



GUAM POWER AUTHORITY

ATURIDÂT ILEKTRESEDÂT GUÅHAN
P.O.BOX 2977 • HAGÂTÑA, GUAM U.S.A. 96932-2977

To All Interested Parties:

Most pandemic-related mandates were lifted effective May 3, 2022. To ensure the continued safety and well-being of GPA personnel, prospective bidders, and guests, please be advised of the following:

1. Virtual meetings and/or conferences are preferred and will be coordinated through the GPA Procurement Division.
2. For In-Person meetings and/or conferences:
 - a. Limit of one (1) representative per prospective bidder when submitting any procurement proposal, and to attend public bid openings.
 - b. Face masks and social distancing may be employed at the option of the individual.
 - c. Persons displaying cold or flu-like symptoms will be asked to leave.

COMPANY NAME:

NAME OF INDIVIDUAL:

Print / Sign

Date

BID NO.: Multi-Step GPA-012-23

RFP NO.: _____



JOSEPH T. DUENAS
Chairman



JOHN M. BENAVENTE, P.E.
General Manager

Telephone Nos. (671) 648-3054/55 or Facsimile (671) 648-3165

Accountability	Impartiality	Competence	Openness	Value
INVITATION FOR BID (IFB) NO.: Multi-Step GPA-012-23				
DESCRIPTION: Renewable Energy Resource Acquisition Phase IV				

SPECIAL REMINDERS TO PROSPECTIVE BIDDERS

Bidders are reminded to read the Sealed Bid Solicitation and Instructions, and General Terms and Conditions attached to the IFB to ascertain that all of the following requirements checked below are submitted in the bid envelope. **Bidders are required to submit one (1) original, six (6) bound copies of their bid including one completed electronic copy on one disk of the Qualitative Scoring Workbook including all addenda, if any, at the closing date and time. One completed electronic copy on another disk of the Priced Proposal Workbook by the "Cut-Off Date for Receipt of Priced Proposals". Bidders are advised to keep a copy of the completed Workbooks and test the electronic copies on disks prior to submitting them to GPA.** All sealed proposal submissions must be hand delivered, delivered by mail, or delivered by other courier services to:

ISSUING OFFICE:

Guam Power Authority-Procurement Office
1st. Floor, Room 101
Gloria B. Nelson Public Service Building
688 Route 15
Mangilao, Guam 96913

(XX) BID GUARANTEE – (\$150,000.00 (USD)) May be in the form of;
Reference #11 on the General Terms and Conditions

- a. Cashier's Check or Certified Check (**NOTE: Cashier's Check or Certified Check Refunds will be ONLY be made out to the name of the Bidder.**)
- b. Wire Transfer to Guam Power Authority
Account No. 0601-026246, Routing No. 121405115
Bank Location: Bank of Guam, 111 Chalan Santo Pap Street, Hagatna, Guam 96910
Bank Mailing Address: P.O. Box BW Hagatna, Guam 96910
- c. Letter of Credit or
- d. Surety Bond – Valid only if accompanied by:
 1. Current Certificate of Authority issued by the Insurance Commissioner; or
 2. Power of Attorney issued by the Surety to the Resident General Agent or the following:
 - a. Current Sworn Annual Report (Limited Liability Company (LLC) and/or Corporation) or;
 - b. Current Renewal of Annual Limited Liability Partnership (LLP); or
 3. Power of Attorney issued by two (2) major officers of the Surety to whomever is signing on their behalf.

- (XX) STATEMENT OF QUALIFICATION;
() SAMPLES;
() BROCHURES/DESCRIPTIVE LITERATURE; (Shall provide detailed literature on items offered)
(XX) OWNERSHIP AND INTEREST DISCLOSURE AFFIDAVIT; **Pursuant to Public Law 36-13**
(XX) NON-COLLUSION AFFIDAVIT; **Pursuant to Public Law 36-13**
(XX) NO GRATUITIES OR KICKBACKS AFFIDAVIT;
(XX) ETHICAL STANDARDS AFFIDAVIT;
(XX) WAGE DETERMINATION AFFIDAVIT;
(XX) RESTRICTIONS AGAINST SEX OFFENDERS AFFIDAVIT;

Note: The above Affidavits must comply with the following requirements:

- a. The affidavit must be signed within 60 days of the date the bid is due;
- b. Date of signature of the person authorized to sign the bid and the notary date must be the same.
- c. First time affidavit **must** be an **original** – If copy, indicate Bid Number/Agency where original can be obtained.

(XX) OTHER REQUIREMENTS:

A Guam Business License and/or Contractor's License with proof of Employer Identification Number (EIN) is not required in order to provide a proposal for this engagement, but is a pre-condition for entering into a contract with the Authority. Bidders MUST comply with PL 26-111 dated June 18, 2002, PL 28-165 dated January 04, 2007 and Wage Determination under the Service Contract Act (www.wdol.gov). Additionally, upon award the successful bidder must provide to GPA the most recently issued Wage Determination by the US Dept. of Labor.

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

On this _____ day of _____, 2023, I, _____, authorized representative of _____ acknowledge receipt of this special reminder to prospective bidders with the above referenced IFB.

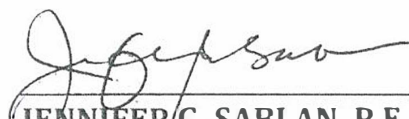
Bidder Representative's Signature

**INVITATION FOR MULTI-STEP BID
No. GPA-012-23**


RENEWABLE ENERGY RESOURCE ACQUISITION

PHASE IV




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**INVITATION FOR MULTI-STEP BID
No. GPA-012-23**

**RENEWABLE ENERGY RESOURCE ACQUISITION
PHASE IV**



Volume I

Commercial Terms and Conditions

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GUAM POWER AUTHORITY RENEWABLE ENERGY RESOURCE ACQUISITION – PHASE IV
Volume I: Commercial Terms and Conditions

1. Introduction

The Guam Power Authority (GPA) is inviting Renewable Resource Developers to participate in a Multi-Step Bid to provide renewable energy to serve the GPA power system.

This Invitation for Multi-Step Bid (IFB) is an effort to comply with Public Law 29-62, which requires GPA to establish renewable portfolio standard goals and add additional renewable capacity with each construction of a conventional base load unit.

This IFB is Phase IV of GPA’s efforts to procure renewable energy resources. The Phase I solicitation resulted in two PPAs now under GPS Solar Dandan, LLC for a combined output of 25.65MW of solar PV. The GPS Solar facility is located in Dandan and was commissioned in October 2015. The Phase II solicitation resulted in PPAs with HEC Guam, LLC (approximately 60 MW of solar power installed capacity) and now KEPCO Mangilao Solar, LLC (approximately 60 MW of solar power installed capacity), in August 2018. The HEC facility, which is currently under construction, will be located in Malojloj. The KEPCO facility was commissioned in June 2022 and is located in Mangilao. The Phase III acquisition intended to acquire up to 60 MW (AC) of renewable capacity with energy storage, installed on predetermined military sites on Guam that GPA has leased from the US Department of Navy. However, this bid has been cancelled due to the Navy’s need to use these proposed sites for other purposes.

In this Phase IV Renewable Energy Resource Acquisition, GPA intends to acquire firm, non-intermittent power from one, or more, renewable generation resources with a total minimum annual energy output of 300,000 MWH. The proposed projects must meet the requirements established in “Volume II: Technical Qualification Proposal Requirements.”

For more information on GPA’s renewable resource acquisitions, prospective bidders may visit the GPA Renewable Resource webpage at: <http://guampowerauthority.com/special/renew1.php>

Maps of potential utility solar sites can be found in Appendix O in Volume V. However, bidders are not limited to the sites identified in these maps.

The GPA webpage also has the following information for bidders’ use:

- Public Law 29-62 (An act to promote the development of renewable energy)
- Public Law 30-66 (An act relative to permitting GPA and GWA to enter into long term contracts)
- Solar Energy Data from the Talofoto substation of the Dandan 25.65 MW solar photovoltaic farm

RENEWABLE ENERGY RESOURCE ACQUISITION – PHASE IV
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This bid shall be a Two Step process. Step One will establish a Qualified Bidders List (QBL) based on acceptable submitted non-price Bid information (or Technical Qualification Proposals). Step One is the period from IFB announcement through Notification of Qualified Bidders. Step Two will evaluate the Priced Proposals from the vendors identified on the QBL and which, if any, Qualified Bidder(s) will be awarded a contract(s). 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 Technical Qualification Proposals and the Qualitative Scoring Workbook. GPA will notify the Bidders selected for the QBL and will proceed with the second step of the bid process to open the sealed bid Priced Proposals of the qualified bidders. GPA will perform a comprehensive evaluation of each bid and select the Bidder(s) with the best bids based on the submitted purchase power price, minimum guarantees, and required technical data.

After the selection of the winning Bidders(s), GPA will conduct system integration studies, at the selected Bidders' expense, to determine system upgrades or improvements required and the associated cost necessary for the selected renewable resource's integration into the GPA transmission system.

If the selected Bidder(s) cannot proceed with the contract, GPA may elect to

- 1) go to the next best Bidder; or
- 2) cancel the bid.

Table 1: Bid Milestones indicate the anticipated milestones in the Bid Process.

GPA reserves the right to change the Bid Milestones at its sole discretion. Bidders are encouraged to confirm with GPA any of the scheduled milestones via an official letter to GPA.

Table 1: Bid Milestones

Bid Milestones	From Date	To Date
Bid Announcement	12/01/2022	02/24/2023
Submit Questions	12/01/2022	01/03/2023
Cut Off Date for Receipt of Questions	01/03/2023 4:00 P.M. CHamoru Standard Time; (CHST)	

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GPA Review and Answer Questions		01/03/2023	02/03/2023
Vendor Prepare Bids		02/03/2023	02/24/2023
Cut Off Date for Receipt of Proposals (Technical and Price Proposals)		02/24/2023 2:00 P.M. CHamoru Standard Time, (CHST)	
EVALUATION Step One:	Technical Proposal Evaluation	02/27/2023	03/03/2023
	Notification of Qualified Bidders	03/07/2023	03/10/2023
EVALUATION Step Two:	Opening of Price Proposals (Public Opening)	03/28/2023 2:00 P.M. CHamoru Standard Time; (CHST)	
	Evaluation of Price Proposal	03/29/2023	03/31/2023
	Notification of Successful Bidder(s)	04/03/2023	04/07/2023
System Integration Study		TBD	TBD
Contract Finalization		TBD	TBD
Contract Approval & Recommendation to Award		TBD	TBD
Public Utilities Commission Review		TBD	TBD
Contract Signing		TBD	
Contract Mobilization		TBD	TBD
CONTRACTOR Operational Commencement		TBD	

1.1. Invitation for Bid (IFB) Document Organization

Invitation for Bid (IFB) documents are organized into six separate volumes, as follows:

Volume I	—	Commercial Terms and Conditions
Volume II	—	Technical Qualification Requirements
Volume III	—	Draft Renewable Energy Purchase Agreement
Volume IV	—	Bid Scoring Mechanism
Volume V	—	Appendices

In addition, the IFB documents include two (2) sets of electronic spreadsheets (MS Excel Workbooks):

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

GPA reminds Bidders to submit the Priced Proposal in a separate sealed envelope clearly marked “Priced Proposal” for Step Two of the bid process.

1.2. 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, Engineering, Planning & Regulatory (Environmental), Safety, Human Resources, Customer Service, Facilities, Strategic Planning and Operations Research, Generation, Procurement, Transmission & Distribution (T&D), and Transportation. Majority of the departments are located in the Gloria B. Nelson Public Service Building (GPA Main Office) located in Mangilao. However, T&D, Generation, and Transportation Offices and buildings are located throughout the island.

1.2.1. Generation Overview

An overview of GPA’s generation resources and transmission systems is provided in GPA’s Integrated Resource Plan, which can be found at the following webpage:

http://guampowerauthority.com/gpa_authority/strategicplanning/2012IRP.php

1.2.2. Electrical System Overview

Guam Power Authority has approximately 182 miles of 115KV and 34.5KV transmission lines. There are 6 ea. 115KV and 35 ea. 34.5KV lines connecting 30 substations throughout the island. These Substations have 63 ea. 13.8KV distribution feeders with approximately 592 miles of lines. The Guam Power Authority follows National Electrical Manufacturers Association (NEMA) ANSI C84 for delivery of power and

RENEWABLE ENERGY RESOURCE ACQUISITION – PHASE IV
Volume I: Commercial Terms and Conditions

imbalance. The GPA Islandwide System Transmission Single Line Diagram can be found on the following webpage:

http://guampowerauthority.com/gpa_authority/engineering/gpa_engineering_system_diagrams.php

1.2.3. Guam Weather

Guam's climate is pleasantly warm year-round. The mean annual temperature is 81 degrees; generally, the range is from the low 70s to the middle 80s. The coolest and least humid months, marked by prevailing westerly trade winds, are in December through February. Although the warmest months are from March through August, the refreshing trade winds blow steadily. The annual rainfall totals 80 to 110 inches. There are two seasons, the dry and the rainy. The dry season begins in December through June. The rainy season falls within the remaining months.

Weather	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Avg Fahrenheit	76	77	78	79	79	80	80	80	79	80	80	79
Avg Centigrade	24	25	26	26	26	27	27	27	26	27	27	26
rainfall inches	5.16	4.26	2.97	4.03	4.49	5.19	9.59	12.16	14.08	14.40	8.51	5.85
rel humidity %	77	76	75	74	73	76	76	81	81	80	80	78
sunshine hrs/day	11.15	11.30	11.51	12.16	12.40	12.58	13.00	12.47	12.24	12.00	11.35	11.18

1.2.4. Historical Renewable Resource Data

Historical 10 second renewable energy delivery from GPS Solar's 26MW Solar PV facility recorded at the Talofofo Substation is available on the GPA renewable website for download at:

<http://guampowerauthority.com/special/renew1.php>

Data is from March 2016 thru November 2017 and is the total output of the solar facility delivered to GPA.

1.3. IFB Document Media

The five-volume set of IFB documents and all Amendments to this IFB may be made available to Bidders in electronic filing format including:

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- Downloadable files posted on the internet (webpage or FTP site); or
- Transmittal through email

2. Instructions to Bidders

This is a multi-step bid procurement consisting of two steps. The **Technical Qualification Proposal and the Priced Proposal should both be submitted on or before the Cut-off Date of Receipt of Proposals indicated in Table 1: Bid Milestones**. In Step One, only the submitted Technical Qualification Proposals will be evaluated and determined whether Acceptable or Unacceptable. GPA will select a short-list of qualified bidders who will be eligible to submit their priced proposals. Only the BIDDERS whose Technical Qualification Proposals are determined to be Acceptable shall qualify for Step Two. BIDDERS whose Technical Proposals are Unacceptable shall be notified, and the unopened Price Proposal packages shall be returned. In Step Two, the Price Proposals of the Bidders whose Technical Qualification Proposals will be considered for award.

2.1. Language and Correspondence

2.1.1. Language

The official language of Guam is English. The bid and all accompanying documents shall be in English. Any bids not submitted in English will be designated as “Unacceptable” and will not qualify for Step Two.

2.1.2. Commercial and Technical Correspondence

Any prospective BIDDER desiring an explanation or interpretation of the solicitation, commercial terms, Technical Specifications, etc., must make a request in writing to GPA at the address listed below, referencing the Invitation for Bid No. Multi-Step GPA-012-23:

ATTENTION:	JOHN M. BENAVENTE GENERAL MANAGER GUAM POWER AUTHORITY-PROCUREMENT OFFICE 1 st . FLOOR, ROOM 101 GLORIA B. NELSON PUBLIC SERVICE BUILDING 688 ROUTE 15 MANGILAO, GUAM 96913 ATTENTION: JAMIE LYNN C. PANGELINAN SUPPLY MANAGEMENT ADMINISTRATOR
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PHONE: 1 (671) 646-3045 /3055
FAX: 1 (671) 648-3165

In addition, Bidders may also make this request by writing to the GPA PMC Procurement Officer at:

jpangelinan@gpagwa.com

The written request may also be sent via-email by sending an electronic copy of the written request to the Procurement Officer handling the IFB. All inquiries must be received by Procurement no later than the deadline for inquiries specified in Table 1: Bid Milestones. 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. Any oral explanations or instructions given by GPA to prospective Bidders will not be binding.

2.2. Technical and Functional Requirements Examination

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 will in no way relieve them of the obligations and responsibilities assumed under the contract.

2.3. 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 ftp site. Announcements regarding any Amendment shall also be posted at the GPA Website at:

<https://go.opengovguam.com/bids/available/gpa>

The BIDDERS shall acknowledge receipt of the amendment by a signature on one copy, which is to be returned to the GPA Supply Management Administrator. Acknowledgement may also be made by fax or e-mail.

2.4. 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.

2.5. 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.

2.6. Priced Proposals Furnished Separately without Technical Qualification Proposals

Bidders are required to submit their Priced Proposals as found in the MS EXCEL Workbook, Priced Proposal Workbook.xls separately from their Technical Qualification Proposals and completed Qualitative Scoring Workbook.xls by the Cut-Off Date for Receipt of Priced Proposals. Bidders must package Priced Proposals in a separate sealed envelope marked “Priced Proposal” and indicating the date and time of bid package submittal.

As part of the data requirements for Priced Proposals, Bidders must furnish a price for energy delivered for each year of the contract. These pricing requirements are described in more detail in Volume II: Technical Requirements.

2.7. Price/Cost Data

BIDDERS shall provide prices/costs in U.S. Dollars.

2.8. Documents Executed Outside of 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.

2.9. Step One Procedures

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

2.9.1. Submission of Bids**2.9.1.1. Bid Contents**

Each bid shall contain a complete and clear description of the proposed renewable resource technology, energy storage, construction timelines and permitting experience, anticipated location, proposed interconnection with GPA system, operation and maintenance experience with proposed technology (as more fully discussed in Volume II: Technical Requirements).

Each bid shall include the following:

- Cover and bid checklist forms defined in Appendix A;
- Responses and supporting information to the questions raised in the Qualitative Scoring Workbook;
- Completed electronic copy of **the Technical Bid Form Workbook**; and,
- Supplementary information described below.

Each bid shall be submitted in the format and quantities discussed in **Section 2.9.2 Bid Submittal**.

2.9.1.2. Responses and Supporting Information to Qualitative Questions

As part of their bid package, Bidders shall provide written responses and supporting information to answer each of the questions raised in the Qualitative Scoring Workbook on the tab marked Part 1- Qual Support References. The Bidders will then reference in the Qualitative Scoring Workbook, using the appropriate Section and/or page numbers, precisely where in their bid packages answers to each of the questions listed may be found.

2.9.1.3. Electronic Copies of the Bid Scoring Workbook

Bidders shall complete both the Qualitative Scoring Workbook and the Priced Proposal Workbook, **and must submit electronic copies of these two Workbooks separately from each other in clearly**

marked envelopes. Electronic copies should be provided on USB device. Files shall not be additionally electronically secured. Any security changes may delay evaluation.

2.9.1.4. Supplementary Information

Bidders shall submit all the supplementary information required by the IFB documents. The supplementary information must be provided in sufficient detail and clarity to permit a complete comparison of the bids with the Technical Specifications. Volume II provides more detail on information required for the Technical Qualification Proposals and Priced Proposals. The supplementary information included with each bid shall include the following:

1. Information requested in the Qualitative Scoring Workbook and in Volume II: Technical Qualification Requirements.

Submittal of the following supplementary information is mandatory and must be provided by the Bid Submittal Closing Date. **GPA shall automatically disqualify any bid submitted without the supplementary information listed below:**

2. 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;
3. Affidavit of Ownership & Interest Disclosure Affidavit (Appendix C);
4. Audited financial information for the last five years on Bidder's firm and all subcontractors that will be used in this contract. If they have one, Bidders must include their Dunn and Bradstreet Number or Other Major Credit Rating Agency rating, or comparable, independent verification of their credit standing.
5. Certificate of Good Standing to conduct business from the jurisdiction of their company's residence;
6. Non-collusion Affidavit (Appendix D) ;
7. Information regarding outstanding claims against the Bidder, if any;
8. Bid Bond (Appendix B);

9. A current Guam Business License is not required in order to provide a Bid for this engagement, but is a pre-condition for entering into a contract with the Authority. ***NOTE: The successful bidder must furnish a current Guam Business License prior to contract execution;***
10. No Gratuities or Kickbacks Affidavit (Appendix G);
11. Ethical Standards Affidavit (Appendix H);
12. Declaration Re Compliance with U.S. DOL Wage Determination (Appendix I);
13. Restriction Against Sex Offenders Employed by Service Providers to Government of Guam from Working on Government of Guam Property (Appendix J);

2.9.2. Bid Submittal

2.9.2.1. Manual Options for Bid Submittal

Bidders may submit their bids via mail services (such as U.S. Postal Service, Federal Express or DHL) to the address provided in **Section 2.1.2 Commercial and Technical Correspondence**. Bidders may also deliver bids at the GPA Procurement Office located at:

Guam Power Authority-Procurement Office
 1st. Floor, Room 101
 Gloria B. Nelson Public Service Building
 688 Route 15
 Mangilao, Guam 96913

2.9.2.2. Non-repudiation Issues

GPA has structured its Manual IFB submittal procedures to ensure non-repudiation of the submitted bids. In this IFB, “non-repudiation” means strong and substantial evidence of the identity of the sender and owner of the bid and of bid’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 bid 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 domain;
- Physical delivery of printed material bids;
- Physically secured area storage of IFB materials.

2.9.2.3. Signature of Bidder

A duly authorized person must sign the Bidder's bids. All names shall be typed or printed below the signature. A bid 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 bid 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.

All required bid documents must be submitted and received by the Procurement Office by the Bid Submittal Closing deadline.

2.9.2.4. Manual Bid Submittal Package Format and Handling

This section describes the bid package format and content required by GPA that is specific to manual submittal of bids. The Manual IFB Bid 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 the Procurement Officer of the Guam Power Authority. Both the Bidders' agents and the GPA Procurement

Officer are live human beings. In addition, both parties perform non-repudiation of the bid 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 bid including one completed electronic copy on one disk of the Qualitative Scoring Workbook and one completed electronic copy on another disk of the Priced Proposal Workbook.

Bidders are advised to keep a copy of the completed Workbooks and test the electronic copies on disks prior to submitting them to GPA.

2.9.2.5. Marking and Packaging of Bids

As a general rule, the manually submitted Bids shall be packaged in separate sealed boxes with the following information clearly marked on the outside of the two largest sides:

- 1) “TECHNICAL QUALIFICATION PROPOSAL” OR “PRICED PROPOSAL”
- 2) "RENEWABLE ENERGY RESOURCE ACQUISITION - PHASE IV";
- 3) BIDDER’S NAME;
- 4) INVITATION FOR BID NUMBER;
- 5) CLOSING DATE and TIME (Guam Standard Time).
- 6) Addressed As follows:

ATTENTION: JOHN M. BENAVENTE
 GENERAL MANAGER
 GUAM POWER AUTHORITY-PROCUREMENT OFFICE
 1st. FLOOR, ROOM 101
 GLORIA B. NELSON PUBLIC SERVICE BUILDING
 688 ROUTE 15
 MANGILAO, GUAM 96913

If the Bidder’s submittal cannot fit within one box or if the Bidder chooses to submit more than one box, each box must be labeled as described above and with the following additional information:

- 7) Box Number Within the Set of Submitted Boxes
- 8) The Total Number of Boxes Submitted.

2.9.2.6. Receipt and Handling of Manually Submitted Bids

Upon receipt, each Bid submittal package will be time-stamped. The only acceptable evidence to establish the date and 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. Bids will be stored in a secure place until the date and time set for proposal opening.

GPA procurement personnel will stamp the outside of each package using the GPA Procurement time stamp and will officially log the date and time that each Bidder's sealed bid package is received.

2.9.3. Submittal Closing Date

The Technical Qualification Proposal Submittal Closing Date is **February 24, 2023, 2:00 P.M., CHamoru Standard Time; (CHST)**. Submitted proposals, excluding the Priced Proposals, will be opened at this time which will initiate the proposal evaluation process. No proposals shall be accepted after the Bid Submittal Closing Date and Time.

2.9.4. Bid Changes During Bid Process

Changes may be made to the Technical Qualification Proposals(s) prior to the Bid Submittal Closing Date.

2.9.5. Evaluation of Technical Qualification Proposals

After the Bid Submittal Closing Date, GPA will evaluate the Technical Qualification Proposals and develop the QBL.

GPA will use the score from the Qualitative Scoring Workbook to evaluate the contents of bids and categorize each of the bids using one of the following designations:

- a. Acceptable—the Bidder will qualify for the QBL and its Priced Proposal may be considered
- b. Potentially Acceptable—the Bidder's submittal has a reasonable possibility of being made acceptable; or
- c. Unacceptable—the Bidder's submittal does not meet the requirements and will not be considered further.

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 Technical Qualification Proposals to assure effective price competition in the second step without technical discussions.

If the Procurement Officer finds that such is not the case, the Procurement Officer shall issue an amendment to this IFB or engage in technical discussions with Bidders as set forth below.

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

2.9.5.1. Notice of Unacceptable Bid

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

2.10. Step Two Procedures

Upon completion of Step One and the selection of qualified bidders, qualified bidders must submit their priced proposals. GPA will proceed with Step Two of the multi-step bid, which includes evaluation of the Priced Proposals and award of the contract(s).

2.10.1. Request for Priced Proposals and Performance Guarantees

Each Bidder from the QBL will be notified and GPA will open their Priced Proposals, which were submitted on compact disk in the MS EXCEL workbook titled Priced Proposal Workbook.xls.

GPA will select a winning Bidder based on a comprehensive evaluation of the Priced Proposals, guarantees, and the resulting net present value of utility cost integrating each bid's Priced Proposal and generation profile as described in Volume IV: Bid Scoring Mechanism.

2.10.1.1. Bid Changes During Bid Process

Changes may be made to the Priced Proposals only prior to the Bid Submittal Closing Date.

2.10.1.2. Bid Validity

All price/cost data submitted with the Bidders' bids shall remain firm and open for acceptance for a period of **not less than eight (8) months after the Bid Submittal Closing Date**; thereafter, the Priced Proposal shall be subject to renewal by mutual agreement between the Bidder and GPA.

The Bidder shall state the actual date of expiration in their Priced Proposal with their bid submittal.

2.10.2. Preliminary Examination of Priced Proposal

GPA will examine the Priced Proposal 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 Proposals 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.

2.10.3. Evaluation Criteria and Comparison of Priced Proposals

GPA will only evaluate and compare the Priced Proposals for Bidder's whose Technical Qualification Proposals were determined to be responsive to the IFB document requirements during Step One.

GPA's evaluation of Priced Proposals shall compare the \$ per MWh Priced Proposals (as they apply to the expected energy production levels and Annual Minimum Quantity described in the Volume II: Technical Requirement) to GPA's cost to produce the same energy from its existing non-renewable resources.

This evaluation method is explained in more detail in Volume IV: Bid Scoring Mechanism.

2.11. General Bid Guidelines and Requirements**2.11.1. Amendments to the IFB Document**

GPA may elect to change the IFB documents in whole or in part. GPA shall send all Amendments to the IFB document recipients via fax and/or e-mail. In addition, GPA will make all Amendments available on the GPA Procurement Available Bids and RFPs website at:

<https://go.opengovguam.com/bids/available/gpa>

2.11.2. Proprietary Data

For the purposes of this IFB and submitted bids, the laws, rules and regulations of Territory of Guam concerning confidentiality shall govern. Bidders may designate those portions of the Bid that contain trade secrets or other proprietary data that are to remain confidential.

The Procurement Officer shall examine the bids 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 Bid submittal what portions of the Bid will be disclosed and that, unless the Bidder protests under the Conditions of Contract Disputes clause the information will be so disclosed. The bid shall be opened to public inspection subject to any continuing prohibition of the disclosure of confidential data.

2.11.3. Acceptance of Bids

GPA reserves the right to reject any or all bids and to waive minor errors, informalities, and discrepancies made by the Bidders if it appears in GPA's best interest to do so.

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

2.11.4. IFB Cancellation or Delay

The Guam Power Authority reserves the right to delay award or to cancel the IFB, or to reject all bids or any individual bid in whole or in part, at any time prior to the final award. When the IFB is canceled or rejected

prior to final award, notice of cancellation or rejection shall be sent to all Bidders and all bid 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 the Bid Submittal Closing Date, but prior to award, all bids 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 IFB did not provide consideration of other factors of significance to the Territory;
- c) All otherwise acceptable bids received have clearly unreasonable price/cost data;
- d) There is reason to believe that the bids may not have been independently arrived at in open competition, may have been collusive and may have been submitted in bad faith;

Again, any individual bid may be rejected in whole or in part when in the best interest of the Territory.

2.11.5. 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.

2.11.6. False Statements In Bid

Bidders must provide full, accurate, and complete information as required by this IFB and its attachments. The penalty for making false statements in any bid 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 bid, the Bidder agrees that this act legally binds the Bidder to his bid.

2.11.7. Prohibition Against Gratuities, Kickbacks, and Favors to the Territory

Pursuant to GCA 5 Section 5630 (c), this clause is conspicuously set forth to alert all parties in this procurement that *Guam Public Law Title 5 § 5630. Gratuities and Kickbacks* prohibits against gratuities, kickbacks and favors to the Territory.

2.11.8. Restriction against CONTRACTORs Employing Convicted Sex Offenders from Working at Government of Guam Venues

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

- (a) No person convicted of a sex offense under the provisions of Chapter 25 of Title 9 Guam Code Annotated, or an offense as defined in Article 2 of Chapter 28, Title 9 GCA in Guam, or an offense in any jurisdiction which includes, at a minimum, all of the elements of said offenses, or who is listed on the Sex Offender Registry, and who is employed by a business contracted to perform services for an agency or instrumentality of the government of Guam, shall work for his employer on the property of the Government of Guam other than public highway.
- (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 contractor 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 contractor 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.
- (c) Duties of the General Services Agency or Procurement Administrators. All contracts, bids, or Requests for Proposals shall state all the conditions in § 5253(b).
- (d) Any contractor found in violation of § 5253(b), after notice from the contracting authority of such violation, shall, within twenty-four (24) hours, take corrective action and shall report such action to the contracting authority. Failure to take corrective action within the stipulated period may result in the temporary suspension of the contract at the discretion of the contracting authority.

2.12. Award of Contract

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

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 GPA's offices, 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 bid.

The successful Bidder shall provide the required Performance Bond within **fourteen (14) 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.

2.13. Bid and Performance Bond Requirements

2.13.1. Bid Bond Form and Amount

A bid bond for an amount of \$ 150,000.00 (USD) for each submitted proposal 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 No. 601-026246, Routing No. 121405115,
Bank of Guam, P. O. Box BW, Hagatna, Guam 96910
- 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.

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

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

For those Bidders not selected for award of contract, bid bonds will be refunded.

For those Bidders selected for award of contract, bid bonds will be refunded once GPA has received their performance bond (see next **Section 2.13.2 Performance Bond Form, Amount, and Duration**). Any Bidder who is selected for award of contract but who is unable to fulfill the obligations of its respective bid(s) will permanently forfeit its bond(s) to GPA.

2.13.2. Performance Bond Form, Amount, and Duration

A performance bond shall be required from winning Bidders in the form as prescribed in Appendix F. For the period during construction and prior to the Commercial Operation Date of the project, the selected Bidder(s) shall provide a Development Security Bond which shall be in effect upon contract execution and until the Commercial Operation Date of the project and submission of the Contract Performance Bond. The amount of the Development security bond shall be 50% of the total projected payment for the 1st contract year based on the contractor's 1st Contract Year energy rate and the guaranteed energy production and shall be posted as a Letter of Credit or Cash.

At the beginning of the contract term, after the Commercial Operation Date, and at the beginning of each GPA Fiscal Year during which the contract is in effect, the Bidder shall provide and maintain a Contract Performance Bond performance bond in the amount equal to Cost for Minimum Annual Energy as described in the Draft Renewable Energy Purchase Agreement for that full or partial fiscal year within the term of the contract.

Upon submission of the Contract Performance Bond, the Development Security Bond can be returned. The selected bidder(s) may forfeit a portion or all of its Development Security if the selected bidder(s) fails to meet requirements as described in the Draft Renewable Energy Purchase Agreement (see Volume III).

If the Bidder 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.

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

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The Bidder shall provide a Performance Bond executed by a surety company licensed to do business on Guam.

3. Required Forms and Supplemental Information

GPA shall automatically disqualify any proposal submitted without the supplementary information and required forms listed below:

- Documents required as part of Qualitative Proposal Requirements;
- 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;
- Audited financial information on BIDDER's firm and all subcontractors that will be used in the performance management of GPA's Fuel Bulk Storage Facility. BIDDERS must include their Dunn and Bradstreet Number or Other Major Credit Rating Agency rating.
- Certificate of Good Standing to conduct business in jurisdiction of residence;
- Information regarding outstanding claims against the BIDDER, if any;
- Required affidavits (Ownership & Interest Disclosure; Non-Collusion; Declaration Regarding Compliance with DOL Wage Determination; No Gratuities or Kickbacks; Ethical Standards Affidavit; Restriction Against Sex Offenders)
- Proposal Checklist
- Bid Bond
- A current Guam Business License. Although it is not required in order to provide a Bid for this engagement, obtaining a Guam Business License is a pre-condition for entering into a contract with the Authority.

The following forms and MS EXCEL Workbooks must be completed:

- Appendix A: Bid Checklists
- Appendix B: Bid Bond Form and Instructions
- Appendix C: Ownership & Interest Disclosure Affidavit
- Appendix D: Non-collusion Affidavit
- Appendix E: Local Procurement Preference Application
- Appendix F: Performance Bond
- Appendix G: No Gratuities or Kickbacks

- Appendix H: Ethical Standards Affidavit
- Appendix I: Declaration Re Compliance with U.S. DOL Wage Determination
- Appendix J: Restriction against Sex Offenders Employed by Service Providers to Government of Guam from Working on Government of Guam Property
- Qualitative Proposal Worksheet.xls
- Price Proposal.xls

3.1. Technical Proposal Forms

The following referenced forms shall be completed and submitted with the Proposal.

3.1.1. Bid Checklists

The BIDDER shall complete Form A-1 by acknowledging the receipt of the Invitation For Bid Documents received from Guam Power Authority, including the latest IFB Amendments received. Acknowledgement of receipt shall be given by signing or putting an initial beside each line item received. This Form is an acknowledgement of receipt, review and understanding of the IFB documents.

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

3.1.2. Ownership & Interest Disclosure Affidavit

The BIDDER shall fill out the Ownership & Interest Disclosure Affidavit form in Appendix C and submit it with its Proposal.

3.1.3. Non-collusion Affidavit

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

3.1.4. No Gratuities or Kickbacks Affidavit

The BIDDER shall fill out the No Gratuities or Kickbacks Affidavit Form in Appendix G and submit it with its Proposal.

3.1.5. Ethical Standards Affidavit

The BIDDER shall fill out the Ethical Standards Affidavit Form in Appendix H and submit it with its Proposal.

3.1.6. Compliance with US DOL Wage Determination

The BIDDER shall fill out and sign *Appendix I – Declaration of Compliance with US DOL Wage Determination* and submit it with the Technical Proposal.

3.1.7. Bid Bond Form

As stated in *Section 2.13 Bid and Performance Bond Requirements*, if a BIDDER desires to submit a bid bond with an acceptable bonding company, the BIDDER must submit original copies of Appendix B.

3.1.8. Local Procurement Preference Application

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

3.1.9. Restriction Against Sex Offenders

The BIDDER shall complete the form, *Restriction against Sex Offenders Employed by Service Providers to Government of Guam from Working on Government of Guam Property* (Appendix J) and submit it as part of the Technical Proposal.

3.2. Qualitative Proposal Workbook

The BIDDER shall complete the Qualitative Proposal Workbook in accordance with the instructions given in the workbook's Instructions tab. The workbook shall be submitted as part of the Qualitative Proposal.

3.3. Price Proposal Workbook

The BIDDER shall complete the Priced Proposal worksheet contained in the MS Excel Workbook Priced Proposal Workbook.xls and submit it in a sealed envelope which will only be opened when the bidder has been deemed qualified through Step One of the multi-step bid process. This workbook outlines the Bidder's rate for energy delivered and the proposed plant's operating characteristics which will be used to determine total system costs.

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

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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

Shall refer to all energy production 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.

4.1.17. Project

The plant, or facilities, that will generate energy required in contract

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 Bidder 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.

4.1.24. Territory

The Territory of Guam.

4.1.25. Engineer of Record

Wherever the words "Engineer of Record" appear in the CONTRACT Documents, it shall mean CONTRACTOR's Professional Engineer who designed and approved the drawings, specifications, reports and other documents for the project.

4.2. Agreement

Prior to entering into a formal agreement, GPA and CONTRACTOR shall resolve and document any differences between the CONTRACTOR's bid and the IFB documents. The Agreement between GPA and CONTRACTOR shall consist of the IFB documents, as resolved by the CONTRACTOR's final negotiated Bid and by GPA amendments, and the CONTRACTOR's bid, 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 bid.

Any formal contract document shall reference GPA IFB documents and the CONTRACTOR's bid. 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 4.14 Changes**.

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

The IFB 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 IFB documents, these General Conditions shall apply. If, during performance of the Agreement CONTRACTOR detects a discrepancy in the IFB 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 IFB 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 IFB 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.

Unless the Contract Agreement 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.

All materials shall conform to federal and local codes and standards applicable to this type of work i.e. NEMA, ANSI, IEEE, ASTM etc. All necessary items and accessories not specified herein, but which are required to fully carryout the specified intent of the work, shall be furnished by the CONTRACTOR at no cost to the owner.

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 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.

The Contractor shall submit for the approval of the Contracting Officer, shop and setting drawings and schedules required by the specifications or that may be requested by the Contracting Officer and no work shall be fabricated by the Contractor, save at his own risk, until such approval has been given. The drawings submitted shall be marked with the name of the project, numbered consecutively and bear the stamp of approval of the Contractor as evidence that the drawings have been checked by the Contractor. Any drawings submitted without this stamp of approval will not be considered and will be returned to the Contractor for re-submission. If the shop drawings show variations from the requirements of the contract because of standard shop practice or other reasons, the Contractor shall make specific mention of such variation in his letter of transmittal so that if any variations are acceptable, suitable action may be taken for proper adjustment; otherwise, the Contractor will not be relieved of the responsibility for executing the work in accordance with the contract even though such shop drawings have been approved. If a drawing as submitted indicates a departure from the contract requirements which the Contracting Officer finds to be in the interest

of the Owner and to be so minor as not to involve a change in the contract price or time for performance, he may approve the drawing.

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. 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.

4.12. 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.

4.13. Price Adjustment**4.13.1. 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

4.13.2. Submission of Cost or Pricing Data

The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of §3118 (Cost or Pricing Data) of the Guam Procurement Regulations in Appendix M.

4.14. Changes**4.14.1. 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.

4.14.2. Time Period for Claim

Within 30 days after receipt of a written change order under Paragraph 5.14.1 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.

4.14.3. 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.

4.14.4. 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.

4.15. 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.

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

- Monthly invoice for Energy delivered at the contract price

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

- Penalty Payments due to liquidated damages from CONTRACTOR's failure to meet its original Commission Date.
- Penalty Payments due to CONTRACTOR's failure to meet its Guaranteed Minimum Annual Energy Production.

4.17. 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 4.21. 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.

4.17.1. 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.

4.17.2. Delivery Time and Force Majeure

Only a Change Order may change contractual Delivery Times. The CONTRACTOR as provided in Paragraph 5.14 Changes 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.

4.18. 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.

If within any warranty period, repairs or changes are required in connection with guaranteed work which, in the opinion of GPA, 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 CONTRACTOR shall promptly upon receipt of notice from GPA and without expense to GPA:

- 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 GPA, are 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 CONTRACTOR disturbs any work guaranteed under another contract, he shall restore such disturbed work to a condition satisfactory to GPA and guarantee such restored work to the same extent as it was guaranteed under such other contract.

If the CONTRACTOR, after notice, fails to proceed promptly to comply with the terms of the guarantee, GPA may have the defects corrected and the CONTRACTOR 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 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.

4.19. 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.

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

Inspectors may be placed by GPA 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 CONTRACTOR or the employees thereof shall be sufficient reason, if GPA shall so decide, to annul the contract.

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.

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 CONTRACTOR and GPA.

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.

If the CONTRACTOR fails to proceed at once with the replacement of rejected materials and/or the correction of defective workmanship, the OWNER may, by contract or otherwise, replace such materials and/or correct such workmanship and charge the cost to the CONTRACTOR, or may terminate the right of the CONTRACTOR to proceed. The CONTRACTOR and surety shall be liable for any damage to the same extent for termination thereunder.

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.

The CONTRACTOR shall furnish promptly, without additional charge, all reasonable facilities, labor and materials necessary for the safe and convenient inspection and tests that may be required by the Contracting Officer. All inspections and tests shall be performed in such manner as not to unnecessarily delay the work. Special, full-size and performance tests shall be as described in the specifications. The CONTRACTOR shall be charged with any cost of inspection when material and workmanship are not ready at the time inspection is requested by the CONTRACTOR.

Should it be considered necessary or advisable by the Contracting Officer at any time before final acceptance of the entire work to make an examination of work already completed by removing or tearing out same, the CONTRACTOR shall on request promptly furnish all necessary facilities, labor and materials. If such work is found to be defective in any material respect due to the fault of the CONTRACTOR or his subcontractors,

he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements involved in the examination and replacement, the cost of conducting the test plus fifteen percent (15%) shall be allowed the CONTRACTOR and he shall in addition, if completion of the work has been delayed thereby, be granted a suitable extension of time on account of the additional work involved.

Additional inspection requirements are further described in *Section 4.56 Quality Control*

4.20. Stop Work Order

4.20.1. 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.

4.20.2. 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.

4.20.3. 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.

4.21. Termination for Convenience

4.21.1. 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. [2GAR-Administration; Div. 4 – Procurement Regulations §6101 (10)] Please see APPENDIX M for a copy of 2GAR – Administration; Div. 4 – Procurement Regulations §6101 (10).

4.21.2. 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.

4.21.3. 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.

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 project 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 project, whether in the CONTRACTOR's facility, in transit, or on GPA's premises, shall immediately pass to GPA.

4.21.4. 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 §3118 (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. Please see APPENDIX M for a copy of §3118 (Cost or Pricing Data) of the Guam Procurement Regulations.

- 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 5.21.2 Contractor's Obligations 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 damage 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:
 - (1) 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
 - (2) 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,
 - (3) 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
 - (4) 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."

4.22. Termination for Defaults

4.22.1. 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.

4.22.2. 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.

4.22.3. 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.

4.22.4. 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 5.21. (As used in the Paragraph of this clause the term "subcontractor" means subcontractor at any tier.)

4.22.5. 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 5.22.4(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.

4.22.6. 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.

4.23. 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.

4.24. 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.

4.25. 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.

4.26. 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.

4.27. 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

4.28. 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 without the prior written consent of GPA. The Draft Power Purchase Agreement in Volume III of this bid, Article Eleven, outlines requirements for assignment.

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.

4.29. 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 furnished.

4.30. 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.

4.31. 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.

4.31.1. Remediating Defective Parts

If at any time GPA determines that the replacement parts 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 CONTRACTOR 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 CONTRACTOR, and without prejudice to any of its rights under the Contract 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.

4.31.2. Remediating 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.

4.31.3. Cost of Remedying Defects

All direct, indirect, and other costs of correcting, removing, and replacing defective Parts or of obtaining Special Services elsewhere and of exercising GPA's rights and remedies under Paragraph 4.39, 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 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.

4.32. 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.

4.32.1. 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.

4.33. 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.

4.34. 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.

4.35. 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.

4.36. 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.

4.37. Insurance

Contractor shall not commence work under this contract until he has obtained all insurance required under this section and GPA 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.

4.38. Contractors and Subcontractors Insurance

Prior to commencing the work, which includes construction and operation activities, 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. Owner shall be an additional insured. Grant Waiver of Subrogation in favor of GPA.
2. Auto Liability covering bodily injury and property damage in the amount of \$1,000,000 combined single limit. Owner shall be an additional insured. Grant Waiver of Subrogation in favor of GPA.
3. Excess Liability with limits of \$5,000,000 or higher. Owner shall be an additional insured. Grant Waiver of Subrogation in favor of GPA.
4. Worker's Compensation and Employer's Liability – Statutory limits. Add Waiver of Subrogation endorsement in favor of GPA
5. Builder's Risk or Installation Floater, when applicable, is to be furnished by Contractor.

6. Pollution Liability, when applicable, with limits of \$5,000,000. GPA is to be an additional insured. Grant Waiver of Subrogation in favor of GPA.
7. Property insurance with replacement cost limits for the premises, property, improvements, structures, and machinery and equipment on the Premises
8. Business Income and Extra Expense with a \$3,000,000 limit or whatever is deemed appropriate by GPA upon award.

At all times after achieving COD, Seller may discontinue or otherwise cancel each of the aforementioned policies, except the following insurance policies, which shall be maintained with the limits set forth below:

1. General Liability with limits of \$1,000,000.00 including products, completed operations, and contractual for this Agreement. GPA shall be an additional insured. Seller shall grant a waiver of subrogation in favor of GPA.
2. Excess Liability with limits of \$5,000,000.00. GPA shall be an additional insured. Seller shall grant a waiver of subrogation in favor of GPA.
3. Worker's Compensation and Employer's Liability – Statutory limits. Add Waiver of Subrogation endorsement in favor of GPA

4.38.1. Indemnification

The Contractor shall indemnify, defend and hold harmless GPA against all loss, damage, or expense (including reasonable attorney's fees incurred by GPA) 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.

4.38.2. 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 (30) 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 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.

4.38.3. 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.

