



# GUAM POWER AUTHORITY

ATURIDÅT ILEKTRESEDÅT GUÅHAN  
P.O.BOX 2977 • HAGÅTÑA, GUAM U.S.A. 96932-2977

To All Interested Parties:

The Guam Power Authority, Procurement Office will continue its efforts with improvement towards accountability, transparency, and efficiency to better serve GPA personnel, prospective bidders, and guests, please be advised of the following:

1. Virtual meetings and/or conferences will be coordinated through the GPA Procurement Division.
2. For In-Person meetings and/or conferences:
  - a. **Please contact our office for scheduled hand delivery of Sealed Bid submission on or before scheduled Opening/Closing date and time with confirmation via:**  
 Tel: (671) 648-3054/5 and/or (671) 648-3045  
 email: jdpangelinan@gpagwa.com  
 email: aaquifunas@gpagwa.com  
 email: jpangelinan@gpagwa.com
  - b. Face masks and social distancing may be employed at the option of the individual.

**COMPANY NAME:**

**REPRESENTATIVE NAME:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Print / Sign

Date

**BID NO.:** Multi-Step Bid GPA-023-23

**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
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INVITATION FOR BID (IFB) NO.: GPA-023-23

DESCRIPTION: PERFORMANCE MANAGEMENT CONTRACT (PMC) YIGO DIESEL GENERATORS

#### 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 one (1) original and five (5) copies of their Technical Proposal including the Technical Proposal Worksheet (Schedule C) and all addenda, if any. One (1) electronic PDF format copy in CD, DVD and/or USB Flash Drive. The BIDDER's Price Proposal shall be submitted in a "SEPARATELY SEALED" envelope and consist of one printed copy and one electronic (CD) copy at the closing date and time. All sealed proposal submissions must be hand delivered, delivered by mail, or delivered by other courier service to:

#### ISSUING OFFICE:

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

(XX) BID GUARANTEE – One Hundred Fifty Thousand US Dollars (\$150,000.00) May be in the form of;  
Reference #11 on the General Terms and Conditions

- 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.)
- Letter of Credit or
- Surety Bond – Valid only if accompanied by:
  - Current Certificate of Authority issued by the Insurance Commissioner; or
  - Power of Attorney issued by the Surety to the Resident General Agent or the following:
    - Current Sworn Annual Report (Limited Liability Company (LLC) and/or Corporation) or;
    - Current Renewal of Annual Limited Liability Partnership (LLP); or
  - Power of Attorney issued by two (2) major officers of the Surety to whomever is signing on their behalf.

- (XX) STATEMENT OF QUALIFICATION;  
( ) SAMPLES;  
(XX) 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:

- The affidavit must be signed within 60 days of the date the bid is due;
- Date of signature of the person authorized to sign the bid and the notary date must be the same.
- 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](http://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-023-23**  
**PERFORMANCE MANAGEMENT CONTRACT**  
**FOR THE**  
**YIGO DIESEL GENERATORS**



\_\_\_\_\_  \_\_\_\_\_

Assistant General Manager,  
Operations

\_\_\_\_\_  \_\_\_\_\_

John M. Benavente, P.E.  
General Manager

## INVITATION FOR MULTI-STEP BID

The Guam Power Authority, hereinafter referred to as GPA, is inviting interested firms to participate in a **Multi-Step Invitation for Bid (IFB) for a Performance Management Contract (PMC) to manage, operate, and maintain the Yigo Diesel Generators.**

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

The contract time shall be for **36 months** after issuance of Notice to Proceed with **options to renew up to two (2) additional 12-month periods.** All BIDDERS identified after Step One of the bid process on the Qualified BIDDERS List must submit their price proposal with a **bid security in the amount of \$150,000.** Bid security can be made by a surety bond or cash deposit in the form of a certified check or cashier's check made payable to the Guam Power Authority.

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

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

## 1.0 INSTRUCTIONS TO BIDDERS

### GENERAL DESCRIPTION OF BID PROCESS

Interested parties shall submit Technical Proposals and Price Proposals for this solicitation. The bid shall be a two-step process.

The first step involves evaluation of the Technical Proposal and establishment of a Qualified BIDDERS List (QBL) based on acceptable submitted Technical Proposals. The second step is evaluation of the qualified BIDDERS Price Proposals.

The BIDDER whose total price proposal (Fixed Management Fee and O&M Spending Budget) for the five contract years yields the lowest total cost to GPA shall be awarded the CONTRACTOR Contract.

### 1.1. PRE-BID CONFERENCE AND SITE TOURS

A Pre-Bid Conference is scheduled on **Thursday, January 26, 2023 at 9:00 AM**. BIDDERS are encouraged to join the conference to receive general instructions and an overview of the requirements for this solicitation, but attendance is not required to participate in the bid.

For the purpose of becoming familiar with the Yigo Diesel Generators, all prospective BIDDERS will have the opportunity, at their own expense, to visit Guam and the Yigo Diesel Generators site to study local conditions, available facilities, craft wages, roads, communications, and available transport facilities. BIDDERS should also acquaint themselves with the relevant laws, rules, and regulations of Guam. Yigo Diesel Generators site tours **should be scheduled as soon as possible with GPA's Procurement Division**.

Each tour shall be on a first-come, first-served basis and only two (2) representatives per bidder and one (1) bidder per day shall be allowed, for no more than one (1) hour tour of the site. All bidders shall be responsible for ensuring that all protocols and requirements to comply with GPA's public health emergency (if still in effect at the time of the requested

site tour), and for complying with the Pandemic Condition of Readiness applicable on the day of the visit. All protocols and requirements are subject to change without prior notice due to the evolving pandemic situation on Guam, and the bidder is responsible for complying with all requirements and for informing GPA of any changes in their plans.

Arrangements for all tours shall be made by written correspondence with the GPA Procurement Officer via facsimile or email at least a week before the requested scheduled Diesel Units tour. BIDDERS are responsible for providing GPA all necessary identification and other documents as may be required by federal and local government security policies and GPA's Safety Division.

### **1.3 LANGUAGE**

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

### **1.4 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.

JOHN M. BENAVENTE, P.E.  
GENERAL MANAGER  
GUAM POWER AUTHORITY

ATTENTION: JAMIE L.C. PANGELINAN  
SUPPLY MANAGEMENT ADMINISTRATOR  
Gloria B. Nelson Public Service Building  
688 Route 15  
Mangilao, Guam

PHONE: (671) 648-3054/55  
FAX: (671) 648-3165

All inquiries must be received by the GPA Procurement Office no later than **4:00 PM on February 9, 2023**. Oral explanations or instructions given will not be binding. Any information 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.

#### **1.5 DEADLINE FOR SUBMISSION OF PROPOSALS**

The Deadline for Submission of the Technical Proposal and Price Proposal is on **February 23, 2023 at 2:00 PM** Guam standard date and time. BIDDERS are reminded to submit the Price Proposal on **a separate, sealed envelope**.

The Technical Proposal and all required forms, and the Bid Bond will be opened at the same date and time as the deadline for submission of proposals. This opening time and date is also referred to as the Proposal submittal deadline or submittal date. Technical Proposals shall not be accepted after the proposal opening date.

The Price Proposal shall be submitted and accepted by GPA but shall remain unopened. The Price Proposal shall be opened at a different date and time, as indicated in Table 1: Bid Schedule. Price Proposals will not be accepted after the Proposal submittal deadline of **February 23, 2023 at 2:00 PM** Guam standard date and time.

#### **1.6 RECEIPT AND HANDLING OF MANUALLY SUBMITTED PROPOSALS**

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

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

## **1.7 BIDDERS RESPONSIBILITIES**

### **a. *Examination of Technical and Functional Requirements and Tender Documents.***

Before submitting their proposal, BIDDERS must familiarize themselves with the nature and extent of the work, 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 Guam. Ignorance on the part of BIDDERS of any part of the tender documents and Technical and Functional Requirements will in no way relieve them of the obligations and responsibilities assumed under the contract.

### **b. *Familiarity with Laws***

BIDDERS 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 laws on the part of the BIDDERS will not relieve the BIDDERS from responsibility.

### **c. *Cost of Bidding***

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

## 1.8 BID MILESTONES

Table 1: Bid Milestones

Milestone	From	To
Bid Announcement	1/12/2023	1/26/2023
Bid Documents Available	1/12/2023	2/23/2023
Pre-Bid Conference	Thursday, January 26, 2023	
Diesel Units Tour	(Individually Scheduled Upon Request)	
Vendors Submit Questions	1/12/2023	2/9/2023
GPA Review and Answer Questions	2/10/2023	2/17/2023
Vendor Prepare Proposals	1/12/2023	2/23/2023
Cut Off Date for Receipt of Bid Documents	2/23/2023 4:00 P.M.	
Step One:		
Opening of Technical Proposal	2/23/2023	
Evaluation by Committee	2/27/2023	3/3/2023
Determine & Notify Qualified Vendor	3/3/2023	3/6/2023
Step Two:		
Opening of Price Proposal	3/10/2023	
Price Proposal Evaluation	3/13/2023	3/15/2023
Notification of Award	3/17/2023	3/31/2023
Contract Finalization	3/17/2023	3/31/2023
CCU & PUC Approval	3/31/2023	5/30/2023
Contract Signing	5/31/2023	
Contract Mobilization	6/1/2023	7/2/2023
Contract and Operational Commencement	7/3/2023	

## 1.9 PREPARATION OF BID

### a. STEP ONE PROCEDURE – TECHNICAL PROPOSALS

- 1) BIDDERS are required to submit one (1) original, and five (5) printed copies of the Technical Proposal in a separate sealed envelope marked “TECHNICAL PROPOSAL – Performance Management Contract (PMC) for the Yigo Diesel Generators” indicating the date and time of bid package remittance.

- 2) Completed Proposal Reference Sheet

The Technical Proposal Worksheet (Schedule C) is included in the bid documents as a printed version and as an MS Excel Document. The workbook contains the

following tables: 1) Proposal Reference Checklist; 2) Proposal Scoring Information which provides the bidder, the scoring mechanism to be used by GPA.

The Proposal Reference Checklist shall be completed and submitted by the BIDDER in its Technical Proposal. The Proposal Reference Checklist shall be used by BIDDERS to indicate the sections in their proposal that address and respond to each GPA has requirement.

3) Technical Proposal and Supporting Information

The BIDDER shall provide all responses and supporting information in writing to answer the questions raised in the Technical Scoring Worksheet. The Technical Proposal should include all documentation needed for GPA to effectively evaluate the BIDDER's capability in meeting the requirements of this solicitation, and in responding to each checklist item.

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

1. 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;
2. A sufficient number of documentation, drawings, diagrams, catalogs, illustrations, and such other information as necessary to clearly support responses to the Technical requirements.
3. Financial information on BIDDER's firm and all subcontractors that will be used in the performance management of the GPA Yigo Diesel Generators. This

information shall be complete for the last five years. BIDDERS must include their Dunn and Bradstreet Number or Other Major Credit Rating Agency rating. The financial information provided will be evaluated as indicated in the Technical Proposal Scoring Worksheet.

4. Required Forms – Bidders must submit with its Technical Proposal the mandatory Required Forms as listed in this bid. Failure to submit the required forms shall be cause for rejection of the bid.

- a. Certificate of Good Standing to conduct business in jurisdiction of residence;
- b. Special Provision for Ownership Disclosure Affidavit
- c. Non-collusion Affidavit;
- d. No Gratuities or Kickbacks Affidavit;
- e. Ethical Standards Affidavit;
- f. Declaration Re-Compliance with US DOL Wage Determination;
- g. Restriction against Sex Offenders
- h. Information regarding outstanding claims against the BIDDER, if any; and;
- i. Bid Bond
- j. Local Procurement Preference Application, if applicable

5. An organization chart with the qualifications of each key project position category, plus a listing of the number of employees by category and their percent commitment on the CONTRACT for each calendar year over the

lifetime of the contract. Categories shall include project management, engineering, analysis, programming, training, and field support.

6. Three or more client references and project description summaries for work performed under similar scope to this project.
- 4) Bid Bond – The Bid Bond shall be included in the Technical Proposal packet. Failure to submit a bid bond shall be cause for rejection of the bid.
- 5) If the BIDDER's Proposal cannot fit within one box or chooses to submit more than one box, each box must be labeled with the following:
  1. Box Number Within the Set of Submitted Boxes
  2. The Total Number of Boxes Submitted.
- b. STEP TWO PROCEDURE – PRICE PROPOSAL
  - 1) BIDDERS are required to submit their price offer on the BID FORM (Schedule D) in a separate sealed envelope marked "PRICE PROPOSAL". Indicate the date and time of price proposal bid package remittance.

The proposal shall include the Annual Management Fee per Contract Year and an Annual O&M Budget. Any departures from the proposed O&M budget shall not be reimbursed by GPA; should the PMC anticipate any changes to the allocated budget, it shall advise GPA of the possible changes for review.

The Bid Form worksheet is included in this bid document (Schedule D) and as a separate attachment in MS Excel File Format.
  - 2) All price/cost data submitted with the BIDDERS proposals shall remain firm and open for acceptance for a period of not less than six (6) months after the Proposal submittal date defined elsewhere and thereafter shall be subject to renewal by mutual agreement between the BIDDER and GPA. BIDDER shall state the actual date of expiration in their proposal.

- 3) BIDDERS shall provide prices/costs in U.S. Dollars. The BIDDER shall provide any equipment and material prices on the basis of CIF to the Guam job site unloaded and shall provide a breakdown of the price/cost data.
- 4) The basis of award shall be the three-year total bid of the Annual Management Fee and O&M Budget as specified in the Bid Form.
- 5) GPA reserves the right to award the contract in whole or in part based on the Evaluation Committee's determination of the most feasible method of final project delivery.
- 6) Changes may be made to the Price Offer prior to the proposal submittal due date.

#### **1.10 BID SECURITY**

The bid bond must accompany the Technical proposal bid submittal. Bidders who fail to submit a bid bond will be automatically disqualified from this Invitation to Bid. Each bid must be accompanied by a deposit in the amount of not less than **\$150,000 (USD)**.

Bid security can be provided in the following forms:

- a. Cash, Bank Draft or Certified Check made payable to the Guam Power Authority;
- b. By wire transfer to Guam Power Authority:

Bank of Guam  
111 Chalan Santo Papa  
Hagatna, Guam 96910  
Account # 0601-026246  
Type of Account – Checking  
Routing/Transit # 121405115

- 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.

Should the successful bidder fail or refuse to execute and deliver the contract and performance and payment bonds required within ten (10) working days after acceptance of his bid by GPA, he shall forfeit the security deposited with his bid to the Guam Power Authority as liquidated damages for such failure or refusal.

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

If a BIDDER desires to submit a bid bond with an acceptable bonding company, the BIDDER must submit original copies of the Bid Bond in the form prescribed.

#### **1.11 NON-COLLUSION AFFIDAVIT**

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

#### **1.12 RIGHT TO ACCEPT AND REJECT BIDS**

The Guam Power Authority reserves the unqualified right, in its sole and absolute discretion, to reject any and all bids, or to accept that bid or combination of bids, if any, which in its sole and absolute judgment will under all circumstances best serve the Guam Power Authority's interests. GPA also reserves the right to waive minor informalities if it appears in GPA's best interest to do so.

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

### **1.13 METHOD OF AWARD**

This is a multi-step bid procurement.

- a. In Step One, only the submitted Technical Proposals will be evaluated based on the evaluation criteria. From this evaluation, a Qualified Bidders List (QBL) will be established based on acceptable submitted Technical Proposals.
- b. In Step Two, the lowest qualified bid price based upon Technical Proposals that are determined to be acceptable and compliant with all technical requirements, either initially or as a result of discussions, will be considered for award.
- c. Step One is the period from IFB announcement through Notification of Qualified BIDDERS. Step Two is the period after establishment and notification of the QBL to the contract award date.

### **1.14 BASIS OF AWARD**

The BIDDER whose total price proposal (Annual Management Fee and O&M Spending Budget) for the three contract years yields the lowest total cost to GPA shall be awarded the CONTRACTOR Contract.

