standards and contract requirements;
- (f) Fuel Inventory and Loss Control Management;
- (g) Submission of Daily, Weekly, Monthly and Annual Reports as required by GPA (Generation, Engineering, P&R, SPORD and Accounting Divisions);
- (h) Compliance with Tank System Operation and Maintenance Workplan (Jan. 19, 2007);
- (i) Compliance with all requirements of the Oil Pollution Act of 1990 (OPA '90);
  - (i) Inclusion of all costs associated with OPA '90 within the firm price proposal;
  - (ii) Compliance with oil spill and recovery provisions of OPA '90;
- (j) Purchase, maintain and operate/deploy materials and equipment as identified in the Facility Spill Response Plan and SPCC Plan; and
- (k) Membership with a qualified and certified oil spill response company on Guam;
- (l) All other duties and responsibilities delineated in Volumes I, II and III, and the Amendments to Invitation for Bid No. GPA-015-22.

**2.3 Scope of the Agreement.**

This Contract supersedes any and all other agreements related to the GPA Bulk Fuel Storage Facility, either oral or in writing between parties hereto with respect to the retainment of PMC by the Authority and contains all of the covenants and agreements between the parties. Each party to this Contract acknowledges that no representation, promises or agreement, orally or otherwise, has been made by any party, or anyone acting on behalf of any party and that no other agreement not contained in this

Contract shall be valid or binding. Any modification of this Contract will be effective only if in writing, and mutually agreed to and signed by both parties. For purposes of this Contract, only the signature of the General Manager will effectively bind GPA to this Contract.

### **SECTION 3. CONDITIONS PRECEDENT**

#### **3.1 PMC's Submittals.**

PMC shall supply the following to GPA, each in form and substance satisfactory to GPA unless such condition precedent is waived by GPA:

- a) copies of resolutions adopted by PMC's Board of Directors authorizing the execution, delivery and performance by PMC of this Agreement certified by the company secretary of PMC in a manner satisfactory to GPA;
- b) a performance bond as specified in **Appendix F** of the Bid Documents.
- c) a copy of the Articles of the Incorporation of PMC certified by the company secretary in a manner satisfactory to GPA;
- d) a copy of PMC's license to do business in Guam.

#### **3.2. GPA's submittals.**

GPA shall supply the following, each in form and substance satisfactory to PMC unless such condition precedent is waived by PMC:

- a) copies of resolutions adopted by the Consolidated Commission on Utilities authorizing the execution, delivery and performance by GPA of this Agreement, each certified by the corporate secretary of the CCU in a manner satisfactory to PMC;

#### **3.3 Insurance.**

PMC shall obtain all insurance specified in Section 35 of this Agreement.

### **SECTION 4. CONTRACT DOCUMENTS**

#### **4.1 Documents Included.**

It is mutually agreed that the following lists of documents which are attached hereto, bound herewith or incorporated herein by reference shall constitute the contract documents, all of which are made a part hereof, and collectively evidence and constitute the contract between the parties hereto, and they are as fully a part of this Agreement as if they were set out verbatim and in full herein, and are designated as follows in their order of precedence:

- a) This Contract
- b) Amendments to IFB GPA-015-22
- c) IFB No. GPA-015-22
- d) PMC's Proposal for IFB No. GPA-015-22

- e) The Performance Bond
- f) Affidavit of Disclosure of Major Shareholders
- g) Audited financial information on PMC's firm and all its sub-contractors that will be used in the Management, Operation and Maintenance of GPA's Bulk Fuel Storage Facility.
- h) Certificate of Good Standing to conduct business in jurisdiction of residence
- i) Non-collusion Affidavit

**4.2 Discrepancies.**

In the case of discrepancies or conflicts between the above-referenced contract documents, this Contract shall take precedence over GPA-015-22, and PMC's proposal submitted in response to the IFB. In case of discrepancies or conflicts between the Amendments to GPA-015-22, the Amendments shall take precedent. If PMC believes that there is any discrepancy or inconsistency between this CONTRACT and the other contract documents, PMC shall bring such discrepancy to the attention of the General Manager before proceeding with the work affected thereby.

**4.3 Presumption of Familiarity.**

It will be conclusively presumed that PMC has read, examined and agreed to each and every term, condition, provision, covenant or agreement contained within each and every Contract Document. PMC is assumed to 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 PMC will not relieve PMC from responsibility.

**SECTION 5. CONTRACT TERM**

**5.1 Term.**

The term of this Performance Management Contract shall be for a three (3) year period commencing on or about October 1, 2023 and shall continue until the midnight of September 30, 2026. The contractual obligation of GPA and PMC is subject to the availability of funds. GPA shall have the right to extend the contract for two (2) additional one-year (1-year) terms with the mutual consent of both parties.

**5.2 Extension.**

Prior to the expiration of the three-year contract term, GPA may, at its election, extend the contract for up to two additional one-year terms. GPA and PMC may renew this agreement upon the mutual agreement of the parties. If the Agreement shall be renewed, then the parties shall meet and discuss the new terms and conditions of the Agreement six months before Termination Date.

**5.3 Notice of Extension.**

GPA shall notify PMC in writing its intent to extend the contract for any extension no later than six months before Termination Date. GPA shall give appropriate notice of its intentions regarding its option to exercise contract extension. The notification will include the number of years GPA intends to extend the contract, not to exceed two (2) years.

At the beginning of the 3<sup>rd</sup> contract year GPA and the PMC shall negotiate the contract extension terms based on the optimum requirements for the facility. These requirements shall be considered as starting negotiation points between GPA and the PMC, should GPA elect to exercise the optional contract extension. Final confirmation by mutual agreement between GPA and the PMC for contract extension shall be given after completion of negotiation no less than no later than six months before Termination Date. However, GPA may elect to reverse its decision without penalty at any time within six months of the end of the contract period based on the PMC's poor performance during this period.

**SECTION 6. COMPENSATION FOR SERVICES**

**6.1 Payment.**

GPA shall pay PMC for costs and services rendered hereunder in accordance with this Agreement. Compensation for services performed and provided by PMC shall be on a monthly basis at the rate stipulated in this section. PMC shall invoice GPA once a month, and payment shall be made within 30 days of after receipt of an acceptable invoice. In the event of any dispute with regard to any portion of the invoice, the undisputed portion shall be paid pending settlement of the dispute. Should GPA fail to make any payment due to PMC under this Agreement, GPA shall pay interest to PMC in accordance with the provisions of the Prompt Payment Act, 5 GCA Sections 22502-22507.