4.38.4. Waiver of Subrogation

Contractor hereby releases GPA and their respective officers, employees, and agents from all loss or damage to the Premises and to the fixtures, personal property, equipment and improvements of Contractor in or on the Premises, notwithstanding that any such loss or damage may be due to or result from the negligence of GPA or their respective officers, employees or agents.

4.39. CONTRACTOR Use of Site and Removal of Debris

The CONTRACTOR expressly agrees to undertake the following at his own expense:

- a) To confine all operations to within the vicinity of the site limits and arrange work so that all materials and equipment are placed in such manner and location that there may be a minimum of interference or inconvenience inflicted upon other contractors, employees, equipment of GPA and the public
- b) To take every precaution against injuries to persons or damages to property
- c) To comply with the regulations governing the operation of premises which are occupied and to perform his contract in such a manner as not to interrupt or interfere with the operation of other facilities
- d) To perform any work necessary to be performed after regular working hours or on Saturdays, Sundays or legal holidays without additional expense to GPA
- e) To store his apparatus, materials, supplies, and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of his work or the work of any other contractors
- f) To place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work

- g) To frequently clean up all refuse, rubbish, scrap materials, and debris caused by his operation so that at all times the site of the work shall present a neat, orderly and workmanlike appearance
- h) To affect all cutting, fitting, or patching of his work required to make the same conform to the plans and specifications, and except with the consent of GPA, not to cut or otherwise alter the work of any contractor
- i) Before final payment to remove all surplus materials, false work, temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from his operations, to put the site in a neat, orderly condition and to thoroughly clean and leave reasonably dust free all finished surfaces

4.40. Restoration of Property

Any property damages to private and public properties, buildings, equipment, or utilities during the course of the work shall be restored to its original condition at no expense to GPA.

4.41. Barricades

The CONTRACTOR shall erect, install and maintain all temporary public walks, warning signs, barricades or other protective means in and around the site as deemed necessary or as may be ordered by the Contracting Officer for the effective protection of the public from injury and shall be held strictly liable for their safety.

4.42. Time Restrictions for Performing Work

No work shall be carried out on site outside of the specified working hours or on Saturdays, Sundays, or legal holidays without the Engineer's written consent unless the work is unavoidable, absolutely necessary to save life or property, or necessary for the safety of the work, in which case the CONTRACTOR shall immediately advise the Engineer. Engineer shall not unreasonably withhold any such consent save in exceptional circumstances, nor do so if work outside of the specified working hours or on Saturdays, Sundays, or legal holidays is considered by CONTRACTOR to be necessary to meet the Contract Time. The services of the Inspector and Engineer will be charged to the CONTRACTOR.

4.43. Safety and Health Requirements

4.43.1. Compliance with Federal and Local Safety Regulations

The CONTRACTOR shall comply with Safety and Health Regulations for Construction, promulgated by the Secretary of Labor under Section 107 of the Contract Work Hours and Safety Standards Act, as set forth in Title 29, C.F.R. Copies of these regulations may be obtained from Labor Building, 14th and Constitution Avenue, NW, Washington, DC 20013. The CONTRACTOR shall comply with the provisions of the Federal Occupational Safety and Health Act, as amended.

4.43.2. Accident Prevention

Precaution shall be exercised at all times for the protection of persons (including employees) and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery, 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 CONTRACTOR shall take every practicable precaution to minimize damage and/or danger to persons, to the work, and to 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. The CONTRACTOR shall undertake these precautions at his own expense.

4.43.3. Responsibility of CONTRACTOR to Act in Emergency

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

4.44. Electrical Energy

The CONTRACTOR shall make all necessary applications, pay all fees and charges, obtain necessary permits and provide and maintain his own electrical power and light as required and necessary in the progress of any branch of the work. He shall provide all temporary wiring necessary.

4.45. Water

The CONTRACTOR shall make all necessary applications, pay all fees and charges, obtain necessary permits for construction of temporary water required for use on this project. The nearest available source of water tap shall be verified by the CONTRACTOR. The CONTRACTOR shall be responsible for all expenses required for conveying water to the site from the available nearest source.

4.46. Signs

The CONTRACTOR shall erect a sign at the project site at his own expense and shall submit a shop drawing for the approval of the Contracting Officer prior to fabrication. The location of sign shall be as directed by the Contracting Officer. Size of sign, lettering, and other pertinent data that should appear on the sign will be furnished by the Contracting Officer to the CONTRACTOR.

4.47. Standards

- a) Any material specified by reference to the number, symbol or title of a specific standard, such as a commercial standard, a Federal specification, a trade association standard or other similar standard, shall comply with the requirements in the latest revision thereto in effect on the date of Invitation for Bids, except as limited to type, class or grade or modified in such reference.
- b) The standard referred to, except as modified in the specifications, shall have full force and effect as though printed in the specifications. These standards are not furnished to bidders for the reason that the manufacturers and trades involved are assumed to be familiar with their requirements. The Contracting Officer will furnish, upon request, information as to how copies of such standards may be obtained.
- c) Reference in the specifications to any article, device, product, material, fixture, form, or type of construction by name, make or catalog number shall be interpreted as establishing a standard of quality and shall not be construed as limiting competition; and the CONTRACTOR, in such cases, may at his option use any article, device, product, material, fixture, form of type of construction which in the judgment of the Contracting Officer expressed in writing is equal to that specified.
- d) All materials and construction work must comply with applicable GPA standards and specifications. The CONTRACTOR shall be responsible for obtaining all applicable GPA standards and specifications from GPA.

4.48. Samples

- a) The CONTRACTOR shall furnish for the approval of the Contracting Officer any samples required by the specifications or that may be required by the Contracting Officer of any and all materials or equipment he proposes to use and shall prepay all shipping charges on the samples.
- b) No samples are to be submitted with bids.
- c) No materials or equipment of which samples are required to be submitted for approval shall be used on the work until such approval has been given by the Contracting Officer, save only at the CONTRACTOR's risk and expense.
- d) Each sample shall have a label indicating the material represented, its place of origin and the names of the producer, the CONTRACTOR and the building or work for which the material is intended. Samples of finished materials shall be so marked as to indicate where the materials represented are required by the drawings or specifications.
- e) A letter in duplicate submitting each shipment of samples shall be mailed under separate cover by the Contractor and contain a list of the samples, the name of the building or work for which the materials are intended, and the brands of the materials and names of the manufacturers.
- f) The approval of any sample shall be only for characteristics or for the named in such approval and no other. No approval of a sample shall be taken in itself to change or modify any contract requirement. When a material has been approved, no additional sample of that material will be considered and no change in brand or make will be permitted. Approval of samples of hardware in good condition may be suitably marked for identification and used in the work.
- g) Failure of any material to pass the specified tests will be sufficient cause for refusal to consider under this contract any further samples of the same brand or make of that material.
- h) Test samples as the Contracting Officer may deem necessary will be procured from the various materials or equipment delivered by the CONTRACTOR for use in the work. If any of these test samples fail to meet the specifications requirement, any previous approvals will be withdrawn and such materials or equipment shall be subject to removal and replacement by the CONTRACTOR with materials or equipment meeting the specification requirements, or at the discretion of the

OWNER, the defective materials and equipment may be permitted to remain in place subject to a proper adjustment of the contract price. The cost of the tests will be borne by the OWNER except where laboratory tests as hereinafter specified are required by the specifications.

4.49. Laboratory Tests

Any specified laboratory tests of materials and finished articles to be incorporated in the work shall be made by bureaus, laboratories or agencies approved by the Contracting Officer, and the reports of such tests shall be submitted to the Contracting Officer. The cost of the testing shall be paid for by the CONTRACTOR.

4.50. Methods

The CONTRACTOR shall use proper and efficient methods and appliances for the performance of all the operations connected with work embraced under these specifications, drawings and contract to secure a rate of progress which will secure completion of the work within the time specified. If, at any time before commencement of work, or during the progress thereof, such methods, equipment or appliances are inefficient or inappropriate for securing said quality of work or said rate of progress, the Contracting Officer may order the CONTRACTOR to increase their efficiency or to improve their character, and the CONTRACTOR must conform to such order. The failure of the Contracting Officer to demand such increases of efficiency or improvement shall not relieve the CONTRACTOR or his sureties from the obligations to secure such quality of work and said rate of progress and the completion of the work as required herein.

4.51. Labor and Materials

The CONTRACTOR shall furnish all labor, materials and equipment for the execution of the work according to the drawings, specifications and contract, and where no specifications are contained therein for whatever may be necessary, shall do all that may be termed ordinary, customary or essential to a job to be well and reliably completed. This includes concealment of all pipes and other rough items of installation if not clearly so shown on the drawings in a manner acceptable to the Contracting Officer. Structural safety shall not be impaired by such concealment. Work not particularly detailed, marked or specified shall be of equal quality as similar parts that are detailed, marked or specified. All material furnished for and used in the job shall be of kind and grade specified and where not specifically called for at least of customary standard grade. All work shall be executed in accordance with their trades. Full structural safety is essential and the CONTRACTOR guarantees to accomplish same for the entire work.

4.52. Submittals

Specific items requiring submittals are specified in the Contract Documents or may be requested as needed by the Contracting Officer. Shop Drawings shall be submitted and approved before procurement, fabrication or delivery. Partial submittals are not acceptable.

4.52.1. Submittal Procedures

- a) Transmit each submittal with a transmittal letter.
- b) Sequentially number the transmittal forms. Resubmittals shall have original number with an alphabetic suffix.
- c) Identify Project, Contractor, Subcontractor, or Supplier; pertinent drawing sheet and detail number, and GPA specification number as appropriate.
- d) Schedule submittals to expedite the Project and deliver to GPA. Coordinate submission of related items.
- e) Identify variations from Contract Documents and GPA specifications which may be detrimental to successful performance of the completed Work.
- f) Revise and resubmit submittals as required. Identify all changes made since previous submittal.
- g) Distribute copies of reviewed submittals to concerned parties. Instruct parties to promptly report any inability to comply with provisions.
- h) GPA shall be allowed three (3) weeks to review and approve submittals without affecting the Contract completion date. Delays in delivery due to submittals that are disapproved during this review period are the responsibility of the Contractor.
- i) Submittals returned to the Contractor as approved shall be considered authorization to proceed with the work. The approval of GPA shall in no way abrogate the requirements of GPA specifications. Review of drawings, methods of work, or information regarding materials or equipment the

Contractor proposes to provide, shall not relieve the Contractor of its responsibility for errors therein and shall not be regarded as an assumption of risks or liability by GPA or by any officer, employee, or subcontractor thereof, and the Contractor shall have no claim under the contract on account of the failure, or partial failure, of the method of work, material, or equipment so reviewed. A mark of "NO EXCEPTIONS TAKEN" or "MAKE CORRECTIONS NOTED" shall mean that GPA has no objection to the Contractor, upon its own responsibility, using the plan or method of work proposed, or providing the materials or equipment proposed.

- j) If a submittal indicates a departure from the contract requirements which the GPA Project Engineer finds to be in the interest of GPA and to be so minor as not to involve a change in the contract price or time for performance, he may approve the submittal. Any such submittal shall be clearly indicated in the transmittal form as deviating from the contract requirements.

4.52.2. Manufacturer's Data

Submittals for each manufactured item shall include manufacturer's descriptive literature, equipment drawings, diagrams, performance and characteristic curves, and catalog cuts. Each submittal shall be approved by the Engineer of Record and include the manufacturer's name, trade name, catalog model or number, nameplate data, size, layout dimensions, capacity, specification reference, applicable Federal, Military and Industry specification references, and all other information necessary to establish contract compliance.

4.53. As-Built Drawings and As-Built Record of Materials

A contract set of drawings shall be maintained at the site with all changes or deviations from the original drawings neatly marked thereon in brightly contrasting color. This shall be a separate set of drawings not used for construction purposes which shall be kept up to date as the job progresses and shall be made available for inspection by the Contracting Officer at all times. Upon completion of the contract this set of drawings and a copy in AutoCAD format shall be delivered to the Contracting Officer.

A record of materials used shall also be provided that indicates the material description, manufacturer, model number, quantity, specification and installed location.

4.54. Meetings

4.54.1. Pre-Construction Conference

The Pre-Construction Conference shall be scheduled after the Notice of Award to designate the personnel representing the parties in Contract. Procedures and processing of submittals, substitutions, applications for payment, proposal requests, change orders, field decisions and Contract close-out procedures may also be discussed.

4.54.2. Progress Meetings

Weekly progress meetings shall be held throughout the duration of the project. GPA may request additional meetings if deemed necessary. Such meetings shall be attended by the CONTRACTOR either via phone or in person, by all active subcontractors and by GPA. The purpose of the meetings will be to discuss current work progress, design or construction issues, interface issues, and potential changes to the schedule. The CONTRACTOR shall make arrangements for meetings, prepare agenda with copies for participants, preside at meetings, record minutes, and distribute copies within two days to GPA, participants, and those affected by decisions made.

The CONTRACTOR shall submit to GPA monthly reports on actual work progress. Such reports shall be submitted to GPA prior to the scheduled work progress meetings. The narrative shall contain a description of current and anticipated delaying factors, if any, impact of possible delaying factors, and proposed corrective actions. The reports shall be submitted as supporting documents for progress payments.

4.55. Contract Closeout**4.55.1. Substantial Completion Date**

- a) When the Contractor considers the entire work ready for its intended use, the Contractor shall, in writing to the Engineer, certify that the entire work is substantially complete and request that the Engineer concur and establish a date of substantial completion.
- b) Within 5 days the Contractor and the Engineer shall complete an inspection of the work to determine the status of the completion. If the Engineer does not consider the work substantially complete, the Engineer will notify the Contractor in writing giving the Engineer's reasons therefore. The Contractor may appeal this decision.

- c) If the Engineer considers the work substantially complete, the Engineer will concur in writing to the Contractor that the work is substantially complete and shall therein fix the date of substantial completion. In addition, a list of any deficiencies requiring completion or correction before final inspection will be attached to the Certificate of Substantial Completion. This list of deficiencies (punch list) shall be completed by the Contractor within 10 days after receipt of the Certificate of Substantial Completion and list of deficiencies. The Engineer will not make the final inspection until all work, including the correction of such deficiencies, final clean-up, and such extra work as may be ordered by the Engineer, has been completed by the Contractor and all sub- contractors.
- d) Definition of Substantial Completion: The date of substantial completion of a project or specified area of the project is the date when construction is sufficiently completed and in accordance with the contract documents, as modified by any change orders agreed to by the parties, to permit the Guam Power Authority to occupy the project or specified area of the project for the use for which intended.

4.55.2. Final Inspection Date

- a) When the Contractor has completed work listed on the punch list or when the 10-day punch list period expires, whichever comes first, the Engineer will set a definite date for final inspection. The Engineer and Contractor will then make a final inspection of the project, again noting any deficiencies that remain. The Engineer will again notify the Contractor in writing of all particulars in which this inspection reveals that the work is incomplete or defective. The Contractor shall remedy such deficiencies within 5 days of written notice.
- b) If such deficiencies are not corrected within 5 days after receipt of the written notice listing deficiencies, the Owner may, without further notice to the Contractor, take whatever steps it deems necessary to correct those deficiencies. Such steps may include, but are not limited to, the correction of defects by Owner provided forces or by others. Thereafter, all direct and indirect costs of the Owner in exercising such rights will be charged against the Contractor and a unilateral change order issued incorporating the necessary revisions in the contract documents and ordering that such costs be deducted from monies due or becoming due the Contractor. Such indirect or direct costs shall include in particular, but without limitation to, compensation for additional professional services required, and all cost of repair and replacement of the work of others destroyed or damaged by correction, removal, or replacement of the Contractor's deficient work.

- c) The Contractor will not be allowed an extension of contract time because of any delay in performance of the work attributable to the exercise of the Owner's rights hereunder.
- d) Upon correction of all deficiencies, the Engineer will notify the Contractor and Owner in writing of the date upon which the work was considered complete.

4.55.3. Final Acceptance

- a) A Certificate of Completion for the project, submitted by the Engineer and approved by the Owner, shall constitute final acceptance of the work.
- b) Final acceptance shall not constitute acceptance of any unauthorized or defective work or material, nor shall progress estimates be construed as acceptance of any work under this contract. The Owner shall not be barred from requiring the Contractor to remove, replace, repair, or dispose of any unauthorized or defective work or from recovering damages for any such work or material.
- c) Submit final Application for Payment identifying total adjusted Contract Sum, previous payments, and sum remaining due.

4.55.4. Final Cleaning

- a) Execute final cleaning prior to final inspection.
- b) Clean equipment and fixtures to a sanitary condition.
- c) Clean filters of operating equipment.
- d) Clean debris from roofs, downpours, and drainage systems.
- e) Clean site; sweep paved areas, rake clean landscaped surfaces.
- f) Remove waste and surplus materials, rubbish, and construction facilities from the site.

4.55.5. Correction Period

- a) If within a year after the date of Final Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any work is found to be defective, the Contractor shall promptly, without cost to the Owner and in accordance with the Owner's written instructions: (i) correct such defective work, or, if it has been rejected by the Owner, remove it from the site and replace it with work that is not defective, and (ii) satisfactorily correct or remove and replace any damage to other work or the work of others resulting therefrom. If the Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, the Owner may have the defective work corrected or the rejected work removed and replaced, and all claims, costs, losses and damages caused by resulting from such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by the Contractor.
- b) Where defective work (and damage to other work resulting therefrom) has been corrected, removed or replaced under this paragraph 4.62.5, the correction period hereunder with respect to such work will be extended for an additional period of two years after such correction or removal and replacement has been satisfactorily completed.
- c) Contractor shall furnish a warranty period performance bond. The bond shall be for an amount equal to 15% of the Contract Price and shall remain in effect for the entire warranty period. Receipt by the Owner of the warranty period bond shall be a prerequisite for release of the construction period performance bond.

4.55.6. Final Report

Two (2) hard copies and one (1) electronic copy of final reports shall be submitted to GPA after testing and commissioning are completed. The report shall include but not limited to:

- a) Summary of Work Performed
- e) Inspection and Test Criteria
- f) All test results
- g) List of materials used
- h) As-built drawings
- i) Commissioning Reports
- j) Recommendations

4.56. Quality Control**4.56.1. Quality Control Requirements**

All testing shall be divided into three (3) categories as follows:

- a) Field tests made at, or in the vicinity of, the jobsite in connection with the actual work, including but not limited to concrete batch plants, asphalt batch plants, and similar establishments directly involved in the work.
- b) Factory tests at the point of manufacture of various products which are shipped to the jobsite as a unit, including by not limited to, such items as electrical equipment, as required by the Engineer.
- c) Certified tests made by approved testing agencies on material and/or equipment, which is to be incorporated into structures under the contract. These tests are those such as are performed by Factory Mutual, Underwriters' Laboratories, Inc., and others.
 - i. Field Tests by the Contractor: The Contractor shall perform all field testing specifically required by the "Applicable Publications" referenced in the contract specification. Cost of testing shall be borne by the Contractor. He shall furnish all equipment, instruments, qualified personnel and facilities necessary to perform all tests required by the contract documents. Testing services shall be performed by the Contractor or acquired by the Contractor through a qualified commercial testing laboratory. If a commercial testing laboratory is retained to perform tests under this contract, all test reports shall be performed by the Contractor or acquired by the Contractor through a qualified commercial testing laboratory. If a commercial testing laboratory is retained to perform tests under this contract, all tests reports shall be certified by a representative of the testing laboratory, who is authorized to sign certified test reports for the laboratory. Test reports shall include the acceptable value for each specification item, the actual test results obtained, the methods used, and a statement that the product conforms (or does not conform to the specification requirements).
 - ii. Factory Tests: The Engineer will arrange for factory tests when they are required.

- iii. **Manufacturer’s Certified Tests:** Certified tests on materials to be incorporated into the work will be acceptable, provided they are performed by the manufacturer or by Government approved agencies or laboratories, show that the material conform to the specification, and that the tests and certification meet the requirements of the paragraph entitled “Certificates and Certifications” below.
- iv. **Government Approval of Laboratories:** All laboratory work performed under this contract shall be done by a laboratory approved by the Government, whether the laboratory is employed by the Contractor or by others, or is owned and operated by the Contractor. The basis of approval includes the following:
 - 1. Laboratories performing work in connection with concrete, steel and bituminous material must conform to American Society for Testing and Materials (ASTM) designation E632-77.
 - 2. Laboratories performing work not in connection with concrete, steel or bituminous material must conform to Sections 3 and 4 of ASTM designation E329-77.

4.56.2. Inspection

All inspections shall be divided into two (2) categories as follows:

- a) Field inspection is that inspection in the vicinity of the jobsite which when performed properly, will result in the complete compliance of all work-in-place with the contract drawings and specifications.
- b) Factory inspection is that inspection of the point of manufacture of the various products which are shipped to the jobsite, including but not limited to, such items as electrical equipment.

4.56.3. Contractor Field Inspections

The Contractor’s Engineer of Record shall inspect all work under this contract. Documentation of the inspection approval by the Engineer of Record shall be submitted to GPA for review.

4.56.4. Factory Inspection

The Contracting Officer will arrange for factory inspection when it is required.

4.56.5. Shop Drawings and Catalog Cuts

All shop drawings, and catalog cuts required by the technical sections of the contract specifications shall be approved by the Engineer.

4.56.6. Identification

Each item which is to be incorporated into the contract shall be clearly marked and identified in the catalog cut submittals, and shall be cross-referenced to the contract drawings and specifications so as to identify clearly the use for which it is intended.

4.56.7. Samples

Samples of materials shall be prepared and submitted as required. The Contractor shall check and approve all samples of materials and/or equipment proposed for incorporation into the project. The samples shall be identified as to their intended use, and shall be accompanied by a letter of certification from the Contractor stating that the samples comply with the contract drawings and specifications.

4.56.8. Certificates and Certifications

Manufacturer's certification may be furnished by the Contractor, on items of materials and equipment incorporated into the work, only when this method will assure full compliance with the provisions of the contract, as determined by the Government. Pre-printed certifications will not be acceptable. All certifications shall be in the original. The original of all manufacturer's certifications shall name the appropriate item of equipment or material, specification, standard or other document specified as controlling the quality of that item and shall have attached thereto certified copies of the test reports upon which the certifications are based.

4.56.9. Record of Inspections

The Contractor shall maintain, on a day-to-day basis, a record of all inspections and field test performed with a certification from the Engineer of Record that all work is in conformance with the design drawings, specifications and contract requirements.

4.56.10. Recalibration of Equipment

Equipment requiring recalibration shall be subject to recalibration at the request of the Engineer. Such recalibration shall be performed by the Contractor at his expense.

4.57. Safety Requirements

4.57.1. References

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by the basic designation only.

a) AMERICAN NATIONAL STANDARDS INSTITUTE (ANSI)

ANSI A10.14 (1991) Construction and Demolition Operations - Requirements for Safety Belts, Harnesses, Lanyards and Lifelines for Construction and Demolition Use

ANSI Z359.1 (1992) Safety Requirements for Personal Fall Arrest Systems

b) CODE OF FEDERAL REGULATIONS (CFR)

29 CFR 1910.120 Hazardous Waste Operations and Emergency Response

c) CORPS OF ENGINEERS (COE)

COE EM-385-1-1 (1996) Safety and Health Requirements Manual

d) NATIONAL FIRE PROTECTION ASSOCIATION (NFPA)

NFPA 70 (1996) National Electrical Code

NFPA 241 (1996) Safeguarding Construction, Alteration, and Demolition Operations

4.57.2. Definitions

- a) Certified Industrial Hygienist. An industrial hygienist is an individual who is certified by the American Board of Industrial Hygiene.
- b) Certified Safety Professional. A safety manager, safety specialist, or safety engineer that has passed the CSP exam administered by the Board of Certified Safety Professionals.
- c) Confined Space. A space which by design has limited openings for entry and exit, unfavorable natural ventilation which could contain or produce dangerous air contaminants, and which is not intended for continuous employee occupancy, engulfment or any other recognized safety or health hazard. Confined spaces include, but are not limited to storage tanks, process vessels, pits, silos, vats, degreasers, reaction vessels, boilers, ventilation and exhaust ducts, sewers, tunnels, underground utility vaults, and pipelines.
- d) Multi-employer work site (MEWS). The prime contractor is the "controlling authority" for all work site safety and health of the subcontractors.
- e) Recordable Occupational Injuries or Illness. An occupational injury or illnesses which result in serious injuries, lost workday cases, non-fatal cases or significant mishaps.
- f) Serious Injuries & Fatalities. Regardless of the time between the injury and death or the length of the illness; hospitalization of three or more employees; or property damage in excess of \$200,000.
- g) Lost Workday Cases. Injuries, other than fatalities, that results in lost workdays.
- h) Non-Fatal Cases. Cases without lost workdays which result in transfer to another job or termination of employment, or require medical treatment (other than first aid) or involve property damage in excess of \$10,000 but less than \$200,000 or involve: loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost workday cases.

- i) Health and Safety Plan (HASP). The HASP is the Navy equivalent Army term of SHP or SSHP used in COE EM-385-1-1. "USACE" property and equipment specified in COE EM-385-1-1 should be interpreted as Government property and equipment.
- j) Safety Officer. The superintendent or other qualified or competent person who is responsible for the on-site safety required for the project. The contractor quality control person cannot be the safety officer, even though the QC has safety inspection responsibilities as part of the QC duties.
- k) Significant Contractor Mishap. A contractor mishap which involves falls of 4 feet or more, electrical mishaps, confined space mishaps, diving mishaps, equipment mishaps, and fire mishaps which result in a lost time injury, or property damage of \$10,000 or more, but less than \$200,000; or when fire department or emergency medical treatment (EMT) assistance is required.
- l) Medical Treatment. Treatment administered by a physician or by registered professional personnel under the standing orders of a physician. Medical treatment does not include first aid treatment provided by physician or registered personnel.
- m) First Aid. A one-time treatment, and follow-up visit for the purpose of observation, of minor scratches, cuts, burns, splinters, and so forth, which do not ordinarily require medical care, even though provided by a physician or registered professional personnel.
- n) Lost Workdays. The number of days (consecutive or not) after, but not including, the day of injury or illness during which the employee would have worked but could not do so; that is, could not perform all or part of his normal assignment during all or any part of the workday or shift; because of the occupational injury or illness.

4.57.3. Submittals

Submit the following in accordance with the submittal procedures:

- a) Accident Prevention Plan (APP)

Submit at least 15 calendar days prior to start of work at the job site, make APP site specific, Notice to Proceed will be given after Government finds the APP acceptable.

b) Activity Hazard Analysis (AHA)

Submit the AHA for the preparatory phase as a part of the APP. Submit subsequent AHA for each major phase of work at least 15 calendar days prior to the start of that phase. Format subsequent AHA as amendments to the APP.

c) Health and Safety Plan (HASP)

Allow 30 calendar days for review by GPA construction safety manager.

d) Records

Reports. Submit reports as their incidence occurs, in accordance with the requirements of the paragraph entitled, "Reports."

4.57.4. Quality Assurance

a) Qualifications

i. Qualifications of Safety Officer:

1. Ability to manage the on-site contractor safety program through appropriate management controls,
2. Ability to identify hazards and have the capability to expend resources necessary to abate the hazards.
3. Must have worked on similar types of projects that are equal to or exceed the scope of the project assigned with the same responsibilities.

ii. Qualifications of Qualified Person, Confined Space Entry:

The qualified person shall be capable by education and specialized training of anticipating, recognizing, and evaluating employee exposure to hazardous substances or other unsafe

conditions in a confined space. This person shall be capable of specifying necessary control and protective action to ensure worker safety.

b) Meetings

i. Preconstruction Conference

The safety officer shall attend the preconstruction conference.

ii. Meeting on Work Procedures

Meet with Contracting Officer to discuss work procedures and safety precautions required by the HASP. Ensure the participation of the Contractor's superintendent, the Quality Control, and the CSP or CIH.

iii. Weekly Safety Meetings

Hold weekly. Attach minutes showing contract title, signatures of attendees and a list of topics discussed to the QC Contractor Quality Control daily report.

c) Crane Safety Requirements

The contractor shall comply with specific activity regulations pertaining to crane safety and operation, and shall notify the contracting officer, in advance of any cranes entering the activity. The contractor shall comply with ASME B30.5 for mobile cranes, and ASME B30.22 for articulating boom cranes.

i. Crane Certificate of Compliance

Prior to cranes entering federal activities, a certificate of compliance from the contractor shall be completed and submitted to the contracting officer. The certificate of compliance shall certify that the crane and rigging gear meets applicable OSHA regulations. The specific OSHA regulation applying to the crane shall be cited on the certification. The contractor shall also certify that all of its crane operators working on federal activity have been trained not to bypass safety devices during lifting operations. A copy of the

certification submitted to the contracting officer shall be posted in the crane. Attached at the end of this specification section is a certification form to be used for this purpose.

ii. Crane Weight Handling Equipment Accident Report

The contractor shall provide the contracting officer within 30 days of any accident a Weight Handling Equipment Accident Report using the form provided at the end of this specification section. The contractor shall notify the contracting officer as soon as practical, but not later than four hours, after an accident involving a fatality, in-patient hospitalization, overturned crane, collapsed boom, or any other major damage to the crane or adjacent property. The contractor shall secure the accident site and protect evidence unit released by the contracting officer. The contractor shall conduct an accident investigation to establish the root cause(s) of the accident. Crane operations shall not proceed until cause is determined and corrective actions have been implemented to the satisfaction of the contracting officer. These notifications and reporting requirements are in addition to those required under other parts of this project specification and the provisions of the "Accident Prevention" clause of the contract.

4.57.5. Accident Prevention Plan (APP)

Prepare the APP in accordance with the required and advisory provisions of COE EM-385-1-1 including Appendix A, "Minimum Basic Outline for Preparation of Accident Prevention Plan," and as modified herein. Include the associated AHA and other specific plans, programs and procedures listed on Pages A-3 and A-4 of COE EM-385-1-1, some of which are called out below.

a) Contents of the Accident Prevention Plan

- i. Name and safety related qualifications of safety officer (including training and any certifications).
- ii. Qualifications of competent and of qualified persons.
- iii. Identify of the individual who will complete exposure data (hours worked); accident investigations, reports and logs; and immediate notification of accidents to include subcontractors.

- iv. Emergency response plan. Conform to COE EM-385-1-1, paragraph 01.E and include a map denoting the route to the nearest emergency care facility with emergency phone numbers. Contractor may be required to demonstrate emergency response.
- v. Confined Space Entry Plan. Identify the qualified person's name and qualifications, training, and experience. Delineate the qualified person's authority to direct work stoppage in the event of hazardous conditions. Include procedure for rescue by contractor personnel and the coordination with emergency responders. (If there is no confined space work, include a statement that no confined space work exists and none will be created.)
- vi. Hazardous Material Use. Provisions to deal with hazardous materials, pursuant to the Contract Clause "FAR 52.223-3, Hazardous Material Identification and Material Safety Data." And the following:
 - 1. Inventory of hazardous materials to be introduced to the site with estimated quantities.
 - 2. Plan for protecting personnel and property during the transport, storage and use of the materials
 - 3. Emergency procedures for spill response and disposal, including a site map with approximate quantities on site at any given time. The site map will be attached to the inventory, showing where the hazardous substances are stored
 - 4. Material Safety Data Sheets for inventoried materials not required in other section of this specification.
 - 5. Labeling system to identify contents on all containers on-site.
 - 6. Plan for communicating high health hazards to employees and adjacent occupants.
- vii. Hazardous Energy Control Plan. For hazardous energy sources, comply with COE EM-385-1-1, paragraph 12.A.07.
- viii. Critical Lift Procedures. Weight handling critical lift plans will be prepared and signed in accordance with COE EM-385-1-1, paragraph 16.c.18.

- ix. Alcohol and Drug Abuse Plan
 - 1. Describe plan for random checks and testing with pre-employment screening in accordance with the DFAR Clause subpart 252.223-7004, "Drug Free Work Force."
 - 2. Description of the on-site prevention program
- x. Fall Protection Plan. The plan shall be site specific and protect all workers at elevations above 6 feet.
- xi. Site Demolition Plan. The safety and health aspects prepared in accordance with Section 02220, "Site Demolition"

4.57.6. Activity Hazard Analysis (AHA)

Prepare for each phase of the work. As a minimum, define activity being performed, sequence of work, specific hazards anticipated, control measures to eliminate or reduce each hazard to acceptable levels, training requirements for all involved, and the competent person in charge of that phase of work. For work with fall hazards, including fall hazards associated with scaffold erection and removal, identify the appropriate fall arrest systems. For work with materials handling equipment, address safeguarding measures related to materials handling equipment. For work requiring excavations, include excavation safe guarding requirements. The appropriate AHA shall be reviewed and attendance documented by Contractor at the preparatory, initial, and follow-up phases of Quality Control inspection.

4.57.7. Health and Safety Plan (HASP)

Prepare as required by 29 CFR 1910.120 and COE EM-385-1-1.

a) Qualified Personnel

Retain a Certified Industrial Hygienist (CIH) or a Certified Safety Professional (CSP) to prepare the HASP, conduct activity hazard analyses, and prepare detailed plan for demolition, removal, and disposal of materials. Retain the CIH or CSP for duration of contract.

b) Contents

In addition to the requirements of COE EM-385-1-1, Table 28-1, the HASP must include:

- i. Interface of trades involved in the construction.
- ii. Sequencing of work.
- iii. Disposal plan.
- iv. Protective equipment.
- v. Pollution control.

4.57.8. Drug Prevention Program

Conduct a proactive drug and alcohol use prevention program for all workers, prime and subcontractor, on the site. Ensure that no employees either use illegal drugs or consume alcohol during work hours. Ensure no employees under the influence of drugs or alcohol during work hours. After accidents, collect blood, urine or saliva specimens and test injured employee influence. A copy of the test shall be made available to the Contracting Officer upon request.

4.57.9. Fall Hazard Prevention Program

a) Scaffolds

Delineate the fall protection requirements necessary during the erection and dismantling operation of scaffolds used on the project in the fall protection plan and activity hazard analysis for the phase of work.

b) Training

Institute a fall protection program. As part of the Fall Protection Program, contractor shall provide training for each employee who might be exposed to fall hazards.

4.57.10. Duties of the Safety Officer

- a) Ensure construction hazards are identified and corrected.
- b) Maintain applicable safety reference material on the job site.
- c) Maintain a log of safety inspections performed.

4.57.11. Display of Safety Information

Display the following information in clear view of the on-site construction personnel:

- a) Map denoting the route to the nearest emergency care facility with emergency phone numbers.
- b) AHA
- c) Sign with number of hours worked since last lost workday accident.

4.57.12. Site Safety Reference Materials

Maintain safety-related references applicable to the project, including those listed in the article "References."
Maintain applicable equipment manufacturers' manuals.

4.57.13. Emergency Medical Treatment

Contractors will arrange for their own emergency medical treatment. Government has no responsibility to provide.

4.57.14. Reports

- a) Reporting Reports
For OSHA recordable accidents, the prime contractor will conduct a suitable investigation and provide to the Contracting Officer within 5 calendar days of the accident.
- b) Notification

Notify Contracting Officer, within 4 hours, of any accident meeting the definition of OSHA recordable occupational injury or illness. Information shall include Contractor name; contract title; type of contract; name of activity, installation or location where mishap occurred; date and time of mishap; names of personnel injured; extent of property damage, if any; and brief description of mishap (to include type of construction equipment used, PPE used, etc.). In addition to OSHA reporting requirements, initial notification shall be made of any accident involving significant mishaps.

c) Monthly Exposure Report

Monthly exposure reporting, to the Contracting Officer is required to be attached to the monthly billing request. This report is a compilation of employee-hours worked each month for all site workers, both prime and subcontractor.

d) OSHA Citations and Violations

Provide the Contracting Officer with a copy of each OSHA citation, OSHA report and Contractor response. Correct violations and citations promptly and provide written corrective actions to the Contracting Officer.

4.57.15. Fall Protection Anchorage

Fall protection anchorages, used by contractors to protect their people, will be left in place and so identified for continued customer use.

4.57.16. Construction

Comply with COE EM-385-1-1, NFPA 241, the accident prevention plan, the activity hazard analysis and other related submittals and activity fire and safety regulations.

a) Hazardous Material Exclusions

Notwithstanding any other hazardous material used in this contract, radioactive materials or instruments capable of producing ionizing/non-ionizing radiation as well as materials which contain asbestos, mercury or polychlorinated biphenyls, di-isocyanates, lead-based paint are prohibited.

Exceptions to the use of any of the above excluded materials may be considered by Contracting Officer upon written request by Contractor.

b) Unforeseen Hazardous Material

If additional material, not indicated, that may be hazardous to human health upon disturbance during construction operations is encountered, stop that portion of work and notify the Contracting Officer immediately. Within 14 calendar days the Government will determine if the material is hazardous. If material is not hazardous or poses no danger, the Government will direct the Contractor to proceed without change. If material is hazardous and handling of the material is necessary to accomplish the work, the Government will issue a modification pursuant to "FAR 52.243-4, Changes" and "FAR 52.236-2, Differing Site Conditions."

4.57.17. Pre-Outage Coordination Meeting

Contractors are required to apply for utility outages a minimum of 15 days in advance. As a minimum, the request should include the location of the outage, utilities being affected, duration of outage and any necessary sketches.

4.57.18. Personnel Protection

a) Hazardous Noise

Provide hazardous noise signs, and hearing protection, where ever equipment and work procedures produce sound-pressure levels greater than 85 dBA steady state or 140 dBA impulses, regardless of the duration of the exposure.

b) Fall Protection

Enforce use of the fall protection device named for each activity in the AHA all times when an employee is on a surface 6 feet or more above lower levels. Personal fall arrest systems are required when working from an articulating or extendible boom, scissor lifts, swing stages, or suspended platform. Fall protection must comply with ANSI A10.14.

c) Personal Fall Arrest Device

Equipment, subsystems, and components shall meet ANSI Z359.1, Personal Fall Arrest Systems. Only a full-body harness with a shock absorbing lanyard is an acceptable personal fall arrest device. Body belts may only be used as positioning devices only such as for steel reinforcing assembly. Body belts are not authorized as a personal fall arrest device. Harnesses must have upper middle back "D" rings for proper body suspension during a fall. Lanyard must be fitted with a double locking snap hook attachment. Webbing, straps, and ropes must be of synthetic fiber or wire rope.

d) Scaffolding

Employees shall be provided with a safe means of access to the work area on the scaffold. Climbing of any scaffold braces or supports not specifically designed for access is prohibited. Contractor shall ensure that scaffold erection is performed by employees that are qualified. Do not use scaffold without the capability of supporting at least four times the maximum intended load or without appropriate fall protection as delineated in the accepted fall protection plan. Minimum platform size shall be based on the platform not being greater in height than four times the dimension of the smallest width dimension for rolling scaffold. Some Baker type scaffolding has been found not to meet these requirements. Stationary scaffolds must be attached to structural building components to safeguard against tipping forward or backward. The first tie-in shall be at the height equal to 4 times the width of the scaffold base.

e) Use of Material Handling Equipment

- i. Material handling equipment such as forklifts shall not be modified with work platform attachments for supporting employees unless specifically delineated in the manufactures printed operating instructions. Crane supported work platforms shall only be used in extreme conditions if the Contractor proves that using any other access to the work location would provide a greater hazard to the workers.
- ii. Cranes must be equipped with Load Indicating Devices, anti-two blocks devices, load, boom angle moment indicating indicators.
- iii. Christmas-tree lifting (multiple rigged materials) is not allowed.

f) Excavations

The competent person for excavation shall be on site when work is being performed in excavation, and shall inspect excavations prior to entry by workers. Individual must evaluate for all hazards, including atmospheric, that may be associated with the work, and shall have the resources necessary to correct hazards promptly.

g) Conduct of Electrical Work

Underground electrical spaces must be certified safe for entry before entering to conduct work. Cable intended to be cut must be positively identified and de-energized prior to performing each cut. Perform all high voltage cutting remotely. When racking in or live switching of circuit breakers, no additional person other than the switch operator will be allowed in the space during the actual operation. Plan so that work near energized parts is minimized to the fullest extent possible. Use of electrical outages clear of any energized electrical sources is the preferred method. When working in energized substations, only qualified electrical workers shall be permitted to enter. When work requires Contractor to work near energized circuits as defined by the NFPA 70, high voltage personnel must use personnel protective equipment that includes, as a minimum, electrical hard hat, safety shoes, insulating gloves with leather protective sleeves, fire retarding shirts, coveralls, face shields, and safety glasses. Insulating blankets, hearing protection, and switching suits may be required, depending on the specific job and as delineated in the Contractor AHA.

4.57.19. Accident Scene Preservation

For serious accidents, ensure the accident site is secured and evidence is protected remaining undisturbed until released by the Contracting Officer.

4.57.20. Field Quality Control

a) Inspections

Include safety inspection as a part of the daily Quality Control inspections required in Section 01400, "Quality Control."

4.57.21. Traffic Work

All work around/involving roadways, to include roadway excavations and utility crossings, will be conducted in accordance with Manual of Uniform Traffic Control Devices. Contractors shall provide and ensure appropriate road closure and detour signs are established as necessary for motor traffic management. All road closures shall be coordinated with the Contracting Officer in advance. Self-illuminated (lighted) barricades shall be provided during hours of darkness. Brightly-colored (orange) vests are required for all personnel working in roadways. Road closures shall require a road closure plan showing the location of signage.

4.57.22. Station Regulations

Contractor is responsible to adhere to all station regulations and obtain all necessary permits and outage approvals prior to commencement of that work activity.

4.57.23. Station Permits

Permits are required for, but not necessarily limited to, welding, digging, and burning. Allow 7 calendar days for processing of the application.

4.57.24. Temporary Barricades

Contractor shall provide for barricading around all work areas to prevent public access.

4.57.25. Fencing

Fencing shall be provided along the construction site at all open excavations and tunnels to control access by unauthorized people. Fencing must be installed to be able to restrain a force of at least 200 pounds against it.

4.57.26. Signs

Place warning signs at the construction area perimeter designating the presence of construction hazards requiring unauthorized persons to keep out. Signs must be placed on all sides of the project, with at least one sign every 300 feet. All points of entry shall have signs designating the construction site as a hard hat area.

4.58. Environmental Protection**4.58.1. Definitions of Contaminants**

- a) Sediment: Soil and other debris that has been eroded and transported by runoff water.
- b) Solid Waste: Rubbish, debris, garbage, and other discarded materials resulting from industrial, commercial, and agricultural operations, and from community activities' such material having insufficient liquid content to be free flowing.
- c) Rubbish: A variety of combustible and noncombustible wastes such as ashes, waste materials that result from construction or maintenance and repair work, leaves and tree trimmings.
- d) Chemical Wastes: Includes salts, acids, alkalies, herbicides, pesticides, petroleum-derived products and organic chemicals.
- e) Sewage: Water-carried waste products from residences, public buildings, institutions or other buildings, including excrementitious or other discharge from the bodies of human beings or animals, together with such ground water infiltration and surface water as may be present.
- f) Garbage: Refuse and scraps resulting from preparation, cooling, dispensing, and consumption of food.
- g) Asbestos and Asbestos Materials: Asbestos means actinolite, amosite, anthophyllite, chrysotile, crocidolite, and tremolite. Asbestos materials means asbestos or any material containing asbestos such as asbestos waste, scrap, debris, bags, containers, equipment, and asbestos-contaminated clothing consigned for disposal. Friable asbestos material requires a Waste Disposal Permit. Submit one (1) copy of Guam Environmental Protection Agency (GEPA) permit or license which reflects such agency's approval of the disposal plan as being in compliance with their waste disposal regulations.

4.58.2. Environmental Protection Requirements

- a) Provide and maintain during the life of the contract, environmental protection as defined herein. Provide environmental protective measures as required to control pollution that develops during normal construction practice.

- b) Provide also environmental protective measures required to correct conditions that develop during the construction of permanent or temporary environmental features associated with the project. Comply with all federal and local statutes and regulations pertaining to environmental protection.

4.58.3. Submittals

- a) Environmental protection Plan: Submit two (2) copies of the proposed Environmental Protection Plan (EPP) to the Guam Environmental Protection Agency (GEPA) and 2 copies to the Contracting Officer for review and approval no later than 10 calendar days after receipt of the Notice to Proceed (NTP) with work under this project. Review of the plan by the Contracting Officer and GEPA will be accomplished simultaneously.

The Contractor shall not undertake any clearing, grubbing, earthwork, and excavations until the EPP has been approved by the GEPA and the Contracting Officer.

- b) Solid waste Disposal Permit: Submit one (1) copy of local permit or license which reflects Guam Environmental Protection Agency's (GEPA) approval of the disposal plan as being in compliance with their solid waste disposal regulations.
- c) The Contractor must submit an approved Erosion Control Plan (ECP) to Guam EPA to be implemented and maintained throughout the duration of the project.

4.58.4. Protection of Natural Resources

The natural resources within the project boundaries and outside the limits of permanent work performed under this contract shall be preserved in their existing condition or restored to an equivalent or improved condition upon completion of the work. Confine construction activities to areas defined by the work schedule, drawings, and specifications.

- a) Land Resources: Except in areas indicated to be cleared, do not remove, cut, deface, injure, or destroy trees or shrubs without special permission from the Contracting Officer.

Protection: Protect existing trees which are to remain and which may be injured, bruised, defaced, or otherwise damaged by construction operations. Remove displaced rocks from uncleared areas. Protect monuments, markers, and works of art.

- b) Repair or Restoration: Repair or restore to their original condition all trees or other landscape features scarred or damaged by the equipment or operations. Obtain approval of the repair or restoration from the Contracting Officer prior to its initiation.
- c) Temporary Construction: At the conclusion of the project, obliterate all signs of temporary construction facilities such as work areas, stockpiles of excess or waste materials, and all other vestiges of construction.
- d) Water Resources: Perform all work in such a manner that any adverse environmental impact on water resources is reduced to a level acceptable to the Contracting Officer.
- e) Oily and Other Hazardous Substances: Take special measures to prevent oily or other hazardous substances from entering the ground, drainage areas, or local bodies of water.