### **1.15 EVALUATION OF TECHNICAL PROPOSALS**

- a. The Proposal Scoring Procedures provide the BIDDERS the opportunity to highlight their qualifications to bid in terms of their resources, skills, operating philosophy and commitments to perform specific tasks and originality.
- b. Technical Proposal Evaluation

The Technical proposal scoring is designed to assess the quality of the BIDDER's resources, skills, comprehensiveness, and responses to topical questions. Each GPA evaluator shall score each BIDDER separately under a point system to determine the acceptability of each Proposal. The majority of the determinations of GPA evaluators

shall prevail in the decision to Qualify or not Qualify a BIDDER for Step 2 — Price Proposal.

- c. GPA will appoint 5-7 members to the Evaluation Committee for evaluation of this bid. Each member will evaluate the proposal. The Technical Proposal Worksheet allows the BIDDERS to indicate the part of the Technical Proposal or Supporting Information that responds to each checklist item. Each checklist item is assigned a weight according to importance and relevance to GPA's requirements, and each evaluator scores the BIDDER's response to each checklist item with five being the highest score, and one being the lowest.
- d. Each GPA evaluator will score BIDDER responses using the following steps:
- Review each BIDDER's response to each question on the CONTRACTOR Checklist Items in the Technical Proposal Scoring worksheet;
  - Assign a relative score to each BIDDER's response to each question;
  - Determine each BIDDER's weighted average raw score using pre-specified weights for each question.

The evaluators will use the supporting information on the **Proposal Scoring Information** tab and **Proposal Reference Checklist** tab for the evaluation.

- e. Each GPA evaluator will analyze the contents of the Proposals and categorize the Proposals as:

Acceptable:            Score  $\geq 70\%$

Unacceptable:        Score  $< 70\%$

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 – Price Proposal.

After each GPA evaluator has completed the evaluation and scoring of BIDDERS, 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
- Unacceptable.

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– Price Proposal. The Procurement Officer may initiate Step Two if there are sufficient acceptable Unpriced Technical Proposals to assure effective price competition in the second phase without technical discussions.

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– Price Proposal.

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

#### **1.16 NOTICE OF ACCEPTABILITY OR UNACCEPTABILITY**

The evaluation committee shall compile a Qualified BIDDERS List wherein all BIDDERS whose Technical Proposal are deemed Acceptable, and has shown to be responsive and responsible, shall be notified of their Acceptability for Step Two of the bid. BIDDERS will be notified via email, fax confirmation, in writing, or telephone communication of the status of their proposal via a Notice of Acceptability or Unacceptability.

BIDDERS whose proposals are deemed unacceptable shall be provided a notice informing them of the reason for not qualifying for Step 2 of the bid. The period between notification of BIDDERS and opening of the price proposals allow the unacceptable BIDDERS to inquire

with GPA on the reasons for not qualifying. However, the BIDDER will not be allowed to augment their proposal to meet the acceptability threshold set by GPA.

#### **1.17 PRICE PROPOSAL OPENING**

The Price Proposal for all qualified BIDDERS will be opened on **March 10, 2023 at 9:00 AM**. The sealed price proposal of BIDDERS whose proposals were deemed unacceptable shall be returned, unopened, to the BIDDERS.

#### **1.18 PRICE PROPOSAL EVALUATION**

The GPA Evaluation Committee shall evaluate the Price Proposal of each qualified, responsible bidder including the MS EXCEL Technical Proposal Worksheet. GPA will examine the Price Offers 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 Price Offers are generally in order.

Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the Total Price provided, and the sum of each line item price comprising the Total Price, then the individual line item price shall prevail and the total price shall be corrected. In case of inconsistencies between the Printed and Electronic copies of the price proposals, the amounts on the Printed proposal shall prevail. If the Bidder does not accept the correction of the error, its bid will be rejected.

#### **1.19 PROPOSAL VALIDITY**

All price/cost data submitted with the BIDDERS proposals shall remain firm and open for acceptance for a period of not less than 6 months after the Proposal submittal date. Thereafter, the price validity shall be subject to renewal by mutual agreement between the BIDDER and GPA.

## **1.20 PROPRIETARY DATA**

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

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

## **1.21 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.

## **1.22 MODIFICATIONS PRIOR TO DATE SET FOR OPENING BIDS**

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

Any amendment, modification or addendum issued by the Guam Power Authority, shall be binding to the same extent as if written in the tender documents.

Any addendum issued will be made available to all BIDDERS via mail, fax, e-mail, or posting to the GPA Website at [www.guampowerauthority.com](http://www.guampowerauthority.com).

### **1.23 SOLICITATION CANCELLATION OR DELAY**

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

- a. The supplies and services being provided are no longer required;
- b. The solicitation did not provide consideration of other factors of significance to the Guam Power Authority and/or the Island of Guam;
- c. All otherwise acceptable proposals received have clearly unreasonable price/cost data;
- d. There is reason to believe that the proposals may not have been independently arrived at in open competition, may have been collusive and may have been submitted in bad faith;
- e. Any individual proposal may be rejected in whole or in part when in the best interest of GPA.

### **1.24 NON-REPUDIATION ISSUES**

GPA has structured both its IFB submittal procedures to ensure non-repudiation of the submitted proposals. In this IFB, non-repudiation is strong and substantial evidence of the

identity of the sender and owner of the proposal and of proposal's integrity in so far as it being unaltered from its original sent state, sufficient to prevent a party from successfully denying the origin, submission or delivery of the proposal and the integrity of its contents. Non-repudiation applies to both parties to this IFB transaction. It binds the sender as well as precludes the recipient from denying the exchange of information and material upon the receipt of secure acknowledgement from the recipient. GPA and the BIDDER shall manage the Manual IFB Submittal Process to address non-repudiation, security and confidentiality inclusive but not limited to the following:

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

a. Documents Executed Outside Guam

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

b. False Statements in Proposal

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

c. Signature of BIDDER

A duly authorized person must sign the BIDDER's proposals. All names shall be typed or printed below the signature. A proposal submitted by a corporation must bear the seal of the corporation, be attested to by its Secretary, and be accompanied by necessary Power-of-Attorney documentation.

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

## **1.25 ACCEPTANCE OF PROPOSALS**

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

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

#### **1.26 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.

#### **1.27 COVENANT AGAINST CONTINGENT FEES**

The BIDDER warrants that he has not employed any person to solicit or secure any resultant contract upon agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Guam Power Authority the right to terminate the contractor, or in its discretion to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through, bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

#### **1.28 REQUIRED FORMS**

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

- a. Certificate of Good Standing to conduct business in jurisdiction of residence;
- b. Special Provision for Ownership Disclosure Affidavit

- c. Non-collusion Affidavit;
- d. No Gratuities or Kickbacks Affidavit;
- e. Ethical Standards Affidavit;
- f. Declaration Re-Compliance with US DOL Wage Determination;
- g. Restriction against Sex Offenders
- h. Information regarding outstanding claims against the BIDDER, if any; and;
- i. Bid Bond
- j. Local Procurement Preference Application, if applicable

All required forms are in *Appendix A – Required Forms*.

#### **1.29 NO GRATUITIES OR KICKBACKS AFFIDAVIT**

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.

#### **1.30 RESTRICTIONS AGAINST CONVICTED SEX OFFENDERS**

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

All contracts for services to agencies listed herein shall include the following provisions:

(1) warranties that no person providing services on behalf of the vendor 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 vendor 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.

**1.31 REPRESENTATION REGARDING ETHICAL STANDARDS FOR  
GOVERNMENT EMPLOYEES AND FORMER GOVERNMENT EMPLOYEES**

The bidder, offeror, or contractor represents that it has not knowingly influenced and promises that it will not knowingly influence a government employee to breach any of the ethical standards set forth in 11 G.C.A. §5601 *et seq.* (Ethics in Public Contracting) of the Guam Procurement Act.

**1.32 DISCLOSURE OF OWNERSHIP & INTEREST**

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

- b. Failure by any bidder to submit the Ownership & Interest Disclosure Affidavit on

the form furnished by the Guam Power Authority shall result in the disqualification of his bid.

### **1.33 AWARD OF CONTRACT**

The contract will be awarded to the BIDDER evaluated as being qualified and with the best-priced proposal. The successful BIDDER will be notified in writing (letter or e-mail or fax) of the Intent to Award the contract, and will be required to send to GPA, within ten (10) days of the date of receipt of such notice, the following requirements:

1. Performance Bond
2. Guam Business License
3. Insurance Policies.

Failure on the part of the successful BIDDER to provide any and all of the requirements, 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 with the next best-priced proposal.

### **1.34 PERFORMANCE BOND, GUAM BUSINESS LICENSE AND INSURANCE POLICIES**

Upon notification of award, the BIDDER shall provide a Performance Bond and Guam Business License, prior to Contract Signing and Contract Commencement.

The Performance Bond, equivalent to one (1) year's Fixed Management Fee, shall be executed by a surety company licensed to do business on Guam.

Upon notification of award, the BIDDER shall provide copies of the insurance policies, as proof of compliance with GPA's Insurance Requirements as specified in the IFB.

## 2.0 GENERAL CONDITIONS

### 2.1 Agreement

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

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

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

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

The tender documents are intended to be complementary, what is called for by one shall be as binding as if called for by all. If not otherwise specified in the tender documents, these General Conditions shall apply. If, during performance of the Agreement CONTRACTOR detects a discrepancy in the tender documents, CONTRACTOR shall so report to GPA in writing at once and shall obtain a written interpretation or clarification from GPA before proceeding further; however, CONTRACTOR shall not be liable to GPA for failure to

report any conflict, error, or discrepancy in the Contract Documents unless CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

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

## **2.2 Indemnity**

CONTRACTOR shall indemnify and hold GPA 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.

## **2.3 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 reserves the right to inspect the Goods upon delivery for the purpose of identifying the Goods and general verification of quantities.

## **2.4 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.

## **2.5 Waiver of Claims**

The making and acceptance of final payment will constitute:

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

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

## **2.6 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.

## **2.7 Substitutions**

If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall make written application to GPA 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. GPA may require CONTRACTOR to furnish at CONTRACTOR's expense such additional data about the proposed substitute as is required by GPA. GPA may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety with respect to any substitute.

## **2.8 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 GPA'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 GPA on previous submittals. CONTRACTOR's submission of any drawing or document bearing CONTRACTOR's approval shall constitute a representation to GPA 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.

GPA'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 GPA when drawings or documents are marked "Approved As Revised" and shall return the required number of corrected copies.

GPA 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 GPA.

GPA'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 GPA's attention to such deviation at the time of submission and GPA has given written concurrence and approval to the specific deviation, nor will any concurrence or approval by GPA relieve CONTRACTOR from responsibility for errors or omissions in the drawings or documents submitted.

## **2.9 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.

#### **2.10 Access to Goods in Production**

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

#### **2.11 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.

#### **2.12 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.

### **2.13 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 Officer.

### **2.14 Submission of Cost or Pricing Data**

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

### **2.15 Change Orders**

**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 Guam in accordance therewith;

- b. Method of shipment or packing; or
- c. Place of delivery.

**2.16 Time Period for Claim**

Within 30 days after receipt of a written change order under Paragraph 2.15 - Change Orders, 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 Guam is prejudiced by the delay in notification.

**2.17 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.

**2.18 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.

**2.19 Contract Price**

The Contract Price constitutes the total consideration to be paid by GPA to the CONTRACTOR for the complete delivery of the Goods, Special Services, and for performing other services in connection therewith in accordance with the Contract Documents as amended by the parties pursuant to the Agreement. Unless expressly provided otherwise in the Contract Documents, the Contract Price is not subject to escalation in respect of materials and/or labor cost or any other factor or variation in rates of exchange, and all duties, responsibilities, and obligations assigned to or undertaken by the CONTRACTOR shall be at its expense without change in the Contract Price. Charges, fees,

CONTRACTOR's profit, and all other expense shall be deemed to be included in the Contract Price. Furthermore, the Contract Price includes management fees and incentive/penalty payments. Therefore, the Contract Price is dynamic but bounded. Only a formal Change Order, accepted by GPA, may change the Contract Price. The CONTRACTOR shall make any claim for an increase in the Contract Price in advance of performance of any such changes. However, GPA reserves the right to challenge or refute such claims.

## **2.20 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. 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.

#### **2.21 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.

#### **2.22 Delivery Time and Force Majeure**

Only a Change Order may change contractual Delivery Times. The CONTRACTOR 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.

### **2.23 Warranty**

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

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

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

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

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

#### **2.24 Tests and Inspections**

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

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

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

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

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

## **2.25 Remediating Defective Goods**

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

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

In the event that the 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 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.

## **2.26 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.

## **2.27 Cost of Remediating Defects**

All direct, indirect, and other costs of correcting, removing, and replacing defective Goods or of obtaining Special Services elsewhere and of exercising GPA's rights and remedies under Paragraph 4.4, 4.19, and other sections as they apply, will be charged against the

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

## **2.28 Stop Work Order**

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.
- c. 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:

- 1) 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
- 2) 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.

d. 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.

**2.29 Termination for Convenience**

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

[GSA Procurement Regulations 6-101.10.]

**2.30 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.

### **2.31 Right to Supplies**

The Procurement Officer may require the CONTRACTOR to transfer title and deliver to GPA in the manner and to the extend 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.

### **2.32 Compensation Under Termination for Convenience**

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

- a. The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for Convenience together with cost or pricing data to the extent required by Section 3-403 (Cost or Pricing Data) of the Guam Procurement Regulations bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Procurement Officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph (c) of this Paragraph.
- b. The Procurement Officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data to the extent required by Section 3-403 (Cost or Pricing Data) of the Guam Procurement Regulations and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by GPA, the proceeds of any sales of supplies and manufacturing materials, and the contract price of the work not terminated.
- c. Absent complete agreement under Subparagraph (b) of this Paragraph, the Procurement Officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under Subparagraph (b) shall not duplicate payments under this subparagraph:
  - 1) Contract prices for supplies or services accepted under the contract;
  - 2) 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;

- 3) Costs of settling and paying claims arising out of the termination of subcontracts or orders of this clause. These costs must not include costs paid in accordance with other subparagraphs of this Paragraph;
  - 4) 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
  - 5) 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, and the contract price of work not terminated.
- d. Cost claimed, agreed to, or established shall be in accordance with Chapter 7 (Cost Principles) of the Guam Procurement Regulations. 13 GCA 2796 (UCCG) which states:
2706. SELLER's Resale Including contract for Resale
- 1) Under the conditions stated in Section 2703 on CONTRACTOR's remedies, the CONTRACTOR may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the CONTRACTOR may recover the difference between the resale price

and the contract price together with an incidental damages allowed under the provisions of this division (Section 2710), but less expenses saved in consequence of the buyer's breach.

- 2) Except as otherwise provided in Subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the CONTRACTOR. Sale may be as a unit or in parcels and at any time and place and on any terms, but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.
- 3) Where the resale is at private sale the CONTRACTOR must give the buyer [i.e., GPA] reasonable notification of his intention to resell.
- 4) Where the resale is at public sale:
  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.

- 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."

### **2.33 Termination for 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.

### **2.34 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.

### **2.35 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.

### **2.36 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", Section 4.23. (As used in the Paragraph of this clause the term "subcontractor" means subcontractor at any tier.)

#### **2.37 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 2.36(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.

#### **2.38 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.

#### **2.39 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.

#### **2.40 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.

#### **2.41 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.

#### **2.42 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.

#### **2.43 Governing Law**

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

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

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

#### **2.44 Non-waiver**

GPA shall not consider any provisions of this Agreement waived unless GPA gives notice of such waiver in writing. Even if such notice has been given, such waiver shall not be construed as being a waiver of any other past or future right of GPA under the provisions of this Agreement, unless otherwise expressly stipulated therein.