**6.2 Contract Price.**

The Contract Price constitutes the total consideration to be paid by GPA to PMC for the complete delivery of all Contract Items, and for performing other services in connection therewith in accordance with the Contract Documents as amended by the parties pursuant to the Agreement. The Price or Cost for each Contract Item under this Agreement shall remain fixed during the term of this 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 PMC shall be at its expense without change in the Contract Price. Charges, fees, PMC's profit, and all other expense shall be deemed to be included in the Contract Price. Only a formal Change Order request, accepted by GPA, may change the Contract Price. PMC 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.

**MS IFB GPA-015-22 (Re-Bid)**  
**Volume IV: Contract**

Table 1 below shows the Price for each Contract Item for each Contract Year, including the optional contract years.

Table 1. CONTRACT PRICE

	CONTRACT ITEMS (BREAKDOWN)	Contract Year			OPTIONAL Contract Years	
		1	2	3	1	2
1	Management and Administration Fees (Include all expenses for: staffing; office maintenance; utilities; transportation; communications; management fees and administration fees)	\$ 510,943	\$ 514,340	\$ 566,733	\$ 586,882	\$ 597,282
2	Security Contractor	\$ 185,000	\$ 194,250	\$ 200,078	\$ 206,080	\$ 212,262
3	Spill Response Company Membership Fees	\$ 38,500	\$ 40,425	\$ 42,446	\$ 44,569	\$ 46,797
4	Insurance Fees (Volume I - 5.41)	\$ 23,858	\$ 25,050	\$ 25,802	\$ 26,576	\$ 27,373
5	Inventory - Environmental / Oil Spill Equipment *Oil Spill Response & Environmental Compliance (OPA90, SPCC and FRP, etc.)	\$ 2,004	\$ 2,105	\$ 2,168	\$ 2,233	\$ 2,300
6	Operation and Maintenance Budget (REQUIRED) *PLEASE EXPAND AND PROVIDE INFORMATION IN "O&M Budget (Required)" tab/worksheet.	\$ 113,242	\$ 118,904	\$ 122,471	\$ 126,145	\$ 129,930
	<b>TOTAL PRICE PROPOSAL</b>	<b>\$ 877,547</b>	<b>\$ 905,974</b>	<b>\$ 958,090</b>	<b>\$ 982,485</b>	<b>\$ 1,015,944</b>

	OPTIONAL ITEMS:					
7	Operation and Maintenance Budget (optional) *PLEASE EXPAND AND PROVIDE INFORMATION IN "O&M Budget (optional)" tab/worksheet. These items are for O&M activities that the bidder may deem necessary for the fuel farm but is not included in the O&M Budget (REQUIRED). GPA and the Contractor will discuss these costs during the Contract Finalization period. THIS IS NOT INCLUDED IN THE EVALUATION OF PRICE PROPOSAL AND WILL BE ADDITIONAL INFORMATION ONLY.	\$ 200,000	\$ 135,000	\$ 150,000	\$ 50,000	\$ -
	<b>Total of Optional Operation and Maintenance Budget</b>	<b>\$ 200,000</b>	<b>\$ 135,000</b>	<b>\$ 150,000</b>	<b>\$ 50,000</b>	<b>\$ -</b>

**6.3 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 days from receipt and approval of the invoice for the completed milestone.

The milestones for payments due to PMC from GPA are as follows:

- (a) Monthly Fees for each Contract Item;
- (b) Reimbursement Payments for Capital Improvement Project (CIP) - related expenditures as agreed to and scheduled between GPA and PMC.

- 6.4 PMC shall submit for review by GPA monthly invoices accompanied by a progress report describing the work performed during the compensation period. All payments to PMC shall be free of any deductions, including but not limited to withholding taxes.
- 6.5 The amounts paid or reimbursed to PMC shall in no event exceed the dollar amount indicated above except upon prior written agreement by the parties. Prior to incurring any expense not contemplated in the total fee, PMC shall request prior approval of any such additional expense from GPA. No such expense shall be reimbursable unless approved in advance by GPA.
- 6.6 Final payment shall be made upon delivery and acceptance of all Services as herein specified and performed under this Agreement. Prior to final payment, and as a condition precedent thereto, PMC shall execute and deliver to the Authority a release of any claims arising under and by virtue of this Agreement against the Authority except any identified written claims in existence at the time of the final payment.
- 6.7 The prices and costs set forth in this Agreement are based on the assumption that the Services performed will be subject to the Guam Gross Receipts Tax. PMC is responsible for payment of any applicable taxes.

**SECTION 7. AGREEMENT**

The Agreement between GPA and PMC shall consist of the tender documents, as resolved by the PMC's final negotiated Proposal and by GPA amendments, and the PMC'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 PMC'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 1 Changes**.

The resolved tender documents shall take priority over and shall govern in all cases of conflict with the adjusted proposal. The PMC's contractual obligation shall be to fulfill all requirements of the tender documents, as resolved, and to provide all features of the PMC'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 PMC detects a discrepancy in the tender documents, PMC shall so report to ENGINEER in writing at once and shall obtain a written interpretation or clarification from ENGINEER before proceeding further; however, PMC shall not be liable to GPA for failure to report any conflict, error, or discrepancy in the Contract Documents unless PMC 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 1 ENGINEER** shall issue clarifications and interpretations of the tender documents.

## **SECTION 8. OPERATION OF THIS CONTRACT**

The Guam Power Authority's responsibility for the day to day monitoring and enforcement of this Contract resides with the GPA General Manager or his designee. The PMC shall identify to GPA the person(s) responsible for the implementation of the Contract and who shall act as the PMC's point of contact.

## **SECTION 9. PMC'S OBLIGATIONS**

### **9.1 Responsibility within the Physical Boundaries of the Bulk Fuel Storage Facility.**

The PMC's area of responsibility shall include the entire Bulk Fuel Storage Facility within the perimeter fence, including the pipeline(s) tie-ins up to the flanges before the first isolation valves at the Tristar manifold and the future pipeline before the perimeter fence of the Ukudu Power Plant. The pipeline infrastructure to the KEPCO/GUP plant and the Ukudu Power Plant is projected to be completed in 2024. The Invitation for Bid Documents, Volume VI Schedule B identifies the physical boundaries.

**9.2 Management and Operation.**

The PMC shall, in good workmanlike manner, do and perform all work and furnish all supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the work required in this contract, and as specified in the Invitation for Bid Documents. The PMC shall observe, comply with and be subject to all terms, conditions, requirements, and limitations of the contract and specifications and shall do carry on the Contract to the satisfaction of the OWNER.

The PMC shall manage, operate and maintain the Bulk Fuel Storage Facility and all equipment and structures within the physical boundary of the Fuel Farm, which includes, but is not limited to, the transfer pumps, pipelines, cathodic protection system, leak detection system, oil-water separators, and other accessories, in good, safe and operating condition.