4.58.5. Control and Disposal of Solid, Chemical and Sanitary Wastes

Pick up solid waste and place in containers which are emptied on a regular schedule. The preparation, cooking, and disposing of food are strictly prohibited on the project site. Conduct handling and disposal of waste to prevent contamination of the site and other areas. On completion, leave areas clean and natural looking. Remove signs of temporary construction and activities incidental to construction of the permanent work in place.

- a) Disposal of Rubbish and Debris: Dispose of rubbish and debris in accordance with the requirements specified herein.

Remove rubbish and debris from the project site and dispose of it in compliance with federal and local requirements.

- b) Garbage Disposal: Place garbage in appropriate containers and transport such refuse to an approved landfill for disposal at least once per week. As an alternative, the Contractor may arrange for weekly pickup and disposal service either with the Government of Guam or a privately-owned garbage collection service. The Contractor shall pay all fees associated with obtaining and maintaining garbage collection and disposal services.

- c) Sewage, Odor, and Pest Control: Dispose of sewage through connection to the public sewage system. Where such system is not available, use chemical toilets or comparably effective units and periodically empty waste into the public sanitary sewage system. Include provisions for pest control and elimination of odors.
- d) Chemical Waste: Store chemical waste in corrosion resistant containers labeled to identify type of waste and date filled. Remove containers from the project site, and dispose of chemical waste in accordance with federal, state, and local regulations. For oil and hazardous material spills which may be large enough to violate federal and local regulations, notify the Contracting Officer immediately and take measures as instructed by the Contracting Officer, at no additional costs.
- e) Petroleum Products: Conduct fueling and lubricating of equipment and motor vehicles in a manner that affords the maximum protection against spills and evaporation. Dispose of lubricants to be discarded and excess oil in accordance with approved procedures meeting federal and local regulations.

4.58.6. Dust Control

Keep dust down at all times, including non-working hours, weekends, and holidays. Sprinkle or treat, with dust suppressors, the soil at the site, haul roads, and other areas disturbed by operations. No dry brooming is permitted. Instead use vacuuming, wet mopping, wet sweeping, or wet power brooming. Air blowing is permitted only for cleaning non-particulate debris, such as steel reinforcing bars. No sandblasting is permitted unless dust therefrom is confined. Only wet cutting of concrete blocks, concrete, and asphalt is permitted. No unnecessary shaking of bags is permitted where bagged cement, concrete mortar, and plaster is used.

4.58.7. Noise

When available, make the maximum use of "low-noise emission products" as certified by Guam Environmental Protection Agency.

INVITATION FOR MULTI-STEP BID

No. GPA-012-23

RENEWABLE ENERGY RESOURCE ACQUISITION

PHASE IV



Volume II

Technical Proposal Qualification Requirements

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1. OVERVIEW

In this Invitation for Multi-Step Bid (“IFB”), GPA is seeking competitive bids for renewable energy resources to meet a portion of its overall resource needs. For selected Bidder(s), GPA will execute purchase power agreements for delivery of firm, non-intermittent power from one, or more, renewable generation resources to the 34.5 kV or 115 kV GPA transmission system. GPA intends to procure a total minimum annual energy of 300,000 MWh up to 530,000 MWh (approximately 180 MW to 320 MW), based on proposed sites, in this Phase IV acquisition that can meet the following established requirements:

- **RENEWABLE RESOURCE TECHNOLOGY:** The Bidder’s resource technology shall be grid-forming / black-start capable and meet the definition of “renewable resource” as described in **Section 2.2.1 Acceptable Renewable Technologies**.
- **ENERGY AND CAPACITY:** The renewable energy resource shall deliver an annual minimum energy (AC) as specified in the Bidder’s Qualitative Proposal with a maximum export capacity of 80 MW (AC) at the interconnection point; this may be a combination of several generation units at one or more sites. However, the nameplate capacity that can be installed may be higher than 80 MW, subject to the maximum additional MW capacity that the GPA system can handle as determined by a System Integration Study. The System Integration Study will be completed within 120 days after evaluation of the Price Proposal(s) and initial notification of the most qualified Bidders.
- **DISPATCHABLE ACTIVE POWER CAPABILITY:** The active, or real, power of the renewable energy resource shall be dispatchable at the point of interconnection, between the hours of 6:00 PM to 6:00 AM, as required by the GPA Power System Control Center operators or a SCADA control point. The available capacity may also be dispatched outside of these hours if deemed necessary by the GPA Power System Control Center operators. The delivered output to the GPA grid shall be firm, non-intermittent power with a ramp-up and ramp-down rate limited to 1% of rated power output per minute. However, this rate may be exceeded at the request of the GPA Power System Control Center operators. The total capacity and energy available for dispatching shall be provided to the GPA Power System Control Center through a SCADA point every second.
- **DISPATCHABLE REACTIVE POWER CAPABILITY:** The renewable energy resource must provide a dispatchable reactive capability requirement up to 0.80 lag to lead at the point of interconnection as required by the GPA Power System Control Center operators and a SCADA / grid controller automated

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output point. The project shall perform at +/- 0.80 PF Dynamic Range up to and including the maximum MW output and shall not reduce reactive capability near the peak real power output.

- **INTERCONNECTION:** The renewable energy resource shall deliver energy directly to the existing GPA 34.5 kV or 115 kV transmission systems, subject to the result of a System Integration Study to be completed after Step 2 of the proposal evaluation. Interconnection to the 115 kV transmission system near the Apra Substation or Harmon Substation is preferred.
- **ENERGY STORAGE SYSTEM (ESS):** The renewable energy resource shall be equipped with an energy storage system (ESS) that meets GPA's requirements as described in **Section 2.2.2 Acceptable ESS Technologies**. The ESS must provide the following functions:
 - **ENERGY-SHIFTING:** The primary purpose of the ESS shall be for energy-shifting, which is to deliver the energy produced at another time or period of the day.
 - **RAPID RESERVE:** The additional function of the ESS is to provide rapid reserve in response to under-frequency events. The total energy exported for these events shall be included in the annual minimum energy requirement.
- **COMMERCIAL OPERATION HISTORY:** The technology proposed for the renewable resource shall have at least one (1)-year of commercial operations history in a utility environment.
- **COMMERCIAL OPERATION COMMENCEMENT:** The renewable energy resource shall be available for commercial operation within thirty-six (36) months from the contract execution.
- **CONTRACT TERM:** The renewable energy resource shall provide energy for a term of 20 years, with the option to extend for two additional five-year terms, for a maximum term of thirty years.
- **BUY-OUT OPTION:** GPA intends to reserve the option to buy-out the capital portion of the contract. Bidders must provide a buy-out schedule for each contract year.
 - GPA reserves the option to take a percent equity in stakes in the project at any time; such percent equity in stakes will be applied against the buy-out amount.
 - GPA and the successful bidder(s) shall negotiate the buy-out percent if the option is taken.
 - The bidder must provide a year-by-year schedule of reduction in energy fees as a function of the contract year buy-out and 25%, 50%, 75%, and 100% of equity stake taken by GPA.

2. DESCRIPTION

The bids for renewable resources shall be developed based on the requirements described below and outlined in the Qualitative Scoring Workbook provided with the bid documents.

2.1. Product and Term

GPA seeks to acquire energy from renewable resource projects based on an ‘annual minimum quantity’ of energy under the terms of the Renewable Energy Purchase Agreement (See Volume III). Projects in this acquisition phase are required to be operational and delivering renewable energy on or before 36 months from the contract award date. The term of the Renewable Energy Purchase Agreement will be 20 years. Prior to the expiration of the twenty-year contract period, GPA may extend the contract for two (2) additional five-year terms.

2.2. Technology

2.2.1. Acceptable Renewable Technologies

Acceptable renewable technologies in this RFP include those technologies that meet the renewable resources definition by Energy Information Administration (EIA), a branch of the U.S. Department of Energy. EIA defines renewable energy as “Energy sources that are naturally replenishing but flow limited. They are virtually inexhaustible in duration but limited in the amount of energy that is available per unit of time. Renewable energy sources include: biomass, hydro, geothermal, solar, wind, ocean thermal, wave action and tidal action.” GPA will consider biofuel supply as alternate to energy delivery. GPA will evaluate biofuel proposals based on energy produce from biofuel supply using GPA’s existing oil-fired generation technology. Offerors should also note that there are certain restrictions regarding the use of municipal solid waste as a biomass fuel source on Guam. The GPA Renewable Acquisition website provides information on this and access to other local legislation (<http://guampowerauthority.com/special/renew1.php>).

Offerors should be prepared to answer carbon balance questions related to their projects. Offerors should be able to clearly illustrate, and provide supporting documentation, that their renewable energy production offsets more carbon emissions than they are producing including those emissions produced from the growing, harvesting, gathering, preparing, transporting, and combusting of renewable fuels.

Under no circumstances will energy from non-renewable resources be acceptable for delivery under the proposed agreement.

2.2.2. Acceptable ESS Technologies

The only acceptable ESS technology in this IFB is a Battery Energy Storage System (BESS) with at least one year of commercial operations history in a utility environment.

2.2.2.1. ESS Technical Requirements**a. Real Power and Energy Requirements.**

The fully functional operating range of the ESS, with respect to energy, is defined in this specification as 0-100% State of Charge (SOC). This means that if the Bidder's proposed system is recommended or required to operate within the ESS manufacturer's stated specifications with a minimum SOC greater than 0% or a maximum charge less than 100%, then the Bidder must adjust the manufacturer's stated specifications to the fully functioning operating range of the ESS. For instance, if the manufacturer's specifications recommend operating the ESS within the range of 10-90% SOC, the total amount of available energy must be reduced by 20% to correspond to the 0-100% SOC range as defined for this IFB.

b. Reactive Power Requirements

The ESS shall have the capability to output up to the nominal real power capacity magnitude on a continuous basis. The real power order of the ESS shall take priority over the reactive power order. If the nominal real power capacity rating cannot be met, Bidders are encouraged to describe the reactive power capabilities of their proposed system and provide a reactive power capability curve. The RI-ESS must provide a dispatchable reactive capability as required by GPA Power System Control Center Dispatchers. The Reactive and Real Power Capability must be communicated to the GPA SCADA Master every two (2) seconds.

c. Response Times

The ESS shall have the ability to change its output power from 0-100% of its maximum overload rating within 200 ms. This includes positive and negative real and reactive power.

d. Ride-through and Synchronization Capabilities

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The ESS shall have the ability to remain online and functional during severe disturbances. The ESS shall not lose synchronism or trip offline for disturbances that the ESS is intended to mitigate. This includes the requirement to ride through rapid rate of change of frequency events and to ride through zero or near zero voltage events with recovery as the voltage recovers. All limitations related to the ride- through and synchronism capabilities of the ESS shall be stated. The ESS must continue to conduct, and not cease to conduct for any reason when the system is operating within the ride-through settings.

Preliminary frequency and control requirements are illustrated in Table 1 below. The provided ride-through requirements are preliminary in nature. The ESS voltage and frequency trip settings should have configurable settings. If ESS is capable of riding through system disturbances beyond the limits specified in the voltage and frequency ride-through requirements, please provide an explanation of the ride-through capabilities of the ESS.

Table 1 – Voltage and Frequency Ride-through Settings

	Settings at Point of Interconnection	
	SETPOINT (V is magnitude in per unit) (F is frequency in Hz)	TRIP TIME (T is time in seconds)
Under-voltage	$V < 0.88$	$T > 2.00$
Normal voltage	$0.88 < V < 1.10$	no trip allowed
Over-voltage	$1.10 < V < 1.20$	$T > 2.00$
Over-voltage	$1.20 < V$	$T > 0.16$
Under-frequency	$F < 57.0$	$T > 0.16$
Normal frequency	$57.0 < F < 63.0$	no trip allowed
Over-frequency	$63.0 < F$	$T > 0.16$

e. Control Functions

It is important for Bidders to describe and illustrate the control modes and methods of operation proposed. The flexibility of the ESS controls shall also be discussed and provide indication of the ease of control system changes such as adding new control modes and methods of operation.

f. SCADA/EMS/SA/AGC Communications Protocol

The ESS shall have the capability to interface with GPA's SCADA, EMS, Substation Automation (SA) and AGC systems over the latest stable release of serial and IP based DNP 3-Secure Authentication communications protocol.

GPA requires the project control system to report each inverter failure or cessation to the GPA SCADA system. The controller will report any alarm that can lead to a system or individual converter cessation or tripping to the GPA SCADA system. The controller will report all delivered power to GPA from the PV system, curtailed power from the PV system, ESS charging power, ESS power, (real and reactive) delivered to GPA, ESS state charge.

Bidder shall provide Bidder's guaranteed success rate according to the size of ESS in the Qualitative Scoring Workbook. The bidder shall also describe the method of calculating and monitoring the success rate in the technical proposal.

2.2.3. Proven Technology

The proposed resource technology and key components must have a minimum of one (1) year of operating experience in commercial utility application.

If the proposed technology is a "scale up" of an existing facility, the operational performance data for the smaller plant must be at least 1/10 the proposed plant size or larger.

2.2.4. Use of GPA Facilities

The use of GPA sites or facilities (with the exception of interconnection facilities) will NOT be permitted in this RFP.

2.2.5. Limits on Renewable Energy Purchases

Due to the nature of the generation control system and related response characteristics of the generators on the GPA system, GPA may limit the amount of energy delivered from renewable resources to no more than 30MW (AC) at the interconnection point.

The Bidder shall complete the Energy Projection table in the Technical Bid Form providing its estimated schedule of hourly deliveries of energy for a representative period of time period sufficient for GPA to understand the variability of the expected renewable resource and the impact of total generation costs as part of the Priced Offer evaluations. These estimates must match the annual Minimum Energy Production guarantees discussed further in **Section 2.3 Project Capacity & Production**.

2.3. Project Capacity & Production

2.3.1. Minimum and Maximum Project Capacity

The minimum export capacity that a Bidder may offer is 5 MW, and the maximum export capacity shall be 80 MW for each project. This may be the combination of several generation units at one site.

2.3.2. Annual Minimum Guaranteed Production Quantity

The Bidder will provide a guarantee for an Annual Minimum Quantity, in MWh, to be delivered to GPA's system. Subsequent failure to provide this guaranteed Annual Minimum Quantity will subject the Bidder to penalties as described in Renewable Energy Purchase Agreement. The Bidder will also provide the expected minimum (also in MWh) to be delivered each year of the contract period, at a 95% confidence level.

2.4. Delivery

2.4.1. Interconnection

The Bidder will deliver renewable energy to a GPA-determined interconnection point on GPA's 115 kV or 34.5 kV transmission system. GPA will determine the exact location after completion of a detailed interconnection study. The GPA transmission system and primary delivery points are identified in the attached map (See Appendix K). GPA requests that the Bidders identify potential interconnection sites within their submittal.

GPA is recommending the following interconnection requirements. Note that final interconnection agreement will be based on System Integration Study recommendations.

1. An underground loop system in and out of a new substation at the renewable generation facility at transmission level (34.5kV and up) connecting to an existing GPA transmission line. The rerouted transmission line, its associated breakers, and control and protection devices, etc. may require upgrade.

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2. An underground transmission line connecting directly to the nearest GPA substation at transmission level (34.5kV and up) from a new substation at the renewable generation facility. The connected GPA substation will require upgrades including a new breaker, control and protection devices, and additional bus structure, etc.
3. A Fiber Optic communication line between the renewable generation facility and the connected GPA substations.
4. A communication-assisted protection scheme with primary and backup protection devices via a dedicated fiber optic line for the transmission line protection between the renewable generation facility and the connected GPA substations. Current differential protection is recommended.
5. GPA will need to set limits for the high/low voltage ride through, high/low frequency ride through, VAR/power factor support and ramping rate limits based to various system studies done by our consultants and existing system condition.

The cost of facilities to bring the Bidder's energy to GPA's point of interconnection is the responsibility of the Bidder. Bidders shall be responsible for the design, engineering and construction cost as well as construction and commissioning. All design shall require GPA review and approval and construction shall be coordinated with GPA for inspections during construction.

Bidders must include the cost for interconnection in their priced proposals as this may be negotiated with GPA during contract negotiations. Total cost, however, must still fall below GPA's avoided cost: the marginal utility cost as determined by GPA's resource planning software.

The cost estimates in the table below are for evaluation purposes:

Table 2 – GPA's Estimated Transmission Costs, \$/mile

34.5 kV Overhead (Poles, Hardware, #927 Al Primary Lines)	\$3.22 Million
34.5 kV Underground (Manholes, Conduits, and 1000kcmil Al Primary Lines)	\$7.14 Million
115 kV Overhead (Poles, Hardware, #927 Al Primary Lines)	\$7.82 Million

Bidder shall provide bidder's methodology of how to measure the power and energy output at the point of interconnection including output of renewable generation plant. This is for GPA to inspect and verify bidder's energy storage system performance.

The final interconnection agreement will be based on the recommendations from the System Integration Study to be completed for selected proposed project(s).

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2.4.2. GPA Interconnection Standard Specifications

GPA maintains standard specifications for interconnection equipment and communication protocols.

2.4.2.1. Transmission Line

Interconnection shall be to the 115 kV or 34.5 KV transmission. The following are specifications for transmission lines:

Table 2 – Transmission Line Specifications

ITEM	SPECIFICATIONS
Overhead Lines	927 kcmil AAAC bare aluminum conductor
34.5 kV Underground Lines	2 sets 1000 kcmil 133% aluminum XLPE underground cable with T-splice modular cable connectors

In addition, Bidders are to provide 15% spare underground cable 1000 kcmil and associated modular T- splice cable connectors as GPA non-stock item materials.

2.4.2.2. Substation Hardware

The following are specifications for breaker, switchgear, relays, instruments and controls, PT & CT, instrument and cable:

Table 3 – Substation Hardware Specifications

ITEM	SPECIFICATIONS
Breakers	Outdoor: SF6 breakers.
	Indoor: Matching existing GPA breakers.
Relays	SEL relays and meters.
PT	Dual ratio
CT	Class 400, multi-ratio.
Cable	#10 AWG for CT connection, #12 AWG for control and power, #18 AWG for SCADA communication

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2.4.2.3. Substation Buildings

All new substations shall be concrete structures which meet Guam building codes.

2.4.2.4. Communication Protocol

Standard Communication Protocol with the existing and future SCADA/EMS is DNP3/DNPi. DNP3-SA version 5 serial and over TCP/IP or latest stable release implemented in concordance with the technical bulletins from www.dnp.org.

2.4.3. Substation Short Circuit Capacity Values

The following are the existing short circuit currents (base and maximum) for Orote and Harmon Substations: Data for other substations will be provided upon request.

Substation:	Base Generation				Max Generation			
	3Ph Fault		LG Fault		3Ph Fault		LG Fault	
	SC MVA	X/R Ratio	SC MVA	X/R Ratio	SC MVA	X/R Ratio	SC MVA	X/R Ratio
OROTE	470.7	7.70494	460.3	8.3632	568.6	6.38708	514.7	7.42385
HARMON	681.5	11.1796	868.7	9.44163	934.4	9.58519	1130.9	8.03686

2.4.4. System Integration Study

At the completion of the Priced Proposals evaluation and subject to the size and location of a Bidder(s) project, GPA will undertake a “System Integration Study”. The purpose of this study is to determine the system impacts and upgrade requirements for integration of the selected project or projects into the GPA system. The Bidder or Bidder(s), in the event GPA selects more than one bid, will be responsible for the cost of such study. Presently the estimated cost for a single project evaluation is about \$40,000 to \$50,000. If additional modeling is required for evaluating multiple projects concurrently, additional costs may be imposed per model.

The Bidder(s) will be responsible for the costs of system upgrades, if any. If required, a separate System Integration Cost Agreement will be executed by the parties. Selected Bidders will have the opportunity to withdraw their bids upon review integration costs resulting from the GPA study.

Upon request the selected bidders will provide the following information for the study:

1. Size and scope of the various types of renewable projects. This should also include any additional details that may be known about individual proposed projects, including the electrical model for the proposed interconnection, such as the distribution line description and impedances at the point of the interconnection.
2. If applicable, solar irradiance data in 2-second intervals for each solar project – time synchronized if possible.
3. Expected control characteristics of the projects – It will be critical that each project must be capable of being controlled in real time. Voltage control characteristics and frequency characteristics must be provided.
4. The developer must supply PSLF modeling information, and EMT modeling information (such as in EMTP-RV or PSCAD format) to allow for further detailed study work for the project itself, and for use on an ongoing basis for GPA system studies for other purposes. Modeling data should also include relevant data for inverters and collector system/transformers between the inverter terminals and the Point of Interconnection.

2.5. Pricing

2.5.1. Fixed Pricing for Guaranteed Energy

Bidders are required to submit fixed pricing for the guaranteed renewable energy delivered for the first contract year. Prices shall escalate at a fixed rate of 0.5% annually for the entire contract period. GPA will apply a 1% penalty factor to the prices of bids interconnecting to the 34.5 kV system. Energy degradation shall be limited to 0.7% annually.

2.5.2. Pricing for Energy Above Guaranteed Amount

All renewable energy available from the Bidder's project(s) above and beyond the guaranteed amount will be offered to GPA at a 15% discount of the lesser of the two following prices: 1) the Bidder's guaranteed price applicable to the then current time period or 2) the effective Levelized Energy Adjustment Clause (LEAC) fuel recovery cost incurred by GPA's ratepayers. The LEAC fuel recovery cost is recalculated approximately every six months and is approved by the Guam Public Utilities Commission.

Data on the current LEAC fuel recovery costs can be found on GPA's website at:

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http://www.guampowerauthority.com/gpa_authority/rates/gpa_rate_schedules.php

Details about historical filings and LEAC fuel recovery charges can be found on the PUC’s website at:

<http://www.guampuc.com/main/?pg=docs&category=Guam%20Power%20Authority&subcat=LEAC>

Details of the calculation of the LEAC can be found under GPA’s Rate Schedule “Z” at:

http://www.guampowerauthority.com/gpa_authority/rates/documents/ScheduleZ-61kb.pdf

For the evaluation, GPA shall use the most recent LEAC Rate approved by the PUC. An amendment shall be forwarded to all prospective bidders for the final rate.

2.5.3. Energy Purchase Price Units

The Bidder shall provide a fixed price bid in \$/MWH for the term of the proposed delivery of renewable energy for each ESS proposal options. The price bid shall include the capital and O&M components which shall be referred to should GPA exercise the capital buy-out option. All columns in the bid price worksheet must be filled. GPA will not accept bids with year-over-year (YOY) escalation rates greater than 1.0% per year.

2.5.4. Bid Expiration

All Bid terms, conditions, and pricing are binding for 8 months following the due date of the IFB.

2.6. Renewable Energy Credits and Environmental Credits

GPA retains all environmental attributes associated with the winning Bidder’s energy, including but not limited to renewable energy credits, greenhouse gas, green tags, or carbon credits, and any other emissions attributes, all as set forth in the form of Renewable Energy Purchase Agreement.

3. TECHNICAL INFORMATION

This section discusses the technical information required for the qualification process in Step One of this multi-step bid. Bidders are required to answer all questions raised in the Qualitative Scoring Workbook for Part 1 - Qualitative Scoring References and Part 2 – Technical Data provided with the bid documents.

3.1. Project Development

This category scores the likelihood that a Bidder's renewable resource project will be placed in commercial service. The evaluation criteria for this category generally address construction and development risks associated with the completion of projects that are not yet in commercial operation, and which are necessary to support bids. Plants that are already operating or are sufficiently advanced in construction may be deemed to earn the maximum possible score from this category. GPA requires bids for projects that will achieve commercial operation within 36 months after contract award.

For projects that are less advanced in construction, we will consider the following criteria for scoring:

1. Method and status of project financing
2. Level of site control by developer (full ownership, long-term lease, short-term lease, negotiating a site, searching for a site, or non-of-the above).
3. Project management/experience
4. Status of required permits, licenses and studies. *Indicate best estimates on what permits, licenses and studies are required and how long the completion period will be.*
5. Status of equipment supply and EPC agreements

3.2. Status of Project Financing

Bidders are required to provide responses to all questions below to demonstrate the financial viability of their project.

1. Identification of equity participants.
 - a. Who are the equity participants in the project?
2. Evidence that the project will be financed.
 - a. How will the project be financed?
 - b. Is there a written commitment from the equity participants? If so, please provide a copy with confidential information redacted if necessary.
 - c. Discuss and/or provide supporting information on any project financing guarantees.

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- d. Does the developer envision any conditions precedent to project financing other than execution of the power purchase agreement and Guam Public Utilities Commission approval of the power purchase agreement? If so, what do you expect them to be?
3. Description of the Bidder's organizational structure from a financial and legal perspective, including any general and limited partners, involvement of subsidiaries, providers of capital, and percentage interest of each party.
4. Provide a description of the financing plan for the project, including construction and term financing. The financing plan should address information contained in the pro forma, such as:
 - a. The project's projected financial structure;
 - b. Expected sources of debt and equity financing;
 - c. Estimated capital cost.
 - d. Evidence the project is financeable

In addition, the financing plan should address the financing of development costs. All bidders are required to provide this information.

5. Provide documentation illustrating the experience of the project sponsor in securing financing for projects of similar size and technology. For each project provide the following information:
 - Project name and location
 - Project type and size
 - a. Date of construction and permanent financing
6. Provide evidence that the Bidder has the financial resources and financial strength to complete and operate the project as planned.
7. Provide copies of the most recent audited financial statement for each Bidder, its parent or subsidiary company to be used in this contract. Also, list the current credit rating from Standard & Poor's and Moody's for the sponsor, affiliates, partners, and credit support provider. Unaudited financials certified by the company's chief financial officer and any Dun & Bradstreet rating are acceptable.
8. The Bidder should demonstrate its ability (and/or the ability of its credit support provider) to provide the required security, including its plan for doing so (including type of security, sources of security and a description of its credit support provider).
9. Provide a description of any current credit issues regarding the Bidder or affiliate entities raised by rating agencies, banks, or accounting firms. Credit issues includes and loan defaults or legal suits or potential suits likely to materially affect the company's finances or ability to obtain loans or other instruments in the financial markets.

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10. Describe the implication of the federal Production Tax Credits or Investment Tax Credits (or similar incentives) on the viability of the project.
11. Provide a memorandum with supporting information demonstrating that the bid will not be subject to Variable Interest Entity treatment¹ and that GPA will not have to carry this entity on its financial statements.
12. Pro forma income and cash flow statement conforming to Generally Accepted Accounting Principles for the project for the term of the proposed Power Purchase Agreement (include revenue and cost data by major categories, debt service, depreciation expenses and other relevant information). Bidders may propose to submit their financial pro forma to a mutually agreed upon independent third party rather than to GPA. Bidders should note that this information will be required of short-listed bidders only and will be requested by GPA upon shortlist notification or after. Should GPA request pro forma financial information from the bidder, the information will only be used for project viability assessment only.
13. Bidders must disclose any litigation related to projects owned or managed by them or any of their affiliates in the United States.

3.2.1. Site Control

Bidders should provide GPA with some confidence in plant site selected. Unpriced Technical Offers shall address the following:

1. Map of the site(s), the total acreage, the interconnection point, and the relationship of the site to other local infrastructure. In addition to providing the required map, provide a site layout plan which illustrates the location of all equipment and facilities on the site.
2. Identify any rights-of-way or easements that are required for access to the project or for interconnection. Describe the status of rights-of-way and easement acquisition, and describe the plan for securing the necessary rights-of-way, including the proposed timeline.
3. Describe whether the project has the capability for expansion at the proposed site. If so, describe the expansion capability possible.
4. Describe the level of control that can be exercised on the site.

¹ GPA is not willing to be subject to accounting treatment that results from variable interest entity (“VIE”) treatment as set forth in Financial Accounting Standards Board Interpretation No. 46 (revised December 2003) (“FIN46R”).

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3.2.2. Project Management/Experience

Bidders are required to demonstrate project experience and management capability to successfully develop and operate the project proposed. GPA is interested in a project team which has demonstrated success in projects of similar type, size and technology and can demonstrate an ability to effectively work together to bring the project to commercial operation in a timely fashion. GPA requests the following information:

1. An organizational chart for the project that lists the project participants and identifies the management structure and responsibilities.
2. Statements that list the specific experience of the firm in developing, financing, owning, and operating generating facilities, other projects of similar type, size and technology, and any evidence that the project participants have worked jointly on other projects for each of the project participants (including the Bidder, partners, and proposed contractors). *(NOTE: If a bidder is relying on the experience of a consultant or contractor to meet the Experience Threshold Requirement, the bidder should describe any contractual relationships between the bidder and the consultant or contractor.)*
3. A management chart which lists the key personnel dedicated to this project and provides biographies of the key personnel.
4. Listing of all projects the project sponsor has successfully developed or that are currently under construction. The following information shall be included for each project:
 - a. Name of the project
 - b. Location of the project
 - c. Project type, size and technology
 - d. Commercial operation date
 - e. Capacity factor of the unit for the past three years
 - f. Availability factor of the unit for the past three years
 - g. References letters from clients showing successful completion of projects or ongoing contracts, including the names and current addresses and telephone numbers of individuals to contact for each reference.
5. With regard to the Seller's project team, identify and describe the entity responsible for the following:
 - a. Construction Period Lender
 - b. Operating Period Lender
 - c. Financial Advisor
 - d. Environmental Consultant
 - e. Owner's Engineer
 - f. Construction Contractor
 - g. Transmission Consultant
 - h. Legal Counsel

3.2.3. Project Schedule and Commercial Operation Date

Bidders are required to provide a complete critical path schedule for the project from the notice of selection of the project for contract negotiation to the start of commercial operations. For each project element, list the start and end date. Bidders should ensure that the schedule provided in this section is not inconsistent with the milestone events contained in the Purchase Power Agreement.

Identify the elements on the critical path. The schedule should include, as a minimum, facility contracts, construction, siting, environmental permitting (anticipated submittal and approval), fuel supply, financing, engineering, procurement, local permits and any other requirements that could influence the project schedule, and the Commercial Operation Date. Bidders shall identify any status of permits, licenses and studies required. The project schedule should include dates for all construction and applicable reporting milestone events specified in the Purchase Power Agreement.

3.2.4. Engineering and Technology (Status of Equipment Supply and EPC Agreements)

Bidders should provide information about the specific technology or equipment including the track record of the technology and equipment. The following information is required for these evaluation criteria:

1. A reasonable but preliminary engineering plan which includes the following information:
 - a. Name of principal engineering firm responsible for facility design
 - b. Type of generation technology
 - c. Major equipment considered or expected to be used
 - d. Equipment vendors selected/considered
 - e. History of equipment operations
 - f. Equipment procurement strategy
2. Identification of expected key equipment suppliers and information that illustrates and discusses the proposed equipment and technology, lead times for delivery to GPA, and suppliers prior experience with equipment operation in tropical island environments. This should specifically address the ability of the equipment to operate in low short-circuit conditions and extreme voltage and frequency requirements.
3. Identification of similar equipment by the same manufacturer that are presently in commercial operations including the number installed, installed capacity and estimated generation.
4. Evidence that the technology to be employed for energy production is ready for transfer to the design and construction phases.
 - a. Describe the technology to be employed for energy production.

- b. To the developer’s best knowledge, are there, or have there been any similar plants in commercial operation? If not, i) are there, or have there been, any pilot projects, and ii) please provide evidence that the technology to be employed for energy production has been proven. Such evidence may include copies of studies confirming technical feasibility.
- 5. Indication if the Bidder has secured its equipment for the project. If not, identify the long-lead equipment options and describe the timing for securing equipment.
- 6. Bidders are encouraged to provide any additional information that will further describe the proposed projects technical feasibility and applicability to development on Guam.

3.3. Physical Project Characteristics

This category captures the physical characteristic risks of the bid products. The evaluation criteria for this category generally address physical and operational risks associated with the production and delivery of power to GPA. Bidders are required to complete Part 2 – Technical Data in the Qualitative Scoring Workbook file (excluding any price references). The characteristics that will be considered in scoring are:

3.3.1. Operating Profile

The evaluation of operating profile shall be based on the following:

- 1. Conformance with Performance Standards
- 2. Impacts on System Operations/Stability
- 3. Generation Profile (see Renewable Energy Project Generation Profile data table in Part – 2 Technical Data worksheet in the Qualitative Scoring Workbook)
- 4. Quality of Forecasting and Dispatchability
- 5. O&M Plan and Coordination of Maintenance- GPA is interested in projects that can demonstrate that the maintenance plan, level of funding, and mechanism for funding will ensure reliable operations during the term of the contract. Bidders shall:
 - a. Provide an operation and maintenance plan for the project that demonstrates the long term operational viability of the proposed project. The plan should include a discussion of the staffing levels proposed for the project, the expected role of the project sponsor or outside contractor, scheduling of major maintenance activity, maintenance funding levels, and the plan for testing equipment.
 - b. Indicate whether or not the project sponsor is willing to coordinate the maintenance schedule for the project with the annual maintenance schedule of GPA.

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- c. Describe the status of the project sponsor in securing any operation and maintenance agreements or contracts. Include a discussion of the sponsors plan for securing a long-term O&M contract.
- d. Provide examples of the Bidder's experience with O&M services for other similar projects.

3.3.2. Point of delivery

Bidders must discuss interconnection with GPA system. Information required to evaluate the criteria include the following:

- 1. Preliminary Single-Line Diagram(s) for the generation and interconnection facilities (see Appendix L for Unpriced Technical Offer submittal requirement details)
- 2. A plan map of the facilities, indicating the interconnection point to the GPA system.
- 3. Technical specifications and other information available for the generators included in the bid.

3.3.3. Risk

All bidders must submit a short Risk-Assessment Plan (1-2 pages) which address the following items:

- 1. Identify project risks. (Include issues that may impact project schedule, budget, output or performance).
- 2. Explanation of how the risks will be avoided / minimized.
- 3. Propose any options that could increase the value of the project.
- 4. Explain the benefits of the proposed options.

3.4. Power Product Characteristics

This category scores how well the bid product matches GPA's operational needs. The evaluation criteria for this category generally address performance and supply portfolio concentration risks, along with the benefits of flexibility and optionality. The characteristics that will be considered in scoring are:

- 1. Guaranteed Annual Minimum Energy Production (MWH)
- 2. Dispatchability. This bid requires ESS for the purpose of shifting energy to a period other than when the energy is produced. Proposals with no ESS or not capable of shifting its energy to another period (i.e. during evening hours) shall be disqualified.
- 3. Describe unit electrical control features available such as automatic generator control, VAR control, droop control, set-point control, emergency assist capability or such other control related features.

4. Flexibility
 - a. In-service date (GPA prefers projects that reasonably propose a commercial operation within 36 months after contract award)
 - b. Willingness to accept contract provisions for flexibility to accommodate future changes to performance standards; and
 - c. Bid size
5. Contract Term.

3.5. Credit Evaluation

GPA will evaluate the credit-worthiness of the Bidder. Bidders shall discuss the following that will be considered in this evaluation criteria scoring:

1. Debt and equity ratings
2. Performance assurance
3. Financial ratio analysis
4. Default risk
5. Credit concentration and liquidity effect
6. Enforceability of contractual credit terms
7. Bidder revisions to contract templates that may affect credit requirements

3.6. Environmental Permits and Impacts

The Bidder should identify environmental impacts associated with the proposed project and its plan to mitigate such impacts. Included in this section are technical environmental issues associated with air, water, solid waste, land use, noise, and other environmental issues. The following addresses specific environmental permitting considerations.

3.6.1. Permits

Bidders are shall identify all permits, licenses, and environmental assessments and/or environmental impact statements required. Specifically, the Unpriced Technical Offer should discuss the following:

1. All Federal and GUAM permits, licenses, and environmental assessments and/or environmental impact statements required to construct and operate the project and governmental agencies for issuing permits and licenses.
2. Experience with governmental agencies which will issue or approve the required permits, licenses, and environmental assessments and/or environmental impact statements. Prepare

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timeline to complete acquisition of permits, licenses, and environmental assessments and/or environmental impact statements.

3. Provide the anticipated timeline for seeking and receiving the required permits, licenses, and environmental assessments and/or environmental impact statements, using the execution date of the power purchase agreement as the starting point. Please include a narrative on the basis for the assumed timeline.

3.6.2. Site Environmental Assessment

The Bidders are responsible for completing Environmental Site Assessment for the proposed site or sites for the project.

Bidders shall address each of the major environmental areas and sub-areas as presented below;

1. Site development
2. Air quality
3. Water resources
4. Ecology
5. Land use
6. Cultural resources
7. Previous site use
8. Noise level
9. Aesthetic/visual

In addition to the above, GPA requests for the following:

10. The location of the nearest residence and the nature of any buildings within 500 feet of the site.
11. Documentation identifying any potential environmental impediments to project development and the plan to mitigate the impediment. Bidder will be responsible for executing plan(s) to mitigate impediment(s).

4. CONTRACT

GPA has created a draft of the Renewable Energy Purchase Agreement in Volume III of this IFB. This document includes the Interconnection Agreement and the Sublease Agreement for use of proposed properties. Bidders are required to review the document and provide comments, note any exceptions, and provide recommendations during the proposal development period as a basis for discussions during contract negotiations. This process is also a factor in the Qualitative evaluation in this multi-step bid.

The final, executable Renewable Energy Purchase Agreement shall be negotiated in good faith between the parties. Each Respondent is responsible for acquiring and/or verifying that it is in compliance with all licenses, permits, certifications, studies, reporting requirements and approvals required by federal, and Guam government laws, regulations and policies in order for it to contract for and perform in accordance with its bid.

The following highlights the contract document between GPA and the selected Bidder(s) or in this section referred to as CONTRACTOR(S).

4.1. CONTRACTOR'S Responsibilities

This section highlights the CONTRACTOR'S responsibilities.

4.1.1. System Integration Study

The CONTRACTOR is responsible for the costs of the System Integration Study.

4.1.2. System Upgrades for Interconnection

The CONTRACTOR is responsible for the all system impact costs, including new or upgraded facilities that are required for the project interconnection with the GPA system.

4.1.3. Interconnection Agreement

The CONTRACTOR shall complete and adhere to interconnection agreement.

4.1.4. Development Security and Post Development Security

The CONTRACTOR is required to post Credit Support only in the form of a Letter of Credit or cash referred to as "Development Security", to secure the CONTRACTOR'S obligations prior to Commercial Operation of the Facility. The CONTRACTOR will forfeit this security if failed to meet project milestones, claims force majeure, or other conditions identified in the draft contract provided in Volume III.

Upon commissioning of the new facility, the Development Security will be returned to the CONTRACTOR and the CONTRACTOR will be required to submit a Post Development Security as security for Seller's obligations following the Commercial Operation Date.

4.1.5. Performance Guarantees

The CONTRACTOR is required to meet Annual Minimum Quantities for energy delivered

4.1.6. Project Milestones

The CONTRACTOR shall submit a construction and commissioning schedule for the proposed project. The CONTRACTOR shall meet deadline for commissioning or is subject to penalties as described in the purchase power agreement.

4.1.7. Government Charges

The CONTRACTOR is responsible for all government taxes, fines or fees necessary for operation of proposed facility.

4.2. GPA Responsibilities

4.2.1. Renewable Energy Purchase

GPA shall purchase all renewable energy produced by the CONTRACTOR.

4.2.2. Transmission

GPA is responsible for the maintenance and associated maintenance costs of all equipment and transmission lines after the CONTRACTOR delivery point.

5. PENALTIES / DAMAGE FEES

Contract performance will be evaluated annually, within 60 days of the contract anniversary, for any penalty evaluations for the pre-commissioning period and the post-commissioning period. However, CONTRACTOR shall provide data upon request throughout the post-commissioning period for further verification of contract performance. Volume III, Article Four, discusses performance requirements and penalties.

6. REGULATORY APPROVAL

Any final negotiated term sheet or contract will be conditioned upon actions and/or approvals by Guam Public Utility Commission, satisfactory to GPA in its sole discretion.

INVITATION FOR MULTI-STEP BID

No. GPA-012-23

RENEWABLE ENERGY RESOURCE ACQUISITION

PHASE IV



Volume III

Draft Contract

GPA Contract No. MS GPA-012-23

**RENEWABLE ENERGY
PURCHASE AGREEMENT**

**BETWEEN
GUAM POWER AUTHORITY
AND**



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**PURCHASE AGREEMENT
BETWEEN
GUAM POWER AUTHORITY
AND
[]**

THIS RENEWABLE ENERGY PURCHASE AGREEMENT (the "Agreement"), effective as of last date set forth on the signature page hereto (the "Effective Date"), is entered into by and between and Guam Power Authority, ("GPA" or "Buyer") and _____, a _____ " " or "Seller"). The purpose of this Agreement is to establish the terms and conditions under which Seller shall sell and GPA shall purchase Renewable Energy and associated Renewable Energy Credits ("RECs") and Environmental Attributes, as defined herein. In this Agreement, Seller and GPA may be individually referred to as a "Party" or collectively as the "Parties."

Recitals

WHEREAS, Seller desires to sell to GPA at the Delivery Point all of the Renewable Energy and associated RECs and Environmental Attributes from the Facility and GPA desires to buy the same from the Seller at the Delivery Point.

Therefore, for good and valuable consideration, including, without limitation, the covenants and agreements of the Parties contained in this Agreement, the receipt and sufficiency of which consideration is acknowledged, the Parties agree as follows:

ARTICLE ONE: DEFINITIONS

The following definitions apply to this Agreement:

1.1 "Actual Renewable Energy" means the actual energy output of the Facility (expressed in MWhs), measured at the Delivery Point, over any Production Measurement Period. Actual Renewable Energy shall be measured by the Seller Metering Equipment and adjusted as applicable in accordance with Section 7.4.

1.2 "Affiliate" means, with respect to any party, any other party (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such party. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.3 "Agreement" has the meaning set forth in the initial paragraph above.

1.4 "Appraisal Price" means the average of three (3) appraisals of the market value of the Facility at the end of the Delivery Period, delivered by three (3) independent appraisers qualified by experience and expertise to determine the arms' length market value of the Facility and assuming that energy and Environmental Attributes produced by the Facility will be sold at fair market value prices over the remaining economic useful life of the Facility. If the Parties do not agree on the independent appraisers, then they shall be determined by arbitration in accordance with Section 12.9.

1.5 "Bankrupt" means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, including but not limited to, under Chapter 11 or Chapter 9 of the United States Bankruptcy Code and Title III of Puerto Rico Oversight, Management and Economic Stability Act, or has any such valid petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.6 “Bid Security” or “Bid Bond” means the \$ _____, which is the amount of the security provided by Seller in connection with its initial bid to GPA for the Project prior to entering into the PPA.

1.7 “Business Day” means any day except a Saturday, Sunday, a Federal Reserve Bank holiday or an official Guam holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party by whom the Notice or payment or delivery is to be received.

1.8 “Buyer” has the meaning set forth in the initial paragraph above.

1.9 “Buyout Payment” means, with respect to Seller’s election not to re-build the Facility pursuant to Section 12.2, an amount equal to: Minimum Production x the number of Contract Years (or portion thereof) remaining in the Delivery Period x the Incremental Price,

1.10 “Change Event” has the meaning set forth in Section 4.16(c).

1.11 “Claiming Party” has the meaning set forth in Section 4.11.

1.12 “Claims” means all claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise.

1.13 “COD Extension” has the meaning set forth in Section 4.2(a).

1.14 “COD Extension Payment” has the meaning set forth in Section 4.2(a).

1.15 “Commercially Reasonable” or “Commercially Reasonable Efforts” means, with respect to any purchase, sale, decision, or other action made, attempted or taken by a Party, such efforts as a reasonably prudent business would undertake for the protection of its own interest under the conditions affecting such purchase, sale, decision or other action, consistent with Good Utility Practices, including, without limitation, electric system reliability and stability or other regulatory mandates relating to renewable energy portfolio requirements, the cost of such action (including whether such cost is reasonable), the amount of notice of the need to take a particular action, the duration and type of purchase or sale or other action, and the commercial environment in which such purchase, sale, decision or other action occurs. “Commercially Reasonable” or “Commercially Reasonable Efforts” shall be reviewed and determined based upon the facts and circumstances known, or which could have been known with the exercise of reasonable efforts, at the time that a sale, purchase, or other action is taken and shall not be based upon a retroactive review of what would have been optimal at such time.

1.16 “Commercial Operation” has the meaning set forth in Section 4.1.

1.17 “Commercial Operation Date” or “COD” means the date that Commercial Operation of the Project has been achieved in accordance with Section 4.1.

1.18 “Confidential Information” means all information, whether written or oral, that is disclosed or otherwise available in connection with this Agreement or the performance by either Party of any of its duties hereunder, except any information which: (i) at the time of disclosure or thereafter is generally available to the public (other than as a result of a disclosure by any Party in violation of this Agreement); (ii) was available to any Party on a non-confidential basis from a source other than the Party hereto providing the Confidential Information, provided that such source is not bound by a confidentiality agreement that protected the Confidential Information and the Party receiving such Confidential Information is aware of such confidentiality agreement; or (iii) has been independently acquired or developed by any Party without violating any of its obligations under this Agreement.

1.19 “Contract Price” means the price in U.S. Dollars (unless otherwise provided for) rounded to the nearest \$0.01, to be paid by GPA to Seller for the purchase of the Renewable Energy, as described in Appendix A.

1.20 “Contract Year” means the annual period, beginning on the Commercial Operation Date, and each annual period thereafter commencing on each anniversary of the Commercial Operation Date.

1.21 “Conventional Energy Resource” is an energy resource that is non-renewable in nature, such as natural gas, coal, oil, and uranium, or electricity that is produced with energy resources that are not Renewable Energy Resources.

1.22 “Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements), or if such entity does not have a rating for its unsecured senior long-term debt obligations, then the rating then assigned to such entity as an issuer rating by S&P, Moody’s or any other rating agency agreed by the Parties.