Failure of GPA to insist upon strict performance of any of the terms and conditions hereof, or failure or delay of GPA to insist upon strict performance of any of the terms and conditions hereof, or failure or delay of GPA to exercise any acts, rights, or remedies provided herein or by law shall not relieve CONTRACTOR of liability under any guarantees or of obligations under the Agreement and shall not be deemed a waiver of any right of GPA to insist upon strict fulfillment of the Agreement or of any of GPA's rights or remedies as to the Goods or special services furnished.

#### **2.45 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 affect the foregoing.

#### **2.46 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.

#### **2.47 New material**

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

#### **2.48 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:

- a. The CONTRACTOR shall have given written notice to the General Manager, or his/her designee:
  - 1) Prior to the commencement of the work involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
  - 2) 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
  - 3) 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.
- b. The notice required by 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
- c. 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.

#### **2.49 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.

#### **2.50 Standards of Design and Workmanship**

The finished Work shall be complete in all respects. The intent of the Specifications is to acquire or purchase management services, training, operations and maintenance materials and services, and supply and inventory management and control. All hardware shall be manufactured, fabricated, assembled, finished, and documented with quality workmanship throughout, and all of its components shall be new and suitable for the purposes specified, All firmware/software shall be designed, implemented, tested, and documented in accordance with the best and recognized correct practices and shall be suitable for the purpose specified. All work shall conform to industry best practices.

#### **2.51 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.

#### **2.52 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.

#### **2.53 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.

#### **2.54 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.

#### **2.55 Title**

Title to any of the hardware, firmware, and software, management practices, training and other documents and/or processes required by GPA to continue the improved operations and maintenance of the Yigo Diesel Generators 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 operations and maintenance of the Yigo Diesel Generators, whether in the CONTRACTOR's facility, in transit, or on GPA's premises, shall immediately pass to GPA.

#### **2.56 Insurance**

Contractor shall not commence work under this contract until he has obtained all insurance required under this section and owner has approved such insurance, nor shall the Contractor

allow any Subcontractor to commence work on this subcontract until all similar insurance required of the Subcontractor has been so obtained and approved. He shall maintain all insurance required during the course of the work and the period of the performance management contract.

## **2.57 Contractors and Subcontractors Insurance**

Prior to commencing the work, contractor shall obtain and thereafter maintain during the course of the work Insurance with companies acceptable to owner. 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:

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

- i. Policy must be primary and non-contributory with endorsements attached.
- ii. GPA shall be named as an Additional Insured.
- iii. Waiver of subrogation shall be in favor of GPA
- iv. Cancellation clause of minimum 90 days' prior written notice to GPA.

GPA must be given minimum 90 days' prior written notice for any material changes in the policy or cancellation of the policy.

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

- i. Policy must be primary and non-contributory with endorsements attached. GPA shall be named as an Additional Insured.
- ii. Waiver of subrogation shall be in favor of GPA
- iii. MCS 90 Endorsement

iv. Cancellation clause of minimum 90 days' prior written notice to GPA.

GPA must be given minimum 90 days' prior written notice for any material changes in the policy or cancellation of the policy.

C. Excess Liability insurance over the General Liability and the Commercial Auto

Liability with limits of \$10,000,000 or higher per occurrence/ \$10,000,000 aggregate.

i. Policy must be primary and non-contributory with endorsements attached.

ii. GPA shall be named as an Additional Insured.

iii. Waiver of subrogation shall be in favor of GPA

iv. MCS 90 Endorsement

v. Cancellation clause of minimum 90 days' prior written notice to GPA.

GPA must be given minimum 90 days' prior written notice for any material changes in the policy or cancellation of the policy.

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

i. Policy must be primary and non-contributory with endorsements attached.

ii. GPA shall be named as an Additional Insured.

iii. Waiver of subrogation shall be in favor of GPA

iv. Cancellation clause of minimum 90 days' prior written notice to GPA.

1. GPA must be given minimum 90 days' prior written notice for any material changes in the policy or cancellation of the policy.

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

i. Policy must be primary and non-contributory with endorsements attached.

ii. GPA shall be named as a NAMED INSURED

iii. GPA shall be named as Loss Payee

iv. Cancellation clause of minimum 90 days' prior written notice to GPA.

1. GPA must be given minimum 90 days' prior written notice for any material changes in the policy or cancellation of the policy.

F. Contractors All Risk or Builders Risk Insurance

- i. Minimum Limits, deductibles, sub-limits, coverage, and property descriptions per contract or project description.
- ii. Policy must be primary and non-contributory with endorsements attached.
- iii. GPA shall be named as a NAMED INSURED
- iv. GPA shall be named as a Loss Payee
- v. Waiver of subrogation shall be in favor of GPA
- vi. Cancellation clause of minimum 90 days' prior written notice to GPA.

1. GPA must be given minimum 90 days' prior written notice for any material changes in the policy or cancellation of the policy.

If applicable, fuel /hazardous materials transport:

- G. General Liability and the Commercial Auto Liability with limits of \$5,000,000 or higher per occurrence.
- i. Policy must be primary with primary wording endorsement attached.
  - ii. GPA shall be named an additional insured
  - iii. Waiver of subrogation shall be in favor of GPA
  - iv. Cancellation clause of minimum 60 days' prior written notice to GPA
  - v. Policy must have MCS 90 Endorsement

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

**Insurance:**

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

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

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

Certificate of insurance must contain this wording to be acceptable.

#### **2.58 Indemnification**

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

#### **2.59 Certificate of Insurance**

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

#### **2.60 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.

#### **2.61 GPA Insurance**

GPA agrees that it will keep the property and machinery and equipment insured, at a minimum, against loss or damage by fire with extended coverage endorsement for full replacement value as determined by GPA from time to time. Such insurance shall be issued by financially responsible insurers duly authorized to do business in the state or territory where the property is located and shall contain the standard form of waiver of subrogation. The insurance company shall be required to give GPA not less than ninety days (90) notice in the event of cancellation or material alteration of such coverage. Nothing contained herein shall be construed as creating any liability or responsibility on the part of the CONTRACTOR for the adequacy of insurance coverage on the property. As to any insurable risks of loss or damage to the property and machinery and equipment not required to be insured hereunder, GPA shall bear the cost of the same. GPA shall be deemed to be self-insured as to the deductible or co-insurance amount applicable to such insurance coverage and shall pay any deductible or co-insurance amount applicable in the event of such loss or damage.

#### **2.62 Waiver of Subrogation**

The parties hereby release each other and their respective officers, employees, and agents from all loss or damage to the Premise property, machinery and equipment and to the fixtures, personal property, equipment and improvements of either GPA or CONTRACTOR in or on the Property, notwithstanding that any such loss or damage may be due to or result from the negligence of either of the parties or their respective officers, employees or agents. This waiver does not apply to maintenance and repair assumed under this contract by the CONTRACTOR.



### 3.0 Technical and Functional Requirements

This section describes the technical and functional requirements of the Performance Management Contract. It establishes the responsibilities of the Guam Power Authority (GPA) and the Performance Management Contractor (CONTRACTOR).

The CONTRACT between the CONTRACTOR and GPA shall be constructed as a Fixed Annual Management Fee Contract, whereby the parties establish the mutually agreed contract deliverables and guarantees. In addition, the CONTRACT shall include provisions for operations and maintenance supplies and services and the inventory management and control of Yigo Diesel Generators.

The CONTRACT scope includes functional requirements that cover several key areas related to the operations and maintenance of the Yigo Diesel Generators:

- Operation & Maintenance of Yigo Diesel Generators including auxiliaries such including but not limited to Remote Start Control System, fuel tanks, fuel supply pipelines, and others;
- Staffing, including Management, O&M Staff, and Administrative Staff;
- Management of GPA staff assigned to augment staffing at the Yigo Diesel Generators, if any;
- Budget Management
- Procurement, Inventory Management & Control;
- Engineering and Technical Services as required to operate and maintain Yigo Diesel Generators;
- Environmental Compliance, including requirements related to all existing and applicable permit requirements;
- Completion of Critical Repairs to assure the units' reliability, availability and efficiency;

- Completion of Major Maintenance Projects, including Unit Overhauls;
- If assigned by GPA, coordinate Yigo Diesel Generators' relocation and clean-up;

### **3.1 Management**

The CONTRACTOR shall be responsible for the overall management of the Yigo Diesel Generators, including providing and managing the staff needed to adequately manage, operate and maintain the units. For staffing, this will include licensed, certified and experienced technicians, service planners, service trackers, and purchasing/procurement personnel. Expenses for the staff provided by the CONTRACTOR (salaries, etc.) shall be included in the Annual Management Fee proposed. The CONTRACTOR shall oversee the implementation and completion of all operations and maintenance activities, especially those necessary to maintain reliability, high availability, and efficiency.

### **3.2 Procure OEM & Non-OEM Support as Required**

The CONTRACTOR will be required to procure all OEM and Non-OEM assistance it requires to support the daily operation and maintenance of the Diesel Units.

### **3.3 Working Capital and CONTRACTOR Expenses**

The CONTRACTOR is responsible to fund all operation & maintenance expenses, inventory management and procurement expenses, as well as expenses for implementing and completing major or critical projects related to ensuring availability, meeting performance guarantees, and maintaining reliability and efficiency. The CONTRACTOR shall be reimbursed by the Authority upon successful documentation of such expenditures, following the guidelines for compensation as delineated in GPA's policies and standard operating procedures.

The CONTRACTOR shall have sufficient working capital to support its cash flow requirements including any cash flow requirements associated with its operations and maintenance (O&M), inventory management and procurement responsibilities and critical

projects for ensuring availability, efficiency and reliability. The minimum working capital acceptable during each contract period shall be no less than 50% of the O&M budget allotted by GPA for the Yigo Diesel Generators for the respective period.

All CONTRACTOR direct and indirect expenses and taxes, including all CONTRACTOR employees related expenses and taxes are the sole responsibility of the CONTRACTOR.

### **3.4 Budget**

The CONTRACTOR shall optimally manage the Operation and Maintenance Spending (O&M Spending) not to exceed the authorized budget amount for each contract year. The CONTRACTOR shall provide appropriate justifications and auditable records of all O&M procurement activities. Any O&M spending beyond authorized limit shall be justified by the CONTRACTOR with proper and sufficient supporting documentation and shall follow the appropriate GPA review process for approval or disapproval. Spending above the approved budget that is not authorized by GPA shall be the sole financial responsibility of the CONTRACTOR.

O&M Spending excludes the base salaries, premiums and benefits for GPA employees assigned to the Yigo Diesel Generators. The CONTRACTOR shall optimize overtime spending to lower total Yigo Diesel Generators costs. As a guide, overtime for employees assigned to the Yigo Diesel Generators shall not exceed 15% of base annual salaries. However, exceptions may be made during emergency response for force majeure situations, such as Typhoon Recovery and other critical support periods, which do not constitute normal operations. The allowance for overtime during these situations will require approval from GPA. The CONTRACTOR shall report overtime expenses to GPA monthly and at the end of each contract year, and the report shall include details of overtime such as justifications, overtime work details and related information.

The CONTRACTOR shall track all O&M costs. The CONTRACTOR shall be required to submit a report of O&M spending to GPA monthly and at the end of each contract year. The report shall illustrate O&M Spending, including Overtime Spending, and shall include details and justification for each item. Justification is particularly important for items exceeding the budget.

The CONTRACTOR will prepare and submit to GPA a three-year Yigo Diesel Generators budget beginning with the next fiscal year by March 31 of each contract year, in accordance with and following the schedule for GPA's Budget Approval Process.

GPA shall authorize the proposed O&M spending budgets for each contract year by the CONTRACTOR. GPA reserves the right to negotiate bid amounts prior to contract commencement. The negotiated amounts shall establish the maximum spending limit for O&M expenses. GPA shall review and negotiate the next fiscal year budget with the CONTRACTOR by June 30 of each contract year.

GPA will make timely reimbursements to the CONTRACTOR for the expenses incurred by the CONTRACTOR in conjunction with the CONTRACTOR's O&M procurement responsibilities. The CONTRACTOR shall include certifications, receipts, and proof of payment and delivery on site of materials and services to be entitled for reimbursable compensation. The CONTRACTOR shall invoice GPA for these expenses no more than once monthly. Cost-plus reimbursement shall not be allowed. There shall be no additional costs or fees for reimbursement of O&M expenses.

### **3.5 Guarantees, Incentives and Penalties**

The CONTRACTOR shall be guided by the Guarantees as discussed in Section 7 of this document. To ensure optimum performance as well as efficient operation and maintenance of the Yigo Diesel Generators, GPA shall apply incentives and penalties as discussed in Section 8 of this document.

### **3.6 Engineering and Technical Services**

The CONTRACTOR shall provide engineering and technical services for the following:

- Regular O&M activities
- Critical Repairs to ensure proper and optimum operation of the Yigo Diesel Generators, including structural integrity, compliance with all required environmental and safety regulations, such as the Fire Code and Environmental Permits;
- Major Maintenance Activities, including Overhaul;
- Contracting experienced and qualified technicians for the completion of work related to transformers, generators, SCRs, mechanical repairs. The current contractor has contracted Cummins for mechanical repairs; GPA will allow PMC to contract with Cummins or any other contractor that meets the requirements and technical qualifications or certifications needed to adequately perform the tasks.

### **3.7 Contractor Staffing**

The organization shall be composed of CONTRACTOR Management and possibly GPA Yigo Diesel Staff.

The CONTRACTOR shall provide appropriate staffing levels of CONTRACTOR employees to provide overall management, resident technical expertise for operation and maintenance of the units, procurement & inventory control, engineering, and administrative support as necessary. The Technical Scoring will evaluate the CONTRACTOR's proposed staffing level.

### **3.8 GPA Staffing**

GPA may assign GPA employees to operate and maintain the Yigo Diesel Generators. If GPA assigns employees for operations of the Yigo Diesel Generators, the CONTRACTOR shall manage the GPA employees and ensure that the personnel receive appropriate training,

certification and experience to be able to operate and maintain the unit with above-average competence and abilities.

### **3.9 CONTRACTOR Staffing Responsibilities**

The CONTRACTOR has the responsibility to ensure adequate staffing, and shall manage and adjust for optimal operation and maintenance of the Yigo Diesel Generators. The CONTRACTOR shall regularly report on the adequacy of staffing levels. If there are vacancies required to be filled, CONTRACTOR shall advise GPA of the vacancies and advise the date for the vacancies to be filled.

The CONTRACTOR shall, at all times, operate the power plant with adequate staffing. The CONTRACTOR will manage and approve the scheduling of vacation, holiday and other leave time to as the CONTRACTOR may determine necessary to ensure the safe and efficient management, operation, maintenance and repair of the Yigo Diesel Generators. The CONTRACTOR shall not unreasonably deny employee requests for authorized absence. The CONTRACTOR's disapproval of GPA employee requests for authorized absence shall be based solely upon scheduling needs to ensure the safe and efficient repair, management, operation, and maintenance of the Yigo Diesel Generators.

#### **a. Maintenance/Service Planner**

The CONTRACTOR shall ensure that the CONTRACTOR staffing pattern includes maintenance planner to manage and maintain the maintenance management system and ensure that maintenance activities are adequately scheduled and completed

#### **b. Purchasing/Procurement Personnel**

The CONTRACTOR shall ensure that the CONTRACTOR staffing pattern includes purchasing/procurement personnel manage and maintain required inventories.

#### **c. Safety Compliance Personnel**

The CONTRACTOR will provide their own safety equipment and test procedures for areas such as air quality monitoring. This is specifically referring to the confined / enclosed space issues as defined by OSHA/GOSHA. The CONTRACTOR will not rely on GPA for these type of services unless in the case of an emergency. However, all safety equipment and test procedures shall be reviewed and approved by GPA Safety Division.

The CONTRACTOR shall allow GPA Safety Division Safety Officers to conduct periodic scheduled and unscheduled facilities inspections to detect potential hazards so that proper remediation activities can be implemented. GPA Safety Division Safety Officers shall document and forward all inspection results through GPA and the CONTRACTOR chain of command.

d. Occupational Safety and Health / Equipment Clearance System

The CONTRACTOR shall design the training program in a manner that will instruct employees in the safe and healthful performance of their work. The CONTRACTOR shall tailor this training and evaluation to the employee's job requirements and level of responsibility. The CONTRACTOR shall keep all Occupational Safety and Health training records for the contract duration.