The General Responsibilities of the PMC shall include, but is not limited to:

- (a) Operation and Maintenance of the facility on a twenty-four hour (24-hour), seven-day (7-day) basis. Fuel transfers shall be restricted between Six A.M. (6 A.M.) to Six P.M. (6 P.M.); any fuel transfer beyond these are shall be subject the approval of the Manager of Generation.
- (b) Determination of fuel oil quantity for all transfers, receipts, deliveries and for inventory;
- (c) Determination of fuel oil quality in the bulk storage tanks as may be required by GPA;
- (d) Determination of fuel oil quality in the pipeline for all transfers to the Ukudu Plant;
- (e) Delivery monitoring; extended deliveries shall be closely monitored by walking the tanks and pipelines).
- (f) Daily physical survey;
- (g) Reporting; and
- (h) All other duties and responsibilities as delineated in Volumes I, II and III of the Invitation for Bid.

**9.3 Specific Responsibilities.**

Specific responsibilities include, but is not limited to:

**9.3.1. Fuel Transfer.**



The PMC will be responsible for all the fuel transfer to and from the GPA Bulk Fuel Storage Facility and the off-site GPA leased tanks, and should ensure that all activities are done safely, efficiently and effectively. This shall include but is not limited to:

- (a) **Fuel Transfer to Power Plants.** The PMC shall coordinate the delivery of fuel oil to the various GPA Power Plants from the Bulk Fuel Storage Facility and from the off-site GPA leased tanks.
- (b) **Fuel Transfer to and from Off-site GPA-leased Tanks.** The PMC shall coordinate the transfer of fuel from off-site GPA-leased tanks to the Bulk Fuel Storage Facility and vice versa. The PMC will coordinate with the dispatcher of the off-site bulk storage facility to schedule and oversee deliveries of fuel and/or transfer of fuel to the Bulk Fuel Storage Facility and the power plants.
- (c) **Fuel Transfer to and from Oil Tankers/ Vessels.** The PMC shall coordinate the transfer of fuel from Cargo Ship to the GPA Bulk Fuel Storage Tanks (and vice versa) together with GPA, GPA's Fuel Supplier, and other GPA's Fuel Handling contractors. The PMC shall also be responsible for the submittal and clearing the cargo documents as required by the Guam Customs and Quarantine prior to the vessel arrival.

The PMC shall establish a standard operating procedure or update and improve existing procedures for preventing product contamination and minimizing inventory losses. The PMC shall fulfill all other responsibilities related to Receiving of Bulk Product as described in Volumes I and II of the Invitation for Bid.

**9.3.2 Fuel Quality.**

The PMC shall ensure that the products in GPA's storage tanks meet the Fuel Specifications required by GPA. The PMC shall not cause to contaminate the product stored in the bulk storage tanks, and shall be liable for any product contamination resulting from the negligent acts of its employees or agents. Such negligent acts shall be subject to claims by GPA against the PMC. Quality specification is listed under Schedule A in Volume VI of the Invitation for Bid.

**9.3.3 Maintenance Activities.**

The PMC shall incorporate a comprehensive maintenance program that is documented to ensure that all maintenance and upkeep practices within the physical boundaries of the facility are adhered to for full life expectancy of the fuel bulk storage facility and pipelines. This contract shall be executed as the turnkey management of the facility with the PMC responsibility for all necessary routine repairs and replacements to the equipment and other appurtenances belonging thereto, as necessary to maintain as such in good working condition in order to have a continuous and uninterrupted delivery of fuel during the course of the contract.

- (a) **Routine Maintenance Activities.**

The routine repairs, maintenance, and upkeep of the facility and equipment shall be carried out by the PMC. Routine Maintenance and minor repairs include, but is not limited to:

- Monthly Tank System Inspections
- Pump Station System Integrity Check
- Instrument Calibration
- Pipeline Inspection
- Operation and Maintenance of Tank System, Pumps and Auxiliary (Diesel-driven) Pump System, Valves, Pipelines, and all Instrumentation and Electrical Systems within the physical boundaries of the facility from the Tristar Tie-In connection up to all the Plants storage tanks,
- Cathodic Protection System Operation and Maintenance
- Leak Detection System Operation and Maintenance
- Oil Water Separator Operation and Maintenance
- Maintenance of Building, Fencing, Grounds and others
- Environmental Compliance and other Technical or Professional Services required to as part of proper operation and maintenance of the Bulk Fuel Storage Facility
- All tasks required to ensure compliance with environmental, local and federal regulations (such as those imposed by, but not limited to USEPA, Guam EPA, US Coast Guard, OPA and others).

If such routine maintenance work involves oil spill response and clean-up, expenses incurred for the oil spill response and clean-up shall be treated separate from the costs associated with the routine O&M work and billed on a separate invoice.

All resources required to undertake the routine maintenance shall be handled by the PMC. PMC shall not assign any work to GPA, nor assume that GPA will take on any work related to the major repair or replacement for which the PMC has offered to undertake. In critical circumstances, such as if the activity is required to ensure compliance with local and federal regulations, PMC may consult with GPA to jointly determine the most efficient way of undertaking routine operation and maintenance activities.

The PMC shall be solely responsible for the repair or replacement of equipment if determined that subject equipment was damaged through negligence, misuse or lack of maintenance, regardless of the cost. The PMC shall also be responsible for the cost of oil spill recovery efforts for any product released resulting from such negligence.

The PMC shall fulfill all other responsibilities related to Routine Maintenance as describe in Volumes I and II of the Invitation for Bid.

(b) Major and Non-Routine Maintenance Activities, Services, Repairs and/or Replacements.

The PMC shall advise GPA, verbal and in writing, of any required major and non-routine maintenance activity, service, repair and/or replacement in excess of Ten Thousand Dollars (\$10,000.00). GPA shall conduct the necessary inspections and evaluations, and work with the PMC in the implementation and completion of the activity / service / repair / replacement. Should the need for the activity / service / repair / replacement be due to damages that are determined to be unpreventable, justified, and outside the control of the PMC, then GPA and the PMC shall jointly identify the best solution to remedy the problem. In all other cases, the PMC shall be responsible to bear the costs of replacement. The PMC shall provide GPA with the cost proposal prior to execution of any work and the project shall be approved in advance. The PMC shall then invoice GPA for the reasonable costs and expenses. The PMC shall provide GPA with all statements and supporting documentation associated with the subject activity, service, repair and/or replacement projects. The PMC shall fulfill all other responsibilities related to Routine Maintenance as described in Volumes I and II and other pertinent documents of the Invitation for Bid. The PMC administrative charges for any major or non-routine maintenance with a one-time cost over \$10,000.00 shall not exceed 5%.