1.23 “Daily Delay Liquidated Damages” has the meaning set forth in Section 4.2(b).

1.24 “Defaulting Party” has the meaning set forth in Section 6.1.

1.25 “Deficiency Amount” has the meaning set forth in Section 4.8.

1.26 “Delivery Period” means the period of delivery under this Agreement, commencing on the Commercial Operation Date and continuing for a Term of twenty (20) years or up to 30 years if contract extensions are applied.

1.27 “Delivery Point” means the point at which the Renewable Energy will be delivered and received, as specified in Section 2.1 herein, or such other delivery point as may be agreed to by the Parties.

1.28 “Development Security” means the security required to be posted by Seller during construction of the Facility prior to Commercial Operation Date. Pursuant to Section 9.1, The Development Security shall be 50% of the total projected payment for the 1st Contract Year based on the Seller’s 1st Contract Year Contract Price and the Guaranteed Output for the first Contract Year. The amount of the Development Security is set out in Section 2.1.

1.29 “Early Termination Date” has the meaning set forth in Section 6.2.

1.30 “Effective Date” means the date first set forth above.

1.31 “Eligible Renewable Energy Resources” are applications of the following defined technologies that displace Conventional Energy Resources that could otherwise be used to provide electricity to GPA’s customers: biogas electricity generator, biomass electricity generator, fuel cells that use only renewable fuels, geothermal generator, hybrid wind and solar electric generator, landfill gas generator, solar electricity resources, wind generator and such other generally accepted Renewable Energy Resources.

1.32 “Emergency” means any abnormal interconnection or system condition (including, without limitation, equipment or transmission limitations and constraints caused by thermal limits, stability, voltage, or loop flows) that Buyer determines in accordance with Good Utility Practices: (a) requires automatic or immediate manual operation to prevent or limit loss of Buyer’s system or generation supply; (b) could adversely affect the reliability of the Buyer system or generation supply; (c) could adversely affect the reliability of any interconnected electric system; or (d) could otherwise pose a threat to public safety.

1.33 “Energy Storage System” shall mean the energy storage system described in Appendix C that is integrated with the Project as part of the Facility.

1.34 “Environmental Attributes” means environmental characteristics that are attributable to Renewable Energy or the Project, including credits; credits towards achieving local, national or international renewable portfolio standards; green tags; Renewable Energy Credits; greenhouse gas or emissions reductions, credits, offsets, allowances or benefits; actual SO₂, NO_x, CO₂, CO, Carbon, VOC, PM₁₀, mercury, and other emissions avoided; and any and all other green energy or other environmental benefits associated with the generation of Renewable

Energy (regardless of how any present or future law or regulation attributes or allocates such characteristics). Such Environmental Attributes shall be expressed in kWh or, as applicable in the case of emissions credits, in tonne equivalent or other allowance measurement. Environmental Attributes do not include Tax Benefits, or any energy, capacity, reliability, or other power attributes used by Seller to provide electricity services.

1.35 “EPC Contractor” means the contractor(s) under the engineering, procurement and construction contract for the Project.

1.36 “Event of Default” has the meaning set forth in Section 6.1.

1.37 “Excused Hours” means the hours in the applicable Production Measurement Period in which (i) Seller or Buyer has declared Force Majeure, (ii) Seller has initiated a Dispatch Down, or (iii) Seller’s delivery to GPA of Renewable Energy is adversely affected as a result of failure by GPA to perform its obligations under this Agreement or the Interconnection Agreement, provided, however, if the Project is not able to generate Renewable Energy during any hour of a Production Measurement Period due solely to Seller’s failure to establish and maintain the “Voltage and Frequency Ride-Through Settings” set forth in Appendix C (“Voltage and Frequency Ride-Through Settings”), such hours shall not constitute Excused Hours.

1.38 “Facility” means all of the following: the Project, as defined in Section 2.1 of this Agreement, the purpose of which is to produce Renewable Energy including Seller’s Interconnection Facilities and Energy Storage System and all equipment and other tangible assets, land rights and contract rights owned by Seller and reasonably necessary for the construction, operation, and maintenance of the Project.

1.39 “Facility Capacity” has the meaning set forth in Section 2.1.

1.40 “Facility Test” has the meaning set forth in Section 4.1 (e).

1.41 “Facility Debt” means the obligations of Seller or its Affiliates to any direct or indirect Facility lender pursuant to the Financing Documents, including without limitation, principal of, premium and interest on indebtedness, fees, expenses or penalties, amounts due upon acceleration, prepayment or restructuring, swap or interest rate hedging breakage costs and any claims or interest due with respect to any of the foregoing. Facility Debt does not include trade debt or obligations incurred in the ordinary course of business.

1.42 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.

1.43 “Financing Arrangement Deadline” has the meaning set forth in Section 4.3.

1.44 “Financing Arrangement Provision Date” has the meaning set forth in Section 4.3.

1.45 “Financing Documents” means the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements and other documents relating to the development, bridge, construction and/or permanent debt financing for the Facility (including any portfolio debt financing of which the Facility is included), including any credit enhancement, credit support, working capital financing, or refinancing documents, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of Seller and/or its Affiliates in connection with development, construction, ownership, leasing, operation or maintenance of the Facility.

1.46 “Forced Outage” means the shutdown or unavailability of the Facility, or a portion thereof other than as a Planned Outage, for reasons including, but not limited to, unanticipated equipment breakdown, human error, or Emergency conditions. A Forced Outage shall not include any Outage that may be deferred consistent with Good Utility Practices and without causing safety risk damage to equipment or additional costs.

1.47 “Forced Outage Notice” has the meaning set forth in Section 4.12(b).

1.48 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under this Transaction, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. So long as the requirements of the preceding sentence are met, a “Force Majeure” event may include, but shall not be limited to, flood, drought, military ordinances or archaeological discoveries at the Project site, change in applicable law or interpretation or application thereof, failure or delay by any Governmental Authority in issuing any required permit, earthquake, storm, fire, lightning, epidemic, war, terrorism or riot. Notwithstanding the foregoing, Force Majeure shall not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability economically to use or resell the Renewable Energy purchased hereunder; (iii) the loss or failure of Seller's supply, including materials or equipment, unless such loss or failure is caused by a Force Majeure event; (iv) the delay in or inability of Seller to obtain financing or economic hardship of any kind unless such delay or inability is caused by a Force Majeure Event; or (v) Seller's ability to sell the Renewable Energy at a price greater than the Contract Price or Buyer's ability to purchase the Renewable Energy at a price less than the Contract Price; or (vi) strike or other labor dispute (other than strikes at a national, Guam or regional level). Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a transmission provider unless such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the transmission provider's tariff.

1.49 “Force Majeure Extension” has the meaning set forth in Section 4.2(c).

1.50 “Good Utility Practices” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result consistent with good business practices, economy, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be generally accepted and consistently adhered to acceptable practices, methods, or acts.

1.51 “Governmental Authority” means any federal, territorial or local government body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

1.52 “Governmental Charges” has the meaning set forth in Section 10.2.

1.53 “GPA” has the meaning set forth in the initial paragraph above.

1.54 “GPA Delay” means any delay by GPA in performing an obligation under this Agreement or under the Interconnection Agreement which results in a delay to Seller achieving COD.

1.55 “Guaranteed Output” has the meaning given in Section 4.8.

1.56 “Incremental Price” means, at the time of its calculation, the LEAC Rate minus the Contract Price, provided, however, if the LEAC Rate is less than the Contract Price then the Incremental Price shall be deemed to be zero.

1.57 “Independent Engineer” shall mean one of the engineering firms set forth in Appendix D hereto, and any other independent engineer or engineering firm, nationally recognized in the United States and having knowledge and expertise in the United States generation industry (including specifically the design and construction of utility scale solar photovoltaic power projects), and which is mutually agreed to by the Parties.

1.58 “Interconnection Agreement” means the agreement for interconnection service relating to the Facility between GPA and Seller, executed and delivered as of the Effective Date in the form attached hereto as Appendix J.

1.59 “Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

1.60 “kWh” means kilowatthour.

1.61 “LEAC Rate” means the “Fuel Recovery Charge” (expressed in US\$/MWh) as set forth in GPA’s most recent approved tariff in effect as of any date of determination of the LEAC Rate under this Agreement.

1.62 “Letter(s) of Credit” means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- from S&P or A3 from Moody’s, in substantially the form set forth in Appendix F hereto; provided, however that such form may be modified by the issuing bank as long as such modifications are acceptable to the beneficiary in its reasonable discretion. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.63 “Merger Event” means, with respect to a Party, that such Party consolidates or amalgamates with, or merges into or with, or transfers substantially all of its assets to another entity and (i) the resulting entity fails to assume all of the obligations of such Party hereunder or (ii) the benefits of any credit support provided pursuant to this Agreement fail to extend to the performance by such resulting, surviving or transferee entity of its obligations hereunder and such benefits are not replaced with equivalent credit support or (iii) the resulting entity’s Credit Rating upon the occurrence of the Merger Event is lower than that of such Party immediately prior to such action and is not supplemented by credit support such that the resulting entity’s credit is equal to or better than the predecessor entity.

1.64 “Minimum Production” has the meaning set forth in Section 4.8.

1.65 “Month” means a calendar Month. The term “Monthly” shall have a meaning correlative to a Month.

1.66 “Moody’s” means Moody’s Investor Services, Inc. or its successor.

1.67 “MW” or “MWh” means megawatt or megawatt hour, in each case rounded to the nearest whole MW or MWh.

1.68 “NAR” means the North American Renewables Registry.

1.69 “NAR Operating Procedures” means any and all guidelines, procedures, requirements and obligations established by the NAR, including the terms of use, operating procedures, and fee schedules, as such may be amended from time to time.

1.70 “Non-Defaulting Party” has the meaning set forth in Section 6.

1.71 “Notice” has the meaning set forth in Section 12.7.

1.72 “Notice to Proceed” means the written notice provided by Seller to the EPC Contractor to begin full (and not limited) procurement and construction activity at the Project site.

1.73 “Outage” means the period during which the Facility or a portion thereof is out of service.

1.74 “Outside Commercial Operation Date” has the meaning set forth in Section 4.2(b).

1.75 “Party” and “Parties” has the meaning set forth in the initial paragraph above.

1.76 “Planned Outage” means any Outage that is not a Forced Outage, and refers to the shutdown or unavailability of the Facility or a portion thereof for inspection or maintenance in accordance with an advance schedule.

1.77 “Production Measurement Period” has the meaning set forth in Section 4.8.

1.78 “Project” has the meaning set forth in Section 2.1.

1.79 “QRE” means the Qualified Reporting Entity as such term is defined in the NAR Operating Procedures.

1.80 “Quantity” means the actual quantity of Renewable Energy sold by Seller and purchased by and delivered to GPA pursuant to this Agreement. The Quantity shall be measured based on the metered data from the Seller Metering Equipment at the Delivery Point.

1.81 “Renewable Energy” means energy derived from a Renewable Energy Resource.

1.82 “Renewable Energy Credit” (“REC”) means the unit created to track kWh derived from an Eligible Renewable Energy Resources or kWh equivalent of Conventional Energy Resources displaced by Renewable Energy Resources.

1.83 “Renewable Energy Resource” means an energy resource that is replaced rapidly by a natural, ongoing process and that is not nuclear or fossil fuel.

1.84 “Replacement Price” means the price at which GPA, acting in a commercially reasonable manner, purchases electricity in place of Renewable Energy.

1.85 “S&P” means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.86 “SCADA” means “supervisory control and data acquisition” and shall refer to that category of software application program that can be used to gather data from the Facility remotely in real time in order to monitor Facility equipment and conditions.

1.87 “Schedule,” “Scheduled” or “Scheduling” means the actions of Seller, Buyer and/or their designated representatives, of notifying, requesting and confirming to each other the quantity and type of Renewable Energy to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.

1.88 “Scheduled Commercial Operation Date” has the meaning set forth in Section 4.2(a).

1.89 “Seller” has the meaning set forth in the initial paragraph above.

1.90 “Seller Failure” has the meaning set forth in Section 5.1.

1.91 “Seller Failure Damages” has the meaning set forth in Section 5.1.

1.92 “Seller’s Interconnection Facilities” means Seller’s equipment as specified in the Interconnection Agreement.

1.93 “Seller Metering Equipment” means all metering equipment and data processing equipment used to measure the Quantity delivered to the Delivery Point.

1.94 “Shortfall Damages” has the meaning set forth in Section 4.8.

1.95 “Study” means the Renewable IFB System Impact Study (insert date & study contractor).

1.96 “Tax Benefits” means Renewable Energy related tax credits or other benefits, including those established under Section 45 and Section 48 of the Internal Revenue Code, as amended, or any similar or successor provision of the Internal Revenue Code.

1.97 “Term” has the meaning set forth in Section 12.1.

1.98 “Termination Damages” has the meaning set forth in Section 4.4.

1.99 “Test Energy” means non-firm Renewable Energy generated by the Facility prior to the Commercial Operation Date, subject to immediate interruption, fluctuations or reduction/increase with no prior Notice, due to unit performance.

1.100 “Transaction” means the transaction relating to the purchase or sale of Renewable Energy and Environmental Attributes as contemplated in this Agreement.

1.101 “Unit Contingent” means that the Renewable Energy is intended to be supplied from the Facility as it is produced.

ARTICLE TWO: COMMERCIAL TERMS**2.1 Commercial Terms.**

The following commercial terms apply to the Transaction that is the subject of this Agreement, each as more fully described herein:

Buyer: GPA	Seller:
Project:	
Delivery Point:	
Guaranteed Annual Production (MWhs): As set forth in the fourth column of Appendix A	Estimated Annual Production (Minimum Production): (MWhs): As set forth in the third column of Appendix A
	Facility Capacity (MWs):
Delivery Period: 20 Contract Years with option of two (2) five-year extensions	Contract Price (\$/MWh): <u>See Appendix A</u>
Renewable Energy Type: Unit Contingent (solar) and associated RECs	Development Security: \$ _____
Day(s) of week: Monday through Sunday, including holidays	Hours: Hour Ending 0100 – Hour Ending 2400, Monday through Sunday Chamorro Standard Time (CHST), Guam time
Commercial Operation Date:	
Test Energy: Seller agrees to sell and Buyer agrees to purchase all Test Energy from the Facility. The price of such Test Energy shall be the current rate. Test Energy shall be delivered in accordance with the Scheduling provisions contained herein. Both Parties agree that Seller will use Commercially Reasonable Efforts to pre-schedule the Test Energy, but Buyer shall nonetheless be obligated to accept all Test Energy up to _____ MW per hour of Test Energy. Seller shall provide to Buyer all RECs and other Environmental Attributes associated with the Test Energy produced by the Facility in accordance with <u>Section 4.16</u> .	

ARTICLE THREE: REPRESENTATIONS AND WARRANTIES

3.1 Mutual Representations and Warranties.

On the Effective Date of this Agreement, each Party represents and warrants to the other Party that:

- (a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) It has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement (other than permits or regulatory authorizations to be obtained by Seller for the construction, operation or maintenance of the Facility, which Seller reasonably anticipates it will be able to obtain in due course);
- (c) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, and the Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses.
- (d) It is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (e) There is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- (f) No Event of Default or potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement; and
- (g) It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

3.2 Seller Representations and Warranties.

Seller affirmatively represents and warrants to GPA that:

- (a) On the Effective Date of this Agreement, or in due course as required in accordance with the Scheduled Commercial Operation Date, Seller has (or reasonably expects to have in due course), good defensible title, or valid and effective leasehold rights in the case of leased property, to the Facility, free and clear of all liens, charges, claims, pledges, security interests, equities and encumbrances of any nature whatsoever other than the lien of current taxes not delinquent, liens, charges, claims, pledges, security, interests, equities and encumbrances relating to Facility Debt as provided for herein, or that are permitted by the Facility Debt, or that in the aggregate do not materially detract from or interfere with the ability of Seller to deliver the Quantity of the Renewable Energy;
- (b) All acts necessary to the valid execution, delivery and performance of this Agreement by Seller have or will be taken and performed as required under Seller's ordinances, operating agreement, or other regulations including, but not limited to (i) the valid authority of the person executing this Agreement to bind Seller and (ii) the Term of this

Agreement does not extend beyond any limitation applicable to Seller imposed by relevant governing documents and applicable law; and

- (c) Seller will have at the time of sale, title to and ownership of the RECs and Environmental Attributes sold hereunder.

3.3 GPA Representations and Warranties.

GPA represents and warrants that the board of directors of GPA has made all certifications required by the Guam Public Utilities Commission and the Guam legislature in order for GPA to execute this Agreement.

ARTICLE FOUR: PERFORMANCE REQUIREMENTS

4.1 Commercial Operation.

Seller shall achieve Commercial Operation of the Project no later than the Scheduled Commercial Operation Date, except to the extent such date is extended pursuant to Section 4.2, in which case Commercial Operation shall occur on or prior to the Outside Commercial Operation Date. Commercial Operation shall be achieved as of the date on which Seller certifies to Buyer in writing that each of the following conditions precedent has been satisfied or waived in writing by the Parties, as applicable ("Commercial Operation"):

- (a) Seller shall have obtained all governmental and regulatory authorizations, including any applicable permits, required for the construction, ownership, operation and maintenance of the Project and for the sale of the Renewable Energy therefrom (except for any permits or authorizations typically obtained after Commercial Operation and that Seller reasonably believes will be obtained in due course);
- (b) Seller and Buyer shall have entered into the Interconnection Agreement;
- (c) Seller shall have established SCADA information and real time data feed to enable GPA to view parameters or data points that relate to Facility availability, Renewable Energy data and other actual resource data for the Facility;
- (d) Seller shall be capable of delivering the Renewable Energy from the Facility to GPA at the Delivery Point.
- (e) Seller shall perform at its cost a capacity test in accordance with the protocol outlined in Appendix I to determine the capacity of the Facility ("Facility Test"). GPA shall receive the entire Renewable Energy from the Facility during such test as contemplated in Section 2.1. Renewable Energy deliveries during testing shall be measured at the Delivery Point.

GPA shall use all available Commercially Reasonable Efforts to assist Seller in achieving the Scheduled Commercial Operation Date. Seller shall present to GPA a certificate executed by its duly executed officer, and by an Independent Engineer as to items (d) and (e), verifying that each of the foregoing conditions has been satisfied or waived in writing by the Parties and Commercial Operation shall be deemed to have occurred upon the delivery of such certificate to GPA unless GPA objects to such certificate on the grounds that the condition has not been satisfied within ten (10) Business Days of delivery thereof and such objections are either agreed by Seller or resolved in favor of GPA pursuant to Section 12.9 hereof. Upon any acceptance or deemed acceptance of Seller's certificate by GPA, all conditions, set forth above shall no longer be a condition precedent to Commercial Operation of the Project. If the Commercial Operation Date does not occur on or before the Outside Commercial Operation Date, as such date may be extended in accordance with Section 4.2 herein; either Party shall have the right to terminate the Agreement upon written Notice to the other Party. In the event of such termination by either Party, GPA shall be entitled to Termination Damages set forth in Section 4.4; provided, however, that in accordance with Section 4.2(c), GPA shall not be entitled to such Termination Damages if the Outside Commercial Operation Date is not achieved due to a Force Majeure event or a GPA Delay.

4.2 Extension of Commercial Operation Date.

- (a) Planned Extension. The Parties agree that the Commercial Operation Date is expected to occur on or before [] ("Scheduled Commercial Operation Date"). Seller may elect to extend the Commercial Operation Date beyond the Scheduled Commercial Operation Date (the "COD Extension") by paying GPA for such extension (the "COD Extension Payment"). The COD Extension Payment shall be in the amount of fifty percent (50%) of the daily Shortfall Damages (based on ninety percent (90%) of the Minimum Production for the first Contract Year) per day for each day (or portion thereof) after but not including the date of the COD Extension until, but not including, the date on

which the Project actually achieves Commercial Operation. To extend the Commercial Operation Date, Seller must, as early as reasonably possible, but in no event later than fourteen (14) days prior to the first day of the proposed extension, provide GPA with Notice of its election to extend the Commercial Operation Date along with an estimate of the duration of the extension. The COD Extension Payment is in addition to and not to be considered part of the Development Security, and shall be paid to GPA in arrears on a monthly basis after delivery of the Notice hereunder. Seller's request to extend the Commercial Operation Date shall not be valid unless proper Notice and payment are timely received by GPA. No Event of Default shall be deemed to have occurred with respect to Seller's extension as provided herein, and GPA shall not have the right to terminate the Agreement or to receive Termination Damages with respect to such extension so long as Seller has provided the Notice, estimation and payment as provided in this Section 4.2(a). Seller may further extend the Commercial Operation Date beyond the original COD Extension, subject to the foregoing Notice, estimation and payment terms applicable to the original COD Extension.

Seller shall be entitled to a prompt refund, without interest, of any portion of the COD Extension Payment held by GPA which exceeds the amount required to cover the number of days by which the Commercial Operation Date was actually extended. In no event may Seller extend the Commercial Operation Date by more than six (6) months through the payment of the COD Extension Payment, except as provided in Section 4.2(b). In the event that the Project does not achieve Commercial Operation on or before the expiration of any COD Extension period as provided herein, either Party shall have the right to terminate the Agreement upon written Notice to the other, subject to any further extension rights pursuant to Sections 4.2(b) or (c) below. In the event of such termination by either Party in accordance with this provision, GPA shall be entitled to Termination Damages as set forth in Section 4.4 as its sole and exclusive remedy, subject to Section 4.2(c).

- (b) Unplanned Extension/Additional Planned Extension. In the event that (i) the Project does not achieve Commercial Operation by the Scheduled Commercial Operation Date and Seller fails to provide sufficient Notice and/or payment in order to extend the Commercial Operation Date as provided in Section 4.2(a), or (ii) the Commercial Operation Date shall not have occurred within the six (6) months extension period provided under Section 4.2(a), then Seller may still extend the Commercial Operation Date by paying GPA damages ("Daily Delay Liquidated Damages"). The Daily Delay Liquidated Damages shall be in the amount of one hundred percent (100%) of the Shortfall Damages (based on ninety percent (90%) of the Minimum Production for the first Contract Year) per day for each day (or portion thereof) after but not including the earlier of the dates set forth in sub-clauses (i) or (ii) above, or until, but not including, the date on which the Project actually achieves Commercial Operation, and shall be payable on a monthly basis in arrears within ten (10) Business Days following receipt of an invoice from GPA for any such Daily Delay Liquidated Damages. No Event of Default shall be deemed to have occurred with respect to Seller's extension as provided herein and GPA shall not have the right to terminate the Agreement with respect to such extension or to receive Termination Damages so long as Seller has extended the Commercial Operation Date and pays the Daily Delay Liquidated Damages as provided in this Section 4.2(b).

In the event that the Project does not achieve Commercial Operation on or before twelve (12) months from the Scheduled Commercial Operation Date (as extended pursuant to this Agreement, the "Outside Commercial Operation Date"), then either Party shall have the right to terminate the Agreement upon written Notice to the other, subject to any further extension rights pursuant to Section 4.2(c) below. In the event of such termination by either Party in accordance with this provision, GPA shall be entitled to Termination Damages as set forth in Section 4.4 as its sole and exclusive remedy, subject to Section 4.2(c).

- (c) Force Majeure and GPA Delay Extension. The Scheduled Commercial Operation Date and the Outside Commercial Operation Date shall also be extended, without payment or other penalty, on a day-for-day basis for each day of delay caused by reason of Force Majeure (a “Force Majeure Extension”) or by reason of GPA Delay. Any Force Majeure Extension or GPA Delay shall also extend the period of any planned or unplanned extensions pursuant to Sections 4.2(a) or (b) on a day-for-day basis for each day during the Force Majeure Extension or GPA Delay, and Seller shall not be required to pay any COD Extension Payments or Daily Delay Liquidated Damages, as applicable, for any days during the Force Majeure Extension or GPA Delay. Notwithstanding any other provision in this Agreement, if, due solely to a Force Majeure event, the Project does not achieve Commercial Operation on or before the Outside Commercial Operation Date, then the Parties by mutual agreement may terminate this Agreement without penalty or further obligation to either Party, and after one hundred and eighty (180) days following the Outside Commercial Operation Date, either Party may unilaterally terminate this Agreement without penalty or further obligation to either Party. For the sake of clarity,
- (i) in the event of any such termination, GPA shall not be entitled to Termination Damages, and
 - (ii) Seller shall be entitled to any remedies available under Section 6.3 in the case of delays caused by GPA Delays, including reimbursement for (i) the cost of network upgrades and interconnection costs incurred by Seller, (ii) costs incurred under construction, equipment and other contracts entered into in connection with the development and construction of the Facility, and (iii) Seller’s costs and expenses in connection with the Facility and its performance under this Agreement.

4.3 Financing Arrangement Deadline.

Seller shall make Commercially Reasonable Efforts to (i) secure a third party financing sufficient for the successful completion of the Project as soon as practicable, and (ii) procure a binding credit agreement for such financing be executed no later than one (1) year after the Effective Date (the “Financing Arrangement Deadline”) unless extended by written agreement of the Parties. Seller shall provide GPA with a copy of the executed credit agreement within three (3) Business Days after the execution of such credit agreement (the date on which GPA receives such copy is hereinafter referred to as the “Financing Arrangement Provision Date”).

In the event that Seller fails to procure the execution of a binding credit agreement by the Financing Arrangement Deadline, GPA may terminate the Agreement and shall be entitled to Termination Damages set forth in Section 4.4 as its sole and exclusive remedy unless such Financing Arrangement Deadline is extended under other provisions of this Agreement, including Section 4.11.

4.4 Termination Damages.

Prior to the Commercial Operation Date, Seller may terminate this Agreement at any time for its convenience. GPA shall be entitled to termination damages, payable solely from the Bid Security or the Development Security established in Section 9.1 (as applicable) (“Termination Damages”), in the amounts set forth in the table below, if: (a) subject to the last sentence of this Section 4.4, Seller terminates the Agreement prior to the Commercial Operation Date for any reason other than: (i) a Force Majeure event (ii) a GPA Delay, or (iii) an Event of Default by GPA; and/or (b) GPA terminates the Agreement as a result of Seller failing to achieve the Commercial Operation Date on or prior to the Scheduled Commercial Operation Date, as the same may have been extended pursuant to Section 4.2, and subject to Section 4.2. The Termination Damages are designed to help compensate GPA for, among other things, transactions that it did not consummate because it relied on this Agreement with Seller, and GPA’s potential failure to meet its applicable renewable energy portfolio requirements and do not constitute a penalty payment. Accordingly, Seller shall pay to GPA, in cash or from the Development Security, Termination Damages in the following amounts, based upon when the termination occurs:

Up to Financing Arrangement Provision
Date

Up to Six (6) months after Financing
Arrangement Provision Date

100% of the Bid Security	Twelve (12) months after Financing Arrangement Provision Date forward: 75% of Development Security
50% of the Development Security	
Twelve (12) months after Financing Arrangement Provision Date from Six (6) months after Financing Provision Date	100% of Development Security

No later than five (5) Business Days after the Financing Arrangement Provision Date, GPA shall return the Bid Security to Seller, to the extent GPA has not validly claimed the Bid Security in respect of Termination Damages on or prior to _____. Notwithstanding the foregoing, in the event that Seller terminates this Agreement for any reason prior to the posting date for the Development Security as set forth in Section 9.1 herein, then Seller shall owe GPA no Termination Damages and such termination shall be without penalty to Seller.

4.5 Seller's and Buyer's Obligations.

Subject to Appendix H, Seller shall sell and deliver, or cause to be delivered, and GPA shall purchase and receive, or cause to be received, all Renewable Energy generated by the Facility, at the Delivery Point, and GPA shall pay Seller the Contract Price for such Quantity of Renewable Energy as measured by the Seller Metering Equipment at the Delivery Point; provided that for quantities of Renewable Energy in excess of 105% of the Estimated Annual Production, as shown in the third column of Appendix A, which are not make-up quantities for delivery deficiencies in prior Production Measurement Periods pursuant to Section 4.8, the price payable by GPA shall be the lower of the Contract Price and the LEAC Rate. For Seller's failure to deliver Renewable Energy as required hereunder, GPA's remedies shall be as set forth in Section 4.8. For GPA's failure to purchase and receive Renewable Energy as required hereunder, if Seller's damages are less than \$10,000 then Seller's remedies shall be as set forth in Appendix K. For damages in excess of that amount, Seller shall in addition have all other remedies available at law or in equity. Seller shall be responsible for any costs or charges imposed on or associated with the Renewable Energy or its delivery up to the Delivery Point. GPA shall be responsible for any costs or charges imposed on or associated with Renewable Energy or its receipt at and from the Delivery Point. Title to and risk of loss of Renewable Energy from the Facility delivered to the Delivery Point shall transfer to GPA at the Delivery Point. Seller warrants that it will deliver to Buyer Renewable Energy free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point. Notwithstanding the foregoing Seller's obligation to supply and sell, and GPA's obligation to accept and purchase, Renewable Energy shall be limited to such Renewable Energy that is actually deliverable from the Facility to the Delivery Point during such period.

4.6 Operation of Facility.

Seller shall operate and maintain the Facility in accordance with Good Utility Practices.

4.7 [Reserved].

4.8 Minimum Production.

The Facility is expected to produce a minimum number of MWhs of Renewable Energy in each one (1) Contract Year period as set forth in the third column of Appendix A (such annual MWh production is the "Minimum Production"). Seller during the Delivery Period shall (i) during each such Contract Year period, deliver to GPA at least ninety percent (90%) of the Minimum Production (which calculated amounts are set forth in the fourth column of Appendix A), and for any consecutive five (5) Contract Years during the Delivery Period, deliver to GPA at least one hundred percent (100%) of the aggregate Minimum Production (which calculated amounts are set forth in Appendix A) during such period (any such time period a "Production Measurement Period" and each such guaranteed amount of delivered Renewable Energy during any Production Measurement Period, the "Guaranteed

Output”). Any shortfall of Renewable Energy deliveries to Buyer from the applicable Guaranteed Output during a Production Measurement Period shall be deemed a “Deficiency Amount”.

GPA shall be entitled to receive damages for any Deficiency Amount (“Shortfall Damages”) which are not due to Excused Hours. GPA shall calculate such Shortfall Damages as follows:

$$\text{Shortfall Damages} = \text{Deficiency Amount} \times \text{Incremental Price.}$$

For purposes of clarity, if Actual Renewable Energy for any given Production Measurement Period is less than the Guaranteed Output for that period (even if due to Excused Hours), there shall be a “shortfall”, and Seller shall be entitled to deliver to GPA energy in that amount in subsequent Performance Measurement Periods, and this Agreement may be extended as necessary for a period of up to six (6) months in order to provide Seller with the opportunity to deliver Renewable Energy to Buyer up to the amount of the Deficiency Amount that would not otherwise be eligible for sale to Buyer under this Agreement. There shall be no Shortfall Damages owing to GPA for any Performance Measurement Period unless such Actual Renewable Energy is less than the Guaranteed Output amount for that Performance Measurement Period, and such shortfall is not due to Excused Hours.

In the event Shortfall Damages are due for a Production Measurement Period of five (5) rolling Contract Years, then such Shortfall Damages shall be reduced by the amount of any Shortfall Damages previously paid for any Contract Year during such five (5) year Production Measurement Period. Seller’s payment of Shortfall Damages shall be Seller’s sole liability and obligation, and GPA’s sole right and remedy, with respect to Seller’s failure to deliver the Guaranteed Output during any Production Measurement Period.

Seller shall be entitled to sell, and GPA shall purchase, quantities of Renewable Energy for which Shortfall Damages are paid hereunder (the “Make-up Renewable Energy”), during any remaining Production Measurement Period during the Delivery Period. The price for the Make-up Renewable Energy shall be the Contract Price in effect at time of the supply of such Make-up Renewable Energy. During any Contract Year, all Renewable Energy delivered by Seller to GPA in excess of the Guaranteed Output shall be credited against makeup of any outstanding Deficiency Amounts, with oldest Deficiency Amounts made up first.

To the extent any Deficiency Amount is due to Excused Hours, Seller shall be excused from any liability with respect thereto.

4.9 Facility Testing.

In addition to the Facility Test referenced in Section 4.1(e), the capacity of the Facility shall be tested during each Contract Year during the Delivery Period (the “Annual Facility Test”). Seller shall notify GPA of the specific date on which it intends to conduct the Annual Facility Test at least ten (10) Business Days in advance and shall permit GPA to be present at such test. GPA shall have the right to receive copies of the results of the Annual Facility Test, which shall be conducted in accordance with the protocol set forth in Appendix I. Any dispute regarding the results of the Annual Facility Test shall be resolved as set forth in Section 12.9 of this Agreement. GPA shall receive, in accordance with Section 4.5, the entire Renewable Energy from the Facility during any Annual Facility Test or re-test. Renewable Energy deliveries during testing shall be measured at the Delivery Point.

4.10 Scheduling.

Seller agrees to supply at the Delivery Point all Renewable Energy produced by the Project, net of Renewable Energy self-generated and consumed at the Facility and net of any generation losses prior to the Delivery Point, up to the Facility Capacity, in accordance with the scheduling and coordination procedures set out in Appendix H. GPA agrees to take at the Delivery Point all Renewable Energy tendered by Seller in accordance with the foregoing sentence.

The Schedules and estimates provided pursuant to Appendix H shall be made by Seller in good faith and based on information available to it at such time, but in no event shall such Schedules be binding on Seller nor shall Seller be liable for any inaccuracies in such Schedules.

4.11 Force Majeure.

To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Transaction and such Party (the “Claiming Party”) gives Notice and details of the Force Majeure to the other Party promptly upon the occurrence of the Force Majeure event, then the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction (other than the obligation to make payments then due or becoming due hereunder). The Claiming Party shall exercise Commercially Reasonable Efforts to remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its corresponding obligations to the Claiming Party (other than the obligation to make payments then due or becoming due hereunder) until the Claiming Party resumes its performance. If the Force Majeure event extends for three hundred and sixty-five (365) days, either Party may terminate this Agreement without further obligation by either Party, except as to costs and liabilities incurred prior to the termination date and obligations under the Agreement which survive termination by nature of the obligation.

4.12 Facility Outages and Maintenance Scheduling.

- (a) Planned Outages. Seller shall provide written Notice to GPA prior to conducting any Planned Outages of the Facility. Within ninety (90) days prior to the Commercial Operation Date, as the same may be extended in accordance with the provisions of Section 4.2, and on or before the first day of each subsequent Contract Year, Seller shall provide GPA with a schedule of such proposed Planned Outages in accordance with Appendix H. The proposed Planned Outages schedule shall be submitted electronically to GPA, using a reasonably acceptable format provided by GPA. Such format is subject to change from time-to-time during the Term of this Agreement by agreement of the Parties, but will generally describe the nature of the Outage, the expected duration, and any other pertinent information that will assist GPA in planning for the decreased output and/or availability of the Facility as a result of the Outage.

GPA shall promptly review Seller’s proposed schedule and may request modifications within thirty (30) days of GPA’s receipt of such schedule. Changes to the schedule may be requested by either Party and each Party shall make Commercially Reasonable Efforts to accommodate such changes, provided further that Seller shall have no obligation to agree to GPA’s proposed modifications or revisions to any Planned Outage schedule.

- (b) Forced Outages. In the event of any Forced Outage, Seller shall promptly notify GPA of the same. Seller shall as quickly as practicable notify GPA verbally and shall then, within twenty-four (24) hours thereafter, provide written Notice to GPA of the Forced Outage (the “Forced Outage Notice”). The Forced Outage Notice shall be submitted electronically to GPA, using a reasonably acceptable format provided by GPA. Such format is subject to change from time-to-time during the Term of this Agreement by agreement of the Parties, but will generally describe the nature of the Outage, the expected duration, and any other pertinent information that will assist GPA in planning for the decreased output and/or availability of the Facility as a result of the Outage. Seller shall return the Facility to service as soon as possible, consistent with Good Utility Practices, after the Forced Outage ceases to exist.
- (c) GPA Parts Inventory. To the extent GPA maintains an inventory of parts or components that are used or useful in the Facility and provided it can prudently do so under its own ordinary course operating practices and restrictions, GPA shall cooperate with Seller in a Commercially Reasonable manner by making such parts or components available to Seller at its request during the period of time Seller is obtaining replacement parts or components for the Facility in order to maximize output of Renewable Energy. If Seller obtains a replacement part or component from GPA, it shall at GPA’s option either replace such part or component with the new part or component ordered by Seller or return the borrowed part or component to GPA at such time as Seller obtains the replacement. Seller shall bear the installation, transportation and labor charges relating to GPA’s replacement parts or components, and if the parts or components are returned to GPA then Seller shall reimburse GPA for any damage to such parts or components while in Seller’s possession.

4.13 Operating Status Reports.

From the Effective Date of this Agreement, through the date of Commercial Operation, Seller shall provide GPA with Monthly reports regarding material data pertaining to the operation of the Facility. The operations data is generally identified as performance, Outage, and risk data and shall be sent electronically to GPA using a reasonably acceptable format provided by GPA. The operations data report format may be modified by agreement of the Parties from time-to-time during the Term of this Agreement.

4.14 Resource Quality Reporting: Forecasting.

Seller shall provide to GPA at its request copies of non-proprietary resource quality data in Seller's possession that could reasonably be expected to affect, in any material manner, the operation and/or productivity of the Facility, whether produced, compiled or otherwise generated by Seller or any third party in a Commercially Reasonable manner, so that GPA can evaluate the expected performance of the Facility. Seller shall provide such data as it is produced or otherwise made available to Seller. Upon Commercial Operation of the Facility, to the extent generated or procured by Seller, Seller shall also provide to GPA Monthly and day-ahead forecasting information for the Facility. Such information shall be in a format agreed to by the Parties and include, among other things: Seller's forecasts for the performance of the Facility based on Facility specifications, weather-based forecasting, and weather-related studies. Such information, which will be used by GPA solely for evaluation, Scheduling, and other purposes related to this Agreement, shall be provided as available. In no event shall the data and/or information provided to GPA pursuant to this Section 4.14 be binding upon Seller, nor shall Seller be liable for any penalties, charges or other damages based on the inaccuracy of such data or information.

4.15 Permit Violations.

Seller shall at all times during the Term of this Agreement maintain and comply in all material respects with all applicable permits for the development, ownership and maintenance of the Facility.

4.16 Delivery of RECs and Environmental Attributes.

- (a) Use of North American Renewables Registry. At least ten (10) days prior to COD, Seller shall transfer to GPA the authority to create, own and transfer all Environmental Attributes associated with the Renewable Energy produced by the Facility, by executing and delivering the form entitled "Generator Owner's Designation of Responsible Party" published by NAR, wherein Seller shall designate GPA as the "responsible party" for all matters relating to the creation, ownership, and transfer of RECs and Environmental Attributes from the Facility. Thereafter, GPA shall be responsible for all obligations relating to creating and transferring RECs and Environmental Attributes from the Facility and Seller shall have no further obligations or liabilities with respect thereto, provided, however, that Seller shall reimburse to GPA its costs of creating and maintaining the NAR account and NAR's fees charged to transfer the RECs and Environmental Attributes, up to an aggregate maximum amount of \$5,000 per annum. In the event this Agreement is terminated or suspended for any reason, the Parties agree to each consent to the termination of such designation in accordance with NAR procedures.
- (b) GPA Registration as a QRE. GPA shall be the QRE for the Facility as required by NAR and shall comply with any and all NAR Operating Procedures relating to the registration and operation as a QRE and the reporting of generation data from the Facility to NAR. As the QRE, each month upon receipt of an invoice and associated interval metering data from Seller in accordance with Section 7.5 herein, GPA shall report such data to NAR within three (3) Business Days following receipt of such data. The Parties shall cooperate to ensure that the Seller Metering Equipment and the resulting interval metering data meet the NAR requirements for metering equipment and generation data.
- (c) Change Event. During the Term, in the event that (i) the NAR Operating Procedures are amended or changed such that it becomes impossible for the Parties to utilize NAR as the REC tracking method and/or for GPA to continue as "responsible party" for purposes of creating, owning and transferring RECs and Environmental Attributes attributable to the Facility; (ii) the fees or charges imposed by NAR on either Seller or GPA to utilize the NAR REC tracking system are materially increased such that use of the NAR REC

tracking system becomes uneconomic or infeasible; or (iii) the NAR REC tracking system is eliminated (each one individually, a “Change Event”), then the Parties shall promptly negotiate in good faith to reform the terms of this Agreement in order to give effect to the original intention of the Parties to the extent reasonable under the circumstances, including utilizing an alternative method for transferring RECs to GPA, but in no case shall Seller’s cost with respect thereto exceed \$5,000 per annum.

4.17 Allowable GPA Curtailment Interim Period.

[Subject to Final System Impact Study this section may be required]

For any day during the contract term prior to _____, GPA will be allowed to curtail the Seller’s Output due to undesirable effects or low loads which may impact stable operations of the GPA electric grid system. GPA will not be required to pay for any curtailments during this period. This will be defined in the Interconnection Agreement.

4.18 Energy Shifting and Rapid Reserve Response.

Seller shall be required to use ESS for the purpose of delivering produced energy at a different period of time than its production period. GPA shall receive all of the stored renewable energy before the next solar production period. The active, or real, power shall be dispatchable at the point of interconnection, between the hours of 6:00 PM to 6:00 AM, as required by the GPA Power System Control Center operators or a SCADA control point. The available capacity may also be dispatched outside of these hours if deemed necessary by the GPA Power System Control Center operators. The delivered output to the GPA grid shall be firm, non-intermittent power with a ramp-up and ramp-down rate limited to 1% of rated power output per minute. However, this rate may be exceeded at the request of the GPA Power System Control Center operators. Seller shall also provide a dispatchable reactive capability requirement up to 0.80 lag to lead at the point of interconnection as required by the GPA Power System Control Center operators or a SCADA control point. The project shall perform at +/- 0.80 PF Dynamic Range up to and including the maximum MW output and shall not reduce reactive capability near the peak real power output. The total energy available for dispatching shall be provided to the GPA Power System Control Center through a SCADA point every second. The additional function of the ESS is to provide rapid reserve in response to under-frequency events. The total energy exported for these events shall be included in the annual minimum energy requirement.

During the Delivery Period, Seller shall allow GPA to negotiate a revision in the ESS control function or integration with a grid controller to improve the reliability and/or stability of the GPA grid.

4.19 Performance.

During the Delivery Period, Seller shall cause the Facility to comply with the performance requirements set forth in Appendix C. If the Facility fails to meet the requirements, GPA may provide written notice to Seller of the failure to meet the requirements and a request for Seller to take steps needed to meet the requirements. In response to such a notice, Seller shall, within two (2) weeks from the date of such notice, provide GPA with a written remedial action plan that provides a detailed description of Seller’s course of action and plan to meet the requirements and shall take steps to implement such remedial action within six (6) months of the date of such action plan; provided, however, GPA shall not be entitled to such a remedial action plan if the failure to achieve the requirements is due to a Force Majeure event, GPA Delay or an Event of Default by GPA. Seller’s sole obligation with respect to any deficiency in the requirements is to follow its remedial action plan.

ARTICLE FIVE: SELLER FAILURE**5.1 Seller Failure.**

In the event Seller fails to deliver to GPA any Quantity of Renewable Energy to which GPA is entitled in accordance with the terms of this Agreement and instead sells such Quantity of Renewable Energy to which GPA is entitled to a third party in violation of this Agreement (“Seller Failure”), then Seller shall pay to GPA the “Seller Failure Damages,” which shall mean the positive difference, if any, between the Replacement Price and the Contract Price for the period of such Seller failure, times such Quantity of Renewable Energy. GPA shall calculate the Seller Failure Damages and shall provide to Seller an invoice for such amount, including a written statement explaining in reasonable detail the calculation of such amount. Seller shall pay the Seller Failure Damages not later than ten (10) days following its receipt of such an invoice from GPA. If the Replacement Price is less than the Contract Price, then the Seller Failure Damages are deemed to be zero. The Seller Failure Damages represent the sole and exclusive remedy for Seller’s failure as described herein, except as provided in Section 6.1(h).

ARTICLE SIX: EVENTS OF DEFAULT; REMEDIES

6.1 Events of Default.

An “Event of Default” shall mean, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following:

- (a) The failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written Notice;
- (b) Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, if such failure is not remedied within thirty (30) Business Days after written Notice, or such longer time, not to exceed ninety (90) Business Days, as is reasonably required to remedy such failure, provided the Defaulting Party is employing Commercially Reasonable Efforts to achieve the remedy;
- (c) The failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default and except for such Party’s obligations to deliver or receive the Renewable Energy, the remedies for which are provided in Article Five) if such failure is not remedied within thirty (30) Business Days after written Notice, or such longer time, not to exceed ninety (90) Business Days, as is reasonably required to remedy such failure, provided the Defaulting Party is employing Commercially Reasonable Efforts to achieve the remedy;
- (d) Such Party becomes Bankrupt (or if the Bankruptcy is involuntary, the failure of such Party to achieve dismissal of the Bankruptcy within ninety (90) days);
- (e) A Merger Event occurs with respect to such Party;
- (f) If during the Term of this Agreement there have occurred three (3) or more Seller Failures as that term is used in Section 5.1;
- (g) With respect to Seller, a material permit violation occurs and such violation is not remedied within thirty (30) Business Days after Notice by either GPA or the relevant permitting authority, or such longer time, as is reasonably required to remedy such failure, provided the Defaulting Party is employing Commercially Reasonable Efforts to achieve the remedy; and
- (h) With respect to Seller, failure to maintain the Development Security and failure to reinstate the same within thirty (30) Business Days after Seller’s receipt of written Notice thereof from GPA.