This training shall adhere to the OSHA/GOSHA mandated training program particular to the employees' job and environment, operating practices and procedures with a practical understanding of prevention strategies.

The CONTRACTOR shall ensure that all employees, upon assignment to positions involving potential exposures to hazardous or toxic substances, including asbestos exposure equal to or exceeding the permissible exposure limits (PEL) undergo proper medical examination and are entered into a medical surveillance program as required by GOSHA.

The CONTRACTOR shall ensure that all employees assigned to positions involving potential exposures to hazardous or toxic substances are issued and are required to wear equipment and/or devices such as:

- Welding or wire mesh gloves;
- Respirators;
- Hard hats;
- Goggles;
- Foot protection;
- Face shields;
- Rubber gloves and coveralls;
- Safety glasses.

e. Utilization of Contractors/Consultants and/or Staff Augmentation

The CONTRACTOR may, at any time, in consultation with GPA, have CONTRACTOR employees or consultants perform functions, duties, and responsibilities at the Yigo Diesel Generators as CONTRACTOR determines in accordance with the scope of this contract. Reimbursement for salaries and benefits shall be based on the rates approved by GPA. Reimbursement shall only be for the period the CONTRACTOR hired Employees/Consultants are employed and performing work up to the termination date of their employment/contract with CONTRACTOR.

**3.10 Resource Allocation of GPA Generation Personnel**

GPA may supply plant operations personnel on a case-by-case basis consistent with GPA's mission and availability of staff and skill sets.

**3.11 Resource Allocation of GPA Central Maintenance Personnel**

GPA may provide reasonable support from the Central Maintenance Section to the CONTRACTOR under the direct authorization of the Manager of Generation.

### **3.12 Resource Allocation of GPA Engineering and Planning Personnel**

GPA may supply engineering and planning personnel services as required on a case-by-case basis consistent with GPA's mission and availability of staff and skill sets.

### **3.12 Training**

The CONTRACTOR shall be responsible for all training and associated costs necessary to perform contract obligations and adhere to regulatory requirements such as OSHA or GOSHA. The CONTRACTOR shall include estimated training costs in their proposal for GPA's consideration and approval.

### **3.13 Operation of Yigo Diesel Generators**

The CONTRACTOR is required to perform and manage all operational responsibilities for the Yigo Diesel Generators, which Operation Responsibilities and Requirements as specified in this bid document.

The CONTRACTOR shall manage, oversee, and perform all duties and responsibilities related to the proper and efficient management and operations of the Yigo Diesel Generators. This includes but is not limited to duties specified in the Technical and Functional requirements, current SOPs, manufacturer SOPs, and all other duties as assigned by the GPA General Manager and his designee.

At the direction of the GPA General Manager, the CONTRACTOR may also be requested to undertake activities that impact the operation of the Yigo Diesel Generators. Such projects will follow GPA's standard procedures for approval, budgeting and implementation.

### **3.14 Unit Operating Information**

The CONTRACTOR shall provide regular reports on unit commitment and unit operations to GPA management and all divisions identified as requiring the information.

The Unit Commitment information shall include the following information for each generation unit:

- Heat Rate Variances (MBTU/MWh);
- Capacity Derations (MW); And,
- Upper and Lower unit commitment levels (MW);
- Forbidden Regions;
- Any Condition that may limit dispatching of the Unit.

Unit operation information shall be provided to the Generation division on a daily basis.

### **3.15 Environmental Compliance**

CONTRACTOR will be responsible for ensuring the completion of activities currently required for the following, at a minimum:

- a. Compliance with the Title V Permit;
- b. Conduct and complete required emissions tests including contracting with a certified, qualified Third-Party Testing Company;
- c. Monitoring of all emission tests and results and ensuring compliance with applicable rules and regulations;
- d. Record-keeping, documentation and review of emission test data;
- e. Completion of necessary corrective actions in order to meet emission requirements;
- f. Monitor all low-volume waste streams to be within compliance with all local, federal and international regulations;
- g. Completion of all activities required by the GPA and Federal Spill Prevention, Control and Countermeasure (SPCC) Plan, including implementation, monitoring and reporting;
- h. Remediation of all oil spill incidents to the satisfaction of local and federal regulatory bodies;

- i. Completion and submission of all required reports as may be required by GEPA, GPA P&R Division, GPA Generation Division;
- j. Payment of all penalties from non-compliance with any and all environmental requirements from local and federal bodies;

### **3.16 GPA Planning and Regulatory Division**

GPA's Planning and Regulatory Division (P&R) shall support the CONTRACTOR in meeting all environmental compliance requirements. P&R shall audit the CONTRACTOR on a regular basis as a means of monitoring and ensuring that all requirements are satisfied. The CONTRACTOR shall coordinate all activities on Environmental Compliance, including records and reports, with P&R. The CONTRACTOR shall provide full cooperation during P&R's audits and monitoring activities.

### **3.17 Maintenance**

The CONTRACTOR is required to perform and manage all Maintenance Responsibilities for Yigo Diesel Generators including but not limited to the Maintenance Responsibilities and Requirements as specified in this bid document.

The CONTRACTOR will be responsible for all equipment associated with the Yigo Diesel Generators. Electrical maintenance personnel are only qualified to handle equipment with an operating voltage of 5000 volts and below. The CONTRACTOR shall be responsible for coordinating with qualified personnel to maintain, repair, and/or reset all other electrical equipment. Coordination with the GPA Transmission & Distribution division shall be done through the office of the Assistant General Manager of Operations.

### **3.18 Use of a Maintenance Management System**

The CONTRACTOR will be required to coordinate with GPA's Generation Division in the use of a Maintenance Management System. The CONTRACTOR shall use its own

Maintenance Management System and authorize key GPA personnel assisting with maintenance planning when needed.

### **3.19 Overhauls**

The CONTRACTOR shall issue competitive bids for the overhaul of at least 15 units at a licensed service center during the 3-year base period of the contract. The CONTRACTOR shall be capable of financing the cost for the overhaul of the units. These costs shall be amortized over the 3-year base period and shall be paid monthly along with the Management Fee and O&M Budget commencing after completion of the overhaul. The CONTRACTOR is allowed a 5% administrative fee for management and oversight of the overhaul projects. Within the first three (3) months of the first year of the contract period, the PMC shall present a proposed overhaul schedule for GPA's review and approval. GPA's approval of the overhaul schedule shall in no way be taken as tacit approval or excuse for the PMC not to meet the minimum equipment availability.

### **3.20 Operating Procedures – Management, Improvement and Addition**

The CONTRACTOR shall audit all operational procedures turned over at the time of contract award, revise the procedures to proper best in class operating standards, train employees to the proper application of all procedures, audit employees in their use of all procedures and take corrective action relating to operational performance deficiencies.

The CONTRACTOR shall also develop new operating procedures throughout the term of the contract as required, and grant GPA access rights to all procedures during the term of the contract for review, usage and possible replication at other operating units. All operating procedures generated by the CONTRACTOR will become the property of GPA.

Annual reviews of all Operating Procedures shall be conducted to validate the applicability and effectiveness of the procedures as new technologies are introduced at the Yigo Diesel

plant, as part of modernization and improvement. Any reviews made shall be reported to GPA along with corresponding findings, updates, and revisions.

Two sets of Yigo Diesel Generators Operating Procedures (hard copies and soft files) will be kept at all times in the Yigo Diesel Generators control rooms. One set each will be given to the following in formats agreed upon by GPA and the CONTRACTOR:

- Assistant General Manager, Operations;
- Manager of Engineering;
- Manager of Generation;
- Manager of Strategic Planning and Operations Research.

### **3.21 Physical Boundaries of Yigo Diesel Generators**

The CONTRACTOR will be responsible for the maintenance of all equipment, facilities and assets within the physical boundary of the Yigo Diesel Generators, including the structural integrity of the power Diesel Units and all equipment within its physical boundaries.

### **3.22 Management of Waste Oil**

The CONTRACTOR shall dispose of waste oil in a safe manner consistent with GPA agreements, local and federal environmental regulations, and industry best practices. The CONTRACTOR shall train, assign, and manage normal shift personnel to this duty.

### **3.23 Optimization of Fuel Consumption**

The CONTRACTOR shall comply with the criteria defined within the Quality Management Plan for Prudent Fuel Use and LEAC Plan for Performance Goals.

### **3.24 Instrumentation**

The CONTRACTOR shall make full use of the Historian and available instrumentation to collect key performance information. Proponents must provide the list and periodicity of key performance data collected at similar diesel units under their operation. Additionally,

each Proponent must provide what analyses are performed using this information. Hourly readings are not sufficient to fulfill this requirement. Proponents must ensure that all instruments that can be made capable of electronic download and storage are made capable of this function. All performance information must be made available to GPA for independent analysis. If required, the CONTRACTOR must provide any software, equipment, and training to Authority staff to access, manipulate and analyze this information.

All key performance information shall be archived appropriately in electronic form.

### **3.25 Power Supply for Start-Up**

GPA will provide all power for Start-up and outage related activities.

### **3.26 Outage Planning and Optimized Outage Scheduling**

The CONTRACTOR will coordinate the scheduling of all its outage requirements through the Manager of Generation or his designee who will, in turn, coordinate with the GPA Power System Control Center (PSCC). System demand will primarily dictate the optimal dates for scheduling outages. Major outage schedules must be established between GPA and the CONTRACTOR and planned far enough in advance that they will support quality outage planning efforts as described elsewhere.

The CONTRACTOR shall coordinate with GPA in documenting the details of the outage and determining the effects to EAF and EFOR, for application in evaluations.

The CONTRACTOR will manage outages to the mutually agreed upon schedule, and is responsible for informing the Manager of Generation or his designee, and other divisions affected by the outage planned, for any changes in the outage schedule. Should this occur, the CONTRACTOR shall use its best efforts to work towards adhering to the originally agreed to schedule.

The outage schedule shall be provided by the Manager of Generation and his designee to other GPA divisions (such as PSCC, SPORD and Finance) for dispatching, fuel consumption forecasting, and such other analysis that requires Yigo Diesel Generators' outage schedule information. The schedule must account for planned and actual performance, as well as details for cases wherein planned outages deviated from original schedule.

### **3.27 Root-Cause Analysis and Critical Path Management**

The CONTRACTOR shall be primarily responsible for root cause analysis and critical path management for all planned and unplanned outages.

### **3.28 Facility Maintenance and Improvement**

The CONTRACTOR is responsible for the maintenance and improvement of all facilities within its physical boundary. Including, but not limited to the upkeep of structures, property grounds, housekeeping services, and janitorial services. The maintenance and improvement shall be in a manner that is acceptable and satisfactory to GPA. Facility maintenance and improvement will be evaluated regularly and shall be included in the evaluation of CONTRACTOR performance.

Projects requiring immediate action shall be determined jointly by GPA and the CONTRACTOR, through an assessment to be done after contract commencement.

The proposed improvements will become the basis for further refinement of the O&M Expense Budget. GPA and CONTRACTOR representatives will annually determine and negotiate which items GPA will fund for the next fiscal and contract year.

### **3.29 Identification and Approval of Projects**

The CONTRACTOR is responsible for Critical Repairs and Major Maintenance projects to ensure proper and optimum operation of the Yigo Diesel Generators. The CONTRACTOR, upon commencement of the contract, is responsible for identifying and recommending

projects to GPA. The list shall be submitted to the Generation Manager and/or his designee, for their review together with the CONTRACTOR upon contract commencement. The project list and supporting information will then be forwarded to GPA Executive Management for review and approval. Projects shall not commence until approval is received. The project list shall be reviewed and updated monthly or as frequently as projects are required.

### **3.30 Project Management**

The CONTRACTOR shall accept project management duties for all critical repairs and Major Maintenance Projects, and other projects related to reliability, availability, and efficiency. Should the CONTRACTOR elect to hire a third party to perform this activity, the CONTRACTOR will be fully responsible for the third party's actions, performance and payment under the CONTRACTOR's Annual Management Fee. Payment for such election is not reimbursable by GPA.

### **3.31 Field Installation**

The CONTRACTOR bears the responsibility for field installation-type activities of all assigned projects. Should the CONTRACTOR elect to hire a third party to perform this activity, the CONTRACTOR will be fully responsible for the CONTRACTOR's actions, performance and payment.

### **3.32 Acceptance Testing**

The CONTRACTOR will be responsible for performing acceptance testing for life extension, reliability, availability, and efficiency projects. Acceptance testing must include a detailed written planning document with structured and non-structured procedures with pass/fail criteria for all important elements of the project. The CONTRACTOR shall submit electronic and hard copies of the proposed acceptance test document sufficiently in advance

of actual testing. The Authority shall provide a timely review and approval of these documents in a reasonable time frame.

### **3.33 Recommended Projects**

CONTRACTOR shall provide a listing of recommended projects to GPA. The listing shall contain activities to be performed over a multi-year time frame. GPA and the CONTRACTOR shall evaluate the list and mutually agree to the overall priority and scheduling of these activities.

The goals of 1) safety and insurance issues 2) maintain or improve Yigo Diesel Generators reliability and availability 3) improvement of efficiency 4) minimization of total cost to GPA, and 5) effective outage scheduling, shall drive the project activities and their schedule.

### **3.34 Relocation of Yigo Diesel Generators, including Clean-up of the Facility**

GPA plans to relocate some of the diesel units to ensure efficient distribution of capacity to other GPA sites, in line with operational requirements and to ensure continued compliance with regulatory requirements.

The CONTRACTOR may be requested to provide a Relocation Plan and Proposal to GPA. If awarded the relocation contract, GPA and the CONTRACTOR will further refine the proposal and put together a practical and cost-effective Relocation and Clean-up Plan subject to approvals from the CCU and PUC. Once approved, the CONTRACTOR shall complete this plan in coordination with GPA's Generation Division and support divisions such as SPORD, Engineering, and Planning & Regulatory Divisions.

### **3.35 CONTRACTOR Procurement Responsibilities**

#### **a. Operations and Maintenance Procurement Outsourcing**

The CONTRACTOR shall implement procurement methods to ensure cost controls remain within the authorized O&M Spending Budget. The CONTRACTOR shall allow

GPA access to all procurement and cost records. All procurement and cost records and processes are subject to audit by GPA.

b. Recommend & Pre-qualify Vendors for Authorization

The CONTRACTOR shall provide a listing of those vendors who they have experienced solid success with and wish for GPA to invite to bid on upcoming work required by the CONTRACTOR. This will expand the normally available pool of high quality vendors and ensure these vendors are informed of the intent to bid.

c. Procure Operating & Maintenance Supplies

The CONTRACTOR will require normal as well as special materials to support the operation and maintenance of the facility. These supplies in most cases will be pre-qualified and approved in the budget process. Those items that are pre-qualified and approved will be processed through the normal CONTRACTOR directed process. The CONTRACTOR will obtain the best terms, conditions, pricing, and availability to meet the needs of the Yigo Diesel Generators and ensure high levels of reliability as well as keep outages to a minimum.

d. Third-Party O&M Outsource Contracts

The CONTRACTOR may utilize external third-party resources to support the O&M needs of the Diesel Units. The CONTRACTOR will direct the procurement functions as required and utilize whatever third-parties necessary. The CONTRACTOR will be responsible for payment to these third-parties and shall obtain the best terms, conditions, pricing, and availability to meet the needs of the power Diesel Units and ensure high levels of reliability.

e. Create or Improve Procurement Procedures to Expedite Repairs

The CONTRACTOR shall develop its own internal procurement procedures to support the purchase and acquisition of emergency materials and professional services. The

CONTRACTOR will direct the procurement functions as required and utilize whatever outside resources necessary. The CONTRACTOR shall be responsible for payment of these outside contractors and obtain the best terms, conditions, pricing, and availability to meet the needs of the power Diesel Units and ensure high levels of reliability.