**9.3.5** Right to Inspection.

GPA shall have the right to conduct inspections of any repair and/or replacement projects. In the event of a dispute, an independent inspector shall be appointed, mutually acceptable to both parties, whose decision as to the quality and/or necessity of the work shall be final and binding on both parties. The independent inspector(s)' fees and charges shall be shared equally by both parties. Payments of any and all invoices of any major repairs or replacements shall be made based on mutually acceptable terms pre-approved by the PMC and GPA.

**9.3.6** Equipment.

The PMC is responsible for the purchase, operation, maintenance and deployment of all necessary oil spill equipment as required in the SPCC Plan. Furthermore, the PMC shall maintain an in-house or on-site stock inventory of the materials, as required, for the sole purpose of supporting this contract.

**9.3.6** Communications and Reporting.

The PMC is required to fulfill all responsibilities on Communications and Reporting as delineated in Volume II Section 3 of the Invitation for Bid.

**9.3.7 Other Operations and Maintenance Activities.**

The PMC shall perform their day-to-day management and operations of the Bulk Fuel Storage Facility to include but is not limited to:

- (a) Conduct daily physical survey of the bulk fuel storage tanks immediately after completion of fuel transfer to the power plants.
- (b) End-of-the-Month Physical Survey of the bulk fuel storage tanks at the GPA Bulk Fuel Storage Facility and GPA-leased tanks from other off-site bulk storage facilities, performed by an independent third party inspector acceptable to GPA.
- (c) Monthly Tank System Inspection and Pump Station Integrity Check.
- (d) Regular Meter and Instrumentation Calibration – at least annually, or as recommended by manufacturer.
- (e) Operation and Maintenance of Cathodic Protection System and Leak Detection System
- (f) Compliance with all regulations and requirements.
- (g) Review, update and maintenance of all required Documents, including Standard Operating Procedures.
- (h) PMC shall provide monthly reports to GPA regarding all activities stated. GPA may conduct unscheduled spot inspections of the Bulk Fuel Storage Facility including activities required from the PMC.
- (i) All other responsibilities indicated in the Invitation for Bid documents.

**9.3.8 Personnel.**

The PMC shall provide adequate number of qualified and trained personnel to deliver all fuel oil required to all of GPA-owned and contracted power plants at any time the power plants require fuel oil. PMC shall provide all personnel required to safely, efficiently, and legally receive all vessel shipments and conduct delivery of fuel oil required to provide the needs described above and maintain minimum inventory requirements necessary for the assurance of fuel oil supply in all cases. The training (initial and follow-on) for operations, maintenance, and safety, as well as all applicable certifications, are the sole responsibility of the PMC for their personnel. The PMC shall also comply with Staffing Requirements as specified in Volume II Section 4 of the Invitation for Bid Documents.

**9.3.9 Coordination with GPA.**

PMC shall coordinate with the GPA dispatcher and power plants personnel to schedule fuel deliveries at the convenience of the power plants providing the communication equipment necessary to maintain continuous communications with the GPA dispatch center. PMC shall

coordinate with the dispatcher of the off-site bulk fuel storage facility to schedule and oversee deliveries of fuel from the GPA-leased tanks to the power plants.

**9.3.10 Oil Spill Recovery Equipment and Inventory.**

PMC shall establish and maintain equipment required by the SPCC and OPA '90 facility plan in good operating condition at all times and all others necessary to meet immediate response in case of oil spill or other form of incident that may cause danger to the environment.

PMC shall submit, on a semi-annual basis, an inventory list of essential spare parts to be approved by GPA. PMC shall maintain a minimum inventory of such parts at all times, and ensure that there is sufficient inventory of parts and materials required for the 24-hour operation of the Bulk Fuel Storage Facility. GPA and the PMC shall meet to establish minimum required inventory items and stock levels for regular plant operations and compliance with regulatory requirements. The PMC shall also ensure that all equipment as required in OPA '90, SPCC Plan and FRP are available and that they are able to operate and deploy all these equipment when needed. Inventory Status Reports shall be submitted to GPA regularly as part of the monthly submission.

The PMC shall also complete and be guided by the requirements under Volume II of the Invitation for Bid Documents.

**9.3.11 Performance Guarantees.**

The PMC shall meet and comply with all Performance Guarantees stated in the Invitation for Bid.

**9.3.12 Capital Improvement Projects (CIPs).**

The PMC is responsible for identifying and recommending to GPA all future Capital Improvement Projects (CIPs) they deem necessary to contribute to the operational efficiency of the Bulk Fuel Storage Facility. The PMC shall fulfill responsibilities on Capital Improvement Projects as delineated in Volume II Section 3.6.2 of the Invitation for Bid.

The PMC shall coordinate with GPA in planning and forecasting the needs for the upgrade and/or major repair or replacement of facility equipment, capital improvement projects, and other expenditures for such major maintenance, equipment acquisition, and/or upgrade of the system. In the event that major expenditures are undertaken by the PMC (for expediency), said expenditures will require prior approval by GPA via formal written request and/or proposals. GPA will reimburse such expenditures upon presentation of satisfactory documentation of expenditures. The PMC administrative charges for any CIPs with a one-time cost over \$10,000.00 shall not exceed 5%.

**9.3.13 Uniformed Security.**

PMC shall provide uniformed, un-armed security forces from an agency that is accredited as per Government of Guam Regulations, to patrol and safeguard the bulk fuel facility premises on a twenty-four (24) hours, seven (7) days a week basis. Expenses for security shall be under Item 2 of the PMC's Fixed Contract Fee as set forth in Table 1 of Section 6.2.

**9.3.14 Grounds Maintenance.**

PMC shall maintain and keep the GPA Bulk Fuel Storage Facility neat and clean at all times. PMC shall be responsible for ground maintenance of the tank dikes, impounding basin areas, pump station, operating and maintenance areas, and all others areas within the physical boundaries of the GPA Bulk Fuel Storage Facility. PMC shall trim grass and cut vegetation and shall not cause any growth to come in contact with equipment, pumps, pipelines, fences and other appurtenances at anytime. Vegetation should be cleared at all times and kept at a distance of no less than 10 feet outside the fence. Expenses for Grounds Maintenance shall be under the PMC's O&M Budget.

**9.3.15 Utilities and Transportation.**

PMC shall pay for all charges from gas, electricity, light, power, communication, transportation, and other services used, rendered, or supplied upon or in connection with the continuous operations and maintenance of the fuel farm facilities, as part of their O&M Budget.

**9.3.16 PMC's Financing Responsibilities.**

The PMC shall have the financial capability to support its cash flow requirement associated with and to sustain the maintenance and operation costs of the facility, and shall comply with the requirements as stated in Volume II, Section 3.18 (Financing) of the IFB Documents.