6.2 Declaration of an Early Termination Date.

If an Event of Default with respect to a Defaulting Party shall have occurred on or after the Commercial Operation Date and be continuing, the other Party (the “Non-Defaulting Party”) shall have the right but not the obligation to: (i) designate a day, no earlier than the day such Notice is effective and no later than twenty (20) days after such Notice is effective, as an early termination date (“Early Termination Date”) to accelerate all amounts owing between the Parties and to liquidate and terminate this Agreement between the Parties; (ii) withhold any payments due to the Defaulting Party under this Agreement as setoff against termination costs and liabilities as determined herein (and until such amounts are determined); and (iii) suspend its performance under this Agreement.

6.3 Suspension of Performance and Other Remedies.

Except as otherwise expressly provided in this Agreement, if an Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written Notice to the Defaulting Party, shall have the right (i) to suspend performance under this Agreement; and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity including any specific remedies set forth in this Agreement; provided, however, that any damages shall include only the direct actual damages incurred by the Non- Defaulting Party as provided in Section 8.1, and Seller's aggregate total liability hereunder shall not exceed the amounts set forth in Section 4.4 prior to the Commercial Operation Date.

ARTICLE SEVEN: PAYMENT AND NETTING

7.1 Billing Period.

Unless otherwise specifically agreed upon by the Parties, the calendar Month shall be the standard period for all payments under this Agreement. No later than the tenth (10th) day after the end of each Month, each Party will render to the other Party an invoice (in the case of Seller, such invoice being rendered in accordance with Section 7.5) for the payment obligations of the non-invoicing Party, if any, incurred hereunder during the preceding Month.

7.2 Timeliness of Payment.

Unless otherwise agreed by the Parties, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the _____ (the) day of each Month, or if later the tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

7.3 Disputes and Adjustments of Invoices.

A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) Months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Except as otherwise provided in this Agreement, payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 7.3 within twelve (12) Months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) Months after the close of the Month during which performance of a Transaction occurred, the right to payment for such performance is waived.

7.4 Metering and Other Facilities.

Seller shall be responsible, at its sole expense, for providing the Seller Metering Equipment in accordance with Good Utility Practices. In accordance with the terms of the Interconnection Agreement, the Seller may elect to have GPA provide Seller with the Seller Metering Equipment; provided, however, the cost of such meters shall be borne solely by Seller at no cost to GPA. Seller shall be solely responsible for operating, maintaining, and repairing the Seller Metering Equipment at its own expense throughout the Term of this Agreement. Seller shall inspect and test the Seller Metering Equipment upon its installation and at least once every year at Seller's expense. Seller shall give GPA reasonable advance Notice of any test, and promptly provide GPA with the results of any such test. GPA may observe the test and conduct its own tests, at GPA's expense, to verify Seller's procedures and results. GPA shall give Seller reasonable advance Notice of any such test, and may observe the tests. GPA shall provide Seller with the results of any test by GPA promptly upon receipt of the results. Access by GPA for any such testing shall be in compliance with Section 12.4.

Upon an inaccurate read of the Seller Metering Equipment or if Seller knows of any inaccuracy or material defect in Seller Metering Equipment, Seller shall notify GPA in writing within forty-eight (48) hours of such defect. Seller shall be solely responsible for adjusting, repairing, replacing or recalibrating such metering device as near as practicable to a condition of zero (-0-) error, and for paying any expenses associated with such adjustment, repair,

replacement or recalibration. If a metering device fails to register or is found upon testing to be inaccurate, an adjustment will be made correcting all measurements by the inaccurate or defective metering device in the following manner:

- (a) In the event that an adjustment factor cannot be reliably calculated, the Parties shall use the measurements from GPA-owned meters if they are installed, fully operational and calibrated in accordance with Good Utility Practices. If for any reason the measurements cannot be obtained from GPA-owned meters, the Parties shall use data from Seller's computer monitoring system to determine the relevant measurements. If Seller's computer monitoring system is found to be inaccurate by more than two (2) percent, the Parties shall estimate the amount of the necessary adjustment using the site meteorological information for the period of the inaccuracy based upon deliveries of Renewable Energy delivered to GPA at the Delivery Point from the Facility during periods of similar operating conditions when the Seller Metering Equipment was registering accurately. The adjustment will be made for the period during which inaccurate measurements were made.
- (b) If the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted will be the shorter of: (1) the last one-half of the period from the last previous test of the metering device to the test that found the metering device to be defective or inaccurate; or (2) the one hundred and eighty 180-day period immediately preceding the test that found the metering device to be defective or inaccurate.
- (c) Upon determination of corrected measurements, the required payment adjustment shall be made according to the procedures set forth in Section 7.3.

DISCUSS SYSTEM IMPACT REQUIREMENTS HERE – Interconnection and Network Upgrades

7.5 Invoices.

Seller shall maintain and read the Seller Metering Equipment for measuring the Renewable Energy delivered hereunder. For review purposes, Seller shall furnish GPA with a written invoice reflecting the Contract Price; interval data from the Seller Metering Equipment used to calculate that invoice; and any other charges due, within ten (10) Business Days after Seller reads the Seller Metering Equipment. Such invoices may be furnished to GPA by facsimile transmission or by such other method as the Parties agree.

ARTICLE EIGHT: LIMITATIONS

8.1 Limitation of Remedies, Liability and Damages.

EXCEPT AS SET FORTH HEREIN, THERE ARE NO WARRANTIES BY EITHER PARTY UNDER THIS AGREEMENT, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED HEREIN, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

Notwithstanding the foregoing, if GPA is the Defaulting Party, the Parties agree that the actual damages recoverable to Seller hereunder on account of an Event of Default by GPA shall include loss of Tax Benefits on a grossed up after tax basis, using the highest applicable United States marginal personal income tax rate.

Any assets transferred to GPA as required by the Interconnection Agreement shall require a one year warranty on all construction work and extension of any manufacturer warranties from the transfer of such assets.

ARTICLE NINE: CREDIT AND COLLATERAL REQUIREMENTS

9.1 Development Security.

In order to secure Seller's obligations prior to Commercial Operation of the Facility, Seller shall post a Letter of Credit or cash in the amount of \$_____ (the "Development Security"). The Development Security shall be held by GPA as security for Seller's obligations prior to the Commercial Operation Date under the Agreement. To the extent permitted under Section 4.4, GPA may draw on the Development Security at any time prior to the Commercial Operation Date, but only in the amounts and according to the schedule set forth in Section 4.4. Seller shall post the Development Security in accordance with the following terms and conditions:

- (a) Seller shall post the Development Security within ten (10) Business Days from the date when a binding credit agreement is executed pursuant to Section 4.3 but no later than the Financing Arrangement Deadline.
- (b) If the Development Security is posted as a Letter of Credit, it shall be in substantially the form attached hereto as Appendix E, respectively with such changes thereto as may be approved by Buyer and Seller in their reasonable discretion.
- (c) Any Development Security posted in cash shall bear simple interest at a rate equal to the Interest Rate. The calculation and payment of any such interest shall be made in accordance with the procedure specified in Section 9.3 of this Agreement.

9.2 Forfeiture of Development Security.

In the event that the Commercial Operation Date does not occur on or before the Scheduled Commercial Operation Date, as extended pursuant to the terms of this Agreement, and to the extent Seller does not remit any COD Extension Payment or Daily Delay Liquidated Damages payment when due pursuant to Section 4.2, then GPA shall be entitled to proceed against the Development Security in accordance with the terms thereof, to the extent of the amount(s) due and owing from time to time under Section 4.2. If the Development Security is exhausted up to the limits in Section 4.4 and further payments are due, then GPA shall be entitled to terminate this Agreement as its sole and exclusive remedy if Seller otherwise refuses to pay the amount due, and Seller shall have no further liability for damages hereunder. Seller acknowledges and agrees that forfeiture of all or a portion of the Development Security, as provided herein, represents reasonable compensation to GPA for, among other things, transactions that it did not consummate because it relied on this Agreement with Seller, and GPA's potential failure to meet its applicable renewable energy portfolio requirements as a result of Seller's failure to achieve Commercial Operation by the Scheduled Commercial Operation Date. Notwithstanding the foregoing, if Seller terminates this Agreement prior to the Commercial Operation Date for the sole purpose of selling the Renewable Energy to a third party, GPA shall be entitled to both the Development Security and any other remedies available at law or in equity to the extent that GPA's actual damages exceed the value of the Development Security.

9.3 Return of Development Security.

Concurrently with the achievement of the Commercial Operation Date or the earlier termination of the Agreement pursuant to Section 4.2, GPA shall return to Seller any remaining portion of the Development Security still held by GPA and to which GPA has no claim pursuant to the terms of this Agreement. If the Development Security was posted as a Letter of Credit, GPA shall return the Letter of Credit to Seller and Seller shall be entitled to immediately cancel such Letter of Credit. If the Development Security was posted in cash, GPA shall return to Seller the balance of the Development Security, together with daily interest at the Interest Rate, from and including the date that the Development Security was posted until, but not including, the date on which the Development Security is returned by GPA.

9.4 Performance Security.

In order to secure Seller's obligations after Commercial Operation of the Facility and during the Delivery Period hereunder, Seller hereby agrees to post security in one of the forms contemplated below, each of which is deemed acceptable by GPA (the "Performance Security"):

- (a) A Letter of Credit or cash in the amount of \$_____; or

- (b) A Payment and Performance Bond in the amount of \$ _____; or
- (c) A subordinated lien on all real and personal property constituting the Project, to be effective as of the Commercial Operation Date (the "GPA Lien") and Seller agrees to take such action as is reasonably required in order to perfect GPA's security interest in, and lien on, such collateral and any and all proceeds resulting therefrom; provided, that concurrently with the grant of the such lien, GPA shall enter into such subordination, inter-creditor and other agreements with the senior financing parties pursuant to which GPA shall agree that their rights and remedies pursuant to their lien shall be subordinated in all respects to the senior first lien held by or the financing parties.

The Performance Security shall be held by GPA as security for Seller's obligations after the Commercial Operation Date and during the Delivery Period, but GPA may draw on the Performance Security at any time only in full the amounts actually due and (b) payable by Seller remaining liable to GPA pursuant to this Agreement. Seller may (i) post the Performance Security by posting a combination or one or more of the above acceptable forms of credit support in an aggregate amount of \$ _____, and (ii) at any time elect to substitute any form of one or more of the above acceptable forms of credit support for any existing Performance Security in which case GPA shall return the replaced Performance Security and reasonably cooperate with Seller in the exchange or cancellation of such credit support.

Seller shall post the Performance Security in accordance with the following terms and conditions:

- (a) Seller shall post the Development Security within ten (10) business days following the Commercial Operation Date.
- (b) If the Performance Security is posted as a Letter of Credit, it shall be in substantially the form attached hereto as Appendix [F-1].
- (c) If the Performance Security is posted as a Payment and Performance Bond, it shall be in substantially the form attached hereto as Appendix [F-2].
- (d) Any Performance Security posted in cash shall bear simple interest at a rate equal to the Interest Rate. The calculation and payment of any such interest shall be made in accordance with the procedure specified in Section 9.5 of this Agreement.

9.5 Return of Performance Security.

At the end of the Term or upon the termination of this Agreement following the settlement and payment of any damages owed as a result of such termination, GPA shall return to Seller any remaining portion of the Performance Security still held by GPA and to which GPA has no claim pursuant to the terms of this Agreement. If the Performance Security was posted as a Letter of Credit or a Payment and Performance Bond, then GPA shall return the Letter of Credit or Payment and Performance Bond to Seller and Seller shall be entitled to immediately cancel such Letter of Credit or Payment and Performance Bond. If the Performance Security was posted in cash, GPA shall return to Seller the balance of the Performance Security, together with daily interest at the Interest Rate, from and including the date that the Performance Security was posted until, but not including, the date on which the Performance Security is returned by GPA.

ARTICLE TEN: GOVERNMENTAL CHARGES**10.1 Cooperation.**

Each Party shall use Commercially Reasonable Efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

10.2 Governmental Charges.

Seller shall pay or cause to be paid all taxes imposed by any Government Authority (“Governmental Charges”) on or with respect to the Renewable Energy, Environmental Attributes or this Agreement arising prior to the Delivery Point. GPA shall pay or cause to be paid all Governmental Charges on or with respect to the Renewable Energy, Environmental Attributes, or this Agreement at and from the Delivery Point. All other tax or income taxes on the sale of the Renewable Energy by Seller hereunder and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges, which are GPA’s responsibility hereunder, GPA shall promptly reimburse Seller for such Governmental Charges. If GPA is required by law or regulation to remit or pay Governmental Charges which are Seller’s responsibility hereunder, GPA may deduct the amount of any such Governmental Charges from the sums due to Seller under Article Seven of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE ELEVEN: ASSIGNMENT

11.1 Buyer Assignment.

Buyer may not assign this Agreement or assign or delegate its rights and obligations under this Agreement, in whole or in part, without Seller's consent, not to be unreasonably withheld.

11.2 Seller Assignment.

Seller may perform any of the following, without the consent of the Buyer (1) transfer, pledge, encumber, or assign this Agreement or the accounts, revenues, or proceeds hereof, in connection with any financing or other financial arrangements for the Facility, (2) transfer or assign this Agreement to any of its Affiliates in connection with a transfer of the Facility to such Affiliate, (3) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party; provided, that Seller provides Buyer prior notice of any such transfer or assignment and, with respect to any transfer to an Affiliate of Seller, (A) the creditworthiness of such Affiliate is equal to or superior to the creditworthiness of Seller as of the Effective Date and (B) such Affiliate enters into an assignment and assumption agreement, in form and substance reasonably satisfactory to Buyer, pursuant to which Affiliate assumes all of Seller's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement. Seller agrees that it will provide written notice to Buyer of any assignment of this Agreement by Seller within five (5) Business Days of the date of such assignment.

Except as stated above, neither this Agreement nor any of the rights, interests and obligations hereunder shall be assigned by Seller without the prior written consent of Buyer, which consent shall not be unreasonably withheld. Any assignment of this Agreement in violation of the foregoing shall be, at the option of Buyer, void.

11.3 Liability After Assignment.

A Party's assignment or transfer of rights or obligations pursuant to this Article 11 shall relieve said Party from any liability and financial responsibility for the performance thereof arising after any such transfer or assignment.

11.4 Transfers of Ownership.

Subject to any rights of first offer or refusal under this Agreement, during the Term, Seller shall not sell, transfer, assign or otherwise dispose of its interest in the Facility to any third-party absent (1) a transfer of this Agreement to such third-party and (2) Seller entering into an assignment and assumption agreement for this Agreement, in form and substance reasonably satisfactory to Buyer, with such third-party.

11.5 Successors and Assigns.

This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

11.6 Collateral Assignment by Seller.

In the event that Seller pursuant to Section 11.2 (1) transfers, pledges, encumbers or collaterally assigns this Agreement to Seller's lenders, Seller shall provide written notice to Buyer of such transfer, pledge, encumbrance or assignment, including the address of Seller's lenders. In connection with any financing or refinancing of the Facility, including tax equity financing, Buyer at Seller's request shall negotiate in good faith with Seller and Seller's lenders and financing parties to agree upon reasonable direct agreements, estoppels, opinions and other customary documentation to support the financing(s) with respect to this Agreement, which shall be in form and substance reasonably agreed to by Buyer, Seller and Seller's financing parties. The direct agreement shall include (but not be limited to) provisions substantially as follows:

- (a) The Parties shall not amend or modify this Agreement in any material respect without the prior written consent of the Seller's financing parties;

- (b) Prior to exercising its right to terminate this Agreement as a result of an Event of Default by Seller, Buyer shall give notice of such Event of Default by Seller to the administrative agent of Seller's lenders of Seller's financing parties, which Buyer has been provided written notice of; and
- (c) Seller's lenders or financing parties shall have the right, but not the obligation, to cure an Event of Default on behalf of Seller in accordance with the provisions of this Agreement, provided that Seller's lenders or financing parties shall be provided an additional forty-five (45) days, from the end of the cure periods provided pursuant to Section 6.1, to effect a cure of such Event of Default.

ARTICLE TWELVE: MISCELLANEOUS

12.1 Term of Agreement.

The Term of this Agreement shall commence on the Effective Date and shall remain in effect for the duration of the Delivery Period, as set forth in Section 2.1, unless earlier terminated by either Party in accordance with this Agreement herein (the “Term”); provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such termination.

12.2 Insurance.

At all times during the Term of this Agreement, Seller shall maintain at its own expense insurance policies for the Facility and its tangible assets in such amounts and against such risks and losses as are consistent with Good Utility Practices and those policies listed below. Such insurance policies shall be maintained only with insurers rated at least A- VII by MVI Best or comparable ratings agency.

- Commercial General Liability with limits of \$1,000,000 including products, completed operations, and contractual for this Agreement. GPA shall be an additional insured. Seller shall grant a waiver of subrogation in favor of GPA.
- Commercial Auto Liability in the amount of \$1,000,000 combined single limit for bodily injury and property damage. GPA shall be an additional insured. Seller shall grant a waiver of subrogation in favor of GPA.
- Excess Liability with limits of \$5,000,000. GPA shall be an additional insured. Seller shall grant a waiver of subrogation in favor of GPA.
- Workers Compensation and Employers Liability with statutory limits and \$1,000,000/\$1,000,000/\$1,000,000 respectively. Seller shall add a waiver of subrogation endorsement in favor of GPA.
- Pollution Liability, when applicable, with limits for \$5,000,000. GPA is to be an additional insured. Seller shall grant a waiver of Subrogation in favor of GPA.
- Builder’s Risk or Installation Floater, when applicable, is to be furnished by Contractor.
- Property insurance that will keep the premises, property, improvements, structures, and machinery and equipment on the premises insured, at a minimum, against with an all risk property policy for full replacement value as determined from time to time. Such insurance shall be issued by financially responsible insurers duly authorized to do business in Guam, and shall contain the standard form of waiver of subrogation. Nothing contained herein shall be construed as creating any liability or responsibility on the part of GPA for the adequacy of insurance coverage on the premises. As to any insurable risks of loss or damage to the premises not required to be insured hereunder, Seller shall bear the cost of the same. Seller 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.

At all times after achieving COD, Seller may discontinue or otherwise cancel each of the aforementioned policies, except the following insurance policies, which shall be maintained with the limits set forth below:

- Commercial General Liability with limits of \$1,000,000.00 including products, completed operations, and contractual for this Agreement. GPA shall be an additional insured. Seller shall grant a waiver of subrogation in favor of GPA.

- Excess Liability with limits of \$5,000,000.00. GPA shall be an additional insured. Seller shall grant a waiver of subrogation in favor of GPA.
- Workers Compensation and Employers Liability with statutory limits and \$1,000,000/\$1,000,000/\$1,000,000 respectively. Seller shall add a waiver of subrogation endorsement in favor of GPA.
- Property insurance that will keep the premises, property, improvements, structures, and machinery and equipment on the premises insured, at a minimum, against with an all risk property policy for full replacement value as determined from time to time. Such insurance shall be issued by any financially responsible insurer duly authorized to do business in Guam, and shall contain the standard form of waiver of subrogation. Nothing contained herein shall be construed as creating any liability or responsibility on the part of GPA for the adequacy of insurance coverage on the premises. As to any insurable risks of loss or damage to the premises not required to be insured hereunder, Seller shall bear the cost of the same. Seller 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.
- Seller is also required to carry Business Interruption and Extra Expense insurance in the amount of \$1,000,000.00.

If the Facility is lost or damaged due to a casualty, Seller shall re-build the Facility promptly and in a commercially reasonable manner; provided, however, (i) if the time to re-build the Facility would result in less than five (5) years remaining in the Delivery Period then (A) Seller shall have the option in lieu of re-building the Facility to pay to GPA the Buyout Payment and terminate this Agreement with no further costs or penalties, or (B) if Seller nevertheless elects to re-build the Facility, then GPA shall reimburse Seller for any deductibles payable by Seller under its property insurance (not to exceed \$500,000), and (ii) regardless of when the casualty event occurs, if Seller re-builds the Facility, then the Delivery Period shall be extended for the greater of one (1) year or two (2) times the length of the interruption of the sale of Renewable Energy (pro-rated based on the Minimum Production for partial interruptions) after the end of the Term, and the Contract Price shall be the price in effect, without escalation, at the end of the Term.

Within ten (10) Business Days after receipt of a request for the same from GPA, Seller shall deliver to GPA a certificate of insurance for any or all policies maintained in accordance with this Section 12.2, which certificate shall include at least the following information: (i) the name of the insurance company, policy number and expiration date; and (ii) the coverage and limits on coverage, including the amount of deductibles or self-insured retentions.

Seller shall furnish certificates of insurance and waiver of subrogation endorsements to GPA prior to commencement of construction of the Facility 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 [thirty (30)] days after receipt of written Notice to GPA. At all times Seller's insurance shall be primary and non-contributory 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 Seller's liability under this Agreement. GPA shall be an additional insured on all liability coverage and certificates of insurance shall clearly indicate such.

12.3 Indemnity.

To the extent permitted by law, each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to the Renewable Energy and Environmental Attributes is vested in such Party, unless a Claim is due to such Party's willful misconduct or gross negligence. To the extent permitted by law, each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Ten. Notwithstanding anything to the contrary contained in this Agreement, no individual representative of either Party shall have any personal liability to the other Party as a result of the breach of any representation, warranty, covenant or agreement contained herein.

12.4 Site Access and Inspection of Records.

Seller shall provide GPA with reasonable access to the Facility site for purposes of review and inspection during regular business hours within a reasonable time after a request for the same is made by GPA to Seller. During such reviews and inspections, GPA representatives shall be permitted to review such records relating to the Facility and reasonably related to the performance of this Agreement, including Facility maintenance and operations logs. GPA shall have access to the Facility site for the limited purposes described herein, but Seller shall at all times remain responsible and liable for the control and operation of the Facility and the Facility site. GPA representatives shall follow Seller's safety procedures when accessing the Facility site and shall conduct themselves in a manner that will not interfere with the operation of the Facility. Seller will provide GPA with information about such safety procedures to enable GPA to comply with this requirement.

12.5 Audit.

Subject to Section 7.3, each Party has the right, at its sole expense and during normal working hours, to examine copies of the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement.

12.6 Confidentiality.

The Parties will make Commercially Reasonable Efforts to safeguard Confidential Information against disclosure by employing the same means to protect such Confidential Information as that Party uses to protect its own non-public, confidential or proprietary information, and otherwise in accordance with the provisions of this Section 12.6. Specifically, no receiving Party shall itself, or permit its employees, consultants and/or agents to disclose to any person, corporation or other entity the Confidential Information without the prior written consent of the Party providing the Confidential Information, except a receiving Party may distribute the Confidential Information to its and its Affiliates' board members, officers, employees, agents, consultants, actual or potential investors, actual or potential purchasers, Facility lenders, and others who have a need for such Confidential Information in connection with the Transaction.

The Parties acknowledge, however, that a Party may need to disclose the Confidential Information in connection with its regulatory filings or to otherwise satisfy its governmental and regulatory requirements. In the event that a Party intends to disclose any of the Confidential Information to its regulatory authorities including, but not limited to, the Guam Public Utilities Commission, the FERC, or any employee, staff member, consultant, and/or agent of the foregoing, it shall give the other Party prompt prior written Notice of its intention so that the other Party may seek a protective order or other appropriate remedy. In addition, each Party specifically agrees not to use the other Party's name in connection with this Agreement or the Facility in any press releases, public meetings or hearings, or other public communications, including any release to any newswire service, without the express written consent of the other Party. The Parties anticipate that at some future time it may be in the best interests of one or both of them to disclose Confidential Information to the media and the Parties anticipate entering into a subsequent agreement that will govern the terms of such disclosure. The Parties expressly agree, however, that unless and until such subsequent agreement is executed between the Parties, the terms of this Agreement shall be binding with respect to such disclosure.

In the event that any Party receiving the Confidential Information becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any of the Confidential Information, the legally compelled Party shall give the other Party providing the Confidential Information prompt prior written Notice of such requirement so that the providing Party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, the providing Party waives compliance with the terms hereof to the extent of the required disclosure.

Each Party acknowledges that the unauthorized disclosure of any Confidential Information may cause irreparable harm and significant injury that may be difficult to ascertain. Each Party therefore agrees that specific performance or injunctive relief, in addition to other legal and equitable relief, are appropriate remedies for any actual or threatened violation or breach of this Agreement, **although neither Party shall be entitled to any special, consequential, indirect or punitive damages as a result of a breach of this Agreement, whether a claim is based in contract, tort or otherwise.** The Parties agree that the respondent in any action for an injunction, specific performance decree or similar relief shall not allege or assert that the initiating Party has an adequate remedy at law

in respect to the relief sought in the proceeding, nor shall the respondent seek the posting of a bond by the Party initiating the action. Under no circumstances will either Party's directors, management, employees, agents or consultants be individually liable for any damages resulting from the disclosure of Confidential Information in violation of the terms of this Agreement.

12.7 Notices.

All notices, requests, statements or payments ("Notices") shall be made as specified on Appendix B attached hereto and incorporated herein by reference. Notices (other than with respect to Scheduling) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. Notices relating to Facility operations and Scheduling, as required pursuant to Appendix H, may be given electronically and shall be deemed effective upon receipt; otherwise, electronic notices shall not be effective unless affirmatively acknowledged in writing (including by reply e-mail) by the receiving Party. A Party may change its addresses by providing Notice of same in accordance herewith.

12.8 Purchase Option.

- (a) Transfer During the Delivery Period. In the event that Seller desires to sell the Facility during the Delivery Period, Seller shall provide prior written Notice of the same to GPA, and agrees to engage in discussions with GPA for the purchase of the Facility by GPA during the exclusivity period described in this Section with GPA if GPA desires to purchase the Facility. Within ninety (90) days following Seller's Notice to GPA of its intent to sell the Facility, GPA may deliver to Seller an indicative purchase price at which it would be willing to purchase the Facility. If GPA does not deliver the indicative purchase price within ninety (90) days of receipt of the Notice, then Seller shall be free to transfer the Facility under any terms and conditions at any time thereafter. If GPA delivers the indicative purchase price within ninety (90) days of receipt of the Notice, then the Parties shall negotiate exclusively for a period of up to sixty (60) days after GPA delivers the indicative purchase price. If no binding agreement is entered into by the Parties during such sixty (60)-day period then Seller shall be free to transfer the Facility to any person on transactions terms, including price, that are better for Seller than GPA's indicative offer, and neither Party shall have any further liability or obligation to the other Party in connection with such sale or as a result of the terminated negotiations. If Seller does not transfer the Facility on such basis within one (1) year following the end of the sixty (60)-day exclusive negotiation period, then the procedure in this paragraph shall apply to any subsequent sale of the Facility during the Term of this Agreement.
- (b) Extension of Delivery Period and Facility Purchase at End of Delivery Period. GPA and Seller may agree to extend the Term of this Agreement on a year-to-year basis up to five (5) years in the aggregate, in which case the Contract Price and terms shall be mutually agreeable to GPA and the Seller. At least one hundred and eighty (180) days prior to the end of the Delivery Period, GPA may provide Notice to Seller that it elects to purchase the Facility at the end of the Delivery Period at a purchase price equal to the higher of (i) 100% of the Appraised Price of the Facility at the end of the Delivery Period and (ii) the sum of (x) the amount necessary to repay any Facility Debt (including any swap or interest rate hedging breakage costs related thereto) in full plus (y) the amount which when applied pursuant to the governing documents for the Seller or any relevant subsidiary or upstream holding company through which the tax equity invests in the Facility is sufficient to repay any Facility Debt, including back-leverage financing and including any swap or interest rate hedging breakage costs related thereto, and for the tax equity investors to recover (to the extent not previously recovered) the higher of (1) their investment balance together with their targeted return or (2) the amount necessary to avoid a loss under US GAAP. If GPA fails to send such Notice of purchase then this Agreement shall terminate in accordance with the terms hereof. If GPA provides such a Notice of the purchase, Seller and GPA shall exercise Commercially Reasonable Efforts to consummate the purchase within thirty (30) days of the end of the Delivery Period, and at the end of such time period the purchase option shall expire. The documentation for the sale shall be mutually

agreeable to the Parties. Any such sale will be on an “as is” basis, without the giving of any representations or warranties, except as to (i) each party’s organization, power and authority; (ii) good standing; (iii) Seller’s ownership of the Facility to be sold in such sale, and the existing liens and encumbrances thereon; (iii) the instrument(s) conveying the Facility to GPA constitutes the legal, valid, and binding obligation of Seller, enforceable against Seller, in accordance with its terms; (iv) such conveyance will not violate any contract or legal requirement applicable to Seller; and (v) subject to applicable regulatory approvals, no consents, approvals, or filings are required to be obtained or made by Seller to convey the Facility to GPA other than those that have previously been obtained or made and are in full force and effect as of the date of the conveyance.

12.9 Alternative Dispute Resolution.

All disputes arising under this Agreement are subject to the provisions of this Section 12.9.

- (a) Mediation. In the event of any dispute or Claim between the Parties arising out of or relating to this Agreement, or the breach thereof, and if the dispute or Claim cannot be settled through negotiation, the Parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration in accordance with Section 12.9(b) hereof; provided, however, that, during the pendency of any such mediation, (1) neither Party shall do anything to alter the status quo, and (2) either Party shall be entitled to seek interim, conservatory or provisional relief from any court or tribunal of competent jurisdiction in order to protect its rights. In the event of any dispute or Claim between the Parties arising out of or relating to this Agreement, or the breach thereof, consistent with the previous sentence, either Party may submit the matter to mediation in accordance with the Commercial Mediation Procedures of the American Arbitration Association. Within fourteen (14) days of such submission, the Parties shall attempt in good faith to mutually agree on the appointment of a mediator. If no such agreement is reached within fourteen (14) days of the submission of the dispute to mediation, then, unless otherwise agreed by the Parties, the American Arbitration Association shall appoint the mediator as promptly as possible in accordance with its Commercial Mediation Procedures or other rules it has adopted for this purpose. The Parties and the mediator shall schedule and complete the mediation within sixty (60) days from the date that the mediator is appointed. In the event that the mediation is not completed by such time, either Party shall be entitled to terminate the mediation and pursue arbitration of any outstanding dispute or Claim in accordance with subsection (b) of this Section 12.9.

- (b) Arbitration. Subject to Section 12.9(a), any disputes or Claims between the Parties and/or their respective representatives arising out of or relating to this Agreement, or the breach thereof, shall be submitted to binding arbitration, whether such disputes or Claims are in contract, tort or otherwise. The arbitration shall be conducted in accordance with the Federal Arbitration Act (9 U.S.C. Section 1, *et seq.*) and the then prevailing Commercial Arbitration Rules of the American Arbitration Association. The validity, construction, and interpretation of this Agreement to arbitrate and all procedural aspects of the arbitration conducted pursuant hereto shall be decided by the arbitrator(s). Submission shall be made upon the request of either Party. Within twenty (20) calendar days of the receipt by the respondent of service of the Notice of arbitration, the Parties shall select one (1) arbitrator by mutual consent. If the Parties are unable to agree upon a single arbitrator, there shall be three (3) arbitrators. Specifically, in the event the Parties cannot agree upon a single arbitrator, both the claimant and the respondent shall appoint one (1) arbitrator within ten (10) calendar days after written Notice by either Party that three (3) arbitrators shall be necessary. The two (2) arbitrators so appointed shall then select the third arbitrator within twenty (20) calendar days, who shall be the chairperson, of the tribunal. The chairperson shall be a person who has over eight (8) years of experience in energy-related transactions, and none of the arbitrators shall have been previously employed by either Party or have any direct interest in either Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by both Parties. It is agreed that the seat of the arbitration shall be Honolulu, Hawaii and that the arbitration proceeding shall be conducted in Honolulu, Hawaii, or another neutral location mutually agreed to by the Parties, however, the seat of the arbitration shall remain Honolulu, Hawaii. It is further agreed that the arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. The compensation and any costs and expenses of the arbitrators shall be borne equally by the Parties. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction. The Parties agree that all information exchanged as a result of any proceeding as described herein shall be deemed Confidential Information.
- (c) Judicial Relief. Either Party may petition a court of appropriate jurisdiction, as described in Section 12.11, for non-monetary interim or provisional relief relating to any dispute or claim of breach arising out of or relating to this Agreement in order to prevent undue hardship relating to any such claimed breach pending the appointment of an arbitration panel as described in this Section 12.9.

12.10 Governing Law.

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF GUAM, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

12.11 Jurisdiction and Costs.

Subject to and without prejudice to the mandatory arbitration provision set out in Section 12.9 hereof, each Party hereby consents to the exclusive jurisdiction of the United States federal courts sitting in Guam for any action or proceeding to enforce the foregoing agreement to arbitrate, or ancillary to such arbitration proceedings, or to confirm or set aside any award rendered in such proceeding. Both Parties waive any right to trial by jury in any such action. described in this Section 12.11. In the event such judicial proceedings are instituted by either Party, the prevailing Party shall be entitled to award of its costs and reasonable attorneys' fees incurred in connection with such proceedings.

12.12 Financial Accounting Standards.

Under the latest interpretations of the Financial Accounting Standards Board's Interpretation No. 46(R) (FIN No. 46(R)), "Consolidation of Variable Interest Entities," GPA may be required to consolidate a seller's entity for which GPA has entered into a long-term power purchase agreement. Seller agrees to provide all information needed and in Seller's possession in order for GPA to determine whether or not Seller or any special purpose entity which

owns the Seller's Facility must be consolidated by GPA under FIN No. 46(R) upon request from GPA. If it is determined that GPA needs to consolidate Seller or such special purpose entity, Seller agrees to provide all information in its possession that is needed to comply with the consolidation requirements of FIN 46(R) in a timely manner every calendar quarter during the Term upon request from GPA. If GPA is required to consolidate Seller or the special purpose entity that owns the Seller's Facility in its financial statements, Seller agrees to provide access to any needed records in its possession and personnel, as requested by GPA, so GPA's independent auditor, Deloitte & Touche LLP, can conduct financial statement audits in accordance with generally accepted auditing standards, as well as internal control audits in accordance with Section 404 of the Sarbanes-Oxley Act of 2002.

12.13 Forward Contract.

The Parties intend that in any relevant proceedings, each be regarded as a forward contract merchant in respect of this Agreement and that the Transaction and this Agreement be a forwards contract for purposes of the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq., as amended from time to time, and the Puerto Rico Oversight, Management and Economic Stability Act, including Title III thereof.

12.14 General.

No delay of a Party in the exercise of, or the failure to exercise, any rights under this Agreement shall operate as a waiver of such rights, a waiver of any other rights under this Agreement or a release of the other Party from any of its obligations under this Agreement. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if such an event occurs, the Parties shall use their Commercially Reasonable Efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. The indemnity provisions of this Agreement shall survive the termination of this Agreement for the period of the applicable statute of limitations. The audit provisions of this Agreement shall survive the termination of this Agreement for a period of twelve (12) Months. This Agreement shall be binding on each Party's successors and permitted assigns.

12.15 Entire Agreement; Amendment.

This Agreement, together with any appendices, schedules, and any written supplements hereto constitutes the entire agreement between the Parties relating to the subject matter hereof. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties.

12.16 Appendices.

The following Appendices are included in this Agreement for all purposes:

<u>Appendix A</u>	Contract Price and Minimum Production
<u>Appendix B</u>	Notice Addresses
<u>Appendix C</u>	Energy Storage System and Performance Criteria
<u>Appendix D</u>	Independent Engineers
<u>Appendix E</u>	Permits
<u>Appendix F</u>	Form of Letter of Credit
<u>Appendix G</u>	Calculation of Curtailed Amount Due to Dispatch Down
<u>Appendix H</u>	Scheduling and Coordination
<u>Appendix I</u>	Base Conditions and Facility Test Protocol
<u>Appendix J</u>	Interconnection Agreement

12.17 Special Provisions.

It is the policy of GPA not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Seller certifies and warrants it will comply with this policy. No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in GPA's contracted programs or activities, on the grounds of such person's handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Guam law; nor shall any person be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in performance of contracts with GPA or in the employment practices of GPA's contractors. Accordingly, all persons entering into contracts with GPA shall, upon request, be required to show proof of such nondiscrimination and to post notices of non-discrimination in conspicuous places that are available to all employees and applicants.

Seller hereby represents that Seller has not been retained or retained any persons to solicit or secure a contract from GPA upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Breach of the provisions of this section is, in addition to a breach of this Agreement, a breach of ethical standards, which may result in civil or criminal sanction, debarment or suspension from being a contractor or subcontractor under any other contract with GPA and any Government Authority.

It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefor. It shall be breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontractor or order. Breach of the provisions of this paragraph is, in addition to a breach of this Agreement, a breach of ethical standards, which may result in civil or criminal sanction, debarment or suspension from being a contractor or subcontractor under any other contract with GPA and any Governmental Authority.

Seller warrants that no person providing services on behalf of Seller or in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated, or convicted of an offense defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated regardless of the jurisdiction in which the conviction was obtained, shall provide services on behalf of Seller relative to this Agreement. If any person employed by Seller and providing services under this Agreement is convicted subsequent to the date of this Agreement, then Seller warrants that it will notify GPA of the conviction within twenty-four hours of being made aware of the conviction, and will immediately remove such convicted person from providing services under this Agreement. If Seller is found to be in violation of any of the provisions of this paragraph, then GPA shall give Notice to Seller to take corrective action. Seller shall take corrective action within twenty-four hours of Notice from GPA, and Seller shall notify GPA when action has been taken. If Seller fails to take corrective steps within twenty- four hours of Notice from GPA, then GPA in its sole discretion may suspend this Agreement temporarily upon prior written Notice to Seller until the individual in question is removed from service to GPA.

12.18 Waiver of Immunity.

To the extent that GPA may in any jurisdiction claim for itself or its assets or revenues immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process, and to the extent that in any such jurisdiction there may be attributed to GPA or its assets or revenues such immunity (whether or not claimed), GPA agrees not to claim and irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.

IN WITNESS THEREOF, the Parties hereto made and executed this Agreement, signed by their duly authorized officers or individuals, as of the dates listed below.

GUAM POWER AUTHORITY
GPA or Buyer

(abbreviation if any) **or Seller**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

[Signature Page to Renewable Energy Purchase Agreement]

ARTICLE THIRTEEN: APPENDICES

APPENDIX A**CONTRACT PRICE, MINIMUM PRODUCTION
AND GUARANTEED OUTPUT**

Contract Year	Annual Contract Price (\$/MWh)	Estimated Annual Production (MWh) (= Minimum Production)	90 % of Minimum Production (MWh)
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			

APPENDIX B

NOTICE ADDRESSES

APPENDIX C

ENERGY STORAGE SYSTEM AND PERFORMANCE CRITERIA

As part of the Facility, Seller shall install the Energy Storage System for the purpose of meeting GPA's requirements set forth in Section 4 and this Appendix C.

1.1 The Energy Storage System shall be comprised of:

____MW/____MWh Energy Storage System which may be dedicated to meet GPA's requirements for energy shifting and rapid reserve as described in Section 4.

1.2 Voltage and Frequency Ride-through

The Facility shall meet the voltage and frequency ride-through requirements shown in Table 1 below. Voltage and frequency measurements in the table are to be taken at the Delivery Point.

Table 1 – Voltage and Frequency Ride-through Settings

	Settings at Point of Interconnection (34.5 kV) (V is magnitude in per unit) (F is frequency in Hz) (T is time in seconds)	
	Setpoint	Trip Time
Under-voltage	$V < 0.88$	$T > 2.00$
Normal voltage	$0.88 < V < 1.10$	no trip allowed
Over-voltage	$1.10 < V < 1.20$	$T > 2.00$
Over-voltage	$1.20 < V$	$T > 0.16$
Under-frequency	$F < 57.0$	$T > 0.16$
Normal frequency	$57.0 < F < 63.0$	no trip allowed
Over-frequency	$63.0 < F$	$T > 0.16$

1.3 Performance

1.3.1 Seller's output shall not produce undesirable effects on the GPA grid, such as issues with outages, frequency or voltage. GPA shall notify Seller of such undesirable effects and shall have the right to order Seller to curtail deliveries of Renewable Energy from the Project to the Delivery Point until Seller has corrected the issue. GPA will not be required to pay for any curtailments during this period.

1.3.2 Evaluation of Performance Verification

During the Delivery Period, Seller shall submit a performance verification report of the Seller's output and Energy Storage System for GPA's review on a monthly basis. Seller shall also provide annual data storage in the Facility database and GPA SCADA.

APPENDIX D

INDEPENDENT ENGINEER

APPENDIX E

PERMITS

APPENDIX F

FORM OF LETTER OF CREDIT

(Provided is sample which may be replaced by Bank / Financial Institution Form)

(Bank or Financial Institution)

_____, 201

Irrevocable Standby Letter of Credit No. __

Beneficiary:

Guam Power Authority

P.O. Box 2977

Guam 96932-2977

Attn:

Applicant:

Dear _____:

We hereby establish for the account of (*Company Name*) ("Applicant") our irrevocable standby letter of credit in your favor for an amount of USD \$[_____] ([_____] United States Dollars). Applicant has advised us that this letter of credit is issued in connection with the Renewable Energy Purchase Agreement, dated as of_____, 2017, by and between the Applicant, and Guam Power Authority (the "Beneficiary"). This letter of credit shall become effective immediately on the date hereof and shall expire on _____[*the date that is XX days after the date first set forth above*] (such date, or such later date(s) as determined by Applicant in accordance with the next succeeding sentence, the "Expiration Date"). The Expiration Date can be extended on one or more occasions by written notice to us from the Applicant, provided that such written notice is received at least 10 days prior to the Expiration Date. This letter of credit is subject to the following:

1. Funds under this letter of credit shall be made available to Beneficiary against its draft drawn on us in the form of Annex 1 hereto, accompanied by (a) a certificate in the form of Annex 2 hereto, appropriately completed and signed by an authorized officer of Beneficiary, dated the date of presentation, and (b) the original of the letter of credit (the "Accompanying Documents") and presented at our office located at (*Bank/Financial Institution Address*) attention_____. (or at any other office which may be designated by us by written notice delivered to you). A presentation under this letter of credit may be made only on a day, and during hours, in which such office is open for business (a "Business Day"). If we receive your draft and the Accompanying Documents at such office on any Business Day, all in strict conformity with the terms and conditions of this letter of credit, we will honor the same by making payment in accordance with your payment instructions on the third succeeding Business Day after presentation.

2. This letter of credit shall terminate upon the earliest to occur of (i) our receipt of a notice in the form of Annex 3 hereto signed by an authorized officer of Beneficiary, accompanied by this letter of credit for cancellation, or (ii) our close of business at our aforesaid office on the Expiration Date, or if the Expiration Date is not a Business Day, then on the succeeding Business Day. This letter of credit shall be surrendered to us by you upon the earlier of presentation or expiration.

3. This letter of credit is issued and subject to the International Standby Practices 1998 (ISP98) International Chamber of Commerce Publication No. 590, and as to matters not addressed by ISP98, shall be governed by and construed in accordance with the laws of the State of New York and application of U.S. Federal Law.

4. This letter of credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except for Annexes 1, 2 and 3 hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as otherwise provided in this paragraph 4.

5. Communications with respect to this letter of credit shall be in writing and shall be addressed to us at the address referred to in paragraph 1 above, and shall specifically refer to this letter of credit no.

_____.

Very truly yours,

Authorized signature

(Bank or Financial Institution)

under LETTER OF CREDIT No. _____

To:

(*Bank or Financial Institution*)

(*Bank/Financial Institution Address*)

Attn: _____

[*Month, Day, Year*]

On Sight

Pay to Guam Power Authority U.S. \$_____ [not to exceed amount available to be drawn]

Wire to:

Bank's Name: Bank of Guam

Bank's Location: 111 Chalan Santo Papa St., Hagatna, Guam

96910 Bank's Mailing Address: P.O. Box BW, Hagatna, Guam

96932 Account Name: Guam Power Authority Revenue Fund

Account Acct. No.: (to be provided)

Routing No.: (to be provided)

For value received and charge to account of Letter of Credit No. __ of (*Company Name*)

GUAM POWER AUTHORITY

By: _____

Name: _____

Title: _____

Drawing under Letter of Credit No. _____

Date: _____

To:

(*Bank or Financial Institution*)

(*Bank/Financial Institution Address*)

Attn: _____

The undersigned, a duly authorized officer of the Guam Power Authority, ("Beneficiary"), hereby certifies on behalf of Beneficiary to (*Bank or Financial Institution*) and to (*Company Name*) (the "Applicant") with reference to irrevocable standby Letter of Credit No.____(The "Letter of Credit") issued for the account of (*Company Name*) ("Applicant"), that:

- 1) pursuant to the Renewable Energy Purchase Agreement, dated as of_____, 20__, by and between Applicant and Beneficiary and as of the date hereof, Beneficiary is entitled to draw under the Letter of Credit;
- 2) by presenting this certificate and the accompanying sight draft, Beneficiary is requesting that payment in the amount of \$_____, as specified on said draft, be made under the Letter of Credit by wire transfer or deposit of funds into the account specified on said draft; and
- 3) the amount specified on the sight draft accompanying this certificate does not exceed the remaining amount to which Beneficiary is entitled to draft under said Renewable Energy Purchase Agreement.

In witness whereof, Beneficiary has caused this certificate to be duly executed and delivered by its duly authorized officer as of the date and year written below.

Date: _____

GUAM POWER AUTHORITY

By:_____

Name:_____

Title: _____

Re: Letter of Credit No. _____ issued for the account of (Company Name)

Ladies and Gentlemen:

We refer to your above-mentioned irrevocable standby Letter of Credit (the "Letter of Credit").
The undersigned hereby surrenders the Letter of Credit to you for cancellation as of the date hereof.
No payment is demanded of you under this Letter of Credit in connection with this surrender.