### **3.36 Guam Power Authority Procurement Responsibilities**

#### **a. Fuel Procurement and Delivery, Including Quality Assurance**

GPA will provide procurement and delivery services of fuel to the CONTRACTOR for the Yigo Diesel Generators. This service will guarantee the fuel's supply and quality in such a manner that it will not disrupt the normal operation of the Diesel Units. Problems with the fuel's quality, if any, shall be well documented and submitted by the CONTRACTOR to GPA, along with the cost impact and any problems.

GPA will cover all costs associated with the delivery of required fuels, and guarantee uninterrupted fuel delivery.

Fuel analysis conducted by GPA through its contractors will be accepted as the sole authority on all fuel issues.

#### **b. Local Vendors**

As requested, GPA will provide a complete listing of all vendors, suppliers and consulting organizations utilized in the past two years, to the CONTRACTOR for their consideration and use. The listing shall include company name, address, and phone and fax numbers. A summary of the basic services provided will be included in the listing of vendors and any basic rates charged to GPA in the past two years.

GPA will determine and create a listing of those vendors it has authorized and recommends to perform services as well as supply goods for the CONTRACTOR. This listing shall contain only those vendors who have actually performed work in the past two years and who have achieved good performance ratings.

### **3.37 Inventory Management**

#### **a. Maintain Required Spare Parts Inventory**

The CONTRACTOR shall be responsible for the management of the spare parts inventory for Yigo Diesel Generators. This responsibility requires the CONTRACTOR to manage and replace all spare parts, materials, parts, components and equipment currently in stock as it is used in the facility. It also requires the CONTRACTOR to be responsible for the security and proper storage of the spare parts, and for the replacement of any losses.

The CONTRACTOR shall repair large items removed from stock such as motors, pump assemblies, circuit breakers, etc. to “like-new” condition. The items shall be returned to stock if the repair option is the best option in support of the Yigo Diesel Generators’ operation. If the original item is not repairable, then new or “like-new” equipment or parts must be procured by the CONTRACTOR to replenish the stock items.

The CONTRACTOR is required to complete Annual Inventory Counts and report the prior year and current year’s inventory to GPA, for each contract year. Standards for inventory valuation and item count currently used by GPA may be adopted.

The CONTRACTOR shall determine whether items in the inventory are active or inactive. The CONTRACTOR may sell off the inactive items if they have no value to GPA or the Yigo Diesel Generators, and only after it has secured GPA’s agreement to do so. The CONTRACTOR shall use proceeds of the sale to secure needed items for stock.

The CONTRACTOR shall take all active inventory items and tie them to the equipment as listed in their maintenance management system. This activity will assist planners in better matching materials to maintenance requirements

All inventory at the beginning and end of the contract duration will be the property of the GPA.

b. Recommended Tasks for Inventory Optimization

The CONTRACTOR shall be responsible for optimizing the inventory for the Yigo Diesel Generators, through completion of the following tasks:

- Review and provide a recommended list of spare parts and inventory requirements for all systems associated with the Yigo Diesel Generators;
- Determine inventory requirements to ensure continuous rotation, refurbishment, and/or replacement of parts;
- Identify and make necessary adjustments to the existing safety stock levels and ordering schedules;
- Track and account for all inventory proceedings;
- Ensure parts specifications are updated for system upgrades.

c. **Quality of Refurbishing of Stock Items after Usage**

The CONTRACTOR shall carefully consider the quality of all refurbishment activities performed on items returned to stock. The quality of repairs often times will not be realized until the component is placed into service. The CONTRACTOR shall keep a record of any associated warranties and request extended warranties where applicable based on commencement from in-service dates and not delivered dates. All warranties shall be transferred to GPA at the end of the contract period.

d. **Account for the Location of Specialized Tools & Assets**

The CONTRACTOR and GPA shall perform an inventory of all tools, non-stock parts, material and equipment assigned to the Yigo Diesel Generators at the time of turnover of management responsibilities. The CONTRACTOR will be responsible for the safe use and control of all tools during the contract term. Should additional tools or equipment be required, the CONTRACTOR may first request to use tools from the Central Maintenance section or other GPA sites. However, GPA is not obligated to supply such tools or equipment if they are needed for other GPA projects. The

CONTRACTOR may be required to secure tools and equipment on its own to support Yigo Diesel Generators operations and maintenance.

**e. Inventory Proceedings**

GPA and the CONTRACTOR shall discuss and agree, in writing, on all inventory proceedings.

Prior to any decision not to reorder any stock item, both parties must fully discuss the matter and must agree to such decisions in writing. If both parties mutually agree not to reorder an item, the CONTRACTOR must still keep detailed records for future usage in the event that the item is required in future years. These records must accompany a copy of the written agreement of both parties. The records must continue to reflect the equipment details in order to support reordering. The CONTRACTOR shall not remove these items from the inventory master listing. However, the CONTRACTOR must code these items to reflect the inventory level at zero.

**f. Inventory Issuance Process**

GPA and the CONTRACTOR shall discuss and agree, in writing, on the Inventory Issuance Process to be followed.

The current method shall be established as a Baseline Process, and may be adopted or revised upon contract commencement, so long as it is properly discussed and approved by GPA and the CONTRACTOR.

**g. Guam Power Authority Inventory Responsibilities**

GPA shall inventory all tools, equipment and vehicles, and develop a master inventory listing prior to the arrival of the CONTRACTOR.

## **4.0 Communications and Reporting**

### **4.1 CONTRACTOR Reporting Requirements**

The CONTRACTOR is responsible for providing regular reports including but not limited to the following:

- a. Operations and Maintenance activities – scheduled and actual completed activities
- b. Project Management
- c. Yigo Diesel Generators Operational Costs including but not limited to providing a model for operational costs in the following forms:
  - Annual Management Fee
  - O&M Expenses (Fixed Fee + Variable Cost)
  - Expenses for maintenance of facilities
  - Critical Repairs, Major Maintenance Costs
- d. Performance Report
- e. Environmental Compliance Report
- f. Inventory Status Report
- g. Special Reports, the contents of which shall be determined jointly by GPA and the CONTRACTOR prior to commencement of the project(s).
- h. Any other report as required in this section and in the other sections of this bid document
- i. Any other report as required by GPA, including:
  - Data for Island Wide Power System (IWPS) Report
  - Daily Production Data and Generation Loading Reports
  - Key Performance Indicators (Daily, Weekly, Monthly and Annually)

### **4.2 Auditable Reporting of Performance Measurements**

The CONTRACTOR shall provide comprehensive weekly and monthly reporting of actual historical measurements for all performance measures as well as information on fuel

deliveries and consumption. The report shall include detailed explanations of any violations of minimum guaranteed performance and requirements.

The daily, weekly and monthly reports of Performance Metrics shall include, but are not limited to:

- a. EAF, EFOR, Forced Outage Hours, EPDH, EUDH
- b. Details of Outages
- c. Gross, Station and Net Generation
- d. Fuel Consumption (HSFO, LSFO, DSL)
- e. Lubricants Consumption
- f. Gross and Net Heat Rate
- g. Gross and Net Efficiency (KWH/gal)
- h. Heating Value (daily and monthly)
- i. Capacity Factor (daily and monthly)
- j. Off-Spec Conditions and Variance Reporting

The CONTRACTOR shall provide the power system operators with the minimum and maximum unit commitment capabilities for the next 24 hours every day at midnight. The CONTRACTOR shall provide detailed explanations of any inability to meet desired operational levels – e.g. partial forced or scheduled capacity derations.

#### **4.3 Weekly and Monthly Project Status**

The CONTRACTOR shall provide monthly project status reports during the planning stage and weekly project status reports during the actual project implementation until the completion of the project. A report confirming that the purpose or objectives of the projects are met, and the benefits or savings are realized (when applicable) shall be provided for GPA's review.

#### **4.4 Monthly Expenditures**

The CONTRACTOR shall provide summaries of compliance/non-compliance regarding monthly expenditures. The accounting and reporting of these monthly expenditures shall conform to generally accepted accounting standards. Proper justifications and documentation, especially for overtime expenses and spending above budget, for each expenditure shall also be provided.

#### **4.5 Incentive/Penalty Calculations**

The CONTRACTOR shall provide annual reports with detailed calculations of incentive/penalty payments for the following performance measures for GPA's review and approval:

- EAF
- Heat Rate

The CONTRACTOR shall also provide annual reports on the detailed calculations of EFOR for inclusion in the Performance Evaluation.

#### **4.6 Annual and Monthly Inventory Management Reports**

The CONTRACTOR shall conduct an annual spare parts inventory and report on inventory values and variances in accordance with generally accepted accounting standards. Coordinate the annual inventory with GPA Accounting. The Previous Year and Current Year's inventory valuations shall be included in this report. The annual inventory report shall also include all Inventory Proceedings, Inventory Optimization activities, accounting of Tools & Assets, and annual inventory valuation.

The CONTRACTOR shall also provide GPA with a monthly report which shall include at a minimum the following data:

- Inventory in Stock (item, quantity, cost breakdown)
- Safety Stock Status (Below Safety Stock, Not-In-Stock, On Order, etc.)

- Inventory Status (fast-moving items, slow-moving items, non-moving items, etc.)
- Updated List of Critical Parts and Inventory

**Other CONTRACTOR Compliance Responsibilities**

The CONTRACTOR shall comply with the following requirements and responsibilities:

- a. Comply with Annual Quality Audit within Yigo Diesel Generators - The CONTRACTOR shall comply with all GPA or authorized third party quality audits.
- b. Use of English & Other US Standards - All communications, correspondence, reports, engineering calculations and drawings, O&M records, documentation and other forms of verbal, electronic and written communications shall be in the English language and other US standard units of measure, forms, and formats.
- c. Use of Compatible Software and Electronic Formats – All communications, correspondence, reports, engineering calculations and drawings, O&M records, documentation and other forms of electronic and written communications shall conform to formats used by the following software:
  - AutoCAD;
  - Microsoft Word;
  - Microsoft Excel;
  - Microsoft Front Page;
  - Microsoft Power Point;
  - Microsoft Project.
- d. Availability/Outage Definition Standards - The CONTRACTOR shall calculate all availability and outage performance measurements in accordance with NERC GADS definitions.

#### **4.7 Guam Power Authority Reporting Responsibilities**

a. Monthly Review of Reported Performance Measurements

GPA or a mutually acceptable third party will verify the CONTRACTOR's actual performance and the CONTRACTOR's adherence to best practices in order to assure long-term Yigo Diesel Generators' viability. Thus, GPA or a third party shall critically review, in cooperation with the CONTRACTOR, the CONTRACTOR's reported measured performance in order to reach agreement on the actual level of achieved performance improvement. Discovered variances may trigger compensation dispute procedures or, in an extreme case, contract termination procedures.

b. Compensation - External Influences

GPA shall monitor, record, and report the observed measurements of all external variables that are used in the determination of CONTRACTOR compensation. GPA and the CONTRACTOR shall identify these external variables.

c. **Incentive/Penalty Calculations Review**

GPA will review and verify the CONTRACTOR's calculations of incentive/penalty payments. GPA and the CONTRACTOR shall, in their best efforts, reach an agreement on the actual incentive penalty payments. Discovered variances may trigger compensation dispute procedures or, in an extreme case, contract termination procedures. GPA shall also provide the Fuel Cost to be used for heat rate incentive/penalty calculations-

## **5.0 Contract Terms and Contract Fees**

### **5.1 Proposed Annual Management Fees**

A portion of the CONTRACTOR's compensation may be in the form of Annual Management Fees. The CONTRACTOR may propose either a constant fee for the life of the contract, or an escalating fee. Front-end loaded fees are expressly prohibited.

Services to be provided under the Annual Management Fee include:

- On-site Technical and Management Services
- Office Space (if not available on-site)
- Office expenses
- Yigo Diesel Generators Engineering and Technical Services
- Procurement of OEM and Non-OEM Support
- Other services specified to be under the Annual Management Fee as specified in other parts of this bid document.

### **5.2 Proposed O&M Spending Budget**

The CONTRACTOR shall propose an O&M Spending Budget, based on the object codes specified in this bid document for each contract year. Compensation for O&M Spending will be made on a reimbursable basis not to exceed the proposed Annual O&M Spending Budget. Cost-plus reimbursement is not allowed.

### **5.3 Proposed Overhaul Budget**

The CONTRACTOR shall propose an Overhaul Budget, to cover all expenses related to the overhaul of up to fifteen (15) units over the 3-year base period. Compensation for overhauls completed will be made on a reimbursable basis not to exceed the proposed Annual Overhaul Budget. Cost-plus reimbursement is not allowed. The CONTRACTOR is allowed a 5% project management fee for management of the unit overhauls.

#### **5.4 Annual Management Fee Reduction for each GPA Full-Time-Employee assigned to Yigo Diesel Generators**

The Annual Management Fee (line 1 of the Price Proposal) is based on Management and Staff for the Yigo Diesel Generators being under the PMC. Should GPA assign additional full-time employees (FTEs) to operate and maintain the diesel units, to replace or take over duties undertaken by PMC employees, the PMC shall propose a reduction in fees for each GPA employee that will be assigned to the Yigo Diesel Unit that will replace PMC employees. The reduction in fixed management fee should equate to at least the paid labor wage and benefits expensed for each PMC employee replaced by a GPA FTE.

#### **5.5 GPA Contract Fee Responsibilities**

GPA shall provide prompt payments to the CONTRACTOR for costs and services rendered in accordance with the Contract. Said payment shall be made within thirty (30) days of being invoiced. Should part of the invoice be challenged, GPA will at a minimum pay the unchallenged portions of the invoice under the same terms. Should GPA fail to make any payments due to the CONTRACTOR under the Contract, GPA shall pay interest to the CONTRACTOR in accordance with the provisions of the Prompt Payment Act, 5 GCA Sections 22502-22507.

#### **5.6 Contract Period**

GPA intends for this contract to be a three-year base contract with the option to extend for two additional 1-year periods for a total of 5 years. Additionally, upon mutual agreement, GPA and the CONTRACTOR may negotiate to further extend the contract for up to 5 more years. The total contract period including maximum extension years shall be ten (10) years.

#### **5.7 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:

- Annual Management Fees, to be paid in twelve (12) monthly installments;
- Monthly Reimbursement Payments for Operations and Maintenance related expenditures. Reimbursement will be based on actual amounts spent by PMC and approved by GPA.
- Monthly Reimbursement Payments for Overhauls completed. Reimbursement will be based on actual amounts spent by PMC and approved by GPA.
- Reimbursement Payments Critical Repair and/or Major Maintenance projects not yet included in the O&M budget.
- Reimbursement of Inventory purchases (stock items; items issued out of warehouse will be charged against O&M budget).