**9.3.17 GPA's Financing Responsibilities.**

GPA will assume total funding of all capital and O&M expenditures, but reserve the option to seek funding assistance from the PMC. In the event the PMC provides funding, PMC and GPA shall mutually agree on acceptable compensation structure, as illustrated in Volume II, Section 3.18 Financing of the IFB Documents. GPA will reimburse the PMC in a timely manner for the expenses incurred by the PMC in conjunction with projects undertaken under the O&M Budget. The PMC shall present to GPA proof of expense which shall include invoices by vendors, receipts, certificates, proof of payments and delivery on site of materials, equipments, and other related goods and services, included in the invoice as claimed for reimbursement.

**SECTION 10. QUANTITY AND QUALITY ASSURANCE**

PMC shall be solely responsible for the cost resulting from any direct damages due to losses in fuel quantity and/or failure in quality thereof, caused by the negligence of the PMC.

**SECTION 11. FEDERAL AND LOCAL REGULATORY COMPLIANCE**

**11.1 General Responsibilities.**

The PMC shall be responsible for complying with all Environmental, Homeland Security, and other Federal and Local compliance requirements to include, but not limited to the following areas:

- (a) Mandatory membership with a qualified and certified Oil Spill Response Companies on Guam (OSROCO, etc.), as required by law, and to comply with the Oil Pollution Act of 1990 (OPA 1990).
- (b) Conduct all activities such as but not limited to monitoring, report submission and payments of fees, required to comply with all existing and applicable environmental regulations, requirements permits and plans. These include, but are not limited to:
  - OPA '90 / OPA '90 Facility Plan
  - SPCC Plan
  - Facility Response Plan
  - Facility Security Plan
  - NPDES permit
- (c) Establishment and maintenance of equipment required by the SPCC Plan and OPA '90 Facility plan in good operating condition at all times, and all others necessary to meet immediate response in case of oil spill or other form of incident that may cause danger to the environment.
- (d) Remediation of all oil spill incidents to the satisfaction of local and federal regulatory bodies.
- (e) Submit results of all audits, investigations and other local/federal activities to GPA.

**11.2 Environmental Compliance.**

The PMC shall operate in compliance with all environmental requirements and is responsible for all required activities including but not limited to:

- (a) Monitoring of all tests and results and ensuring compliance with applicable rules and regulations;
- (b) Completion of all necessary corrective actions;
- (c) Conduction of tests on all water supply to comply with NPDES Permit;
- (d) Creation, development and updating of Standard Operating Procedures as required;
- (e) Monitoring all low volume waste streams to be within compliance with all local, federal and international regulations;
- (f) Completion of all activities to ensure compliance with all existing environmental permits and plans that include, but are not limited to the NPDES Permit, BMP, FRP, SPCC and OPA '90;

- (g) Compliance with GPA and Federal Spill Prevention Control and Countermeasures (SPCC) programs and policies to include implementation, monitoring and reporting;
- (h) Submission of all required reports including compliance schedules;
- (i) Record-keeping and equipment maintenance;
- (j) Payment of all applicable fees as stated in the various environmental permits and plans;
- (k) Payment of all penalties from non-compliance with any and all environmental requirements from local and federal bodies.

GPA's Planning and Regulatory Division shall support the PMC in meeting all environmental compliance requirements. P&R shall audit the PMC on a regular basis as a means of monitoring and ensuring that all requirements are satisfied. The PMC shall coordinate all activities on Environmental Compliance, including records and reports, to GPA's Planning and Regulatory Division (P&R). The PMC shall provide full cooperation during P&R's audits and monitoring activities. All corrective measures shall be completed no later than the specified date as required by P&R.

- 11.3 The PMC shall also comply with all other requirements pertaining to Environmental, Homeland Security and other Federal and Local Compliance Requirements as specified in Volume II of the Invitation for Bid.
- 11.4 If at any time during the term of the Contract the Government of the United States or the Territory of Guam, or other instrumentality or agency enacts laws or issues regulations which would require compliance by GPA, PMC shall comply with such governmental laws and regulations at the same price set out herein, or if unreasonable, at a price to be renegotiated by the parties (except taxes, penalties, fees or other charges that may be imposed on PMC because of PMC's failure to make proper tax filings including requests for credits, exemptions, drawbacks or rebates). If the laws or regulation causes an increase or decrease in PMC's cost of performance of the Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly. Any claim of PMC for adjustment under this section must be asserted in writing within thirty (3) days from date of receipt by PMC of the notification of compliance with Government laws, rules and regulations. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this Contract entitled "Claims and Disputes". However, nothing in this clause shall excuse the PMC from proceeding with the Contract in order to comply with Government laws, rules and regulations.

#### **SECTION 12. OIL POLLUTION ACT OF 1990 (OPA '90)**

The PMC is responsible for compliance with the requirements and the oil spill and recovery provisions of the federal law Oil Pollution Act of 1990 (OPA '90 Act) as necessary for the operations of the Bulk Fuel Storage Facility.



**SECTION 13. OPA'90 Requirement- Oil Spill Response Organization**

The PMC shall present by be or shall become a bona fide member of a certified Oil Spill Response Company on Guam that is duly recognized and approved by federal and regulatory bodies such as the US Coast Guard to fulfill the requirements of the Oil Pollution Act of 1990 (OPA'90). Otherwise, the PMC shall qualify to become an active member or **must secure** an oil spill response service contract with a certified Oil Spill Response Company. Proof of such membership or an oil spill response agreement must be provided to GPA within thirty (30) days of the date of the contract award. Failure to furnish and deliver to the Authority the required membership in the time and manner specified shall constitute a default and grounds for cancellation of Contract.

**SECTION 14. FACILITY RESPONSE PLAN AND SPILL PREVENTION CONTROL AND COUNTERMEASURE PLAN**

GPA shall provide the existing Facility Response Plan (FRP) and Spill Prevention Control and Countermeasure Plan (SPCC).

The PMC shall review, edit, enhance and obtain regulatory approvals for any changes from the Federal Environmental Protection Agency, Region IX, San Francisco, for such plan as a mandatory requirement under the OPA Act 90, with the PMC as the operator and GPA as the facility owner. GPA shall be furnished with copies of these plans, to be submitted to:

- Manager of Generation (Generation Division)
- Planning and Regulatory Division

The PMC shall, on their own, purchase, maintain and operate or deploy all necessary oil spill equipment as required in the SPCC plan, as an in-house stock inventory.