Very truly yours,

GUAM POWER
AUTHORITY

By: _____

Name: _____

Title: _____

APPENDIX G

CALCULATION OF CURTAILED AMOUNT DUE TO GPA DISPATCH DOWN

Buyer shall pay Seller, on the date payment would otherwise be due in respect of the day in which any curtailment is initiated by GPA for reasons other than Force Majeure or Seller Event of Default (“Dispatch Down”), an amount equal to the Contract Price times the amount of Renewable Energy that Seller could reasonably have delivered to Buyer but for such Dispatch Down, pursuant to the limitations provided in Appendix H, Section 1.2, which allow GPA to curtail energy delivered from Seller 2% of the Guaranteed Output in each Contract Year. The determination of the curtailed amount associated with any Dispatch Down shall be calculated as follows:

- 1) Identification of weather conditions for the period of DispatchDown

For any period the Facility was Dispatched Down, Seller shall document the Weather Data associated therewith. (“Weather Data” means solar irradiation, wind speed, and ambient temperatures.)

- 2) Curtailed amount calculation

- a. Seller shall use PVSyst energy simulation software or other software as agreed by the Parties to generate hypothetical generation amounts for the Dispatch Down period (curtailed amount MWh) by utilizing the Weather Data.
- b. In addition to “Annual Facility Test” (as described in Section 4.9 of this Agreement), GPA shall be entitled to check the accuracy of the equipment associated with the Weather Data once in each Contract Year as agreed with Seller.

APPENDIX H

SCHEDULING AND COORDINATION PROCEDURES

The Parties acknowledge that as of the Effective Date GPA has not yet established protocols for scheduling (firm or intermittent) power to permit solar energy generating projects to participate in GPA's scheduling process. As soon as practicable, in consultation with Seller (and after taking into account and accommodating Seller's reasonable comments), GPA shall establish such protocols. As soon as practicable after such protocols have been established, become effective and been provided to Seller, but not more than ninety (90) days thereafter, Seller shall use commercially reasonable efforts to cause the Project to become certified as an available resource, including negotiating and executing documents to become an available resource in Guam. Following certification and whenever applicable, Seller shall use commercially reasonable efforts to comply with all additional reasonable protocols issued by GPA relating to available resources during the Delivery Period, and GPA shall consult with Seller (and take into account and accommodate Seller's reasonable comments) in connection with the preparation of any such additional protocols. Seller shall not be required to incur additional costs to comply with such future protocols or to become an available resource under future requirements to be established by GPA.

1.1 General

- (a) **Notices.** Seller shall submit to GPA notices and updates required under this Agreement regarding the Project's status, including, but not limited to, outage requests, Forced Outages and Forced Outage reports. If a web based system is not available, Seller shall promptly submit such information to GPA (in order of preference) telephonically, by electronic mail, or facsimile transmission to the personnel designated to receive such information. Seller shall also provide additional reporting requirements specified by the GPA Power System Control Center.
- (b) **GPA Settlements.** GPA shall be responsible for all settlement functions within GPA related to the Project.
- (c) **Resource Data Template.** Seller shall provide the data to the GPA that is required for GPA's resource data template (or successor data system) for the Project consistent with this Agreement. Neither Party shall change the template for such data without the other Party's prior written consent.
- (d) **Annual Delivery Schedules.** No later than forty-five (45) days before (A) the first day of the first Contract Year and (B) the beginning of each calendar year for every subsequent Contract Year during the Delivery Period, Seller shall provide a non-binding forecast of each month's average-day expected Actual Renewable Energy for the following calendar year.
- (e) **Monthly Delivery Schedules.** Ten (10) Business Days before the beginning of each month during the Delivery Period, Seller shall provide a non-binding forecast of each day's average expected Actual Renewable Energy for the following month ("Monthly Delivery Forecast").
- (f) **Daily Delivery Schedules.** By 5:30 AM Guam Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall provide GPA with a non-binding forecast of the Project's available energy (a "Day-Ahead Forecast"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include Schedules for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's estimate of the Project's available energy. Seller may not change such Schedule past the deadlines provided in this section except in the event of a Forced Outage or Schedule change imposed by GPA, in which case Seller shall promptly provide GPA

with a copy of any and all updates to such Schedule indicating changes from the then-current Schedule. These notices and changes to the Schedules shall be sent to GPA's on-duty scheduling coordinator. If Seller fails to provide GPA with a Day-Ahead Forecast as required herein, then for such unscheduled delivery period only GPA shall rely on the delivery Schedule provided in the Monthly Delivery Forecast or GPA's best estimate based on information reasonably available to GPA and Seller shall be liable for Scheduling and delivery based on such Monthly Delivery Forecast or GPA's best estimate.

- (g) Hourly Delivery Schedules. Notwithstanding anything to the contrary herein, in the event Seller makes a change to its Schedule on the actual date of delivery for any reason, including Forced Outages (other than a scheduling change imposed by GPA), that results in a change to its deliveries (whether in part or in whole), Seller shall notify GPA immediately by calling GPA's on-duty scheduling coordinator. Seller shall notify GPA of Forced Outages in accordance with this Agreement. Seller shall keep GPA reasonably informed of any developments that are reasonably expected to affect either the duration of the outage or the availability of the Project during or after the end of the outage.

1.2 DispatchDown/Curtailment.

- (a) GPA shall have the right to order Seller to curtail deliveries of Renewable Energy from the Project to the Delivery Point pursuant to a Notice of a Dispatch Down delivered to Seller, provided that the value attributable to any Renewable Energy in an aggregated quantity of more than 2% of the Guaranteed Output for any Contract Year which is not delivered during such curtailment periods, whether for transmission unavailability, operational dispatch or pre-set ramping parameters or otherwise, shall be reimbursed to Seller as provided below.
- (b) Seller shall have the right in its discretion to make up any curtailed quantities, as calculated in accordance with Appendix G, of Renewable Energy as a result of a Dispatch Down ("Dispatch Down Makeup Production"), for which it is not reimbursed pursuant to this Appendix H, in the first and any subsequent Contract Year in which at least the Minimum Production is delivered and to extend the Term to the extent necessary, but not to exceed six (6) months, to make up any curtailed quantities. The Contract Price for the Contract Year in which the make-up occurs shall apply to Dispatch Down Makeup Production. Production in excess of Guaranteed Output for any Contract Year as set forth in the fifth column of Appendix A will first be applied to any previous years' Deficiency Amounts, then to Dispatch Down Makeup Production, then treated under this Agreement as production in excess of Guaranteed Output.
- (c) GPA shall provide to Seller all technical information necessary to justify and support each Dispatch Down. Seller agrees to reduce the Project's Renewable Energy as set forth in such a Notice of Dispatch Down that meets the requirements set forth herein.
- (d) For each MWh of Renewable Energy from the Facility curtailed by GPA in Contract period prior to January 1, 2022. GPA shall pay Seller, on the date payment would otherwise be due in respect of the month in which any such curtailment occurred in excess of low load curtailment requirements discussed in section 4.17 and to be defined in the Interconnection Agreement, an amount equal to the product of the Contract Price times the amount of Renewable Energy that Seller could reasonably have delivered to GPA but for such curtailment ("Lost Revenue"). For each MWh of Renewable Energy from the Facility curtailed by GPA until the end of this

Agreement, GPA shall pay Seller, on the date payment would otherwise be due in respect of the month in which any such curtailment occurred, an amount equal to the product of the Contract Price times the amount of Renewable Energy that Seller could reasonably have delivered to GPA but for such curtailment (“Lost Revenue”); provided that no Lost Revenue shall be due and payable from GPA to Seller for curtailments of up to 2% of the Guaranteed Output.

- (e) For purposes of clarification, no curtailment by GPA, as a result of a warranted failure of or defect in the interconnection facilities transferred by Seller to GPA pursuant to the Interconnection Agreement, during the one-year warranty term thereof, shall count against the % curtailment threshold set forth above. During the one-year warranty term of the interconnection facilities transferred, any curtailment by GPA which results from such failure of or defect in the interconnection facilities transferred will not be eligible for reimbursement by GPA to Seller as Lost Revenue payments, or Dispatch Down Makeup Production in future Contract Years.

1.3 Outage Notification.

- (a) Planned Outages. Seller shall schedule Planned Outages in accordance with Good Utility Practices and with the prior written consent of GPA, which consent may not be unreasonably withheld, conditioned or delayed. Nonetheless, the Parties acknowledge that in all circumstances, Good Utility Practices shall dictate when Planned Outages should occur. Seller shall notify GPA of Seller’s proposed Planned Outage schedule for the Project for the following calendar year by submitting a written Planned Outage schedule no later than October 1st of each year during the Delivery Period. The Planned Outage schedule is subject to GPA’s concurrence, which concurrence may not be unreasonably withheld, conditioned or delayed. GPA shall promptly respond with its approval or with reasonable modifications to the Planned Outage schedule and Seller shall use its commercially reasonable efforts in accordance with Good Utility Practices to accommodate GPA’s requested modifications. Notwithstanding the submission of the Planned Outage schedule described above, Seller shall also submit a completed form of outage notification to GPA no later than fourteen (14) days prior to each Planned Outage and reasonably appropriate outage information or requests to GPA. Seller shall contact GPA with any requested changes to the Planned Outage schedule if Seller believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Good Utility Practices. Seller shall not change its Planned Outage schedule without GPA’s concurrence, not to be unreasonably withheld, conditioned or delayed.
- (b) Forced Outages. Within two hours of any Forced Outage Seller shall submit a completed form of outage notification to GPA in accordance with the instructions shown on the agreed form and shall submit outage information to GPA. Seller shall not substitute Renewable Energy from any other source for the output of the Project during a Forced Outage.
- (c) Coordination with GPA. GPA shall cooperate with Seller in arranging and coordinating all Project outages.

1.4 Operations Logs and Access Rights.

- (a) Operations Logs. Seller shall maintain a log of all material operations and maintenance information on a daily basis. Such log shall include, but not be limited to, information on power production, efficiency, availability, maintenance performed, outages, results of inspections, manufacturer recommended services, replacements, and control settings or adjustments of equipment and protective devices. Seller shall

maintain this information for at least two (2) years and shall provide this information electronically to GPA within five days of GPA's request.

- (b) Access Rights. GPA, its authorized agents, employees and inspectors shall have the right of ingress to and egress from the Project during normal business hours upon reasonable advance notice and for any purposes reasonably connected with this Agreement and in accordance with Section 12.4 and the other applicable requirements of this Agreement.

APPENDIX I

BASE CONDITIONS AND FACILITY TEST PROTOCOL

[GPA and Seller shall complete a mutually agreed process for commissioning and performance testing prior to COD and to any curtailment claims]

1. Notice of Test plan to GPA
2. Test Plan

The test equation between real PV plant output and PVSyst is below:

$$PV_Output = (PV_Diff)(PVSyst_Output)$$
 - (1) Collect the weather data
 - (2) Base on collected data, generate thePVSyst
 - (3) Compare the PVSyst and real plant output
 - (4) Update the PV_Diffparameter
3. This PV_Diff Parameter shall be used for identification.
4. Status data of main equipment such as ESS PCS, Battery PV inverters (ex: On/Off status) shall be collected by SCADA and _____provide those data.
5. Detail testing plan and period for all the equipment including the procedure above shall be discussed and agreed with both parties at least before a month of COD and the parties shall execute the test.

APPENDIX J

**INTERCONNECTION AGREEMENT
(TO BE PROVIDED UPON EXECUTION)**

INVITATION FOR MULTI-STEP BID

No. GPA-012-23

RENEWABLE ENERGY RESOURCE ACQUISITION

PHASE IV



Volume IV

Bid Scoring Mechanism

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1. OVERVIEW

GPA will use the Bid Scoring Procedures described in this volume of the Invitation for Bid (IFB) to qualify Bidders for the participation in the final bid stage. The Bid Scoring Procedures provide the Bidders the opportunity to highlight their qualifications to bid in terms of their resources, experience in developing renewable resources, financial conditions and creditworthiness qualifications, risk exposure, pricing structure, and ability to comply with bidding “Threshold Requirements”.

The IFB bid evaluation shall be based on such specifications and based on the relative ranking of each Bidder’s qualifications, financial information, and the structure of their bid.

2. BID SCORING WORKSHEETS

Bidders shall complete the following worksheets in the **Qualitative Scoring Workbook.xls** for Step 1 of this multi-step IFB.

- **Part 1- Qualitative Proposal Support References**
- **Part 2 – Technical Data**

Bidders shall complete the **Priced Proposal** worksheet in the **Priced Proposal Workbook.xls** for Step 2 of this multi-step IFB.

3. STEP 1 – QUALITATIVE BID SCORING

The qualitative bid scoring is designed to assess the quality of the Bidder’s resources, experience, credit worthiness, maturity of resource technology, and control of proposed site. Each GPA evaluator shall score each Bidder separately under a point system to determine the acceptability of each bid. The majority of the determinations of GPA evaluators shall prevail in the decision to Qualify or not Qualify a Bidder for Step 2.

3.1 Technical Qualification Proposal Qualitative Bid Scoring Procedure

The instructions for filling out the Qualitative Scoring Workbook are listed in the **Workbook Instructions** tab in the Workbook. The Bidder must complete all entries in the **Part 1- Qual Support References** and **Part 2 – Technical Data** tabs of the Workbook.

GPA may elect to have up to seven (7) evaluators for this IFB. Evaluators will be employees of GPA.

Each GPA evaluator will score Bidders’ responses in the “**Part 1- Qual Support References**” and the “**Part 2 – Technical Data**” Worksheet Tabs using the following steps in filling out the “**Qual Eval Scoresheet**” tab:

- Review each Bidder’s response to each line item;
- Assign a relative score to each Bidder’s response to each line item;
- Determine each Bidder’s weighted average raw score using pre-specified weights for each

GUAM POWER AUTHORITY RENEWABLE ENERGY RESOURCE ACQUISITION – PHASE IV
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question.

The maximum Total Qualitative Score is **1,865 points**.

Each GPA evaluator will analyze the contents of the bids and categorize the bids as:

- a. Acceptable—those Technical Qualification Proposals receiving a score at or above 80% of the total possible score of 1,865 points (those receiving 1,492 points).
- b. Potentially Acceptable—those Technical Qualification Proposals receiving a score of less than 80% but at least 70% of the total possible score of 1,865 points (those receiving at least 1,306 points)
- c. Unacceptable—those Technical Qualification Proposals receiving a score of less than 70% of the total possible score of 1,865 points (those receiving less than 1,306 points)

A rating of Potentially Acceptable means the GPA evaluator has determined this Bidder has a reasonable possibility of making its submittal acceptable. A percent score of less than 70% indicates that a GPA evaluator has determined that the Bidder has not supplied sufficient evidence of qualifications and should not be allowed to participate in Step 2.

After each GPA evaluator has completed the evaluation of Technical Qualification Proposals, GPA shall complete the Table 1 below. The Procurement Officer will enter for each GPA evaluator and Bidder one and only one of the following in the appropriate table cell below:

- Acceptable
- Potentially Acceptable
- Unacceptable

Table 1. Final Evaluation of Bidder Qualification

	BIDDER 1	BIDDER 2	BIDDER 3	BIDDER 4	BIDDER 5	BIDDER 6
TECHNOLOGY:						
EVALUATOR						
1						
2						
3						
4						
5						
Majority Result:						

If the majority of the GPA evaluators rate the Bidder as Acceptable, that Bidder is determined to be Qualified and will be allowed to participate in Step 2.

The Procurement Officer may initiate Step Two if there are sufficient acceptable Technical Qualification Proposals to assure effective price competition in the second phase without technical discussions. Sufficient acceptable Technical Qualification Proposals shall include variety of

resource technologies in order to meet GPA’s generation diversification goals.

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 who are rated by a majority of the GPA evaluators as Acceptable or Potentially Acceptable. During the course of such discussions, the Procurement officer shall not disclose any information derived from one Technical Qualification Proposals to any other Bidders. Once discussions are begun, any Bidder who has not been notified that it’s 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.

Bidders who are rated by the majority of the GPA evaluators as Unacceptable are determined to be not qualified and will not be allowed to participate in Step 2.

The Procurement Officer shall record in writing the basis for finding a Bidder Not Qualified and make it part of the procurement file.

3.2 Qualitative Scoring

Table 2 identifies the factors that will determine which of the Bidders meet the qualifications to participate in Step 2, Price Evaluation, in this multi-step bid. Evaluators will score each bid by criteria category sub-factors listed in this table. The Evaluator scores will be summed by category and weighted to produce a weighted score. The weighted scores will be totaled to produce a total score which will be the final score used to determine “Acceptable”, “Potentially Acceptable”, and “Unacceptable” bids as defined in previous section.

Descriptions of the scoring criteria sub-factors can be found in Volume II.

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Table 2 - Qualitative Scoring

Invitation for Bid: GPA-0XX-23 Renewable Energy Resource Acquisition for the Guam Power Authority PART 3 - QUAL EVAL SCORESHEET					
Bidder's Name: Bidder's No.: <<< BIDDER'S BID NO >>>				Date:	
EVALUATION FACTORS	Raw Score Weight	MAX Possible Score	Maximum Weighted Possible Score	BID EVALUATION	
				RAW SCORE	WEIGHTED SCORE
A. PROJECT DEVELOPMENT	20	26	520	0	
A1. Method and status of project financing (3)		3			
A2. Level of site control by developer (6)		6			
A3. Project team experience (5)		5			
A4. Project Schedule & Commercial Operation Date (4)		4			
A5. Status of equipment supply and EPC agreements (3)		3			
A6. Bidder concurrence to the draft Purchase Power Agreement (5)		5			
B. PHYSICAL PROJECT CHARACTERISTICS	20	20	400	0	
B1. Operating Profile (5)		5			
B2. Point of delivery (5)		5			
B3. Risk that the resource will not perform as expected (5)		5			
B4. Project life and extension options. (5)		5			
C. POWER PRODUCT CHARACTERISTICS	25	12	300	0	
C1. Guaranteed Annual MWH (3)		3			
C2. Dispatchability (3) - Proposals not capable of energy shifting total daily solar generated energy shall be disqualified.		3			
C3. Product flexibility (3)		3			
C4. Contract Term (3)		3			
D. CREDIT EVALUATION	20	21	420	0	
D1. Debt and equity ratings (3)		3			
D2. Performance assurance (3)		3			
D3. Financial ratio analysis (3)		3			
D4. Default risk (3)		3			
D5. Credit concentration and liquidity effect (3)		3			
D6. Enforceability of contractual credit terms (3)		3			
D7. Bidder revisions to contract templates that may affect credit requirements (3)		3			
E. Environmental Permits and Impacts	15	15	225	0	
E1. Permits (5)		5			
E2. Site Environmental Assessment (10)		10			
TOTALS	100	94	1865	0	
EVALUATION RATING:					
ACCEPTABLE - Scores Greater Than or Equal to:				1492	
POTENTIALLY ACCEPTABLE - Less than Acceptable but Greater Than or Equal to:				1306	
UNACCEPTABLE - Scores are less than:				1306	

4. STEP 2 – PRICE PROPOSAL EVALUATION

The price evaluation will be based on the Annual Fixed Pricing (\$/MWh) for the guaranteed renewable energy delivered for the first contract year. Prices shall escalate at a fixed rate of 0.5% annually for the entire contract period. However, total cost must still fall below GPA's avoided cost, which is the marginal utility cost as determined by GPA's resource planning software. GPA will apply a 1% penalty factor to the prices of bids interconnecting to the 34.5 kV system. Energy degradation shall be limited to 0.7% annually.

The basis of the avoided cost analysis will be the process used in developing GPA's Integrated Resource Plan. GPA's Integrated Resource Plan includes assumptions such as GPA generator performance and efficiencies (heat rate, availability, etc.), fuel forecasts, load forecasts, and GPA generator fixed and variable operating costs. The avoided cost analysis will include an evaluation of the utility's fuel and O&M cost savings expected to be realized by contracting with each Bidder's project using GPA's resource planning software. The evaluation compares the difference in total system costs between the case without Phase IV Renewable Energy Bids and with Bidder proposed costs and energy guarantees singly and in combination. To meet the avoided cost standard, the Bidder's proposed costs and operational guarantees must result in an equal or lower total system cost when included in the GPA generation mix than the GPA system without the proposed renewable energy system. The components of the total cost of power to the utility for each bid will include the cost of the energy to be purchased as a product of the bid price and the contract energy based on the generation profile submitted by the bidder.

GPA will award the contract(s) to the Bidder(s) whose bid meets all of the requirements and yields the lowest Annual Fixed Pricing (\$/MWh) for the guaranteed renewable energy delivered for the first contract year.

Table 3. Priced Proposal Evaluation

	BIDDER 1	BIDDER 2	BIDDER 3	BIDDER 4	BIDDER 5	BIDDER 6
TECHNOLOGY:						
First Year Annual Fixed Pricing (\$/MWh)						

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No. GPA-012-23

RENEWABLE ENERGY RESOURCE ACQUISITION

PHASE IV



Volume V

Required Forms

APPENDIX A

Proposal Checklists

DOCUMENT RECEIPT CHECKLIST

Document Title	Proponent Initial
Volume I Commercial Terms and Conditions	
Volume II Technical Qualification Requirements	
Volume III Purchase Power Agreement (Draft)	
Volume IV Proposal Scoring Mechanism	
Volume V Appendices	
APPENDIX A – Proposal Checklist	
APPENDIX B – Bid Bond Form and Instructions	
APPENDIX C – Ownership & Interest Disclosure Affidavit	
APPENDIX D – Non-Collusion Affidavit	
APPENDIX E – Local Procurement Preference Application	
APPENDIX F – Performance Bond	
APPENDIX G – No Gratuities or Kickbacks Affidavit	
APPENDIX H – Ethical Standards Affidavit	
APPENDIX I – Declaration of Compliance with US DOL’s Wage Determination	
APPENDIX J – Restriction Against Sex Offenders	
APPENDIX K – Electrical System Drawings	
APPENDIX L – Required Interconnection Technical Information	
APPENDIX M – §3118 (Cost or Pricing Data) & §6101 ((9) Liquidated Damages) of the Guam Procurement Regulations	
APPENDIX N – Historical LEAC – Fuel Recovery Rates	
APPENDIX O – Potential Utility Solar Sites	
Qualitative Scoring Workbook.xls	
Priced Proposal Workbook.xls	
Contiguous Amendment Notifications From Amendment No. 1 through _____	
Others:	

TECHNICAL PROPOSAL SUBMITTAL CHECKLIST

ITEM	QUANTITY (ORIGINALS) ¹	QUANTITY (COPIES) ¹	GPA INITIAL
1 Technical Qualification Proposal			
2 Written Responses and Supporting Information to the Questions Raised in the Qualitative Scoring Workbook			
3 Electronic Copy of the Completed Qualitative Scoring Workbook (Reference Worksheet)			
4 Completion of data input into Technical Proposal Form			
5 Electronic Copy of the Completed Price Technical Proposal Workbook			
6 Supplementary Information:			
6.1 Articles of Incorporation and By-Laws ²			
6.2 Ownership & Interest Disclosure Affidavit (Appendix C) ²			
6.3 Audited Financial Information on Bidder and Sub-Contractors			
6.4 Certificate of Good Standing ²			
6.5 Non-collusion Affidavit (Appendix D) ²			
6.6 Client References			
6.7 Bid Bond ²			
6.8 Local Procurement Preference Application (Appendix E)			
6.9 No Gratuities or Kickbacks Affidavit			
6.10 Ethical Standards Affidavit			
6.11 Declaration Re Compliance with US DOL Wage Determination			
6.12 Restriction Against Sex Offenders Employed by Service Providers to Government of Guam from Working on Government of Guam Property			

¹Quantities supplied for each item must comply with minimums established in Volume I of the Invitation for Bid documents.

²Proposal is subject to automatic disqualification if this article is not provided.

APPENDIX B

Bid Bond Form and Instructions



GUAM POWER AUTHORITY

ATURIDÂT ILEKTRESEDÂT GUÅHAN
P.O.BOX 2977 • HAGÂTÑA, GUAM U.S.A. 96932-2977

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

Lourdes A. Leon Guerrero
I Maga 'håga

Joshua F. Tenorio
I Sigundo Maga 'lâhi

BID BOND

NO.: _____

KNOW ALL MEN BY THESE PRESENTS that _____, as

Principal Hereinafter called the Principal, and (Bonding Company), _____
A duly admitted insurer under the laws of the Territory of Guam, as Surety, hereinafter called the Surety are
Held firmly bound unto the Territory of Guam for the sum of _____ Dollars
(\$ _____), for Payment of which sum will and truly to be made, the said Principal and the said
Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly
by these presents.

WHEREAS, the Principal has submitted a bid for (identify project by number and brief description)

NOW, THEREFORE, if the Territory of Guam shall accept the bid of the Principal and the Principal shall
enter into a Contract with the Territory of Guam in accordance with the terms of such bid, and give such bond or
bonds as my be specified in bidding or Contract documents with good and sufficient surety for the faithful
performance of such Contract Documents with good and sufficient surety for the faithful performance of such
Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event
of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the
Territory of Guam the difference not to exceed the penalty hereof between the amounts specified in said bid
and such larger amount for which the Territory of Guam may in good faith contract with another party to perform
work covered by said bid or an appropriate liquidated amount as specified in the Invitation for Bids then this
obligation shall be null and void, otherwise to remain full force and effect.

Signed and sealed this _____ day of _____ 2023.

(PRINCIPAL) (SEAL)

(WITNESS)

(TITLE)

(MAJOR OFFICER OF SURETY)

(TITLE)

(TITLE)

(RESIDENT GENERAL AGENT)

SEE INSTRUCTIONS FOR SUPPORTING DOCUMENTS REQUIRED.**INSTRUCTION TO PROVIDERS:**

NOTICE to all Insurance and Bonding Institutions:

The Bond requires the signatures of the Vendor, two (2) major Officers of the Surety and Resident General Agent, if the Surety is a foreign or alien surety.

When the form is submitted to the Guam Power Authority, it should be accompanied with copies of the following:

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 or the following:
 - a. Current Sworn Annual Report (Limited Liability Company (LLC) and/or Corporation) or;
 - b. Current Renewal of Annual Limited Liability Partnership (LLP)

The following reference links below are for reference:

https://www.govguamdocs.com/revtax/docs/SwornAnnualReport_LLC_0609.pdf
https://www.govguamdocs.com/revtax/docs/SwornAnnualReport_Corporations.pdf
https://www.govguamdocs.com/revtax/docs/Renewal_LLP_Registration_r1106.pdf

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.

APPENDIX C

Ownership & Interest Disclosure Affidavit



GUAM POWER AUTHORITY

ATURIDÂT ILEKTRESEDÂT GUÅHAN
P.O.BOX 2977 • HAGÂTÑA, GUAM U.S.A. 96932-2977

SPECIAL PROVISION FOR OWNERSHIP DISCLOSURE AFFIDAVIT

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

5 GCA §5233 (Title 5, Section 5233) states:

Disclosure of Ownership, Financial, and Conflicts of Interest

(a) Purpose. The disclosure required by this Section are intended to reveal information bearing on the responsibility of a bidder, and can be obtained by an inquiry regarding responsibility prior to award.

(b) Definitions.

As used herein, the term “person” shall be interpreted liberally to include the definition found in 1 GCA § 715, and in § 5030(n) of this Chapter, and includes a natural person as well as every entity of whatever form or composition (an “artificial person”) recognized under the laws of Guam other than a natural person, who is a prospective contractor under a bid, offer, proposal, or other response to a solicitation, or is a contractor under a contract with the government of Guam, and subject to the provisions of this Chapter.

(c) Public Disclosure of Ownership.

- (1) The ownership interests to be disclosed under this Section include the interests of a natural or artificial person who owns all or any part of a prospective contractor, bidder, or offeror, whether as proprietor, a partner, limited or otherwise, a shareholder of any class, in which case the percentage ownership interest test shall be based on each class, a member of an association or company, limited or otherwise, and any person owning a beneficial legal interest in any trust, and any other person having the power to control the performance of the contract or the prospective contractor.
- (2) Prior to award, every person who is a prospective contractor, bidder, or offeror of a contract to be acquired under any method of source selection authorized by this Chapter shall submit a Disclosure Statement, executed as an affidavit under oath, disclosing the name of each person who currently or has owned an ownership interest in the prospective contractor, bidder, or offeror greater than ten percent (10%) at any time during the twelve (12) month period immediately preceding the date of the solicitation (the “relevant disclosure period”). If a prospective contractor, bidder, or offeror is an artificial person, the Disclosure Statement shall disclose the name of each person who has owned an ownership interest in such artificial person (a “second tier owner”) greater than twenty-five percent (25%) at any time during the relevant disclosure period. If any such second tier owner is also an artificial person, the Disclosure Statement shall disclose the name of each person who has owned an ownership interest in such second tier owner (a “third tier owner”) of forty-nine percent (49%) or more during the relevant disclosure period. If the name of no natural person has been identified as an owner, or a second or third tier owner of the prospective contractor, bidder, or offeror, the Disclosure Statement shall identify the name, position, address, and contact information of the natural person having the authority and responsibility for the performance of the prospective contract, and the name of any natural person who has the authority and power to remove and replace the designated responsible person or otherwise control the performance of the prospective contract.

- (d) Disclosure of Financial Interest. A prospective contractor shall execute an affidavit disclosing the name of any person who has received or is entitled to receive a commission, gratuity, contingent fee or other compensation to solicit, secure, or assist in obtaining business related to the solicitation by means of a Disclosure Statement, executed as an affidavit under oath, disclosing such interest and shall also contain the amounts of any such commission, gratuity, contingent fee or other compensation.
- (e) Disclosure of Conflict of Interest. A prospective contractor shall disclose the name of any person who directly or indirectly participates in any solicitation if such person is also an employee of the government of Guam, or of the government of the United States if federal funds are used in payment of the contract.
- (f) Every disclosure of an ownership or financial interest of any person required to be identified by this Section shall name the person required to be disclosed and the street address of their principal place of business. All information disclosed or meant to be disclosed under this Section is public procurement data and shall be kept as part of the public record of each procurement.
- (g) Continuing Duty of Disclosure. Notwithstanding any other provision of this Chapter, the duty to disclose the information required under this Section shall be, upon award a continuing duty of a contractor of every contract subject to this Chapter, and all such information shall become part of the procurement record required by § 5249 of this Chapter. Throughout the term of a contract subject to the terms of this Chapter, the contractor shall promptly make any disclosures not made previously and update changes in the identities or other required information, interests, or conflicts of the persons required to be disclosed herein. Failure to comply with this Section shall constitute a material breach of contract.”

Section 2. Severability. If any provision of this Act or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity shall not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

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

OWNERSHIP & INTEREST DISCLOSURE AFFIDAVIT

TERRITORY OF GUAM)
)
 HAGATNA, GUAM)

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

1. That the name of each person who owns or has owned an ownership interest in the prospective contractor, bidder, or offeror greater than ten (10%) at any time during the twelve (12) month period immediately preceding the date of this solicitation are as follows:

<u>Name</u>	<u>Street Address (Principal Place of Business)</u>	<u>Percentage of Shares Held</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
Total percentage of shares:		_____

2. That for any owners listed Section 1 who are artificial persons, the name of each person who owns or has owned an interest in such artificial person (a "second-tier owner") greater than twenty-five percent (25%) at any time during the relevant disclosure period are as follows:

<u>Name</u>	<u>Street Address (Principal Place of Business)</u>	<u>Percentage of Shares Held</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
Total percentage of shares:		_____

3. That for any owners listed Section 2 who are artificial persons, the name of each person who has owned an ownership interest in such second-tier owner (a "third-tier owner") of forty-nine percent (49%) or more during the relevant disclosure period are as follows:

<u>Name</u>	<u>Street Address (Principal Place of Business)</u>	<u>Percentage of Shares Held</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
Total percentage of shares:		_____

4. That if no natural person has been identified as an owner in Section 1-3 above, the natural person having the authority and responsibility for the performance of the prospective contract:

<u>Name & Position</u>	<u>Street Address (Principal Place of Business)</u>	<u>Contact Information</u>
_____	_____	_____
_____	_____	_____

The natural person having the authority and power to remove and replace the designated responsible person or otherwise control the performance of the prospective contract:

<u>Name & Position</u>	<u>Street Address (Principal Place of Business)</u>	<u>Contact Information</u>
_____	_____	_____

5. Persons who have received or are entitled a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the Bid/RFP for which this Affidavit is submitted are as follows:

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

6. Persons who directly or indirectly participated in this solicitation, if government of Guam employees (or government of the United States employees, if federal funds are used in payment of the contract):

<u>Name & Position</u>	<u>Street Address (Principal Place of Business)</u>	<u>Contact Information</u>
_____	_____	_____
_____	_____	_____

Further, affiant sayeth naught.

Date: _____

Signature of individual if bidder/offeror is a sole
Proprietorship; Partner, if the bidder/offeror is a
Partnership Officer, if the bidder/offeror is a
corporation.

Subscribe and sworn to before me this _____ day of _____,

20_____.

Notary Public _____

In and for the Territory of Guam

My Commission expires _____.

APPENDIX D

Non-Collusion Affidavit

NON-COLLUSION AFFIDAVIT

Guam)
)ss:
 Hagatna)

I, _____ first being duly sworn, depose and say:
 (Name of Declarant)

1. That I am the _____ of _____.
 (Title) (Name of Bidding/RFP Company)
2. That in making the foregoing proposal or bid, that such proposal or bid is genuine and not collusive or sham, that said bidder/offeror has not colluded, conspired, connived or agreed, directly or indirectly, with any bidder or person, to put in a sham or to refrain from bidding or submitting a proposal and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the bid of affiant or any other bidder, or to secure any overhead, project or cost element of said bid price, or of that of any bidder, or to secure any advantage against the GUAM POWER AUTHORITY or any person interested in the proposed contract; and
3. That all statements in said proposal or bid are true.
4. This affidavit is made in compliance with Guam Administrative Rules and Regulations §§3126(b).

 (Declarant)

SUBSCRIBED AND SWORN to me before this _____ day of _____, 2023.

)Seal(

 Notary Public

SPECIAL PROVISIONS

All offerors are required to submit a current affidavit; failure to do so will mean disqualification and rejection of the proposal.

APPENDIX E

Local Procurement Preference Application



GUAM POWER AUTHORITY

ATURIDÂT ILEKTRESEDÂT GUÅHAN
P.O.BOX 2977 • HAGÂTNÂ, GUAM U.S.A. 96932-2977

Lourdes A. Leon Guerrero
I Maga 'håga

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

Joshua F. Tenorio
I Sigundo Maga 'lâhi

Accountability	·	Impartiality	·	Competence	·	Openness	·	Value
----------------	---	--------------	---	------------	---	----------	---	-------

LOCAL PROCUREMENT PREFERENCE APPLICATION

Based on the law stipulated below, please place a checkmark or an “X” on the block indicating the item that applies to your business:

5GCA, Chapter 5, Section 5008, “Policy in Favor of Local Procurement” of the Guam Procurement Law states:

All procurement of supplies and services shall be made from among businesses licensed to do business on Guam and that maintains an office or other facility on Guam, whenever a business that is willing to be a contractor is:

- ()

(a)

A licensed bona fide manufacturing business that adds at least twenty-five percent (25%) of the value of an item, not to include administrative overhead, suing workers who are U.S. Citizens or lawfully admitted permanent residents or nationals of the United States, or persons who are lawfully admitted to the United States to work, based on their former citizenship in the Trust Territory for the Pacific Islands; or
- ()

(b)

A business that regularly carries an inventory for regular immediate sale of at least fifty percent (50%) of the items of supplies to be procured; or
- ()

(c)

A business that has a bona fide retail or wholesale business location that regularly carries an inventory on Guam of a value of at least one half of the value of the bid or One Hundred Fifty Thousand Dollars (\$150,000.0) whichever is less, of supplies and items of a similar nature to those being sought; or
- ()

* (d)

A service actually in business, doing a substantial business on Guam, and hiring at least 95% U.S. Citizens, lawfully admitted permanent residents or national of the United States, or persons who lawfully admitted to the United States to work, based on their citizenship in any of the nations previously comprising the Trust Territory of the Pacific Islands.
- Bidders indicating qualification under (d) may be considered QUALIFIED for the Local Procurement Preference **only if** the Government's requirement is for service. Service is defined Pursuant to 5 GCA Government Operations Subparagraph 5030 entitled DEFINITIONS under Chapter 5 of the Guam Procurement Law.
1.

I _____, representative for _____,

have read the requirements of the law cited above and do hereby qualify and elect to be given the LOCAL PROCUREMENT PREFERENCE for Bid No.: GPA _____.

By filling in this information and placing my signature below, I understand that the Guam Power Authority will review this application and provide me with a determination whether or not the 15% preference will be applied to this bid.
2.

I _____, representative for _____,

have read the requirements of the law cited above, and do not wish to apply for the Local Procurement Preference for Bid No.: GPA _____.

Bidder Representative Signature

Date

NOTE:
Prospective Bidders not completing this form will automatically be not considered for Local Procurement Preference. Non-completion of this form is not a basis for rejection of the bid or proposal.

APPENDIX F

Performance Bond

PERFORMANCE BOND NUMBER: _____

KNOW ALL MEN BY THESE PRESENTS that _____,
as Principal, hereinafter called **CONTRACTOR**, and _____,
a corporation hereinafter called **SURETY**, are held and firmly bound unto the **GUAM POWER AUTHORITY** as Obligee, in the amount of _____
Dollars (\$ _____), an amount negotiated for the first partial **GUAM POWER AUTHORITY** fiscal year within the term of the **CONTRACT**, for the payment whereof **CONTRACTOR** and **SURETY** bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, **CONTRACTOR** has by written agreement dated _____, 20XX, entered into a **PURCHASE POWER AGREEMENT** with the **GUAM POWER AUTHORITY** through midnight of _____, in accordance with forms and specifications prepared by the **GUAM POWER AUTHORITY** which **CONTRACT** is by reference made a part hereof, and is hereinafter referred to as the "**CONTRACT**".

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if **CONTRACTOR** shall promptly and faithfully perform said **CONTRACT** then this obligation shall be null and void; otherwise it shall remain in full force and effect. The **SURETY** hereby waives notice of any alteration or extension provided the same is within the scope of the **CONTRACT**. Whenever **CONTRACTOR** shall be and is declared by the **GUAM POWER AUTHORITY** to be in default under the **CONTRACT**, **GUAM POWER AUTHORITY** having performed its obligation thereunder, the **SURETY** may promptly remedy the default or shall promptly:

- (1) Complete the **CONTRACT** in accordance with its terms and conditions;
or,
- (2) Obtain a bid or bids for completing the **CONTRACT** in accordance with its terms and conditions and upon determination by the **GUAM POWER AUTHORITY** and the **SURETY** jointly of the lowest responsive, responsible **BIDDER**, arrange for a **CONTRACT** between such **BIDDER** and the **GUAM POWER AUTHORITY** and make available as work progresses (even though there should be a default or a succession of defaults under the **CONTRACT** or **CONTRACTS** of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the **CONTRACT** price; but not exceeding, including other costs and damages for which the **SURETY** may be liable hereunder, the amount set forth in the first paragraph hereof.

The term "balance of the **CONTRACT** price", as used in this paragraph shall mean the total amount payable by the **GUAM POWER AUTHORITY** to **CONTRACTOR** under the **CONTRACT** for the current fiscal year and any amendments thereto, less the amount properly paid by the **GUAM POWER AUTHORITY** to **CONTRACTOR** for that partial or full fiscal year.

The term fiscal year shall mean the time between October 1 in the calendar year to September 30 of the next calendar year.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the **GUAM POWER AUTHORITY** or successors of the **GUAM POWER AUTHORITY**.

Signed and sealed this _____ day of _____, 20____.

(Principal)

(Seal)

(Witness)

(Bonding Company)

(Title)

(Title)

By: _____

(Witness) (Attorney-In-Fact)

APPENDIX G

No Gratuities or Kickbacks Affidavit

NO GRATUITIES OR KICKBACKS AFFIDAVIT**AFFIDAVIT**

(Offeror)

TERRITORY OF GUAM)

)

SS:**HAGATNA, GUAM**)

)

_____, being first duly sworn, deposes and says:

As the duly authorized representative of the Offeror, that neither I nor of the Offeror's officers, representatives, agents, subcontractors, or employees has or have offered, given or agreed to give any government of Guam employee or former employee, any payment, gift, kickback, gratuity or offer of employment in connection with Offeror's proposal.

Signature of Individual if Proposer is a Sole Proprietorship;

Partner, if the Proposer is a Partnership;

Officer, if the Proposer is a Corporation

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2023._____
Notary Public
In and for the Territory of Guam
My Commission Expires:

APPENDIX H

Ethical Standards Affidavit

ETHICAL STANDARDS AFFIDAVIT**AFFIDAVIT**

(Proposer)

TERRITORY OF GUAM)

)

SS:**HAGATNA, GUAM**)

)

_____, being first duly sworn, deposes and says:

That I am (the Sole Proprietor, a Partner or Officer of the Offeror)

That Offeror making the foregoing Proposal, that neither he or nor of the Offeror's officers, representatives, agents, subcontractors, or employees of the Offeror have knowingly influenced any government of Guam employee to breach any of the ethical standards set forth in 5 GCA Chapter 5 Article 11, and promises that neither he nor any officer, representative, agent, subcontractor, or employee of Offeror will knowingly influence any government of Guam employee to breach any ethical standard set for in 5 GCA Chapter 5 Article 11.

Signature of Individual if Proposer is a Sole Proprietorship;

Partner, if the Proposer is a Partnership;

Officer, if the Proposer is a Corporation

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2023._____
Notary Public

In and for the Territory of Guam

My Commission Expires:

APPENDIX I

Declaration Re-Compliance with U.S. DOL Wage Determination

DECLARATION RE-COMPLIANCE WITH U.S. DOL WAGE DETERMINATION

Procurement No.: _____

Name of Offeror Company: _____

_____ hereby certifies under penalty of perjury:

- (1) That I am _____ (the offeror, a partner of the offeror, an officer of the offeror) making the bid or proposal in the foregoing identified procurement;
- (2) That I have read and understand the provisions of 5 GCA § 5801 and § 5802 which read:

§ 5801. Wage Determination Established.

In such cases where the government of Guam enters into contractual arrangements with a sole proprietorship, a partnership or a corporation ('contractor') for the provision of a service to the government of Guam, and in such cases where the contractor employs a person(s) whose purpose, in whole or in part, is the direct delivery of service contracted by the government of Guam, then the contractor shall pay such employee(s) in accordance with the Wage Determination for Guam and the Northern Mariana Islands issued and promulgated by the U.S. Department of Labor for such labor as is employed in the direct delivery of contract deliverables to the government of Guam.

The Wage Determination most recently issued by the U.S. Department of Labor at the time a contract is awarded to a contractor by the government of Guam shall be used to determine wages, which shall be paid to employees pursuant to this Article. Should any contract contain a renewal clause, then at the time of renewal adjustments, there shall be made stipulations contained in that contract for applying the Wage Determination, as required by this Article, so that the Wage Determination promulgated by the U.S. Department of Labor on a date most recent to the renewal date shall apply.

§ 5802. Benefits.

In addition to the Wage Determination detailed in this Article, any contract to which this Article applies shall also contain provisions mandating health and similar benefits for employees covered by this Article, such benefits having a minimum value as detailed in the Wage Determination issued and promulgated by the U.S. Department of Labor, and shall contain provisions guaranteeing a minimum of ten (10) paid holidays per annum per employee.

- (3) That the offeror is in full compliance with 5 GCA § 5801 and § 5802, as may be applicable to the procurement referenced herein;

 Signature of Individual if Proposer is a Sole Proprietorship;
 Partner, if the Proposer is a Partnership;
 Officer, if the Proposer is a Corporation

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2023.

 Notary Public
 In and for the Territory of Guam
 My Commission Expires:

APPENDIX J

Restriction Against Sex Offenders Employed by Service Providers to Government of Guam from Working on Government of Guam Property

SPECIAL PROVISIONS

Restriction Against Sex Offenders Employed by Service Providers to Government of Guam from Working on Government of Guam Property

GCA 5 §5253 Restriction Against Contractors Employing Convicted Sex Offenders from Working at Government of Guam Venues:

- (a) No person convicted of a sex offense under the provisions of Chapter 25 of Title 9 Guam Code Annotated, or an offense as defined in Article 2 of Chapter 28, Title 9 GCA in Guam, or an offense in any jurisdiction which includes, at a minimum, all of the elements of said offenses, or who is listed on the Sex Offender Registry, and who is employed by a business contracted to perform services for an agency or instrumentality of the government of Guam, shall work for his employer on the property of the Government of Guam other than public highway.
- (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 contractor 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 contractor 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.
- (c) Duties of the General Services Agency or Procurement Administrators. All contracts, bids, or Requests for Proposals shall state all the conditions in § 5253(b).
- (d) Any contractor found in violation of § 5253(b), after notice from the contracting authority of such violation, shall, within twenty-four (24) hours, take corrective action and shall report such action to the contracting authority. Failure to take corrective action within the stipulated period may result in the temporary suspension of the contract at the discretion of the contracting authority.

SOURCE: Added by P.L. 28-024:2 ((Apr. 21, 2005). Amended by P.L. 28-098:2 (Feb. 7, 2006).