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

- Penalty Compensation Payments due to CONTRACTOR's failure to meet its minimum performance guarantees, as agreed upon in Sections 7 and 8 for the following:
  - \* EAF – annual, through adjustment of Annual Management Fee
  - \* Heat Rate – annual, through adjustment of Annual Management Fee

## **6.0 FORM OF CONTRACT**

**The DRAFT CONTRACT included provided in Section 6 is the Form of Contract GPA intends to enter into with the CONTRACTOR. Any questions, clarifications, corrections or changes should be sent by the BIDDER to GPA prior to the deadline for proposals so it can be addressed by GPA prior to Proposal Evaluations.**

**Exceptions and major changes to the contract shall not be accepted upon award and Contract Finalization.**

**PERFORMANCE MANAGEMENT CONTRACT**  
**FOR THE GUAM POWER AUTHORITY**  
**YIGO DIESEL GENERATORS**  
**POWER DIESEL UNITS**

**between**

**GUAM POWER AUTHORITY**

**and**

**(CONTRACTOR)**

**JULY 2023**

## PERFORMANCE MANAGEMENT CONTRACT

This Performance Management Contract (“Contract”) is made and entered into on the \_\_\_\_ day of \_\_\_\_\_, 2023 by and between:

CONTRACTOR, (Name of Organization), (type of organization), duly organized and existing under the laws of \_\_\_\_\_ and licensed, registered and qualified to do business in Guam with its principal address at \_\_\_\_\_;

-and-

GUAM POWER AUTHORITY, a Public Corporation with its office located at the Gloria B Nelson Public Service Building, 688 Route 15, Mangilao, Guam, 96913;

### RECITALS

WHEREAS, GPA desires to efficiently operate and maintain its Yigo Diesel Generators; and

WHEREAS, GPA seeks to ensure the reliability and availability of its Yigo Diesel Generators in order to meet capacity requirements until the new Yigo Diesel Generators is commissioned and actively operating; and

WHEREAS, the Consolidated Commission on Utilities has determined that Performance Management Contract is the preferred option for GPA to ensure continued effective generation outage planning, maintenance, and overall performance of its Yigo Diesel Generators; and

WHEREAS, the Guam Public Utilities Commission has, through stipulation, ordered that GPA retain a CONTRACTOR for its Yigo Diesel Generators; and

WHEREAS, GPA seeks to engage the professional services and assistance of (Name of CONTRACTOR) to provide operations, maintenance, and management services, outage planning and scheduling, budgeting, procurement, and such other services as are specified herein; and

WHEREAS, GPA, has agreed to supply fuel to the generating power station upon the terms and subject to the conditions hereinafter appearing; and

WHEREAS, (Name of CONTRACTOR) is fully willing to provide, and is capable of providing, the management, operations, maintenance and repair services set forth in the IFB and Agreement in accordance with the terms and conditions thereof.

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

### **SECTION 1 – DEFINITION OF TERMS**

In this Agreement and in the Recitals hereto:

“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.

“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.

“Yigo Diesel Generators” shall mean the Yigo Diesel Generators. Comprehensive information concerning the Diesel Units’ design, historical performance, operation, maintenance activities, future maintenance, capital requirements and condition assessment are fully set forth in Schedule A of GPA-023-23.

“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).

“Claim” means any dispute or disagreement brought in accordance with the Guam Procurement Law, 5 GCA §5001 et. seq. and the Government Claims Act of Guam, 5 GCA §6001 et. seq. and the procedures thereunder.

“Commencement Date” means the date upon which CONTRACTOR assumes operational control of GPA’s Yigo Diesel Generators.

“Completion Date” shall have the meaning given in the Contract, or the last day of any extension of this contract.

“Contractor” The CONTRACTOR with whom GPA has entered into the Contract Agreement.

“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.

“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.

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

“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.

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

“Deliverable Work Product” shall mean such reports, products, or services that Contractor is required to provide to the Guam Power Authority in accordance with this Contract, and such other work product as may be specified in the IFB.

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

“Effective Date of the Contract Agreement” The date indicated in the Agreement on which it becomes effective, or if no such date is indicated, the date by which the Contract is signed by both parties.

“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.

“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.

“Equivalent Availability” shall be as defined in the NERC standards.

“Final Payment” means the last payment made by GPA to CONTRACTOR after delivery and acceptance of all Services as herein specified and performed under this Agreement. For purposes of found. Error only, said term shall refer to date upon which GPA made the final or last payment due to CONTRACTOR for a specific good, performance item, work task or service, and not the last payment made by GPA to Contractor arising from the contract.

“Force Majeure” shall mean those events or acts specified in SECTION 8 – FORCE MAJEURE of this Contract.

“Forced Outage” shall be as defined in the NERC standards.

“FTE” mean “Full Time Equivalent Employee,” or the availability of one full time employee for no less than two thousand and eighty work hours in one calendar year.

“Fuel” means the Bunker -C fuel or Distillate Fuel delivered by GPA that shall have the fuel specifications described in Schedule B of the IFB.

“Fuel Specifications” means the specifications as to the quality and method of storage, supply and delivery of the fuel for Yigo Diesel Generators as described in Schedule B of the IFB.

“Fuel Supply Procedures” means the procedures and parameters for the supply and delivery of fuel by GPA described in Schedule B of the IFB.

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

“Goods” All property required to be furnished by Contractor under the procurement documents.

“Guam Power Authority” means that public corporation of the Government of Guam or its successors, which has statutory authority to operate and maintain public power on Guam.

“Heat Rate” means the ratio of the amount of heat energy required to produce a given amount of electrical energy.

“Insurance” shall have that meaning specified in SECTION 16 - INSURANCE of this Contract.

“Modification” A written amendment of the Contract signed by both parties, or Change Order, or ENGINEER's Instructions.

“Month” means the period beginning the first day of the calendar month.

“O&M Spending” means spending for certain categories of operations and maintenance expenditures directly impacting GPA’s total O&M costs. Such expenditures need to the optimally controlled by the contractor in order to maximize the total benefit to GPA and its customers.

“Operation & Maintenance Contract” means this Contract for the management, operation, and maintenance of the Yigo Diesel Generators.

“OWNER” The Guam Power Authority, a Public Corporation.

“Performance Bond” shall mean that Performance Bond or guarantee of a financial institution or similar security acceptable to the Guam Power Authority in the amount as specified in the IFB. Provision of such Performance Bond by the CONTRACTOR is a condition precedent to the formation and execution of this Contract, and failure by the Contractor to furnish a Performance Bond at the time specified and in the manner provided, or to maintain such Performance Bond in full effect during the term of this Contract, shall be grounds for cancellation of the Contract.

“Planned Outage” shall mean an outage scheduled by CONTRACTOR and GPA as defined in the NERC standards.

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

“Power Stations” means the Yigo Diesel Generators.

“Procurement Officer ” The General Manager of the Guam Power Authority or the General Manager’s designee.

“Project” The Yigo Diesel Generators, facilities, or works the Goods and Services are to be used for or incorporated into.

“Project Scope” means the scope of the supply of work of the contractor in connection with the Project.

“PURCHASER” The Guam Power Authority with whom Contractor has entered into the Contract Agreement.

“Qualified GPA Employee” shall mean an employee who on and after the Commencement Date: (1) GPA certifies is in compliance with GPA's Drug Free Workplace Policy; (2) by reason of education, training and/or experience, possesses the requisite qualifications for and capability to perform, as established by the Civil Service Commission, the duties and responsibilities of the position to which the employee is to be assigned; (3) has had satisfactory performance reviews within GPA; (4) if assigned by GPA to the Yigo Diesel Generators, performs, in a manner satisfactory to CONTRACTOR.

“Scope of Services” shall mean those services set forth in Section 2 of this Contract and as indicated in IFB hereto, a copy of which is attached hereto and incorporated herein by reference.

“Seller” The Contractor.

“SITE or Site” The SITE is the area where the Project is to be executed. In this case, the SITE is the Yigo Diesel Generators.

“Special Services” Services to be furnished by Contractor at the Yigo Diesel Generators as required by the Contract Agreement.

“Termination Date” shall have the meaning given in the Contract.

“Territory” The Territory of Guam.

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

2.1 Purpose. GPA hereby retains (Name of CONTRACTOR) to manage, operate and maintain the Yigo Diesel Generators. By awarding the contract, the goal of GPA is to improve the efficiency, reliability, operations, maintenance the Yigo Diesel Generators.

2.2 The Scope of Services to be rendered. CONTRACTOR shall be responsible for the following:

- 1) Management, Operation, and Maintenance of the Yigo Diesel Generators;
- 2) Accomplishment of the critical repairs and major maintenance projects as well as projects ensuring the units meet or maintain availability, reliability and efficiency standards;
- 3) Supervision of Yigo Diesel Generators Staff;
- 4) Meeting Specified Performance Standards Objectives including but not limited to Unit Availability and Heat Rate;
- 5) Meeting all Environmental Compliance Rules and Regulations;
- 6) Procurement, Inventory control and management;
- 7) Diesel Units and Relocation and Clean-up; and
- 8) Other Responsibilities and Duties as cited in the Invitation for Bid Documents.

(Name of CONTRACTOR) shall provide those services and deliverables as set forth in the IFB.

2.3 Key Performance Indicators. (Name of CONTRACTOR) shall utilize best operation and maintenance practices, training and management techniques to accomplish key performance indicators for the Yigo Diesel Generators including:

- 1) Equivalent Availability
- 2) Relative Heat Rate
- 3) Emission Guarantees
- 4) Other Performance Indicators as may be requested by GPA

### **SECTION 3 – CONDITIONS PRECEDENT**

3.1 CONTRACTOR's Submittals. (Name of CONTRACTOR) shall supply the following to GPA, each in form and substance satisfactory to GPA unless such condition precedent is waived by GPA:

- 1) copies of resolutions adopted by (Name of CONTRACTOR)'s Board of Directors authorizing the execution, delivery and performance by (Name of CONTRACTOR) of this Agreement certified by the company secretary of (Name of CONTRACTOR) in a manner satisfactory to GPA;
- 2) a performance bond as specified in SECTION 26 – PERFORMANCE BOND of the Contract.
- 3) a copy of the Articles of the Incorporation of (Name of CONTRACTOR), certified by the company secretary in a manner satisfactory to GPA;
- 4) a copy of (Name of CONTRACTOR)'s license to do business in Guam.
- 5) a legal opinion of (Name of CONTRACTOR)'s legal counsel in form and substance the equivalent of GPA's general counsel opinion in Article 3.02(ii).

3.2 GPA's submittals. GPA shall supply the following to (Name of CONTRACTOR) form and substance satisfactory to (Name of CONTRACTOR), each in form and substance satisfactory to (Name of CONTRACTOR) unless such condition precedent is waived by (Name of CONTRACTOR):

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

2) a legal opinion of GPA's Staff Attorney concerning corporate authority.

3.3 Insurance. (Name of CONTRACTOR) shall obtain all insurance specified in SECTION 16 - INSURANCE of this Agreement.

#### **SECTION 4 – CONTRACT DOCUMENTS**

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

- 1) GPA-023-23
- 2) Amendments to GPA-023-23
- 3) This Operation & Maintenance Contract
- 4) The Performance Bond
- 5) Affidavit of Disclosure of Ownership & Interest
- 6) Audited financial information of (Name of Contractor)'s firm and all subcontractors that will be used in the Performance Management of Yigo Diesel Generators.
- 7) Certificate of Good Standing to conduct business in jurisdiction of residence
- 8) Non-collusion Affidavit
- 9) Ethical Standards Affidavit
- 10) No Gratuities or Kickbacks Affidavit
- 11) Declaration Re Compliance with US DOL Wage Determination
- 12) Restriction Against Sex Offenders Employed By Service Providers to Government of Guam From Working on Government of Guam Property

4.2 Discrepancies. In the case of discrepancies or conflicts between the above-referenced contract documents, this CONTRACT shall take precedence over GPA-023-23, and (Name of

CONTRACTOR)'s proposal submitted in response to the IFB. In case of discrepancies or conflicts between the Amendments to GPA-023-23, the Amendments shall take precedent. Should (Name of CONTRACTOR) believe that there is any discrepancy or inconsistency between this Contract and the other contract documents, (Name of CONTRACTOR) shall bring such discrepancy to the attention of the General Manager before proceeding with the work affected thereby.

4.3 Presumption of Familiarity. It will be conclusively presumed that (Name of CONTRACTOR) has read, examined, and agreed to each and every term, condition, provision, covenant or agreement contained within each and every Contract Document. (Name of CONTRACTOR) is assumed to be familiar with all federal (U.S.) And local laws, ordinances, rules and regulations of Guam that in any manner affect the work. Ignorance of law on the part of (Name of CONTRACTOR) will not relieve (Name of CONTRACTOR) from responsibility.

## **SECTION 5 – CONTRACT TERM**

5.1 Term. The term of this Operation & Maintenance Contract shall be for a three-year period commencing on or about July 1, 2023 and terminating on June 30, 2026. The contractual obligation of GPA and (Name of CONTRACTOR) is subject to the availability of funds.

5.2 Extension. Prior to the expiration of the two-year contract term, GPA may, its election, extend the contract for up to two (2) additional one-year (1-year) terms. If the Agreement shall be renewed, then the parties shall meet and discuss the new terms and conditions of the Agreement six months before Termination Date.

5.3 Notice of Extension. GPA shall notify (Name of CONTRACTOR) in writing its intent to extend the contract no later than six months before the current expiration date.

GPA shall give appropriate notice of its intentions regarding its option to exercise contract extension. The notification will include the number of years GPA intends to extend the contract, not to exceed five years.

GPA and the CONTRACTOR shall negotiate the contract extension terms based on the optimum requirements for the Yigo Diesel Generators. These requirements shall be considered as starting

negotiation points between GPA and the CONTRACTOR, should GPA elect to exercise the optional contract extension. Final confirmation by mutual agreement between GPA and the CONTRACTOR for contract extension shall be given after completion of negotiation no less than no later than six months before Termination Date. However, GPA may elect to reverse its decision without penalty at any time within six months of the end of the contract period based on poor CONTRACTOR performance during this period.

## **SECTION 6 – OPERATION OF THE POWER DIESEL UNITS**

6.1 Full Responsibility for Management, Operations and Maintenance. During the term of this contract and any extension thereof, (Name of CONTRACTOR) shall be responsible for the management, operation, maintenance and repair of the Yigo Diesel Generators, including all regularly schedule preventative or remedial maintenance and any maintenance required due to Yigo Diesel Generators forced outage. (Name of CONTRACTOR) shall perform its duties, to the extent permitted by Guam law, to keep the Yigo Diesel Generators in good working order.

6.2 Procure OEM and Non-OEM Support as Required. (Name of Contractor) shall be responsible for procuring all OEM and Non-OEM assistance required to support the daily operation and maintenance of the Yigo Diesel Generators.

6.3 Management of the O&M Budget. GPA shall approve the operations and maintenance budget for the Yigo Diesel Generators as proposed by (Name of Contractor). Said budget shall be finalized in writing and approved with execution of this Contract. (Name of CONTRACTOR) shall furnish all agreed upon and required equipment, materials and supplies, and services, keeping within this budget. GPA shall reimburse (Name of CONTRACTOR) for such expenditures as GPA has given prior written approval. In addition, GPA reserves the right to audit (Name of CONTRACTOR), using its own staff or outside resources, to ensure that (Name of CONTRACTOR) has implemented adequate cost controls.

Contractor shall develop, monitor and manage the annual Yigo Diesel Generators' budget. Such budget shall not be implemented without the written approval of GPA. In planning the budget, the

Contractor will develop a process of justifying activities, personnel, materials and supplies, etc. in support of Yigo Diesel Generators' mission critical objectives.

6.4 Management Responsibility for Yigo Diesel Generators Personnel. (Name of CONTRACTOR) shall provide, to the extent permitted by Guam Law, management and supervision of the staff in the day-to-day performance of its duties in accordance with Contract requirements. The CONTRACTOR shall comply with all responsibilities for the management of personnel as required in IFB GPA-023-23.

6.5 CONTRACTOR Staffing Level. CONTRACTOR shall provide all services hereunder as an independent Contractor. For the duration of the duration of the Performance Management Contract, CONTRACTOR shall have sufficient number of FTE (Full Time Equivalent employee) physically present and available to ensure that the required services are performed. The number of physically present FTE's on Guam at any particular time during the contract period may be more or less depending on the operational status of the Yigo Diesel Generators. GPA may, at its discretion, request that an employee (initial or additional) proffered by Contractor be replaced in the event that the Authority believes that such employee lacks the requisite experience or expertise. Contractor will bring personnel to Guam with such expertise as is necessary to perform the services required hereunder.

6.6 Employee Positions. The Contractor will provide appropriate staffing levels of employees, including:

- 1) (to be identified in the Bid)
- 2)
- 3)

6.7 Hiring of Personnel Contractors and Subcontractors. CONTRACTOR may provide, upon prior written consent of GPA, experienced personnel, contractors, and subcontractors, if required during the performance of the Services hereunder. Said personnel, contractors or subcontractors shall be under CONTRACTOR's sole and exclusive direction and control, CONTRACTOR shall remain, at all times, an independent contractor and shall be responsible for and shall promptly pay all federal, state

and municipal taxes chargeable or assessed with respect to CONTRACTOR's personnel, contractors or subcontractors, including but not by any limitation, social security, unemployment, federal and state withholding, and other taxes. CONTRACTOR shall also be responsible for and pay all compensation and/or any reimbursements due to personnel, contractors, subcontractors, and no additional amounts shall be due from the Authority.