**SECTION 15. PROTECTION OF WORK AND PROPERTY**

The PMC shall at all times safely guard the OWNER's property from injury or loss in connection with this contract. He shall at all times safely guard and protect his own work and that of adjacent property (as provided by law and the contract documents) from damage. All passageways, guard fences, lights and other facilities required for protection by laws and regulations and local conditions must be provided and maintained.

**SECTION 16. WARRANTY**

The PMC's obligation to deliver and perform services in connection therewith in accordance with the Agreement is absolute, and the PMC warrants and guarantees to OWNER that all services will be in

accordance with the Contract Documents. The PMC shall provide OWNER with all warranties and guarantees in writing.

Except as otherwise specified all work shall be guaranteed by the PMC against defects resulting from the use of inferior materials, equipment, or workmanship for one year from the date of final completion of any repairs or replacements.

If within any guarantee period, repairs or changes are required in connection with guaranteed work which, in the opinion of the OWNER, is rendered necessary as the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the contract, the PMC shall promptly upon receipt of notice from OWNER and without expense to the OWNER:

- (a) Place in satisfactory condition in every particular all of such guaranteed work and correct all defects therein; and
- (b) Make good all damages to the building or site or equipment or contents thereof which, in the opinion of the OWNER, is the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the contract.

In any case wherein fulfilling the requirements of the contract or of any guarantee embraced in or required thereby the PMC disturbs any work guaranteed under another contract, he shall restore such disturbed work to a condition satisfactory to the OWNER and guarantee such restored work to the same extent as it was guaranteed under such other contract.

If the PMC, after notice, fails to proceed promptly to comply with the terms of the guarantee, the OWNER may have the defects corrected and the PMC and his surety shall be liable for all expense incurred.

All special guarantees applicable to definite parts of the work shall be stipulated in the specifications or other papers forming a part of the contract and shall be subject to the terms of this paragraph during the first year of the life of such special guarantee.

In the event the PMC 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.

#### **SECTION 17. DEFECTIVE WORK**

No work or material which may be defective in construction or quality or deficient in any of the requirements of the drawings and specifications will be considered accepted as a consequence of the failure of the OWNER to discover or to point out said defects or deficiencies during the construction; nor will the presence of inspectors on the work relieve the PMC from the responsibility of securing the quality and progress of work as required by these specifications.

Any defective work that may be discovered before the completion of the work or within such time as required by the bond shall be replaced by work and materials that shall conform to the spirit and intent of the drawings, specifications and contract.

The fact that the OWNER may have overlooked defective work shall not constitute the acceptance of work. NO PAYMENT WHETHER PARTIAL OR FINAL SHALL BE CONSTRUED TO BE AN ACCEPTANCE OF DEFECTIVE WORK OR IMPROPER MATERIALS.

The OWNER may at any time by order given in writing stop any work not being done according to drawings and specifications and any order so given shall not in any way relieve the PMC from completing his contract and shall not in any way terminate, cancel or abrogate the contract or any part thereof, and the Government of Guam shall not in any way be responsible for the delay due to stopping the work as aforesaid.

#### **SECTION 18. INSPECTION OF WORK**

##### **18.1 Access to the Work.**

Authorized GPA representatives shall have access at all times to the work for inspection whatever it is in preparation or progress and the PMC shall provide proper facilities for such access and inspection.

##### **18.2 Inspectors.**

Inspectors may be placed by the OWNER to supervise each and every subdivision of the work or any parts or process thereof. The authorized inspectors shall have free access to all parts of the work at all times and shall be given every facility, information and means of thoroughly inspecting the work done and the materials used or to be used. The inspectors shall at all times be free to perform their duties and any intimidation of any inspector by the PMC or the employees thereof shall be sufficient reason, if the OWNER shall so decide, to annul the contract.

#### **SECTION 19. DEFAULT**

In the event either party of this Contract fails to perform any of the provisions of this Contract, the other party must notify the party in default in writing of the deficiency or non-performance. The party in default has thirty (30) calendar days in which to remedy such default. If such default is not cured within thirty (30) calendar days, the other party may terminate all or part of the Contract. Events of default include but are not limited to the following:

- (a) Failure of PMC to provide evidence of an acceptable performance bond on specified time.
- (b) Failure of the OWNER to pay invoices within 30-days of receipt.
- (c) Failure of PMC to adhere to the terms of the Contract.

#### **SECTION 20. LICENSES, PERMITS, TAXES, AND RESPONSIBILITIES**

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

#### **SECTION 21. SUBCONTRACTS**

Nothing contained in the contract documents shall be construed as creating any contractual relationship between any sub-PMC and the OWNER. The diffusion or sections of the specifications are not intended to control the PMC in dividing the work among its sub-contractors or to limit the work performed by any trade. The PMC shall be as fully responsible to the OWNER for the acts and omissions of the PMC's sub-contractors and of persons employed by them, as he is for the acts and omissions of persons directly employed by him.

The PMC shall be responsible for the coordination of the sub-contractors engaged in his work.

The PMC shall, without additional expense to the OWNER, utilize the services of specialty sub-contractors on those parts of the work which are specified to be performed by specialty sub-contractors.

The OWNER will not undertake to settle any differences between the PMC and his sub-contractors or between sub-contractors.

The PMC shall cause appropriate provisions to be inserted in all subcontracts relative to the work including waiver of mechanics liens to bind its sub-contractors by the terms of the contract documents insofar as applicable to the work of sub-contractors and to give the OWNER any exercise over the PMC under any provisions of the contract documents.

#### **SECTION 22. ASSIGNMENT OF AGREEMENT**

The PMC shall not assign the whole or any part of this contract or any monies due or to become due hereunder without the written consent of the OWNER and of all the sureties executing any bonds on behalf of the PMC in connection with said contract. In case the PMC assigns the whole or any part of said contract or assigns all or any part of any monies due or to become due under said contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due the PMC or otherwise shall be subject to all of the terms and conditions of said contract or supplemental thereto, the rights and remedies of the OWNER thereunder or arising by operation of the law and to the liens of all persons, firms, and corporations for services rendered or materials supplied in connection with the performance of said contract.

#### **SECTION 23. EQUAL OPPORTUNITY**

- 23.1 The PMC will not discriminate against any employee or applicant for employment because of race, religion, sex, color, age, economic status, or national origin. The PMC will take affirmative action to insure that qualified applicants are employed and that employees are treated during employment without regard to their race, religion, sex, color, age, economic status, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoffs or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The PMC agrees to post in

conspicuous places, available to employees and applicants for employment, notices to be provided by the OWNER setting forth the provisions of this nondiscrimination clause.