Signature of Bidder Date

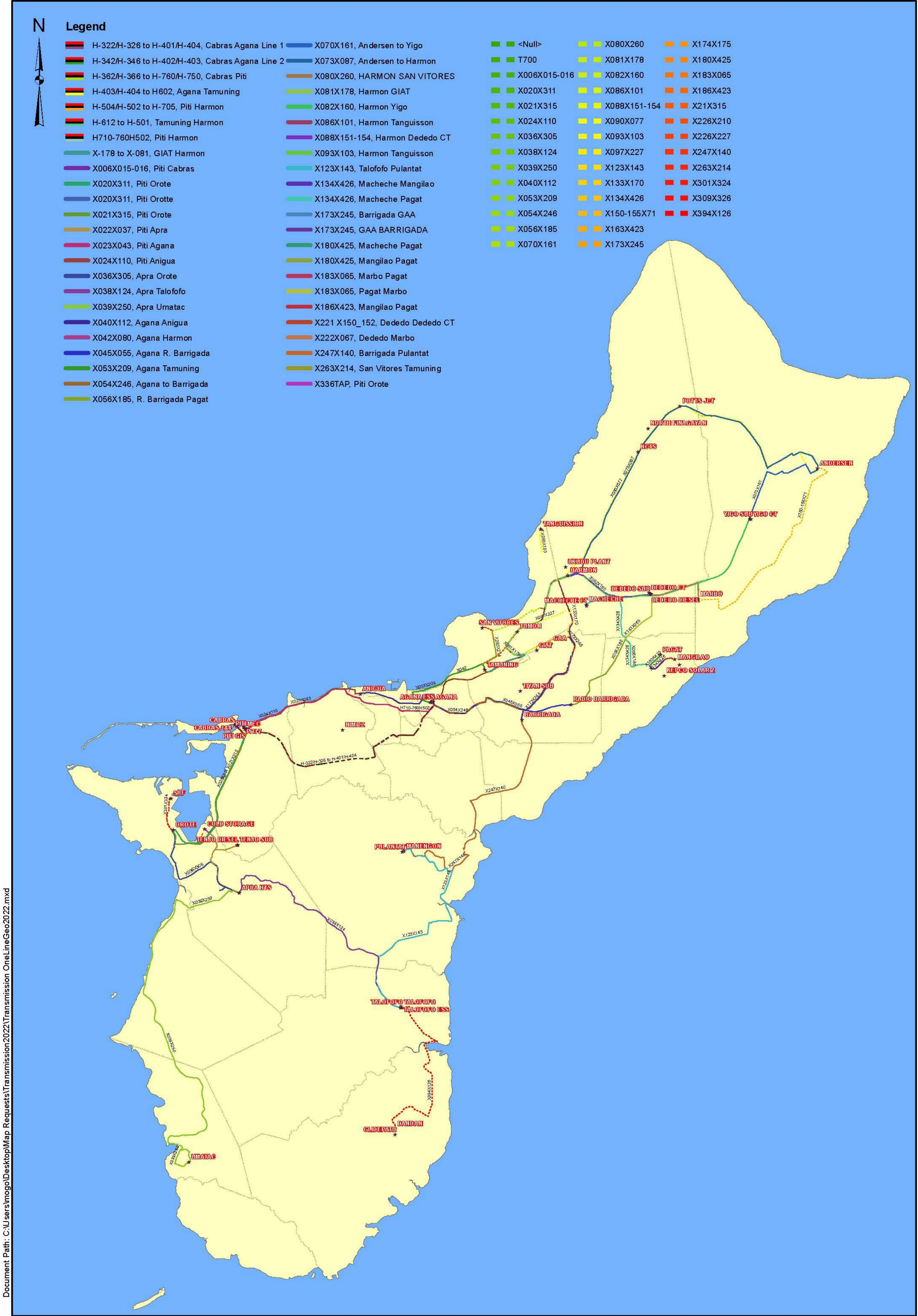
Proposer, if an individual;
Partner, if a partnership;
Officer, if a corporation.

Subscribed and sworn before me this _____ day of _____, 2023.

Notary Public

APPENDIX K

Electrical System Drawings



Document Path: C:\Users\mogo\Desktop\Map Requests\Transmission2022\Transmission One LineGeo2022.mxd



**GUAM POWER AUTHORITY
115kV and 34.5kV TRANSMISSION LINE
ONE GEOGRAPHIC**

APPENDIX L

Required Interconnection Technical Information

Bidders are required to provide the following information in describing or detailing proposed project's interconnection with GPA grid.

1. Provide preliminary Single-Line Diagram(s) for the generation and interconnection facilities. The Single-line diagram(s) should include:
 - a. **Transformers** - For main and generator step up transformer(s), show:
 - i. Transformer voltage and MVA ratings.
 - ii. Transformer impedance(s).
 - Transformer winding connections and grounding. If neutrals are grounded through impedance, show the impedance value.
 - b. **Breakers** - For the Breakers include:
 - i. The voltage, continuous current and interrupting capability ratings.
 - ii. The trip speed (time to open)
 - c. The protective relaying and metering for the generators, buses, and all other main substation equipment.
 - d. For the potential transformers, indicate the type, quantity, ratio, and accuracy rating.
 - e. For the current transformers, indicate the type, quantity, ratio, and accuracy rating, and thermal rating factor.
 - f. Auxiliary power devices (e.g. capacitors, reactors, storage systems, etc.) and their rating(s); additional inquiries may be made to obtain technical data for these devices.
 - g. The generator(s) voltage, impedances, and MVA ratings.
 - h. The generator grounding method. If the generator is not solidly grounded, provide the grounding method details and equipment ratings.
2. Provide a plan map of the facilities and indicate the interconnection point to the GPA system.
3. Provide the technical specifications and other information available for the generators included in the proposal.

APPENDIX M

Procurement Regulations

(excerpts from 2GAR-Administration; Div. 4 – Procurement Regulations)

§3118 *Cost or Pricing Data*

§6101 (9) *Liquidated Damages Clause*

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have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The final determination shall be made part of the procurement file.

§3117. Prequalification of Suppliers. Prospective suppliers may be prequalified for particular types of supplies, services, and construction. Solicitation mailing lists of potential contractors shall include, but shall not be limited to, such prequalified suppliers.

(a) Prequalification.

(1) **General.** Prospective contractors may be prequalified for bidder lists, but distribution of the solicitation shall not be limited to prequalified contractors, nor may a prospective contractor be denied award of a contract simply because such contractor was not prequalified. The fact that a prospective contractor has been prequalified does not necessarily represent a finding of responsibility.

(2) **Qualified Products Lists.** This Section is not applicable to qualified products lists which are treated in §4103(b)(2) (Procedures for the Development of Specifications, Special Additional Procedures) of Chapter 4 (Specifications) of these Regulations.

§3118. Cost or Pricing Data. (a). **Scope of Regulation on Cost or Pricing Data.** This Section sets forth the pricing policies which are applicable to contracts of any type and any price adjustments thereunder when cost or pricing data are required to be submitted. The provisions of this Section requiring submission of cost or pricing data do not apply to a contract let by competitive sealed bidding (including multi-step bidding) or small purchases. However, cost or pricing data may be required under a contract let by

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competitive sealed bidding when price adjustments are subsequently made in such a contract and, to this extent, those provisions would apply. See Section 3118(b) (Requirement for Cost or Pricing Data) for when the contractor may be required to submit cost or pricing data.

(b) Requirement for Cost or Pricing Data.

(1) **Submission of Cost or Pricing Data.** Except as provided in Subsection 3118(b)(2) of this Section, cost or pricing data is required to be submitted in support of a proposal when:

(A) any contract expected to exceed \$100,000 is to be awarded by competitive sealed proposals, by sole source procurement, by competitive selection, or under 5 GCA Article 5, of Chapter 5 of the Guam Procurement Act, (Architect-Engineer and Land Surveying Services).

(B) adjusting the price of any contract, including a contract awarded by competitive sealed bidding, whether or not cost or pricing data were required in connection with the initial pricing of the contract, if the adjustment involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed \$100,000. (For example, the requirement applies to a \$30,000 net modification resulting from a reduction of \$70,000 and an increase of \$40,000 when the reduction and increase are related.) However, this requirement shall not apply when unrelated and separately priced adjustments for which cost or pricing data would not be required if considered separately are consolidated for administrative convenience. The price shall also be adjusted to reflect non-payment by the contractor of any taxes which would have been paid were it not for the exclusion provided by Section 16543.1016 (Gross Receipts Tax) as added by 5 GCA §5232(c) of the Guam Procurement Act; or

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(C) The Procurement Officer makes a written determination that the circumstances warrant requiring submission of cost or pricing data provided, however, cost or pricing data shall not be required where the contract award is made pursuant to competitive sealed bidding. However, generally cost or pricing data should not be required where the contract or modification is less than \$25,000. Moreover, when less than complete cost analysis (for example, analysis of only specific factors) will provide a reasonable pricing result on awards under \$100,000 without the submission of complete cost or pricing data, the Procurement Officer shall request only that data considered adequate to support the limited extent of the cost analysis needed and need not require certification.

(2) **Exceptions.** Cost and pricing data need not be submitted or certified:

(A) where the contract price is based on:

- (i) adequate price competition;
- (ii) established catalogue prices or market prices; except as provided by §3118(c)(3)(c); or
- (iii) prices set by law or regulation; or

(B) when the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency determines in writing to waive the applicable requirement for submission of cost or pricing data under Subsection 3118(b)(1)(a), (b), or (c) of this Section in a particular pricing action and the reasons for such waiver are stated in the determination. A copy of such determination shall be kept in the contract file and made available to the public upon request.

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If, after cost or pricing data were initially requested and received, it is determined that adequate price competition does exist, the data need not be certified.

(c) *Meaning of Terms Adequate Price Competition, Established Catalogue Prices or Market Prices, and Prices Set by Law or Regulation.*

(1) **Application.** As used in the exceptions set forth in §3118(b)(2) (Requirement for Cost or Pricing Data, Exceptions) the terms *adequate price competition, established catalogue prices or market prices, and prices set by law or regulations* shall be construed in accordance with the following definitions.

(2) **Adequate Price Competition.** Price competition exists if competitive sealed proposals are solicited and at least two responsible offerors independently compete for a contract to be awarded to the responsible offeror submitting the lowest evaluated price by submitting priced offers (or best and final offers) meeting the requirements of the solicitation. If the foregoing conditions are met, price competition shall be presumed to be “adequate” unless the Procurement Officer determines in writing that such competition is not adequate.

(3) **Established Catalogue Prices or market Prices.**

(A) See 5 GCA §5201(b) (Definitions, Established Catalogue Price of the Guam Procurement Act), for the definition of established catalogue price. (This definition is quoted in §1106(24) of these Regulations).

(B) *Established Market Price* means a current price, established in the usual and ordinary course of trade between buyers and sellers, which can be substantiated from sources which are independent of the manufacturer or supplier and may be an indication of the reasonableness of price.

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(C) If, despite the existence of an established catalogue price or market price, and after consultation with the prospective contractors, the Procurement Officer considers that such price is not reasonable, cost or pricing data may be requested. Where the reasonableness of the price can be assured by a request for cost or pricing data limited to data pertaining to the differences in the item or services being procured and those listed in the catalogue or market, procured and those listed in the catalogue or market, requests should be so limited.

(4) **Prices Set by Law or Regulation.** The price of a supply or service is set by law or regulation if some governmental body establishes the price that the offeror or contractor may charge the territory and other customers.

(d) Submission of Cost or Pricing Data and Certification.

(1) **Time and Manner.** When a cost or pricing data are required, they shall be submitted to the Procurement Officer prior to beginning price negotiations at any reasonable time and in any reasonable manner prescribed by the Procurement Officer. When the Procurement Officer requires the offeror or contractor to submit cost or pricing data in support of any proposal, such data shall either be actually submitted or specifically identified in writing.

(2) **Obligation to Keep Data Current.** The offeror or contractor is required to keep such submission current until the negotiations are completed.

(3) **Time for Certification.** The offeror or contractor shall certify as soon as practicable after agreement is reached on price that, to the best of his knowledge and belief, the cost or pricing data submitted are accurate, complete, and current as of a mutually determined date prior to reaching an

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agreement. Certification shall be made using the certificate set forth in §3118(e) (Certificate of Current Cost or Pricing Data) of these Regulations.

(4) **Refusal to Submit Data.** A refusal by the offeror to supply the required data shall be referred to the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency, whose duty shall be to determine in writing whether to disqualify the noncomplying offeror, to defer award pending further investigation, or to enter into the contract. A refusal by a contractor to submit the required data to support a price adjustment shall be referred to the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency who shall determine in writing whether to further investigate the price adjustment, not to allow any price adjustment, or to set the amount of the price adjustment, subject to the contractor's rights under Chapter 9 (Legal and Contractual Remedies) of these Regulations.

(e) **Certificate of Current Cost or Pricing Data.**

(1) **Form of Certificate.** When cost or pricing data must be certified, a certificate substantially as set forth below shall be included in the contract file along with any award documentation required under these Regulations. The offeror or contractor shall be required to submit the certificate as soon as practicable after agreement is reached on the contract price or adjustment.

**CERTIFICATE OF CURRENT COST OR
PRICING**

This is to certify that, to the best of my knowledge and belief, cost or pricing data as defined in §3101(a) of the Guam Procurement Regulations submitted, either actually or by specific identification in writing (See §3118(d)) to the Procurement Officer in support of¹,

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are accurate, complete, and current as of
(date)(month)(year).....²

This certification includes the cost or pricing data supporting any advance agreement(s) between the offeror and the territory which are part of the proposal.

FIRM.....

NAME.....

TITLE.....

DATE OF EXECUTION.....³

(End of Certificate)

¹Describe the proposal, quotation, request for price adjustment or other submission involved, giving appropriate identifying number (e.g., RFP No. _____).

²The effective date shall be a mutually determined date prior to, but as close to the date when price negotiations were concluded and the contract price was agreed to as possible. The responsibility of the offeror or contractor is not limited by the personal knowledge of the offeror's or contractor's negotiator if the offeror or contractor had information reasonably available at the time of agreement, showing that the negotiated price is not based on accurate, complete, and current data.

³This date should be as soon after the date when the price negotiations were concluded and the contract price was agreed to as practical.

(2) **Representation as to Accuracy of Cost or Pricing Data.** Although the certificate pertains to *cost or pricing data*, it is not to be construed as a representation

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as to the accuracy of the offeror's or contractor's judgment on the estimated portion of future costs or projections. It does, however, constitute a representation as to the accuracy of the data upon which the offeror's or contractor's judgment is based. A Certificate of Current Cost or Pricing Data shall not substitute for examination and analysis of the offeror's or contractor's proposal.

(3) Inclusion of Notice and Contract Clause. Whenever it is anticipated that a Certificate of Current Cost or Pricing Data may be required, notice of this requirement shall be included in the solicitation. If such a certificate is required, the contract shall include a clause giving the territory a contract right to a reduction in the price as provided in §3118(f) (Defective Cost or Pricing Data).

(4) Exercise of Option. The exercise of an option at the price established in the initial negotiation in which certified cost or pricing data were used does not require recertification or further submission of data.

(f) Defective Cost or Pricing Data.

(1) Overstated Cost or Pricing Data. If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the territory is entitled to an adjustment of the contract price, including profit or fee or any exclusion of taxes (Gross Receipts Tax) pursuant to §19543.1016 as added by 5 GCA §5232(c) of the Guam Procurement Act, to exclude any significant sum by which the price, including profit or fee or any exclusion of taxes (Gross Receipts Tax) pursuant to Section 19543.1016 as added by 5 GCA §5232(c) of the Guam Procurement Act was increased because of the defective data. Judgmental errors made in good faith concerning the estimated portions of future costs or projections do not constitute defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless

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there is a clear indication that the defective data were not used or relied upon, the price should be reduced in such amount. In establishing that the defective data caused an increase in the contract price, the Procurement Officer is not expected to reconstruct the negotiation by speculating as to what would have been the mental attitudes of the negotiating parties if the correct data had been submitted at the time of agreement on price.

(2) Off-Setting Understated Cost or Pricing Data.

In determining the amount of a downward adjustment, the contractor shall be entitled to an off-setting adjustment for any understated cost or pricing data submitted in support of price negotiations for the same pricing action up to the amount of the territory's claim for overstated cost or pricing data arising out of the same pricing action.

(3) Dispute. If the contractor and the Procurement Officer cannot agree as to the existence of defective cost or pricing data or amount of adjustment due to defective cost or pricing data, the Procurement Officer shall set an amount in accordance with Subsections 3118(f)(1) and 3118(f)(2) of this Section and the contractor may appeal this decision as a contract controversy under Chapter 9 (Legal and Contractual Remedies) of these Regulations.

(g) Price Analysis Techniques. Price analysis is used to determine if a price is reasonable and acceptable. It involves an evaluation of the prices for the same or similar items, services, or construction. Examples of price analysis criteria include, but are not limited to:

- (1) price submissions of prospective bidders or offerors in the current procurement;
- (2) prior price quotations and contract prices charged by the bidder, offeror, or contractor;

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- (3) prices published in catalogues or price lists;
- (4) prices available on the open market; and
- (5) in-house estimates of cost.

In making such analysis, consideration must be given to any differing terms and conditions.

(h) **Cost Analysis Techniques.** Cost analysis includes the appropriate verification of cost or pricing data, and the use of this data to evaluate:

- (1) specific elements of costs;
- (2) the necessity for certain costs;
- (3) the reasonableness of amounts estimated for the necessary costs;
- (4) the reasonableness of allowances for contingencies;
- (5) the basis used for allocation of indirect costs;
- (6) the appropriateness of allocations of particular indirect costs to the proposed contract; and
- (7) the reasonableness of the total cost or price.

(i) **Evaluations of Costs or Pricing Data.** Evaluations of cost or pricing data should include comparisons of costs and prices of an offeror's cost estimates with those of other offerors and any independent territorial price and cost estimates. They shall also include consideration of whether such costs are reasonable and allocable under the pertinent provisions of Chapter 7 (Cost Principles) of these Regulations.

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(9) Liquidated Damages Clause.

(a) **With Termination for Default Clause.** The following clause is authorized for use in supply or service contracts when it is difficult to determine with reasonable accuracy the amount of damage to the territory due to delays caused by late contractor performance or nonperformance and the contract contains the termination for default clause set forth in §6101(8) of this Chapter.

"LIQUIDATED DAMAGES

When the Contractor is given notice of delay or nonperformance as specified in Paragraph (l) (Default) of the Termination for Default Clause of this contract and fails to cure in the time specified, the contractor shall be liable for damages for delay in the amount of one-fourth of one-percent (1%) of outstanding order per calendar day from date set for cure until either the territory reasonably obtains similar supplies or services if the contractor is terminated for default, or until the contractor provides the supplies or services if the contractor is not terminated for default. To the extent that the contractor's delay or nonperformance is excused under Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of the Termination for Default Clause of this contract, liquidated damages shall not be due the territory. The contractor remains liable for damages caused other than by delay."

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(b) **In Other Situations.** If the contract will not have a termination for Default Clause or the liquidated damages are to be assessed for reasons other than delay, the Chief Procurement Officer or the head of a Purchasing Agency may approve the use of any appropriate liquidated damages clause.

(10) **Termination for convenience Clause.**

"TERMINATION FOR CONVENIENCE

(a) **Termination.** The Procurement Officer may, when the interest of 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.

(b) **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 territory. The contractor

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must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

(c) **Right to Supplies.** The Procurement Officer may require the contractor to transfer title and deliver to the territory in the manner and to the extent directed by the Procurement Officer:

(1) any completed supplies; and

(2) 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, §2706 (U.S.C.G. §2706 is quoted at the end of this §6101(10)(d) Utilization of this Section in no way implies that the territory has breached the contract by exercise of the Termination for Convenience

APPENDIX N

Historical LEAC – Fuel Recovery Rates

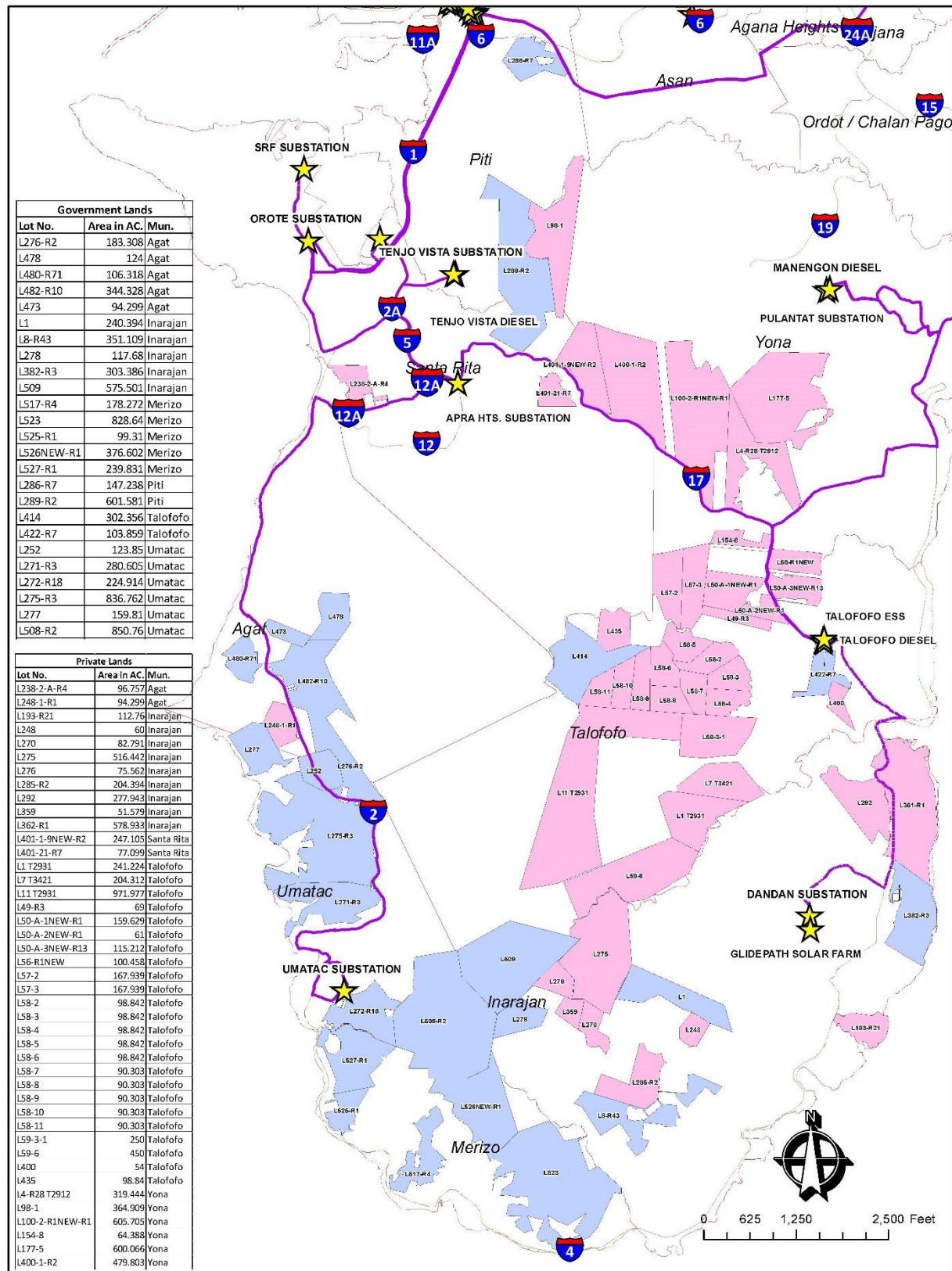
Historical Levelized Adjustment Clause – Fuel Recovery Rate (Secondary)

EFFECTIVE DATES		FUEL RECOVERY RATE (per Kwh)
From	To	
5/1/2009	7/31/2009	0.136450
8/1/2009	1/31/2010	0.129670
2/1/2010	7/31/2010	0.150460
8/1/2010	1/31/2011	0.124650
2/1/2011	7/31/2011	0.161530
8/1/2011	1/31/2012	0.192220
2/1/2012	3/31/2012	0.191980
4/1/2012	7/31/2012	0.192310
8/1/2012	1/31/2013	0.186834
2/1/2013	7/31/2013	0.209271
8/1/2013	1/31/2014	0.182054
2/1/2014	7/31/2014	0.172986
8/1/2014	10/31/2014	0.176441
11/1/2014	1/31/2015	0.146666
2/1/2015	7/31/2015	0.102054
8/1/2015	1/31/2016	0.104871
2/1/2016	7/31/2016	0.086613
8/1/2016	1/31/2017	0.086613
2/1/2017	7/31/2017	0.105051
8/1/2017	1/31/2018	0.117718
2/1/2018	4/30/2018	0.147266
5/1/2018	7/31/2018	0.154242
8/1/2018	1/31/2019	0.154242
2/1/2019	7/31/2019	0.154242
8/1/2019	1/31/2020	0.154242
2/1/2020	3/31/2020	0.134474
4/1/2020	5/31/2020	0.110039
6/1/2020	7/31/2020	0.086800
8/1/2020	1/31/2021	0.086800
2/1/2021	7/31/2021	0.110000
8/1/2021	9/30/21	0.130400
10/1/2021	11/30/21	0.150800
12/1/2021	1/31/2022	0.171458
2/1/2022	3/31/2022	0.180837
4/1/2022	6/30/2022	0.209552

APPENDIX O

Potential Utility Solar Sites

Government and Private Lands Potential Utility Solar



Legend

GISP.ELE.T_OverheadTransmissionLine

Overhead Transmission Line

GISP.ELE.T_UndergroundLineSegment

Underground Transmission

Major Route

Municipality

Government Lands

Private Lands

Substation

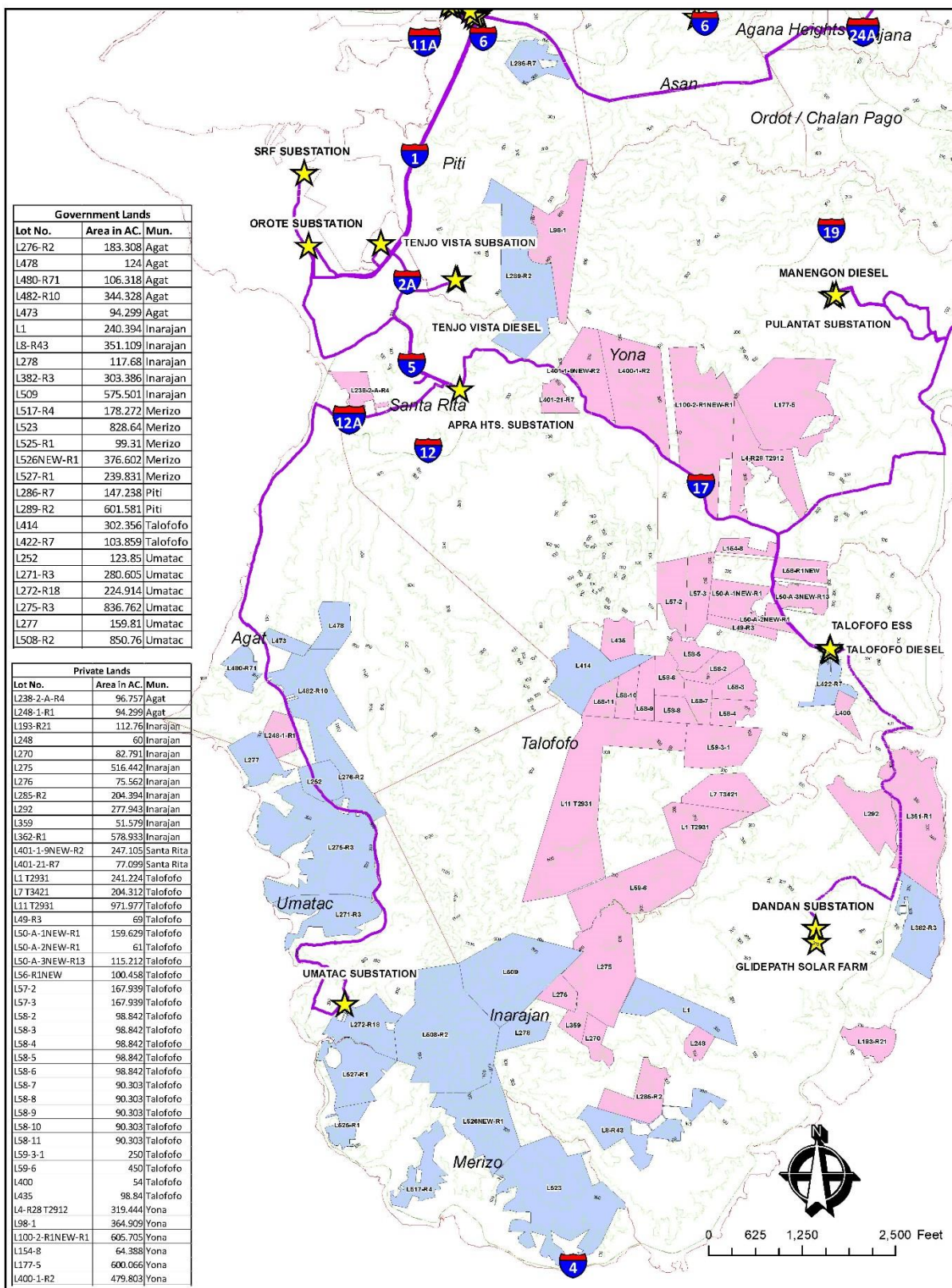


Guam Power Authority
Division: Engineering
Section: Real Estate-GIS
Prepared by: rtsantos

DISCLAIMER: THE INFORMATION PROVIDED IS FOR OFFICIAL USE ONLY AND NOT TO BE USED FOR DESIGN OR ANALYSIS. ALL LOCATIONS AND DISTANCES ARE APPROXIMATE.

Date: 8/24/2022 9:28:48 AM

Government and Private Lands Potential Utility Solar



Legend

ContourLines_200

GISP.ELE.T_OverheadTransmissionLine

Overhead Transmission Line

GISP.ELE.T_UndergroundLineSegment

Underground Transmission

Major Route

Municipality

Government Lands

Private Lands

Substation

DISCLAIMER: THE INFORMATION PROVIDED IS FOR OFFICIAL USE ONLY AND NOT TO BE USED FOR DESIGN OR ANALYSIS. ALL LOCATIONS AND DISTANCES ARE APPROXIMATE.



Guam Power Authority
Division: Engineering
Section: Real Estate-GIS
Prepared by: rsantos

Date: 8/24/2022 9:18:55 AM

Invitation for Bid: GPA-XXX-23 Renewable Energy Resource Acquisition for the Guam Power Authority (Phase IV) QUALITATIVE SCORING WORKBOOK INSTRUCTIONS							
Bidders should enter their name in highlighted cell, this will title the other sheets in the workbook with the Bidder's name.							
Bidder should enter a unique bid no. (1,2,3....) in the highlighted cell if submitting more than one bid.							
<<< BIDDER'S BID NO >>>							
<p>Overview: Bidders are required to complete Task 1 and Task 2 described below. GPA staff will complete Tasks 3 and 4. Bidders must fill in the worksheets titled "Part 1- Qual Support References" and "Part 2 - Technical Data" and return an electronic copy of this entire workbook with their IFB submittals. GPA will review each Bidder's submittal of Task 1 to ensure that the referenced pages/sections given by the Bidder in the worksheet truly support compliance with the Technical Requirements. The Bidders have been given the Task 1 worksheet to facilitate the bid evaluation. In addition, GPA has requested for specific technical information that must be provided as described in Task 2. For the Bidders' reference, there is a copy of the scoring sheet used to qualify/disqualify the Unpriced Technical Offers on the worksheet titled "Part 3 - Qual Eval Scoresheet." The Bidders may use this sheet as a tool to assess the strength of their submittals. However, GPA evaluators will fill this information in for each bid received and only the GPA evaluators' scorings will count.</p>							
<p>Task 1: Complete the worksheet titled "Part 1-Qual Support References Each Bidder Must Complete Task 1.</p> <table border="0" style="width: 100%;"> <tr> <td style="vertical-align: top; width: 10%;">Step</td> <td style="vertical-align: top;">Directions</td> </tr> <tr> <td style="vertical-align: top;">1</td> <td>Go to the "Part 1 - Qual Support References" worksheet.</td> </tr> <tr> <td style="vertical-align: top;">2</td> <td>In Column E, labeled "Bid Reference," cite the volume, chapter, section, page number, etc. of the Bidder's submittal where the information supporting compliance for the given Checklist Item can be found. Give locational references as specifically as possible. Leave the reference cell blank if the bid does not contain adequate supporting information for the given Checklist Item.</td> </tr> </table>		Step	Directions	1	Go to the "Part 1 - Qual Support References" worksheet.	2	In Column E, labeled "Bid Reference," cite the volume, chapter, section, page number, etc. of the Bidder's submittal where the information supporting compliance for the given Checklist Item can be found. Give locational references as specifically as possible. Leave the reference cell blank if the bid does not contain adequate supporting information for the given Checklist Item.
Step	Directions						
1	Go to the "Part 1 - Qual Support References" worksheet.						
2	In Column E, labeled "Bid Reference," cite the volume, chapter, section, page number, etc. of the Bidder's submittal where the information supporting compliance for the given Checklist Item can be found. Give locational references as specifically as possible. Leave the reference cell blank if the bid does not contain adequate supporting information for the given Checklist Item.						
<p>Task 2: Complete the worksheet titled "Part 2 - Technical Data" Each Bidder Must Complete Task 2.</p> <table border="0" style="width: 100%;"> <tr> <td style="vertical-align: top; width: 10%;">Step</td> <td style="vertical-align: top;">Directions</td> </tr> <tr> <td style="vertical-align: top;">1</td> <td>Go to the "Part 2 - Technical Data" worksheet. This width of this sheet (columns B to Q) can be viewed completely by setting zoom to 84%</td> </tr> <tr> <td style="vertical-align: top;">2</td> <td>Fill in the yellow highlighted cells in this worksheet with the information requested. Additional instructions are provided below. If any of the items are not applicable, mark "N/A".</td> </tr> </table> <p><u>No: Technical Data Request:</u></p> <ol style="list-style-type: none"> 1. Provide the name of the company bidding. 2. Provide Bidder contact information. 3. Provide the name of the renewable energy project. 4. Assign a bid number to the bid form. If a Bidder is submitting two alternative bids for the same project, the bid number would be 1 for the first and 2 for the second. Alternative bids might be submitted for different CODs, project sizes, etc. 5. Select the renewable energy technology being utilized by the project. If the technology is not listed in the selection list enter the technology on the space provided directly to the right of the selection box. 6. Provide the location of the project by street address (if available). If a street address is not applicable, provide GPS coordinates or a general description of where the project is located. 7. Indicate whether the proposed facility is new or existing. This refers to the project that will be supplying renewable energy in this bid request. 8. Provide the names, contact information, and ownership share for project owner(s). 9. Provide the requested project technical information specific to the project being proposed. 9.A Date of Initial Operation. Provide the date at which the project is operational. This may not be the date at which GPA will begin to receive renewable power (i.e. startup for test) 9.B Agreement beginning date. Provide the date at which GPA will begin receiving renewable energy. Note: May not be the same as 9.A. 9.C Nameplate capacity of the facility in kW. 9.D ESS capacity, in MW and MWh. 9.E Estimated annual capacity factor (net) percentage. 9.F Guaranteed net annual generation in MWh/yr. Bidders are required to provide annual production guarantees for each contract year. 9.G Minimum annual generation in MWh/yr at 95% Confidence Level. Bidders are required to provide annual production for each contract year. 9.H Guaranteed Success Rate, AC-AC Efficiency and Availability in percentage. 9.I Estimated equivalent availability factor percentage. 		Step	Directions	1	Go to the "Part 2 - Technical Data" worksheet. This width of this sheet (columns B to Q) can be viewed completely by setting zoom to 84%	2	Fill in the yellow highlighted cells in this worksheet with the information requested. Additional instructions are provided below. If any of the items are not applicable, mark "N/A".
Step	Directions						
1	Go to the "Part 2 - Technical Data" worksheet. This width of this sheet (columns B to Q) can be viewed completely by setting zoom to 84%						
2	Fill in the yellow highlighted cells in this worksheet with the information requested. Additional instructions are provided below. If any of the items are not applicable, mark "N/A".						

Invitation for Bid: GPA-XXX-23 Renewable Energy Resource Acquisition for the Guam Power Authority (Phase IV) QUALITATIVE SCORING WORKBOOK INSTRUCTIONS	
9.J	Expected project life in years.
10.	Provide the requested project interconnection and transmission information:
10.A	Voltage at which the project interconnects to the transmission system.
10.B	Point of interconnection or interconnection substation name.
10.C	Name of the transmission line on which the project is interconnected.
10.D	Total interconnection cost. Bidder is to provide estimate on interconnection costs. GPA will conduct a system interconnection study for bidders who have been selected for award at the cost of the selected bidder to verify and confirm the amount provided here.
11.	Provide the requested Power Purchase Agreement Non-Pricing Information:
11.A	Term of the agreement, in years.
11.B	Contract net capacity, in MW. Contracts with selected bidders will be based on the capacity provided here. GPA will not be obligated to purchase additional energy beyond the proposed project capacity.
12.	Provide the monthly estimated average net MWh per hour for every hour of the day. GPA requests for operation profile to evaluate the project. Annual projections must equal the Guaranteed net annual generation in 9.G above.
13.	Provide the monthly estimated net portfolio credits per hour for every hour of the day.
14.	If the Bidder is proposing an arrangement not covered by either of the preceding categories, the Bidder may include a description of the agreement here. The Bidder is responsible for providing sufficient information to allow GPA to evaluate this alternative bid package.
Task 3: Review the Bidder's information referenced under Task 1 and Task 2. GPA Evaluators Shall Complete Task 3.	
Step	Directions
1	Review Bidder entries in Column E of the sheet "Part 1 - Qual Support References" and additional information in "Part 2 - Technical Data." Using these entries, evaluate the Bidder's supporting documents to determine if the Bidder has provided enough information and has met the Technical Requirements.
Task 3: Score the Bidder's IFB submittal using the worksheet titled "Part 2 - Qual Eval Scoresheet" GPA Evaluators Shall Complete Task 3.	
Step	Directions
1	Go to the "Part 2 - Qual Eval Scoresheet" worksheet.
2	In Column H, rate the quality of the Bidder's response to each requested Checklist Item, based on review of the submittal.

Invitation for Bid: GPA-XXX-23 Renewable Energy Resource Acquisition for the Guam Power Authority (Phase IV) PART 1 - QUAL SUPPORT REFERENCES		
Bidder's Name:	Bidder's No.: <<< BIDDER'S BID NO >>>	DATA MISSING
EVALUATION FACTORS	BID REFERENCE (Enter the chapter/section and page number where information is to be found within submitted materials)	ALERTS
A. PROJECT DEVELOPMENT		
A1. Method and status of project financing (3) Bidders are required to provide responses to all questions below. Bidders are required to demonstrate the financial viability of their project. Bidders should provide the following information:		
A1-a. Identification of equity participants. • <i>Who are the equity participants in the project?</i>		<<< Reference Required
A1-b. Evidence that the project will be financed. • <i>How will the project be financed?</i>		<<< Reference Required
• <i>Is there a written commitment from the equity participants? If so, please provide a copy with confidential information redacted if necessary.</i>		<<< Reference Required
• <i>Discuss and/or provide supporting information on any project financing guarantees.</i>		<<< Reference Required
• <i>Does the developer envision any conditions precedent to project financing other than execution of the power purchase agreement and Guam Public Utilities Commission approval of the power purchase agreement? If so, what do you expect them to be?</i>		<<< Reference Required
A1-c. Description of the Bidder's organizational structure from a financial and legal perspective, including any general and limited partners, involvement of subsidiaries, providers of capital, and percentage interest of each party.		<<< Reference Required
A1-d. Provide a description of the financing plan for the project, including construction and term financing. The financing plan should address information contained in the pro forma, such as: • <i>The project's projected financial structure</i> • <i>Expected sources of debt and equity financing</i> • <i>Estimated capital cost.</i> • <i>Evidence the project is financeable</i> • <i>In addition, the financing plan should address the financing of development costs.</i> <i>All bidders are required to provide this information.</i>		<<< Reference Required <<< Reference Required <<< Reference Required <<< Reference Required <<< Reference Required
A1-e. Provide documentation illustrating the experience of the project sponsor in securing financing for projects of similar size and technology. For each project provide the following information: • <i>Project name and location</i> • <i>Project type and size</i> • <i>Date of construction and permanent financing</i>		<<< Reference Required <<< Reference Required <<< Reference Required
A1-f. Provide evidence that the Bidder has the financial resources and financial strength to complete and operate the project as planned.		<<< Reference Required
A1-g. Provide copies of the most recent audited financial statement or annual report for each Bidder, including affiliates of the Bidder. Also, list the current credit rating from Standard & Poor's and Moody's for the sponsor, affiliates, partners, and credit support provider.		<<< Reference Required
A1-h. The Bidder should demonstrate its ability (and/or the ability of its credit support provider) to provide the required security, including its plan for doing so (including type of security, sources of security and a description of its credit support provider).		<<< Reference Required
A1-i. Provide a description of any current credit issues regarding the Bidder or affiliate entities raised by rating agencies, banks, or accounting firms.		<<< Reference Required
A1-j. Describe the implication of the federal Production Tax Credits or Investment Tax Credits (or similar incentives) on the viability of the project.		<<< Reference Required
A1-k. Provide a memorandum with supporting information demonstrating that the proposal will not be subject to Variable Interest Entity treatment[1] and that GPA will not have to carry this entity on its financial statements. NOTE [1] GPA is not willing to be subject to accounting treatment that results from variable interest entity ("VIE") treatment as set forth in Financial Accounting Standards Board Interpretation No. 46 (revised December 2003) ("FIN46R").		<<< Reference Required
A1-l. Pro forma income and cash flow statement conforming to Generally Accepted Accounting Principles for the project for the term of the proposed Power Purchase Agreement (include revenue and cost data by major categories, debt service, depreciation expenses and other relevant information). Bidders may propose to submit their financial pro forma to a mutually agreed upon independent third party rather than to GPA. Bidders should note that this information will be required of short-listed bidders only and will be requested by GPA upon shortlist notification or after. Should GPA request pro forma financial information from the bidder, the information will only be used for project viability assessment only.		<<< Reference Required
A1-m. Bidders must disclose any litigation related to projects owned or managed by them or any of their affiliates in the United States.		<<< Reference Required
A2. Level of site control by developer (3) Bidders should provide GPA with some confidence regarding the level of control Bidder has on the project site.		