The CONTRACTOR may, at any time, in consultation with GPA, have CONTRACTOR employees or consultants perform functions, duties, and responsibilities at the Yigo Diesel Generators as CONTRACTOR determines in accordance with the scope of this contract. Reimbursement for salaries and benefits shall be based on rates approved by GPA. Reimbursement shall only be for the period the CONTRACTOR hired Employees/Consultants are employed and performing work up to the termination date of their employment/contract with CONTRACTOR.

The listings of any (Name of CONTRACTOR)/CONTRACTOR personnel, contractors or subcontractors shall be subject to the approval of GPA, commencing at the start of this contract. (Name of Contractor) shall provide a list of personnel, contractors, and subcontractors assigned to perform work under this contract for GPA's review and approval.

6.8 Provision of Listing of Personnel/Contractors/Subcontractors. (Name of Contractor) shall provide GPA with a listing of the name and address of all personnel, contractors or subcontractors, utilized by it for this project within seven (7) days of the hiring or engagement of the CONTRACTOR with such personnel, contractor or subcontractor. These listings shall be subject to GPA approval under the terms stated above.

6.9 Training. For the duration of this contract and any extension thereof, the Contractor will be responsible for all training and associated costs necessary to perform contract obligations and adhere to regulatory requirements such as OSHA or GOSHA.

6.10 Operations. CONTRACTOR shall perform and manage all responsibilities and activities pertaining to the Operation of the Yigo Diesel Generators, including all obligations specified under IFB GPA-023-23.

6.11 Environmental Compliance. The Contractor shall operate the Yigo Diesel Generators in compliance with all environmental and other federal local laws and regulations of this agreement, requirements (US Environmental Protection Agency and Guam Environmental Protection Agency) and shall comply with any changes in such laws, regulations and permits and with any new laws and regulations.

6.12 Maintenance. CONTRACTOR shall perform and manage all responsibilities and activities pertaining to the Maintenance of the Yigo Diesel Generators, including all obligations specified under IFB GPA-023-23.

6.13 Specialized Technical and Engineering Support. Contractor shall provide ongoing technical and engineering services to plan major outages, prepare budgetary estimates for major outages, outline project critical tasks and assist in defining reasonable or realistic schedules for completion. In addition, Contractor will:

- 1) Utilize the GPA Computerized Maintenance and Management System (CMMS) to track repairs, preventive maintenance history, materials and labor costs, etc.
- 2) Ensure that all major outages are planned well in advance and are executed to meet projected budgets, time lines, and all technical specifications of the work.
- 3) Provide effective methods to help manage all major overhauls in specific target areas.
- 4) Provide engineering expertise to evaluate cost effective alternative solutions whenever generation components show greater wear and tear than expected during the outage planning study.
- 5) Assist in developing detailed condition assessment inspections to provide valuable data in planning a major outage for a specific targeted power Yigo Diesel Generators.
- 6) The Contractor shall evaluate, monitor and provide recommendations on Yigo

Diesel Generators operating procedures, employee skill gaps and any other resources (such as reference technical drawings, service manuals, or other tools) that are usually helpful in the efficient operation of the Yigo Diesel Generators.

6.14 Engineering and Technical Services. CONTRACTOR shall provide Yigo Diesel Generators' engineering and technical services for:

- a) Critical Repairs;
- b) Major Maintenance Projects; and
- c) Other repairs, projects activities or technical tasks necessary to maintain reliability, availability, efficiency; comply with regulatory requirements; align with resource implementation planning efforts; and to support GPA in other initiatives or projects.

6.15 Procurement Authority. In pursuance of its obligations to furnish equipment, materials, supplies and services; agreed by GPA, in maintaining and repairing the Yigo Diesel Generators, (Name of CONTRACTOR) shall have the authority to:

- 1) enter into contracts for the supply of materials and services, including, contracts with GPA;
- 2) appoint and remove consultants and professional advisers;
- 3) purchase replacement parts and equipment;
- 4) perform other obligations as specified in GPA-023-23 regarding Procurement and Outsourcing.

6.16 Inventory Management. Contractor shall be responsible for the management of Yigo Diesel Generators inventory, and will perform all obligations related to Yigo Diesel Generators including, but not limited to

- 1) Maintain required spare parts inventory
- 2) Recommend tasks for inventory optimization

- 3) Account for specialized tools and assets
- 4) inventory management reporting
- 5) perform other obligations as specified in GPA-023-23.

6.17 Regulatory Reporting. (Name of CONTRACTOR) shall undertake those communications and reporting requirements.

6.18 Designated Representative. Contractor has designated \_\_\_\_\_ as its primary contact for GPA with regard to the services provided hereunder. Contractor shall ensure that said person is reasonably available to GPA management in person during working hours for the term of this contract.

6.19 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 approval of necessary changes from GPA before proceeding with the work affected thereby.

6.20 Full Efforts. Contractor agrees to exercise reasonable business efforts to perform the required duties and responsibilities under this Agreement in accordance with the laws, rules and regulations of the Government of Guam.

6.21 Accuracy of Work. Contractor shall be responsible for the professional and technical accuracy of all work and materials furnished under this contract. Contractor shall, without cost to GPA, correct and revise any material errors or deficiencies in its work.

6.22 Business License. Contractor agrees to obtain and keep current a Guam business license, or other licenses required by law, and to provide proof of such license to GPA.

6.23 Performance. GPA's review, approval, acceptance of and payment of fees for services

required under this contract shall not be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of Contractor's failure to perform in accordance with this contract.

#### **SECTION 7 – PERSONNEL MANAGEMENT – UTILIZATION OF GPA EMPLOYEES**

7.1 CONTRACTOR Utilization of Existing GPA Employees. CONTRACTOR shall, unless otherwise provided for in this Section, beginning on the Commencement Date and continuing through the Termination Date, utilize all GPA employees assigned to Yigo Diesel Generators

7.2 General Assignment. All GPA employees assigned by GPA to the Yigo Diesel Generators, at any time under any provision of this Contract shall be, at the time of their assignment, and shall, at all times during their assignment, continue to be Qualified GPA Employees. Before assigning an employee Yigo Diesel Generators, GPA shall establish that the employee is a Qualified GPA Employee.

7.3 Personnel Administration. GPA shall, subject to Sections 7.5 through 7.10, perform all personnel administration functions for GPA employees assigned to the Yigo Diesel Generators. GPA shall have access to its employees assigned to the Yigo Diesel Generators for the purpose of performing its administrative functions. Personnel administration functions shall include, but not be limited to:

- 1) Computation and payment of compensation; GPA shall retain its standard responsibilities for all GPA employee payroll expenses and disbursements;
- 2) Administration of sick leave, maternity leave, paternity leave, annual leave, military leaves of absence and such other programs providing GPA employees authorized absences;
- 3) Recruitment, examination and appointment of new hires;
- 4) Administration of employee benefit plans, health insurance, retirement plans, worker compensation plans, and such other programs for the welfare of GPA employees;
- 5) In-service training programs and such other training programs for which GPA employees are eligible; and,

- 6) Such other personnel matters not related to the maintenance, operation, and repair of the Yigo Diesel Generators.

7.5 GPA Policies and Procedures. GPA shall take such actions and shall establish, to the extent not already in existence, and implement Departmental policies, procedures, or rules pursuant to appropriate authority, applicable to CONTRACTOR and to GPA employees assigned to the Yigo Diesel Generators, if any, that facilitate and enhance CONTRACTOR's ability to efficiently and effectively repair, operate, and maintain the Yigo Diesel Generators and which, at a minimum, provide for:

- 1) CONTRACTOR authority and discretion to counsel or issue written warnings to individual employees for unsatisfactory work performance and violations of work rules, conduct rules, safety procedures, or other conduct CONTRACTOR determines to be detrimental to the safe and efficient repair, operation, and maintenance of the Yigo Diesel Generators. At its sole discretion, GPA may take disciplinary action, as it deems appropriate. CONTRACTOR shall cooperate and assist GPA by providing such witnesses and evidence as GPA may reasonably request to support any disciplinary action. CONTRACTOR may request disciplinary action but shall not have authority to initiate or direct disciplinary action against any individual GPA employee; provided, however, that GPA shall use its best efforts to proceed promptly, diligently, and thoroughly to process all requests and take such disciplinary action as requested by CONTRACTOR if reasonable under the circumstances, including, but not limited to the immediate suspension of GPA employees during the notice period of GPA's disciplinary procedures, or placing employee on administrative leave pending adverse action, if their continued presence would interfere with the safe and efficient operation of the Yigo Diesel Generators or the safety and health of persons or if the suspension was necessary to eliminate the possibility of deliberate damage to equipment, property, or important documents;

2) Appropriate implementation of Section 6.2 through 6.12.

7.6 CONTRACTOR Diesel Units Management. CONTRACTOR shall coordinate with the Generation Manager and Assistant Plant Superintendent to establish work rules, assign and direct the work of the GPA work force, make work schedules, establish safety procedures, prescribe training and approve attendance at training, and any other necessary management actions in performing the requirements of this Contract. CONTRACTOR shall have the sole discretion in selecting methods and means to accomplish the refurbishing, operation, and maintenance of the Yigo Diesel Generators.

7.7 Assignment to Position. The assignment of GPA employees to the Yigo Diesel Generators, if applicable, shall be to a specific position. GPA may substitute qualified personnel with other classified personnel as necessary to manage organizational requirements.

7.8 CONTRACTOR may, at any time, with prior written approval from GPA, have CONTRACTOR employees or consultants perform functions, duties, and responsibilities at the Yigo Diesel Generators as CONTRACTOR determines in accordance with the scope of the CONTRACTOR.

7.9 CONTRACTOR shall cooperate with GPA in GPA's personnel administration under Section 6.10 to the extent that CONTRACTOR has a role in the supervisory process.

7.10 CONTRACTOR Vacancies – Consideration of GPA Employees. When CONTRACTOR hires to fill positions at the Yigo Diesel Generators, CONTRACTOR shall give due consideration, to all Qualified GPA Employees or retirees, who at the time of their retirement were Qualified GPA Employees who apply. CONTRACTOR and GPA may meet and confer to discuss the development of plans whereby CONTRACTOR could hire retirees of GPA.

## **SECTION 8 – SUPPLY OF FUEL**

8.1 During the term of this agreement, GPA shall at all times supply all fuel necessary for Yigo Diesel Generators to generate the electricity for dispatch by GPA.

8.2 The cost of the fuel to be supplied by GPA pursuant to this Section shall be for GPA's account.

8.3 All fuel to be supplied by GPA shall be of the quality and supplied and delivered in the

manner described in the IFB.

8.4 All fuel shall be tested as provided in the IFB.

8.5 GPA shall ensure that at all times the necessary stocks of fuel are available for storage at the fuel storage tanks Yigo Diesel Generators.

8.6 The Contractor shall prepare weekly fuel schedules showing anticipated times and Quantities of fuel to be utilized by Yigo Diesel Generators and GPA shall be responsible for ensuring the availability of fuel supplies, for the payment therefore and for all arrangements with the suppliers.

#### **SECTION 9 – DUTIES AND RESPONSIBILITIES OF GPA**

9.1 Cooperation. GPA agrees to make its management and staff available to Contractor so that Contractor can provide the services required hereunder.

9.2 Availability of Records. GPA shall take all steps to ensure that documentation required by Contractor for performance of its duties are available to Contractor. GPA will promptly assist Contractor in obtaining such information as is needed by Contractor to perform the services hereunder.

9.3 Responsibility for Transmission Lines. GPA, at its own cost, will be responsible for the maintenance and repair of all the transmission lines and switchgear within the switchyard and on the GPA grid to ensure that at all times they are capable of accepting the energy and capacity provided by Yigo Diesel Generators.

9.4 GPA/Contractor Steering Committee. GPA and the Contractor shall organize a Steering Committee, which shall, from time to time, meet and discuss and agree on safety and technical guidelines for the operation of Yigo Diesel Generators and for the maintenance, repair and safety/security of the Unit. The Contractor shall operate Yigo Diesel Generators within such guidelines.

#### **SECTION 10 – COMPENSATION FOR SERVICES**

10.1 Payment. GPA shall pay Contractor for costs and services rendered hereunder in accordance with this Agreement. Said payment shall be made within 30 days of being invoiced. Should part of the invoice be challenged, GPA will at a minimum pay the unchallenged portions of the invoice under the same terms as above. Should GPA fail to make any payment due to (Name of Contractor)

under this Agreement, GPA shall pay interest to (Name of Contractor) in accordance with the provisions of the Prompt Payment Act, 5 GCA Sections 22502-22507.

10.2 Contract Price. The Contract Price constitutes the total consideration to be paid by GPA to 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 Contractor shall be at its expense without change in the Contract Price. Charges, fees, Contractor's profit, and all other expense shall be deemed to be included in the Contract Price. Furthermore, the Contract Price includes management fees and incentive/penalty payments. Therefore, the Contract Price is dynamic but bounded.

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

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

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

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

- 1) Annual Management Fees;
- 2) Reimbursement Payments for Operations and Maintenance related

expenditures as agreed to and scheduled between GPA and the Contractor, not to exceed O&M budget approved and allocated by GPA;

- 3) Reimbursement Payments for Overhauls completed;
- 4) Reimbursement Payments for Capital Expenditures or Major O&M work and related expenditures as agreed to and scheduled between GPA and the Contractor;
- 5) Incentive Compensation Payment
- 6) Payment Compensation Payments due to GPA from the Contractor based on Contractor's failure to meet its minimum performance guarantees.

10.4 The cost of management fees under this Agreement shall remain fixed during the term of this Agreement. As stated, the total amount of fees includes all travel costs, living allowances, expenses, mobilization, and all other matters related to the price of this contract. The total contract price is intended to be all inclusive of costs and expenses related to performance hereunder.

10.5 Contractor shall submit for review by GPA monthly invoices accompanied by a progress report describing the work performed during the compensation period. All payments to Contractor shall be free of any deductions, including but not limited to withholding taxes.

10.6 The amounts paid or reimbursed to Contractor shall in no event exceed the dollar amount indicated above except upon prior written agreement by the parties. Prior to incurring any expense not contemplated in the total fee, Contractor shall request prior approval of any such additional expense from GPA. No such expense shall be reimbursable unless approved in advance by GPA.

10.7 Final payment shall be made upon delivery and acceptance of all Services as herein specified and performed under this Agreement. Prior to final payment, and as a condition precedent thereto, Contractor shall execute and deliver to the Authority a release of any claims arising under and by virtue of this Agreement against the Authority except any identified written claims in existence at the time of the final payment.

10.8 The prices and costs set forth in this Agreement are based on the assumption that the

Services performed will be subject to the Guam Gross Receipts Tax. Contractor is responsible for payment of any applicable taxes.

## **SECTION 11 - TERMINATION**

11.1 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:

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

11.2 Cancellation of 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:

- 1) 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
- 2) 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.

11.3 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.

11.4 Termination. The Procurement Officer may, when the interest of GPA so requires, terminate this contract in whole or in part, for the convenience of GPA. 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.

11.5 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.

11.6 Rights to Supplies. The Procurement Officer may require the Contractor to transfer title and deliver to GPA in the manner and to the extend directed by the Procurement Officer:

- 1) Training material;
  - 2) Any completed supplies; and,
  - 3) 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 GPA 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 GPA has breached the contract by exercise of the Termination for Convenience Clause.

11.7 Compensation Under Termination for Convenience. The Contractor shall perform the following for compensation under termination for convenience.