- 23.2 The PMC will, in all solicitations or advertisements for employees placed by or on behalf of the PMC, state that all qualified applicants will receive consideration for employment without regard to race, religion, sex, color, age, economic status, or national origin.
- 23.3 The PMC will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the OWNER, advising the said labor union or workers' representative of the PMC's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

**SECTION 24. PROHIBITION AGAINST GRATUITIES, KICKBACKS,  
AND FAVORS TO THE TERRITORY**

GCA 5 §5630(c) prohibits the CONSULTANT against gratuities, kickbacks, and favors to the Territory.

**SECTION 25. RESTRICTION AGAINST PMC EMPLOYING  
CONVICTED SEX OFFENDERS FROM WORKING AT  
GOVERNMENT OF GUAM VENUES**

GCA 5 §5253(b) restricts the CONSULTANT against employing convicted sex offenders from working at Government of Guam venues. It states:

- (b) All contracts for services to agencies listed herein shall include the following provisions: (1) warranties that no person providing services on behalf of the PMC has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry; and (2) that if any person providing services on behalf of the PMC is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry, that such person will be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.

**SECTION 26. CLAIMS AND DISPUTES**

All controversies between the OWNER and the PMC which arise under, or are by virtue of, this Contract and which are not resolved by mutual agreement of the parties shall be decided as set forth in 5 G.C.A §5427 of the Guam Procurement Law.

**SECTION 27. TERMINATION FOR CONVENIENCE**

GPA may terminate the performance of the services under this Contract in accordance with this clause in whole, or in part, whenever GPA determines that such termination of Contract is in the best interest of the Guam Power Authority and its ratepayers.

Any such termination is effected by delivery to the PMC a written Notice of Termination specifying the extent to which services in the Contract is terminated in whole or in part. In the event the OWNER elected to terminate the Contract it shall be effective sixty (60) days after the receipt of such Notice of Termination.

**SECTION 28. SURRENDER OF PREMISES**

Upon voluntary or other termination of this Contract or any early termination of the term from whatever cause, PMC shall voluntarily surrender and deliver to GPA the premises, including all buildings, alterations, replacements, changes, additions, and improvements constructed, erected, added or placed on the premises, in as good condition and repair and as clean as the commencement of the term, and as any new buildings, structures, replacements, additions or improvements constructed, erected, added or placed on the premises by the PMC were when completed, with ordinary wear and tear excepted. In the event that the PMC is not able to repair or replace such defective, damaged or lost properties, the cost for such repair or replacement shall be deducted from the PMC's good Performance Bond.

**SECTION 29. FAILURE TO COMPLY WITH LAWS**

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

**SECTION 30. AMENDMENT AND WAIVER**

Neither the Contract nor any provision hereof may be changed, waived, altered, amended, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, alteration, amendment, discharge or termination is sought.

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

**SECTION 31. GOVERNING LAW**

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

The parties expressly submit to the jurisdiction of the Superior Court of the Territory of Guam, for the resolution of any dispute or difference or claims between the parties in connection with the Contract, and to service of process by registered mail. Judgment upon any award rendered by the Superior Court of the Territory of Guam may be entered in any court of any country having jurisdiction, and such award shall be binding upon the parties. The PMC waives all rights against OWNER to claim consequential, special or punitive damages.

**SECTION 32. RELATIONSHIP OF PARTIES**

Nothing contained in the Contract as awarded to the successful offeror shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between PMC and OWNER, and no provisions contained in the Contract nor any acts of the parties shall be deemed to create any relationship between OWNER and PMC, other than the relationship of supplier of services and beneficiary.

**SECTION 33. NOTICE TO OTHER PARTY**

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

**SECTION 34. NOTICES**

Any notice, demand or any document required or permitted to be delivered hereunder shall be in writing and may be delivered personally or shall be deemed to be delivered when deposited in the mail, postage prepaid, registered or certified mail, addressed to the parties at their respective address indicated below:

To: Supreme Group Guam LLC

(PMC)

FAX Number: None

Address: PO Box 315293 Tamuning, Guam 96931

TO: GUAM POWER AUTHORITY  
Attention: General Manager  
FAX Number (671) 648-8163  
P.O. Box 2977, Hagatna  
Guam 96932-2977

**SECTION 35. PMC'S AND ITS SUB-CONTRACTOR'S INSURANCE**

**35.1. Mandatory Insurance Requirements.**

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

**A. General Liability Insurance** including products, completed operations and contractual liability coverage in the amount of \$2,000,000 per occurrence and \$2,000,000 aggregate.

- i. Policy must be primary and non-contributory with endorsements attached.
- ii. GPA shall be named as an Additional Insured.
- iii. Waiver of subrogation shall be in favor of GPA.
- iv. Cancellation clause of minimum 90 days' prior written notice to GPA.
  1. GPA must be given minimum 90 days' prior written notice for any material changes in the policy or cancellation of the policy.



**B. Commercial Auto Liability insurance covering third party bodily injury and property damage in the amount of \$1,000,000 combined single limit per occurrence.**

- i. Policy must be primary and non-contributory with endorsements attached.
- ii. GPA shall be named as an Additional Insured.
- iii. Waiver of subrogation shall be in favor of GPA
- iv. Cancellation clause of minimum 90 days' prior written notice to GPA.
  - 1. GPA must be given minimum 90 days' prior written notice for any material changes in the policy or cancellation of the policy.

**C. Excess Liability insurance over the General Liability and the Commercial Auto Liability with limits of \$10,000,000 or higher per occurrence/ \$10,000,000 aggregate.**

- i. Policy must be primary and non-contributory with endorsements attached.
- ii. GPA shall be named as an Additional Insured.
- iii. Waiver of subrogation shall be in favor of GPA
- iv. Cancellation clause of minimum 90 days' prior written notice to GPA.
  - 1. GPA must be given minimum 90 days' prior written notice for any material changes in the policy or cancellation of the policy.

**D. Worker's Compensation and Employer's Liability Insurance – Statutory Limits.**

- i. Policy must be primary and non-contributory with endorsements attached.
- ii. GPA shall be named as an Additional Insured.
- iii. Waiver of subrogation shall be in favor of GPA
- iv. Cancellation clause of minimum 90 days' prior written notice to GPA.
  - 1. GPA must be given minimum 90 days' prior written notice for any material changes in the policy or cancellation of the policy.

**E. Professional Liability Insurance including in the amount of \$1,000,000 each claim.**

- i. Policy must be primary and non-contributory with endorsements attached.
- ii. GPA shall be named as a NAMED INSURED
- iii. GPA shall be named as Loss Payee
- iv. Cancellation clause of minimum 90 days' prior written notice to GPA.
  - 1. GPA must be given minimum 90 days' prior written notice for any material changes in the policy or cancellation of the policy.