Invitation for Bid: GPA-XXX-23 Renewable Energy Resource Acquisition for the Guam Power Authority (Phase IV) PART 1 - QUAL SUPPORT REFERENCES		
Bidder's Name:	Bidder's No.: <<< BIDDER'S BID NO >>>	DATA MISSING
EVALUATION FACTORS	BID REFERENCE (Enter the chapter/section and page number where information is to be found within submitted materials)	ALERTS
A2-a. Provide a map of the site that clearly identifies the location of the site, the total acreage, the interconnection point, and the relationship of the site to other local infrastructure. In addition to providing the required map, provide a site layout plan which illustrates the location of all equipment and facilities on the site.		<<< Reference Required
A2-b. Identify any rights-of-way or easements that are required for access to the project or for interconnection. Describe the status of rights-of-way and easement acquisition, and describe the plan for securing the necessary rights-of-way, including the proposed timeline.		<<< Reference Required
A2-c. Describe whether the project has the capability for expansion at the proposed site. If so, describe the expansion capability possible.		<<< Reference Required
A3. Project team experience (5) Bidders are required to demonstrate project experience and management capability to successfully develop and operate the project proposed. GPA is interested in a project team which has demonstrated success in projects of similar type, size and technology and can demonstrate an ability to effectively work together to bring the project to commercial operation in a timely fashion.		
A3-a. Provide an organizational chart for the project that lists the project participants and identifies the management structure and responsibilities.		<<< Reference Required
A3-b. For each of the project participants (including the Bidder, partners, and proposed contractors), provide statements that list the specific experience of the firm in developing, financing, owning, and operating generating facilities, other projects of similar type, size and technology, and any evidence that the project participants have worked jointly on other projects. If a bidder is relying on the experience of a consultant or contractor to meet the Experience Threshold Requirement, the bidder should describe any contractual relationships between the bidder and the consultant or contractor.		<<< Reference Required
A3-c. Provide a management chart which lists the key personnel dedicated to this project and provide profiles or curriculum vitae of the key personnel.		<<< Reference Required
A3-d. Provide a listing of all projects the project sponsor has successfully developed or that are currently under construction. Provide the following information as part of the response:		
• <i>Name of the project</i>		<<< Reference Required
• <i>Location of the project</i>		<<< Reference Required
• <i>Project type, size and technology</i>		<<< Reference Required
• <i>Commercial operation date</i>		<<< Reference Required
• <i>Capacity factor of the unit for the past three years</i>		<<< Reference Required
• <i>Availability factor of the unit for the past three years</i>		<<< Reference Required
• <i>References, including the names and current addresses and telephone numbers of individuals to contact for each reference.</i>		<<< Reference Required
A3-e. With regard to the Seller's project team, identify and describe the entity responsible for the following:		
• <i>Construction Period Lender</i>		<<< Reference Required
• <i>Operating Period Lender</i>		<<< Reference Required
• <i>Financial Advisor</i>		<<< Reference Required
• <i>Environmental Consultant</i>		<<< Reference Required
• <i>Owner's Engineer</i>		<<< Reference Required
• <i>Construction Contractor</i>		<<< Reference Required
• <i>Transmission Consultant</i>		<<< Reference Required
• <i>Legal Counsel</i>		<<< Reference Required
A4. Project Schedule & Commercial Operation Date		<<< Reference Required
A5. Status of equipment supply and EPC agreements(3) Bidders should provide information about the specific technology or equipment including the track record of the technology and equipment.		
A5-a. Provide a reasonable but preliminary engineering plan which includes the following information:		
• <i>Name of principal engineering firm responsible for facility design</i>		<<< Reference Required
• <i>Type of generation technology</i>		<<< Reference Required
• <i>Major equipment considered or expected to be used</i>		<<< Reference Required
• <i>Equipment vendors selected/considered</i>		<<< Reference Required
• <i>History of equipment operations</i>		<<< Reference Required
• <i>Equipment procurement strategy</i>		<<< Reference Required
A5-b. Provide name of expected key equipment suppliers and information that illustrates and discusses the proposed equipment and technology, lead times for delivery to GPA, and suppliers prior experience with equipment operation in tropical island environments.		<<< Reference Required
A5-c. Please identify similar equipment by the same manufacturer that are presently in commercial operations including the number installed, installed capacity and estimated generation.		<<< Reference Required

Invitation for Bid: GPA-XXX-23 Renewable Energy Resource Acquisition for the Guam Power Authority (Phase IV) PART 1 - QUAL SUPPORT REFERENCES		
Bidder's Name:	Bidder's No.: <<< BIDDER'S BID NO >>>	DATA MISSING
EVALUATION FACTORS	BID REFERENCE (Enter the chapter/section and page number where information is to be found within submitted materials)	ALERTS
A5-d. Provide evidence that the technology to be employed for energy production is ready for transfer to the design and construction phases. • Describe the technology to be employed for energy production. • To the developer's best knowledge, are there, or have there been any similar plants in commercial operation? If not, i) are there, or have there been, any pilot projects, and ii) please provide evidence that the technology to be employed for energy production has been proven. Such evidence may include copies of studies confirming technical feasibility.		<<< Reference Required
A5-e. Please indicate if the Bidder has secured its equipment for the project. If not, identify the long-lead equipment options and describe the timing for securing equipment.		<<< Reference Required
A6. Bidder concurrence to the draft Purchase Power Agreement (5)		<<< Reference Required
B. PHYSICAL PROJECT CHARACTERISTICS		<<< Reference Required
B1. Operating Profile (5)		<<< Reference Required
B1-a. Conformance with Performance Standards		<<< Reference Required
B1-b. Impacts on System Operations/Stability		<<< Reference Required
B1-c. Generation Profile		<<< Reference Required
B1-d. Quality of Forecasting and Dispatchability		<<< Reference Required
B1-e. O&M Plan and Coordination of Maintenance • Provide an operation and maintenance plan for the project that demonstrates the long term operational viability of the proposed project. The plan should include a discussion of the staffing levels proposed for the project, the expected role of the project sponsor or outside contractor, scheduling of major maintenance activity, maintenance funding levels, and the plan for testing equipment. • Indicate whether or not the project sponsor is willing to coordinate the maintenance schedule for the project with the annual maintenance schedule of GPA. • Describe the status of the project sponsor in securing any operation and maintenance agreements or contracts. Include a discussion of the sponsors plan for securing a long-term O&M contract. • Provide examples of the Bidder's experience with O&M services for other similar projects.		<<< Reference Required
B2. Point of delivery (5)		<<< Reference Required
B2-a. Provide preliminary Single-Line Diagram(s) for the generation and interconnection facilities (see Appendix H for required details)		<<< Reference Required
B2-b. Provide a plan map of the facilities; indicate the interconnection point to the GPA system.		<<< Reference Required
B2-c. Provide the technical specifications and other information available for the generators included in the proposal.		<<< Reference Required
B3. Risk that the resource will not perform as expected (5) Discuss risks and plans associated with resource performance.		<<< Reference Required
B4. Project life and extension options. (5) Describe willingness to allow GPA to extend the life of a resource beyond the initial term or forecast provide potential future risk mitigation. As a result, proposals that provide rights to long-term access to the resource or energy supply will be scored		<<< Reference Required
C. POWER PRODUCT CHARACTERISTICS		<<< Reference Required
C1. Guaranteed Annual MWH (3)		<<< Reference Required
C2. Dispatchability (3)		<<< Reference Required
C3. Product flexibility (3)		<<< Reference Required
C3-a. Discuss In-service date (GPA prefers projects that reasonably propose a commercial operation date in the 2022-2023 timeframe)		<<< Reference Required
C3-b. Willingness to accept contract provisions for flexibility to accommodate future changes to performance standards.		<<< Reference Required
C3-c. Bid size (GPA may prefer contracts in an output range sufficient to allow GPA to contract with more than one project entity to diversify project risk).		<<< Reference Required
C4. Contract term (1) Discuss contract term. (NOTE: No firm capacity payments will be offered for this BID. GPA prefers proposals that have a longer contractual term.)		<<< Reference Required
D. CREDIT EVALUATION		<<< Reference Required
D1. Debt and equity ratings (3)		<<< Reference Required
D2. Performance assurance (3)		<<< Reference Required
D3. Financial ratio analysis (3)		<<< Reference Required
D4. Default risk (3)		<<< Reference Required
D5. Credit concentration and liquidity effect (3)		<<< Reference Required
D6. Enforceability of contractual credit terms (3)		<<< Reference Required
D7. Bidder revisions to contract templates that may affect credit requirements (3)		<<< Reference Required
E. Environmental Permits and Impacts		<<< Reference Required

Invitation for Bid: GPA-XXX-23 Renewable Energy Resource Acquisition for the Guam Power Authority (Phase IV) PART 1 - QUAL SUPPORT REFERENCES		
Bidder's Name:	Bidder's No.: <<< BIDDER'S BID NO >>>	DATA MISSING
EVALUATION FACTORS	BID REFERENCE (Enter the chapter/section and page number where information is to be found within submitted materials)	ALERTS
<p>The Bidder should identify environmental impacts associated with the proposed project and its plan to mitigate such impacts. Included in this section are technical environmental issues associated with air, water, solid waste, land use, noise, and other environmental issues. The following addresses specific environmental permitting considerations,</p> <p>E1. Permits (5)</p> <p>E1-a. Identify all permits, licenses, and environmental assessments and/or environmental impact statements required.</p>		<<< Reference Required
<p>E1-b. Provide a list of all Federal and GUAM permits, licenses, and environmental assessments and/or environmental impact statements required to construct and operate the project. Identify governmental agencies for issuing permits and licenses.</p>		<<< Reference Required
<p>E1-c. Identify the governmental agencies which will issue or approve the required permits, licenses, and environmental assessments and/or environmental impact statements. Prepare timeline to complete acquisition of permits, licenses, and environmental assessments and/or environmental impact statements.</p>		<<< Reference Required
<p>E1-d. Provide the anticipated timeline for seeking and receiving the required permits, licenses, and environmental assessments and/or environmental impact statements, using the execution date of the power purchase agreement as the starting point. Please include a narrative on the basis for the assumed timeline.</p>		<<< Reference Required
<p>E2. Site Environmental Assessment (5)</p> <p>Discuss proposed actions to address environmental issues stated in the Navy Environmental Assessment including</p> <ul style="list-style-type: none"> • Site development • Air quality • Water resources • Ecology • Land use • Cultural resources • Previous site use • Noise level • Aesthetic/visual 		<<< Reference Required
<p>E2-b. Identify a community support and a communications plan to gain support for or acceptance of the proposed project. Identify support for and/or acceptance of the proposed project by the affected communities and the general public.</p> <ul style="list-style-type: none"> • Identify communities and other stakeholders that may be affected by the proposed project. How will they be affected? • How will affected communities and the general public be informed about the proposed project? • Will the affected communities and the general public be given an opportunity to provide the developer with feedback and comments on the proposed project? What will the developer do with the feedback and comments received? 		<<< Reference Required

<<<<<<<<< END >>>>>>>>>

Invitation for Bid: GPA-XXX-23
Renewable Energy Resource Acquisition for the Guam Power Authority (Phase IV)
PART 2 - TECHNICAL DATA

BIDDER:	PROJECT NAME: <<<project name>>>	BIDDER'S NO.: <<< BIDDER'S BID NO >>>
Bidder Information		
1. Company Name:		
Primary Contact:		
2. Contact Name:	Alternative Contact:	
	Contact Name:	
	Company Name:	
	Street Address:	
	City:	
	State & Zip Code:	
	Phone Number:	
	Fax Number:	
	e-mail Address:	
Renewable Energy Project Information		
3. Project Name:	<<<project name>>>	
4. Unique Bid Number (1,2,3...):	<<< BIDDER'S BID NO >>>	
5. Renewable Technology (Select one):	<renewable technology>	
6. Street Address (or general location):		
City / County:		
State & Zip Code:		
7. New or existing? (Click One Below)	<input type="checkbox"/> Existing Facility <input type="checkbox"/> New Facility	
8. Project Owners	Owner 1: _____ Owner 2: _____ Owner 3: _____ Contact: _____ Street Address: _____ City: _____ State & Zip Code: _____ Phone Number: _____ e-mail Address: _____ Ownership Share: _____	
9. Project Technical Information		
9.A Date of Initial Operation, (MM/DD/YYYY):	<< This is the date when the facility will initiate operation mainly for testing	
9.B Agreement Beginning Date, (MM/DD/YYYY):	<< This is the Commercial Operation Date	
9.C Nameplate Capacity, kW:		
9.D ESS Capacity (MW and MWh):	KW _____ KWH << This will be used for dispatching solar energy production for evaluation purposes.	
9.E Estimated Annual Capacity Factor (net), %:		
9.F Guaranteed Net Annual Generation, MWh/yr:		
Contract Year: 1	11	Contract Year: 21
2	12	22
3	13	23
4	14	24

Invitation for Bid: GPA-XXX-23
Renewable Energy Resource Acquisition for the Guam Power Authority (Phase IV)
PART 2 - TECHNICAL DATA

BIDDER:		PROJECT NAME.: <<<project name>>>		BIDDER'S NO.: <<< BIDDER'S BID NO >>>	
		5	15	25	
		6			
		7			
		8			
		9			
		10			
9.G Expected Minimum Annual Generation, MWh/yr at 95% Confidence Level:					
Contract Year: 1		11	Contract Year: 21		
2		12	22		
3		13	23		
4		14	24		
5		15	25		
6		16			
7		17			
8		18			
9		19			
10		20			
9.H Guaranteed Success rate, AC-AC efficiency and availability for RI-ESS:					
1% Ramp Rate		Guaranteed AC-AC		Guaranteed Availability	
Guaranteed Success Rate		Efficiency			
Contract Year: 1		Contract Year: 1	Contract Year: 1		
2		2	2		
3		3	3		
4		4	4		
5		5	5		
6		6	6		
7		7	7		
8		8	8		
9		9	9		
10		10	10		
11		11	11		
12		12	12		
13		13	13		
14		14	14		
15		15	15		
16		16	16		
17		17	17		
18		18	18		
19		19	19		
20		20	20		
21		21	21		
22		22	22		
23		23	23		
24		24	24		
25		25	25		
9.I Estimated Equivalent Availability Factor, %:					
9.J Expected Project Life, years:					

Invitation for Bid: GPA-XXX-23
Renewable Energy Resource Acquisition for the Guam Power Authority (Phase IV)
PART 2 - TECHNICAL DATA

BIDDER:	PROJECT NAME.: <<<project name>>>		BIDDER'S BID NO >>>																									
10. Interconnection and Transmission Information																												
10.A Interconnection Voltage:																												
10.B Interconnecting Point / Substation:																												
10.C Interconnecting Transmission Line:																												
10.D Total Interconnection Cost:																												
11. Power Purchase Agreement Information																												
11.A Term, years:																												
11.B Contract Net Capacity, kW:																												
12. Renewable Energy Project Generation Profile																												
Provide the monthly estimated average net MWh per hour for every hour of the day. GPA requests for operation profile to evaluate the project. Annual projections must equal the Guaranteed net annual generation in 9.G above. Data provided shall be the solar production net output (excludes ESS & other losses/meter output). GPA will use this data to determine total daily production to be dispatched over its peak period (6PM -10PM) based the ESS capacity entered in 9D above.																												
<div style="display: flex; justify-content: space-around; align-items: center;"> <div style="border: 1px solid black; padding: 5px;">Open Fold (Show All Years)</div> <div style="border: 1px solid black; padding: 5px;">Close Fold (Hide After 1st Year)</div> </div>																												
Hour:																												
CON YR	MON	YR	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	DAYS	Monthly Total MWh
1	Jan	2022																									31	0
1	Feb	2022																									28	0
1	Mar	2022																									31	0
1	Apr	2022																									30	0
1	May	2022																									31	0
1	Jun	2022																									30	0
1	Jul	2022																									31	0
1	Aug	2022																									31	0
1	Sep	2022																									30	0
1	Oct	2022																									31	0
1	Nov	2022																									30	0
1	Dec	2022																									31	0

Contract Year: 11

Annual Production (MWH)	0
Guarantee Match? (9.G)	YES
Capacity Factor	#DIV/0!

Contract Year: 12

Annual Production (MWH)	0
Guarantee Match? (9.G)	YES
Capacity Factor	#DIV/0!

Contract Year: 21

Annual Production (MWH)	0
Guarantee Match? (9.G)	YES
Capacity Factor	#DIV/0!

Contract Year: 12

Annual Production (MWH)	0
Guarantee Match? (9.G)	YES
Capacity Factor	#DIV/0!

Contract Year: 13

Annual Production (MWH)	0
Guarantee Match? (9.G)	YES
Capacity Factor	#DIV/0!

Contract Year: 22

Annual Production (MWH)	0
Guarantee Match? (9.G)	YES
Capacity Factor	#DIV/0!

Contract Year: 14

Annual Production (MWH)	0
Guarantee Match? (9.G)	YES
Capacity Factor	#DIV/0!

Contract Year: 15

Annual Production (MWH)	0
Guarantee Match? (9.G)	YES
Capacity Factor	#DIV/0!

Contract Year: 23

Annual Production (MWH)	0
Guarantee Match? (9.G)	YES
Capacity Factor	#DIV/0!

Contract Year: 16

Annual Production (MWH)	0
Guarantee Match? (9.G)	YES
Capacity Factor	#DIV/0!

Contract Year: 17

Annual Production (MWH)	0
Guarantee Match? (9.G)	YES
Capacity Factor	#DIV/0!

Contract Year: 24

Annual Production (MWH)	0
Guarantee Match? (9.G)	YES
Capacity Factor	#DIV/0!

Contract Year: 18

Annual Production (MWH)	0
Guarantee Match? (9.G)	YES
Capacity Factor	#DIV/0!

Contract Year: 19

Annual Production (MWH)	0
Guarantee Match? (9.G)	YES
Capacity Factor	#DIV/0!

Contract Year: 25

Annual Production (MWH)	0
Guarantee Match? (9.G)	YES
Capacity Factor	#DIV/0!

Contract Year: 20

Annual Production (MWH)	0
Guarantee Match? (9.G)	YES
Capacity Factor	#DIV/0!

Contract Year: 26

Annual Production (MWH)	0
Guarantee Match? (9.G)	YES
Capacity Factor	#DIV/0!

Contract Year: 27

Annual Production (MWH)	0
Guarantee Match? (9.G)	YES
Capacity Factor	#DIV/0!

Contract Year: 28

Annual Production (MWH)	0
Guarantee Match? (9.G)	YES
Capacity Factor	#DIV/0!

Contract Year: 29

Annual Production (MWH)	0
Guarantee Match? (9.G)	YES
Capacity Factor	#DIV/0!

Contract Year: 30

Annual Production (MWH)	0
Guarantee Match? (9.G)	YES
Capacity Factor	#DIV/0!

13. Renewable Energy Project Portfolio Credit Generation Profile
Provide the monthly estimated net portfolio credits per hour for every hour of the day.

Invitation for Bid: GPA-XXX-23
Renewable Energy Resource Acquisition for the Guam Power Authority (Phase IV)
PART 2 - TECHNICAL DATA

BIDDER:

Open Fold (Show All Years)

Close Fold (Hide After 1st Year)

PROJECT NAME.: <<<project name>>>

BIDDER'S NO.: <<< BIDDER'S BID NO >>>

CON YR	MON	YR	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	DAYS	Monthly Total MWh
1	Jan	2022																									31	0
1	Feb	2022																									28	0
1	Mar	2022																									31	0
1	Apr	2022																									30	0
1	May	2022																									31	0
1	Jun	2022																									30	0
1	Jul	2022																									31	0
1	Aug	2022																									31	0
1	Sep	2022																									30	0
1	Oct	2022																									31	0
1	Nov	2022																									30	0
1	Dec	2022																									31	0

<<<<<< END >>>>>>>>

Invitation for Bid: GPA-XXX-23 Renewable Energy Resource Acquisition for the Guam Power Authority (Phase IV) PART 3 - QUAL EVAL SCORESHEET											
Bidder's Name: Bidder's No.: <<< BIDDER'S BID NO >>>				Date:							
EVALUATION FACTORS				BID EVALUATION							
				RAW SCORE	WEIGHTED SCORE						
Raw Score Weight	MAX Possible Score	Maximum Weighted Possible Score									
A. PROJECT DEVELOPMENT	20	26	520	0							
A1. Method and status of project financing (3)		3									
A2. Level of site control by developer (6)		6									
A3. Project team experience (5)		5									
A4. Project Schedule & Commerical Operation Date (4)		4									
A5. Status of equipment supply and EPC agreements (3)		3									
A6. Bidder concurrence to the draft Purchase Power Agreement (5)		5									
B. PHYSICAL PROJECT CHARACTERISTICS	20	20	400	0							
B1. Operating Profile (5)		5									
B2. Point of delivery (5)		5									
B3. Risk that the resource will not perform as expected (5)		5									
B4. Project life and extension options. (5)		5									
C. POWER PRODUCT CHARACTERISTICS	25	12	300	0							
C1. Guaranteed Annual MWH (3)		3									
C2. Dispatchability (3) - Proposals not capable of energy shifting total daily solar generated energy shall be disqualified.		3									
C3. Product flexibility (3)		3									
C4. Contract Term (3)		3									
D. CREDIT EVALUATION	20	21	420	0							
D1. Debt and equity ratings (3)		3									
D2. Performance assurance (3)		3									
D3. Financial ratio analysis (3)		3									
D4. Default risk (3)		3									
D5. Credit concentration and liquidity effect (3)		3									
D6. Enforceability of contractual credit terms (3)		3									
D7. Bidder revisions to contract templates that may affect credit requirements (3)		3									
E. Environmental Permits and Impacts	15	15	225	0							
E1. Permits (5)		5									
E2. Site Environmental Assessment (10)		10									
TOTALS	100	94	1865	0							
EVALUATION RATING:											
<table border="1"> <tr> <td>ACCEPTABLE - Scores Greater Than or Equal to:</td> <td>1492</td> </tr> <tr> <td>POTENTIALLY ACCEPTABLE - Less than Acceptable but Greater Than or Equal to:</td> <td>1306</td> </tr> <tr> <td>UNACCEPTABLE - Scores are less than:</td> <td>1306</td> </tr> </table>						ACCEPTABLE - Scores Greater Than or Equal to:	1492	POTENTIALLY ACCEPTABLE - Less than Acceptable but Greater Than or Equal to:	1306	UNACCEPTABLE - Scores are less than:	1306
ACCEPTABLE - Scores Greater Than or Equal to:	1492										
POTENTIALLY ACCEPTABLE - Less than Acceptable but Greater Than or Equal to:	1306										
UNACCEPTABLE - Scores are less than:	1306										

Invitation for Bid: GPA-XXX-23
Renewable Energy Resource Acquisition for the Guam Power Authority (Phase IV)
PRICE OFFER WORKSHEET

Instructions:

Bidder shall fill in the highlighted fields.

1. Bidder's Name:

2. Bid Reference No.:

(Refers to Bidder's Bid No. if bidder is submitting more than one bid, otherwise enter "N/A")

3. Contract Term, Years:

4. Price Offer Entry:

Enter fixed annual energy purchase price and the Guaranteed Net Annual Generation (MWH/YR) into the table below.

Contract Year	Annual Price (\$/MWH)	Guaranteed Net Annual Generation (MWH/YR)
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		

Contract Year	Annual Price (\$/MWH)	Guaranteed Net Annual Generation (MWH/YR)
16		
17		
18		
19		
20		

GOVERNMENT OF GUAM

GENERAL TERMS AND CONDITIONS

SEALED BID SOLICITATION AND AWARD

Only those Boxes checked below are applicable to this bid.

- [X] 1. **AUTHORITY:** This solicitation is issued subject to all the provision of the Guam Procurement Act (5GCA, Chapter 5) And the Guam Procurement Regulations (copies of both are available at the Office of the Complier of laws, Department of Law, copies available for inspection at the Guam Power Authority). It requires all parties involved in the Preparation, negotiation, performance, or administration of contracts to act in good faith.
- [X] 2. **GENERAL INTENTION:** Unless otherwise specified, it is the declared and acknowledged intention and meaning of these General Terms and conditions for the bidder to provide the Government of Guam (Government) with specified services or with materials, supplies or equipment completely assembled and ready for use.
- [X] 3. **TAXES:** Bidders are cautioned that they are subject to Guam Income Taxes as well as all other taxes on Guam Transactions. Specific information on taxes may be obtained from the Director of Revenue and Taxation.
- [X] 4. **LICENSING:** Bidders are cautioned that the Government will not consider for award any offer submitted by a bidder who has not complied with the Guam Licensing Law. Specific information on licenses may be obtained from the Director of Revenue and Taxation.
- [X] 5. **LOCAL PROCUREMENT PREFERENCE:** All procurement of supplies and services where possible, will be made from among businesses licensed to do business on Guam in accordance with section 5008 of the Guam Procurement Act (5GCA, Chapter 5) and Section 1-104 of the Guam Procurement Regulations.
- [X] 6. **COMPLIANCE WITH SPECIFICATIONS AND OTHER SOLICITATION REQUIREMENTS:** Bidders shall comply with all specifications and other requirements of the Solicitation.
- [] 7. **“ALL OR NONE” BIDS:** Unless otherwise allowed under this Solicitation. “all or none” bids may be deemed to be non-responsive. If the bid is so limited, the Government may reject part of such proposal and award on the remainder.

NOTE: By checking this item, the Government is requesting all of the bid items to be bided or none at all. **The Government will not award on an itemized basis.** Reference: Section 3-101.06 of the Guam Procurement Regulations.

- [X] 8. **INDEPENDENT PRICE DETERMINATION:** The bidder, upon signing the Invitation for Bid, certifies that the prices in his bid were derived at without collusion, and acknowledge that collusion and anti-competitive practices are prohibited by law. Violations will be subject to the provision of Section 5651 of that of the Guam Procurement Act. Other existing civil, criminal or administrative remedies are not impaired and may be in addition to the remedies in Section 5651 of the Government code.
- [X] 9. **BIDDER’S PRICE:** The Government will consider not more than two (2) (Basic and Alternate) item prices and the bidder shall explain fully each price if supplies, materials, equipment, and/or specified services offered comply with specifications and the products origin. Where basic or alternate bid meets the minimum required specification, cost and other factors will be considered. Failure to explain this requirement will result in rejection of the bid.
- [X] 10. **BID ENVELOPE:** Envelope shall be sealed and marked with the bidder’s name, Bid number, time, date and place of Bid Opening.
- [X] 11. **BID GUARANTEE REQUIREMENT:** Bidder is required to submit a Bid Guarantee Bond or standby irrevocable Letter of Credit or Certified Check or Cashier’s Check in the same bid envelope to be held by the Government pending award. The Bid Guarantee Bond, Letter of Credit, Certified Check or Cashier’s Check must be issued by any local surety or banking institution licensed to do business on Guam and made payable to the Guam Power Authority in the amount of \$150,000.00 USD. The Bid Bond must be submitted on Government Standard Form BB-1 (copy enclosed). Personal Checks will not be accepted as Bid Guarantee. If a successful Bidder (contractor) withdraws from the bid or fails to enter into contract within the prescribed time, such Bid guarantee will be forfeited to the Government of Guam. Bids will be disqualified if not accompanied by Bid Bond, Letter of Credit, Certified Check or Cashier’s check. Bidder must include in his/her bid, valid copies of a Power of Attorney from the Surety and a Certificate of Authority from the Government of Guam to show proof that the surety company named on the bond instrument is authorized by the Government of Guam and qualified to do business on Guam. For detailed information on bonding matters, contact the Department of Revenue and Taxation. Failure to submit a valid Power of Attorney and Certificate of Authority on the surety is cause for rejection of bid. (GPR Section 3-202.03.3) **Pursuant to Public Law 27-127, all competitive sealed bidding for the procurement of supplies or services exceeding \$25,000.00 a 15% Bid Security of the total bid price must accompany the bid package.**
- [X] 12. **PERFORMANCE BOND REQUIREMENT:** The Bidder may be required to furnish a Performance Bond on Government Standard Form BB-1 or standby irrevocable Letter of Credit or Certified Check or Cashier’s Check payable to the Guam Power Authority issued by any of the local Banks or Bonding Institution in the amount equal to **Cost for Minimum Annual Energy as described in the Draft Renewable Energy Purchase Agreement for that full or partial fiscal year within the term of the contract.** In the event that any of the provisions of this contract are violated by the contractor, the Chief Procurement Officer shall serve written notice upon both the contractor and the Surety of its intention to terminate the contract. Unless satisfactory arrangement or correction is made within ten (10) days of such notice the contract shall cease and terminate upon the expiration of the ten (10) days. In the event of any such termination, the Chief Procurement Officer shall immediately serve notice thereof upon the Surety. The Surety shall have the right to take over and perform the contract, provided, however, that if the Surety does not commence performance thereof within 10 days from the date of the mailing of notice of termination,

the Government may take over and prosecute the same to complete the contract or force account for the account and at the expense of the contractor, and the contractor and his Surety shall be liable to the Government for any excess cost occasioned the Government thereby (GPR Section 3-202.03.4).

- [X] 13. **PERFORMANCE GUARANTEE:** Bidders who are awarded a contract under this solicitation, guarantee that goods will be delivered or required services performed within the time specified. Failure to perform the contract in a satisfactory manner may be cause for suspension or debarment from doing business with the Government and to enforce Section 23 of these General Terms and Conditions. In addition, the Government will hold the Vendor liable and will enforce the requirements as set forth in Section 41 of these General Terms and Conditions.
- [X] 14. **SURETY BONDS:** Bid and Performance Bonds coverage must be signed or countersigned in Guam by a foreign or alien surety's resident general agent. The surety must be an Insurance Company, authorized by the government of Guam and qualified to do business in Guam. Bids will be disqualified if the Surety Company does not have a valid Certificate of Authority from the Government of Guam to conduct business in Guam.
- [X] 15. **COMPETENCY OF BIDDERS:** Bids will be considered only from the such bidders who, in the opinion of the Government, can show evidence of their ability, experience, equipment, and facilities to render satisfactory service.
- [X] 16. **DETERMINATION OF RESPONSIBILITY OF BIDDERS:** The Chief Procurement Officer reserves the right for securing from bidders information to determine whether or not they are responsible and to inspect plant site, place of business; and supplies and services as necessary to determine their responsibility in accordance with Section 15 of these General Terms and Conditions (GPR Section 3-401).
- [X] 17. **STANDARD FOR DETERMINATION OF LOWEST RESPONSIBLE BIDDER:** In determining the lowest responsible offer, the Chief Procurement Officer shall be guided by the following:
- a) Price of items offered.
 - b) The ability, capacity, and skill of the Bidder to perform.
 - c) Whether the Bidder can perform promptly or within the specified time.
 - d) The quality of performance of the Bidder with regards to awards previously made to him.
 - e) The previous and existing compliance by the Bidder with laws and regulations relative to procurement.
 - f) The sufficiency of the financial resources and ability of the Bidder to perform.
 - g) The ability of the bidder to provide future maintenance and services for the subject of the award.
 - h) **The compliance with all of the conditions to the Solicitation.**
- [X] 18. **TIE BIDS:** If the bids are for the same unit price or total amount in the whole or in part, the Chief Procurement Officer will determine award based on Section 3.202.15.2, or to reject all such bids (GPR Section 3-202.15.2).
- [] 19. **BRAND NAMES:** Any reference in the Solicitation to manufacturer's Brand Names and number is due to lack of a satisfactory specification of commodity description. Such preference is intended to be descriptive, but not restrictive and for the sole purpose of indicating prospective bidders a description of the article or services that will be satisfactory. Bids on comparable items will be considered provided the bidder clearly states in his bid the exact articles he is offering and how it differs from the original specification.
- [] 20. **DESCRIPTIVE LITERATURE:** Descriptive literature(s) as specified in this solicitation must be furnished as a part of the bid and must be received at the date and time set for opening Bids. The literature furnished must clearly identify the item(s) in the Bid. The descriptive literature is required to establish, for the purpose of evaluation and award, details of the product(s) the bidder proposes to furnish including design, materials, components, performance characteristics, methods of manufacture, construction, assembly or other characteristics which are considered appropriate. Rejection of the Bid will be required if the descriptive literature(s) do not show that the product(s) offered conform(s) to the specifications and other requirements of this solicitation. Failure to furnish the descriptive literature(s) by the time specified in the Solicitation will require rejection of the bid.
- [] 21. **SAMPLES:** Sample(s) of item(s) as specified in this solicitation must be furnished as a part of the bid and must be received at the date and time set for opening Bids. The sample(s) should represent exactly what the bidder proposes to furnish and will be used to determine if the item(s) offered complies with the specifications. Rejection of the Bid will be required if the sample(s) do not show that the product(s) offered conform(s) to the specifications and other requirements of this solicitation. Failure to furnish the sample(s) by the time specified in the Solicitation will require rejection of the Bid.
- [] 22. **LABORATORY TEST:** Successful bidder is required to accompany delivery of his goods with a Laboratory Test Report indicating that the product he is furnishing the Government meets with the specifications. This report is on the bidder's account and must be from a certified Testing Association.
- [X] 23. **AWARD, CANCELLATION, & REJECTION:** Award shall be made to the lowest responsible and responsive bidder, whose bid is determined to be the most advantageous to the Government, taking into consideration the evaluation factors set forth in this solicitation. No other factors or criteria shall be used in the evaluation. The right is reserved as the interest of the Government may require to waive any minor irregularity in bid received. The Chief Procurement Officer shall have the authority to award, cancel, or reject bids, in whole or in part for any one or more items if he determines it is in the public interest. Award issued to the lowest responsible bidder within the specified time for acceptance as indicated in the solicitation, results in a bidding contract without further action by either party. In case of an error in the extension of prices, unit price will govern. It is the policy of the Government to award contracts to qualified local bidders. The government reserves the right to increase or decrease the quantity of the items for award and make additional awards for the same type items and the vendor agrees to such modifications and additional awards based on the bid prices for a period of thirty (30) days after original award. No. award shall be made under this solicitation which shall require advance payment or irrevocable letter of credit from the government (GPR Section 3-202.14.1).

- [] 24. **MARKING:** Each outside container shall be marked with the Purchase Order number, item number, brief tem description and quantity. Letter marking shall not be less than 3/4" in height.
- [] 25. **SCHEDULE FOR DELIVERY:** Successful bidder shall notify the Guam Power Authority, Dededo Warehouse at (671) 653-2073, Information Technology Division at (671) 648-3060, GPA Transportation Supply at (671) 300-8318 and/or Guam Power Authority Cabras Warehouse at (671) 475-3319 at least twenty-four (24) hours before delivery of any item under this solicitation.
- [] 26. **BILL OF SALE:** Successful supplier shall render Bills of Sale for each item delivered under this contract. Failure to comply with this requirement will result in rejection of delivery. The Bill of Sale must accompany the items delivered but will not be considered as an invoice for payment. Supplier shall bill the Government in accordance with billing instructions as indicated on the Purchase Order.
- [] 27. **MANUFACTURER'S CERTIFICATE:** Successful bidder is required, upon delivery of any item under this contract, to furnish a certificate from the manufacturer indication that the goods meet the specifications. Failure to comply with this request will result in rejection of delivery payment. Supplier shall bill the Government in accordance with billing instructions as indicated on the Purchase Order.
- [X] 28. **INSPECTION:** All supplies, materials, equipment, or services delivered under this contract shall be subject to the inspection and/or test conducted by the Government at destination. If in any case the supplies, materials, equipment, or services are found to be defective in material, workmanship, performance, or otherwise do not conform with the specifications, the Government shall have the right to reject the items or require that they be corrected. The number of days required for correction will be determined by the Government.
- [] 29. **MOTOR VEHICLE SAFETY REQUIREMENTS:** The Government will only consider Bids on motor vehicles which comply with the requirements of the National Traffic and Motor Vehicle safety Act of 1966 (Public Law 89-563) and Clean Air Act as amended (Public Law 88-206), that are applicable to Guam. Bidders shall state if the equipment offered comply with these aforementioned Federal Laws.
- [] 30. **SAFETY INSPECTION:** All motor vehicles delivered under this contract must pass the Government of Guam Vehicle Inspection before delivery at destination.
- [X] 31. **GUARANTEE:**
 a) **Guarantee of Vehicle Type of Equipment:**
 The successful bidder shall guarantee vehicular type of equipment offered against defective parts, workmanship, and performance, for a period of not less than one (1) year after date of receipt of equipment. Bidder shall also provide service to the equipment for at least one (1) year. Service to be provided shall include, but will not be limited to tune ups (change of spark plugs, contact points and condensers) and lubrication (change of engine and transmission oil). All parts and labor shall be at the expense of the bidder. All parts found defective and not caused by misuse, negligence or accident within the guarantee period shall be repaired, replaced, or adjusted within six (6) working days after notice from the Government and without cost to the Government. Vehicular type of equipment as used in this context shall include equipment used for transportation as differentiated from tractors, backhoes, etc.
 b) **Guarantee of Other Type of Equipment:**
 The successful bidder shall guarantee all other types of equipment offered, except those mentioned in 31a, above, against defective parts, workmanship, and performance for a period of not less than three (3) months after date of receipt of equipment. Bidder shall also provide service to the equipment for at least three (3) months. All parts found defective within that period shall be repaired or replaced by the Contractor without cost to the Government. Repairs, adjustments or replacements of defective parts shall be completed by the contractor within six (6) working days after notice from the Government.
 c) **Compliance with this Section is a condition of this Bid.**
- [X] 32. **REPRESENTATION REGARDING ETHICS IN PUBLIC PROCUREMENT:** The bidder or contractor represents that it has not knowingly influenced and promises that it will not knowingly influence a Government employee to breach any of the ethical standards and represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth on Chapter 11 (Ethics in Public Contracting) of the Guam Procurement Act and in Chapter 11 of the Guam Procurement Regulations.
- [X] 33. **REPRESENTATION REGARDING CONTINGENT FEES:** The contractor represents that it has not retained a person to solicit or secure a Government contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business (GPR Section 11-207).
- [X] 34. **EQUAL EMPLOYMENT OPPORTUNITY:** Contractors shall not discriminate against any employee or applicant of employment because of race, color, religion, se, or national origin. The contractor will take affirmative action to ensure that employees are treated equally during employment without regards to their race, color, religion, sex, or national origin.
- [X] 35. **COMPLIANCE WITH LAWS:** Bidders awarded a contract under this Solicitation shall comply with the applicable standard, provisions, and stipulations of all pertinent Federal and/or local laws, rules, and regulations relative to the performance of this contract and the furnishing of goods.
- [X] 36. **CHANGE ORDER:** Any order issued relative to awards made under this solicitation will be subject to and in accordance with the provisions of Section 6-101-03.1 of the Guam Procurement Regulations.
- [X] 37. **STOP WORK ORDER:** Any stop work order issued relative to awards made under this solicitation will be subject to and in accordance with the provisions of Section 6-101-04.1 of the Guam Procurement Regulations.

- [X] 38. **TERMINATION FOR CONVENIENCE:** Any termination order for the convenience of the Government issued relative towards made under this solicitation will be subject to and in accordance with the provisions of Section 6-101.10 of the Government Procurement Regulations.
- [X] 39. **TIME FOR COMPLETION:** It is hereby understood and mutually agreed by and between the contractor and the Government that the time for delivery to final destination or the timely performance of certain services is an essential condition of this contract. If the contractor refuses or fails to perform any of the provisions of this contract within the time specified in the Purchase Order (from the date Purchase Order is acknowledged by vendor), then the contractor is in default. Defaults will be treated subject to and in accordance with the provisions of Section 6-101-08 of the Guam Procurement Regulations.
- [X] 40. **JUSTIFICATION OF DELAY:** Bidders who are awarded contracts under this Solicitation, guarantee that the goods will be delivered to their destination or required services rendered within the time specified. If the bidder is not able to meet the specified delivery date, he is required to notify the Chief Procurement Officer of such delay. Notification shall be in writing and shall be receive by the Chief Procurement Officer at least twenty-four (24) hours before the specified delivery date. Notification of delay shall include an explanation of the causes and reasons for the delay including statement(s) from supplier or shipping company causing the delay. The Government reserves the right to reject delay justification if, in the opinion of the Chief Procurement Officer, such justification is not adequate.
- [X] 41. **LIQUIDATED DAMAGES:** When the contractor is given notice of delay or nonperformance as specified in Paragraph 1 (Default) of the Termination for Default Clause of this contract and fails to cure in the time specified, the contractor shall be liable for damages for delay in the amount of one-fourth of one percent (1%) of outstanding order per calendar day from date set for cure until either the territory reasonable obtains similar supplies or services if the contractor is terminated for default, or until the contractor provides the supplies or services if the contractor is not terminated for default. To the extent that the contractor’s delay or nonperformance is excused under Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of the Termination for Default Clause of this contract, liquidated damages shall not be due the territory. The contractor remains liable for damages caused other than by delay (GPR Section 6-101-09.1).
- [X] 42. **PHYSICAL LIABILITY:** If it becomes necessary for the Vendor, either as principal, agent or employee, to enter upon the premises or property of the Government of Guam in order to construct, erect, inspect, make delivery or remove property hereunder, the Vendor hereby covenants and agrees to take, use, provide and make all proper, necessary and sufficient precautions, safeguards and protections against the occurrence of any accidents, injuries or damages to any person or property during the progress of the work herein covered, and to be responsible for, and to indemnify and save harmless the Government of Guam from the payment of all sums of money by reason of all or any such accidents, injuries or damages that may occur upon or about such work, and fines, penalties and loss incurred for or by reasons of the violations of any territorial ordinance, regulations, or the laws of Guam or the United States, while the work is in progress. Contractor will carry insurance to indemnify the Government of Guam against any claim for loss, damage or injury to property or persons arising out of the performance of the Contractor or his employees and agents of the services covered by the contract and the use, misuse or failure of any equipment used by the contractor or his employees or agents, and shall provide certificates of such insurance to the Government of Guam when required.
- [X] 43. **CONTACT FOR CONTRACT ADMINISTRATION:** If your firm receives a contract as a result of this Solicitation, please designate a person whom we may contact for prompt administration.

Name: _____	Title: _____
Address: _____	Telephone: _____

GOVERNMENT OF GUAM

SEALED BID SOLICITATION INSTRUCTIONS

1. **BID FORMS:** Each bidder shall be provided with two (2) sets of Solicitation forms. Additional copies may be provided upon request. Bidders requesting additional copies of said forms will be charged per page in accordance with Section 6114 of the Government Code of Guam. All payments for this purpose shall be by cash, certified check or money order and shall be made payable to the Guam Power Authority.

2. **PREPARATIONS OF BIDS:**
 - a) Bidders are required to examine the drawings, specifications, schedule, and all instructions. Failure to do so will be at bidder's risk.
 - b) Each bidder shall furnish the information required by the Solicitation. The bidder shall sign the solicitation and print or type his name on the Schedule. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent are to be accompanied by evidence of this authority unless such evidence has been previously furnished to the issuing office.
 - c) Unit price for each unit offered shall be shown and such price shall include packing unless otherwise specified. A total shall be entered in the amount column of the Schedule for each item offered. In case of discrepancies between a unit price and extended price, the unit price will be presumed to be correct.
 - d) Bids for supplies or services other than those specified will not be considered. Time, if stated as a number of days, means calendar days and will include Saturdays, Sundays, and holidays beginning the day after the issuance of a Notice to Proceed. Time stated ending on a Saturday, Sunday or Government of Guam legal holiday will end at the close of the next business day.

3. **EXPLANATION TO BIDDERS:** Any explanation desired by a bidder regarding the meaning or interpretation of the Solicitation, drawings, specifications, etc., must be submitted in writing and with sufficient time allowed for a written reply to reach all bidders before the submission of their bids. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective bidder concerning a Solicitation will be furnished to all prospective bidders in writing as an amendment to the Solicitation if such information would be prejudicial to uninformed bidders.

4. **ACKNOWLEDGEMENT OF AMENDMENTS TO SOLICITATIONS:** Receipt of an amendment to a Solicitation by a bidder must be acknowledged by signing an acknowledgement of receipt of the amendment. Such acknowledgement must be received prior to the hour and date specified for receipt of bids.

5. **SUBMISSION OF BIDS:**
 - a) Bids and modifications thereof shall be enclosed in sealed envelopes and addressed to the office specified in the Solicitation. The bidder shall show the hour and date specified in the Solicitation for receipt, the Solicitation number, and the name and address of the bidder on the face of the envelope.
 - b) Telegraphic bids will not be considered unless authorized by the Solicitation. However, bids may be modified or withdrawn by written or telegraphic notice, provided such notice is received prior to the hour and date specified for receipt (see paragraph 6 of these instructions).
 - c) Samples of items, when required, must be submitted within the time specified, unless otherwise specified by the Government, at no expense to the Government. If not destroyed by testing, samples will be returned at bidder's request and expense, unless otherwise specified by the Solicitation.
 - d) Samples or descriptive literature should not be submitted unless it is required on this solicitation. Regardless of any attempt by a bidder to condition the bid, unsolicited samples or descriptive literature will not be examined or tested at the bidder's risk, and will not be deemed to vary any of the provisions of this Solicitation.

6. **FAILURE TO SUBMIT BID:** If no bid is to be submitted, do not return the solicitation unless otherwise specified. A letter or postcard shall be sent to the issuing office advising whether future Solicitations for the type of supplies or services covered by this Solicitation are desired.

7. **LATE BID, LATE WITHDRAWALS, AND LATE MODIFICATIONS:**
 - a) Definition: Any bid received after the time and date set for receipt of bids is late. Any withdrawal or modification of a bid received after the time and date set for opening of bids at the place designated for opening is late (Guam Procurement Regulations Section 3-202)
 - b) Treatment: No late bid, late modification, or late withdrawal will be considered unless received before contract award, and the bid, modification, or withdrawal would have been timely but for the action or inaction of territorial personnel directly serving the procurement activity.

8. **DISCOUNTS:**
 - a) Notwithstanding the fact that prompt payment discounts may be offered, such offer will not be considered in evaluating bids for award unless otherwise specified in the Solicitation. However, offered discounts will be taken if payment is made within the discount period, even though not considered in the evaluation of bids.
 - b) In connection with any discount offered, time will be computed from date of delivery and acceptance of the supplies to the destination as indicated in the purchase order or contract. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the Government check.

9. **GOVERNMENT FURNISHED PROPERTY:** No material, labor or facilities will be furnished by the Government unless otherwise provided for in the Solicitation.
10. **SELLERS' INVOICES:** Invoices shall be prepared and submitted in quadruplicate (one copy shall be marked "original") unless otherwise specified. Invoices shall be "certified true and correct" and shall contain the following information: Contract and order number (if any), item numbers, description of supplies or services, sizes, quantities, unit prices, and extended total. Bill of lading number and weight of shipment will be shown for shipments made on Government bills of lading.
11. **RECEIPT, OPENING AND RECORDING OF BIDS:** Bids and modifications shall be publicly opened in the presence of one or more witnesses, at the time, date, and place designated in the Invitation for Bids. The name of each bidder, the bid price, and such other information as is deemed appropriate by the Procurement Officer, shall be read aloud and recorded, or otherwise made available. The names and addresses of required witnesses shall be recorded at the opening. The opened bids shall be available for public inspection except to the extent the bidder designates trade secrets or other proprietary data to be confidential as set forth in accordance with Section 12 below. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. Prices, makes and models or catalogue numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary (Guam Procurement Regulations Section 3-202.12.2).
12. **CONFIDENTIAL DATA:** The Procurement Officer shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. If the parties do not agree as to the disclosure of data, the Procurement Officer shall inform the bidders in writing what portions of the bid will be disclosed and that, unless the bidders protest under Chapter 9 of the Guam Procurement Act (P.L. 16-124), the bids will be so disclosed. The bids shall be opened to public inspection subject to any continuing prohibition on the disclosure of confidential data (Guam Procurement Regulations Section 3-202.12.3).
13. **MULTI-STEP SEALED BIDDING:**
 - a. It is defined as two-phase process consisting of a technical first-phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the territory, and a second-phase in which those bidders whose technical offers are determined to be acceptable during the first-step have their priced bids considered. It is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtained the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to evaluate and determine the acceptability of technical offers.
 - b. In addition to the requirements set forth in the General Terms and Conditions and the Special provisions, the following applies:
 - 1). only unpriced technical offers are requested in the first phase;
 - 2). priced bids will be considered only in the second phase and only from bidders whose unpriced technical offers are found acceptable in the first phase;
 - 3). the criteria to be used in the evaluation at those specified in the Special Provisions and the General Terms and Conditions;
 - 4). the territory, to the extent the Procurement Officer finds necessary, may conduct oral or written discussion of the unpriced technical offers;
 - 5). the bidders, may designate those portions of the unpriced technical offers which contain trade secrets or other proprietary data which are to remain confidential; and,
 - 6). the service being procured shall be furnished generally in accordance with bidder's technical offer as found to be finally acceptable and shall meet the requirements of the Invitation for Bids.
 - c. **RECEIPT AND HANDLING OF UNPRICED TECHNICAL OFFERS.**
Unpriced technical offers shall not be opened publicly, but shall be opened in front of two or more procurement officials. Such offers shall not be disclosed to unauthorized persons. Bidders may request nondisclosure of trade secrets and other proprietary data identified in writing.
 - d. **EVALUATION OF UNPRICED TECHNICAL OFFERS.**
The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bids. The unpriced technical offers shall be categorized as:
 - 1). acceptable;
 - 2). potentially acceptable, that is, reasonably susceptible of being made acceptable; or
 - 3). 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 Phase Two of the procedure if, in the Procurement Officer's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without technical discussions. If the Procurement Officer finds such is not the case, the Procurement Officer shall issue an amendment to the Invitation for Bids or engage in technical discussions as set forth in Subsection 3-202.20.5 of this Section.
 - e. Upon the completion of Phase One, the Procurement Officer shall invite each acceptable bidder to submit a price bid. Upon submission of prices, the Procurement Officer shall prepare the final evaluation and reconsideration for the Chief Procurement Officer's approval.