**F. PMCs All Risk or Builders Risk Insurance**

- i. Minimum Limits, deductibles, sub-limits, coverage, and property descriptions per contract or project description.

**MS IFB GPA-015-22 (Re-Bid)**  
**Volume IV: Contract**

---

- ii. Policy must be primary and non-contributory with endorsements attached.
- iii. GPA shall be named as a NAMED INSURED.
- iv. GPA shall be named as a Loss Payee
- v. Waiver of subrogation shall be in favor of GPA
- vi. Cancellation clause of minimum 90 days' prior written notice to GPA.
  - 1. GPA must be given minimum 90 days' prior written notice for any material changes in the policy or cancellation of the policy.

If applicable, fuel /hazardous materials transport:

G. General Liability and the Commercial Auto Liability with limits of \$5,000,000 or higher per occurrence.

- i. Policy must be primary with primary wording endorsement attached.
- ii. GPA shall be named an additional insured
- iii. Waiver of subrogation shall be in favor of GPA
- iv. Cancellation clause of minimum 60 days' prior written notice to GPA
- v. Policy must have MCS 90 Endorsement

**All policies must contain the following endorsement and on the Certificate of Insurance:**

H. Cancellation Clause of minimum 90 days' prior written notice to GPA.

GPA must be given minimum 90 days' prior written notice before any material changes in the policy or cancellation of the policy can take effect. Written notice must be addressed to:

Guam Power Authority  
Chief Financial Officer  
PO BOX 2977  
Hagatna, GU  
96932-2977

Certificate of insurance must contain this wording to be acceptable.

**35.3. Certificate of Insurance.**

PMC 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 PMC'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 PMC's liability under this agreement. GPA shall be an additional insured on all liability coverage and certificates of insurance shall clearly indicate such.

**35.4. Insurance Company and Agent.**

All insurance policies herein required of the PMC 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.

**SECTION 36. INDEMNITY**

The PMC 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 PMC or the PMC's employees, servants, agents or sub-contractors and from mechanics and materialism liens.

**SECTION 37. 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.

**SECTION 38. 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.

**SECTION 39. ACCIDENT PREVENTION**

Precaution shall be exercised at all times for the protection of persons (including employees) and property. Equipment and all hazards shall be guarded or eliminated in accordance with the safety provisions of the latest edition of the Manual of Accident Prevention in Construction published by the Associated General Contractors of America to the extent that such provisions are not in contravention of applicable laws.

Should typhoon warnings be issued, the PMC shall take every practicable precaution to minimize damage and/or danger to persons, to the work, and to the adjacent property. These precautions shall include closing all openings, removing all loose materials, tools and/or equipment from exposed locations, and removing or securing scaffolding and all other temporary work.

**SECTION 40. RESPONSIBILITY OF PMC TO ACT IN EMERGENCY.**

In case of an emergency which threatens loss or injury of property and/or safety or life, the PMC shall act, without previous instructions from the OWNER, as the situation may warrant.

**SECTION 41. FORCE MAJEURE.**

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

- (a) War, etc. War, hostilities, acts of public enemy or belligerents, sabotage, blockade, revolution, insurrection, riot or disorder;
- (b) Restraints. Arrest or restraint of princes, rulers or peoples;
- (c) Confiscation. Expropriation, requisition, confiscation of nationalization;
- (d) Rationing. Embargoes, export or import restrictions or rationing or allocation, whether imposed by law, decree or regulation or by voluntary cooperation of industry at the insistence or request of any governmental authority or person purporting to act therefore;
- (e) Regulations. Interference by restriction or onerous regulations imposed by civil or military authorities, whether legal or de facto and whether purporting to act under some constitution, decree, law or otherwise;
- (f) Acts of God. Acts of God, fire, frost or ice, earthquake, storm, lightning, tide, tidal wave, or peril of the sea, accident of navigation or breakdown or injury of vessels;
- (g) Loss of Tankers. Loss of tanker tonnage due to sinking or capture by belligerents, to include acts of piracy or to governmental taking whether or not by formal requisition;
- (h) Accidents. Accidents to or adjuncts of shipping navigation;
- (i) Strikes and Quarantine. Epidemics, quarantine, strikes or combination of workmen, lockouts, or other labor disturbances;

- (j) Explosions. Explosion, accidents by fire or otherwise to wells, pipes, storage facilities, refineries, installations, machinery;
- (k) Taking by Government. Unavailability of fuel because of the election of the government of the country of its origin to confiscate, retain, ban export, or otherwise prevent shipment of fuel;
- (l) Mechanical Breakdown. Unavailability of GPA's electric generating plant and any, or all, appurtenances thereto, including transmission and distribution facilities, due to any mechanical operate as designed, emergency outages of equipment or facilities for the purpose of making repairs to avoid breakdown thereof or damage thereto other than regularly scheduled repairs or regular maintenance; or
- (m) Other Events. Any event, matter or thing wherever occurring and whether or not of the same class or kind as those set forth, which shall not be reasonably within the control and without the fault or negligence of the party affected thereby.

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

#### **SECTION 42. ATTORNEY'S FEES AND COSTS**

PMC agrees that should a default by either party result in litigation, the successful party shall be entitled to recover its costs and reasonable attorney's fees from the defaulting party.

#### **SECTION 43. CONTRACT BINDING EFFECT**

All EXHIBITS attached hereto are incorporated herein by reference in its entirety.

This Contract is binding upon the PMC only if PMC has been awarded the Contract in response to the **MS IFB GPA-015-22**. This Contract is subject to the approval of GPA and the Public Utilities Commission and it shall not be binding on part of GPA until such approval is made as evidenced by the signatories below.

IN WITNESS WHEREOF the parties hereto have executed this contract as of the day and year first written.

PMC: SUPREME GROUP GUAM LLC

OWNER:

(COMPANY NAME AND SEAL)

GUAM POWER AUTHORITY

  
\_\_\_\_\_  
DARREL P. DELA PAZ

  
\_\_\_\_\_  
JOHN M. BENAVENTE, P.E.

MS IFB GPA-015-22 (Re-Bid)  
Volume IV: Contract

---

General Manager

Date: August 7, 2023

General Manager

Date: [Signature] 9/29/2023

CERTIFIED AS TO FUNDS AVAILABLE:

Date: \_\_\_\_\_

By: Pamela Aguigui JK

PAMELA AGUIGUI

GPA'S Certifying Officer

Account No. 54900.501000.83



Amount: \$ 873,547.00 only  
FY24 OP# 31701

APPROVED AS TO FORM:

Date: 9/26/2023

By: [Signature]

GPA Staff Attorney

 GPA BUDGET OFFICE  
BUDGET CLEARED   
By: Pam Aguigui  
Date: [Signature] 9/29/23