- 1) The Contractor shall submit a termination claim specifying the amounts due because of the termination for Convenience together with cost or pricing data to the extent required by Section 3403 (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.
- 2) 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 3403 (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.
- 3) 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:

- a. Contract prices for supplies or services accepted under the contract;
- b. 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;
- c. Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph 11.7 of this clause. These costs must not include costs paid in accordance with other subparagraphs of this Paragraph;
- d. 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 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.
- e. 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 2706. All references in said regulations to “seller” shall be deemed to refer to “contractor” herein.

11.8 Termination for 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.

11.9 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.

11.10 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.

11.11 Excuse for Non-Performance 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 constituting a “force majeure” or “act of god” as defined in paragraph SECTION 18 – FORCE MAJEURE of this agreement.

11.12 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 8.3.4 (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.

11.13 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.

11.14 Termination by Contractor. If, within thirty (30) days after payment of a proper and correct invoice is due from GPA to CONTRACTOR, and upon ten (10) days written notice from CONTRACTOR to GPA, CONTRACTOR may terminate this agreement.

11.15 Work Product. Upon such termination of this Agreement, all briefs, reports, summaries, completed work, and work in progress, and such other information and materials as may have been accumulated by Contractor in performing this Agreement shall, in the manner and to the extent determined by GPA, become the property of and be delivered to GPA. Contractor may retain a copy of all work that it produces.

11.16 Extension. This Agreement may be extended only upon the written mutual agreement of the parties. The provisions of any such renewal term will be in accordance with the written agreement of the parties.

11.17 No Continuing Obligations. Upon termination of this Agreement, as herein above provided, neither party shall have any further obligation hereunder except for (i) obligations accruing prior to the date of termination, and (ii) obligations, promises or covenants which are expressly made to extend beyond the term of this Agreement.

11.18 Bankruptcy. GPA shall have a right to terminate this Agreement if Contractor [including, for purposes of this paragraph, any parent subsidiary or affiliate thereof]: shall file a petition in bankruptcy or shall be adjudicated bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, dissolution or similar relief under any law or regulation relating to bankruptcy, insolvency or the rights of creditors generally; shall seek or consent to or acquiesce in the appointment of a trustee for, or a receiver for liquidation of, its business or affairs; shall make an assignment for the benefit of creditors; or there shall be filed against Contractor, its parent company, affiliates, or subsidiaries an involuntary petition in bankruptcy or any proceeding seeking to reorganize, dissolve or liquidate such companies; or if a trustee or receiver shall be appointed for or over the business or property of any of them.

## **SECTION 12 – RELATIONSHIP OF THE PARTIES**

12.1 Personnel of Contractor. Contractor may provide, upon prior written consent of GPA, additional experienced professional personnel, hereinafter referred to as "Employee", if required during the performance of the Services hereunder. Employee shall be under Contractor's sole and exclusive direction and control, and for no purposes shall such Employee be considered an employee of GPA. Contractor shall remain at all times, an independent contractor and shall be responsible for and shall promptly pay all federal, state and municipal taxes chargeable or assessed with respect to Contractor's employees, including but not by any way of limitation, social security, unemployment, federal and state withholding, and other taxes. Contractor shall also be responsible for and pay all compensation and/or

any reimbursements due Employee, and no additional amounts shall be due from the Authority. The Authority may, at its discretion, request that an Employee (initial or additional) proffered by Contractor be replaced in the event that the Authority determines that such Employee lacks the requisite experience or expertise.

12.2 Duty to Inform Employees. It is Contractor's duty and obligation to inform Employees of (1) applicable GPA rules and regulations; and (2) the proprietary nature of information and the need to guard its secrecy per Section 12 hereof.

12.3 Independent Contractor Status. It is expressly understood and agreed that, in the performance of Services under this Agreement, Contractor and its personnel/employees shall at all times act as an independent contractor with respect to GPA, and not as an employee or agent of GPA. Further, it is expressly understood and agreed by the parties that nothing contained in this Agreement shall be construed to create a joint venture, partnership, association, or other affiliation or like relationship between the parties, or a relationship of landlord and tenant, it being specifically agreed that their relationship is and shall remain that of independent parties to a contractual relationship as set forth in this Agreement.

12.4 Provision of Listing of Personnel/Contractors/Subcontractors. Contractor shall provide GPA with a listing of the name and address of all personnel, contractors or subcontractors utilized by it for this project within seven (7) days of the hiring or engagement of such personnel, contractor or subcontractor by Contractor.

12.5 No Employment Benefits to Contractor. There shall be no employee benefits to Contractor occurring from this Agreement such as:

- 1) Insurance coverage provided by GPA.
- 2) Participation in the Government of Guam retirement system.
- 3) Accumulation of vacation leave or sick leave.

12.6 No Withholding by GPA. There shall be no withholding of taxes by GPA.

12.7 No Employment Benefits to Contractor, Its Employees Or Personnel. No person

providing services on behalf of Contractor pursuant to this Agreement shall have any claim under this Agreement or otherwise against GPA for salary, vacation pay, paid sick leave, retirement benefits, social security, workers compensation, health, disability, professional malpractice, or unemployment insurance benefits or other employee benefits of any kind. Contractor understands and agrees that (i) its employees or personnel who provide services under this Agreement will not be treated as GPA employees for tax purposes, (ii) GPA will not withhold on behalf of Contractor's employees or personnel any sums for income tax, unemployment insurance, social security, or any other withholding pursuant to any law or requirement of any governmental body or make available any of the benefits afforded to employees of GPA, and (iii) all of such payments, withholdings, and benefits, if any, are the sole responsibility of Contractor.

12.8 Payment of Taxes. Contractor will be responsible for paying all taxes applicable to them as an independent contractor, including but not limited to, GRT, income tax, or any other tax.

12.9 Representation. Contractor and its personnel are not authorized to make representations on behalf of GPA without GPA's express consent.

### **SECTION 13 – OWNERSHIP OF INFORMATION, DATA AND DOCUMENTS**

13.1 Title. Title to, ownership and copyright in all deliverables shall vest in GPA, and such materials shall be delivered to GPA upon completion of the Services or upon request of GPA. Contractor shall obtain and/or execute any necessary documents for GPA to perfect or protect such ownership. Any materials retained by Contractor shall be treated in accordance with GPA's Record Retention Policy.

13.2 Previously Created Materials. Ownership of materials previously created by Contractor, which may be used as part of the Services, shall continue to be property of Contractor.

13.3 Conveyance to GPA. The entire right, title and interest, including copyright in all deliverables hereunder shall be transferred to and vested in GPA. The parties expressly agree to consider as works made for hire those works ordered or commissioned by GPA, which qualify as such in accordance with copyright laws. For all such original works, Contractor agrees to provide documentation satisfactory to GPA to ensure the conveyance of all such right, title and interest,

including copyright, to GPA.

13.4 Proprietary Rights Indemnification. Contractor warrants that any material furnished by Contractor will not infringe upon or violate any copyright, trade secret or any other proprietary right of any third party.

#### **SECTION 14 – CONFIDENTIAL AND TRADE SECRET INFORMATION**

14.1 Protection of Trade Secret. Contractor and its employees upon coming into contact with or receiving directly from GPA confidential and/or trade secret information, will be bound by any protective order relating to this information. Contractor and employees will treat all information received by it during the term of this Agreement as strictly confidential and will not disclose such information in any form, to third parties or internally within Contractor's firm to employees without a need to know such information, without the express written permission of GPA. Confidential information, whether magnetically stored or not must be secured. Contractor will control access to such material and ensure that no breach of confidentiality occurs. Contractor, on receiving requests or orders for information in the form of questions, interrogatories, etc. from non GPA sources, will advise GPA immediately by telephone and follow-up by providing copies of such requests.

14.2 Proprietary Information. Any information, whether or not protected by patent or copyright, including, but not limited to, programs, files, specifications, drawings, sketches, models, samples, tools, business information, technical information or other data, written or otherwise (hereinafter "Information"), which has been furnished or disclosed to Contractor shall remain GPA's property and shall be treated by Contractor as being proprietary information. Information shall not be reproduced, published or disclosed to any third party; or utilized by Contractor for any other purposes without the prior written consent of GPA. All copies of the information shall be returned to GPA immediately upon request after the conclusion of Services; provided, however, that Contractor may maintain the professionally mandated work paper record of its Services.

14.3 Previous Information. Contractor shall have no obligation to preserve the proprietary nature of any information, which was previously known to Contractor free of any obligation to keep

confidential; or is disclosed to third parties by GPA without restriction; or is or becomes publicly available by other than unauthorized disclosure.

#### **SECTION 15 –ACCESS TO RECORDS AND OTHER REVIEW**

Contractor shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at its offices at all reasonable times during the contract period and for three (3) years from the date of the final payment under this Agreement, for inspection by the Authority.

#### **SECTION 16 - INSURANCE**

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

16.2 Contractors and Subcontractors Insurance. Prior to commencing work, Contractor shall obtain and thereafter maintain during the course of the work Insurance with companies acceptable to GPA leave. 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:

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

- i. Policy must be primary and non-contributory with endorsements attached.
- ii. GPA shall be named as an Additional Insured.
- iii. Waiver of subrogation shall be in favor of GPA
- iv. Cancellation clause of minimum 90 days' prior written notice to GPA.

1. GPA must be given minimum 90 days' prior written notice for any material changes in the policy or cancellation of the policy.

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

- i. Policy must be primary and non-contributory with endorsements attached.

GPA shall be named as an Additional Insured.

- ii. Waiver of subrogation shall be in favor of GPA

- iii. MCS 90 Endorsement

- iv. Cancellation clause of minimum 90 days' prior written notice to GPA.

1. GPA must be given minimum 90 days' prior written notice for any material changes in the policy or cancellation of the policy.

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

- i. Policy must be primary and non-contributory with endorsements attached.

- ii. GPA shall be named as an Additional Insured.

- iii. Waiver of subrogation shall be in favor of GPA

- iv. MCS 90 Endorsement

- v. Cancellation clause of minimum 90 days' prior written notice to GPA.

1. GPA must be given minimum 90 days' prior written notice for any material changes in the policy or cancellation of the policy.

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

- i. Policy must be primary and non-contributory with endorsements attached.

- ii. GPA shall be named as an Additional Insured.

- iii. Waiver of subrogation shall be in favor of GPA

iv. Cancellation clause of minimum 90 days' prior written notice to GPA.

1. GPA must be given minimum 90 days' prior written notice for any material changes in the policy or cancellation of the policy.

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

i. Policy must be primary and non-contributory with endorsements attached.

ii. GPA shall be named as a NAMED INSURED

iii. GPA shall be named as Loss Payee

iv. Cancellation clause of minimum 90 days' prior written notice to GPA.

1. GPA must be given minimum 90 days' prior written notice for any material changes in the policy or cancellation of the policy.

F. Contractors All Risk or Builders Risk Insurance

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

ii. Policy must be primary and non-contributory with endorsements attached.

iii. GPA shall be named as a NAMED INSURED

iv. GPA shall be named as a Loss Payee

v. Waiver of subrogation shall be in favor of GPA

vi. Cancellation clause of minimum 90 days' prior written notice to GPA.

1. GPA must be given minimum 90 days' prior written notice for any material changes in the policy or cancellation of the policy.

If applicable, fuel /hazardous materials transport:

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

i. Policy must be primary with primary wording endorsement attached.

ii. GPA shall be named an additional insured

- iii. Waiver of subrogation shall be in favor of GPA
- iv. Cancellation clause of minimum 60 days' prior written notice to GPA
- v. Policy must have MCS 90 Endorsement

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

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

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

Certificate of insurance must contain this wording to be acceptable.

16.3 Certificate of Insurance. Contractor shall furnish certificates of insurance and waiver of subrogation endorsement to GPA prior to commencement of work showing evidence of such coverage, including the statement to the effect that cancellation or termination of the insurance shall not be effective until at least (10) days after receipt of written notice to owner. 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.

16.4 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 Guam and be executed by some agent thereof duly licensed as an agent in Guam.

16.5 GPA Insurance. GPA agrees that it will keep the property and machinery and

equipment insured, at a minimum, against loss or damage by fire with extended coverage endorsement for full replacement value as determined by GPA from time to time. Such insurance shall be issued by financially responsible insurers duly authorized to do business in the state or territory where the property is located and shall contain the standard form of waiver of subrogation. The insurance company shall be required to give GPA not less than ninety days (90) notice in the event of cancellation or material alteration of such coverage. Nothing contained herein shall be construed as creating any liability or responsibility on the part of the CONTRACTOR for the adequacy of insurance coverage on the property. As to any insurable risks of loss or damage to the property and machinery and equipment not required to be insured hereunder, GPA shall bear the cost of the same. GPA shall be deemed to be self-insured as to the deductible or co-insurance amount applicable to such insurance coverage and shall pay any deductible or co-insurance amount applicable in the event of such loss or damage.

16.6 Waiver of Subrogation. The parties hereby release each other and their respective officers, employees, and agents from all loss or damage to the Premise property, machinery and equipment and to the fixtures, personal property, equipment and improvements of either GPA or CONTRACTOR in or on the Property, notwithstanding that any such loss or damage may be due to or result from the negligence of either of the parties or their respective officers, employees or agents. This waiver does not apply to maintenance and repair assumed under this contract by the CONTRACTOR.

## **SECTION 17 - INDEMNITY**

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

17.2 Accident or Injury During Travel. GPA assumes no liability for any accident or injury that may occur to Contractor, its agents, dependents or personal property while en route to or from Guam or during any travel mandated by the terms of this Agreement.

## SECTION 18 – FORCE MAJEURE

18.1 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:

- 1) 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
- 2) Delay, either on the part of Contractor or its subcontractors, caused by shortages of supervisors or labor, inefficiency, or similar occurrences, or
- 3) Sabotage, strikes, or any other concerted acts of workmen which occur only in the facilities of 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 Section 10, TERMINATION. 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.

18.2 Invocation of Force Majeure. The party invoking Force Majeure shall perform the following:

- 1) 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;

- 2) Consult with the other party and take all reasonable, prudent steps to minimize the losses of either party resulting from the Force Majeure;
- 3) Resume the performance of its obligations as soon as possible after the Force Majeure condition ceases.

18.3 Delivery Time and Force Majeure. Only a Change Order may change contractual Delivery Times. Contractor as provided in found. Error 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. (However, GPA shall pay for reasonable overtime rates and benefits during periods of Force Majeure).

Notwithstanding the foregoing, all time limits stated in the Purchase Order documents are of the essence in the agreement.

## **SECTION 19 - WARRANTY**

19.1 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 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.

19.2 Contractor shall provide to GPA with all warranties and guarantees in writing. GPA and the Contractor 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.

19.3 Contractor shall be responsible for remedying all defects, without limitation, in design,

materials, workmanship, operating characteristics, or performance of the Goods 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.

19.4 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.

19.5 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.

## **SECTION 20 – TESTS AND INSPECTIONS**

20.1 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.

20.2 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, 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 Contractor.

20.3 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 Contractor of any of its responsibilities or liabilities under the Contract Documents, nor be interpreted in any way as implying acceptance of the Goods.

## **SECTION 21 – DEFECTS IN GOODS AND SERVICES**

21.1 Remedying Defective Goods. If at any time after GPA's acceptance of delivery and before expiration of the correction period, GPA determines that the Goods are defective, 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. Contractor warrants that Contractor, unless otherwise agreed, shall remedy any defects.

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

In the event that 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 Contractor, and without prejudice to any of its rights under the Agreement, accept the defective Goods and carry out the remedial work itself instead of requiring correction or removal and replacement, and charge 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 Contractor.

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

21.3 Cost of Remedying Defects. All direct, indirect, and other costs of correcting, removing, and replacing defective Goods or of obtaining Special Services elsewhere and of exercising GPA's rights and remedies will be charged against 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 Contractor to GPA. Such direct, indirect, and other costs will include, in particular but without limitation, compensation for additional professional services required and all costs of repair and replacement of Goods, or property of GPA or others destroyed or damaged by correction, removal, or replacement of defective Goods. 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.

## **SECTION 22 – CHANGE ORDER**

22.1 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:

- 1) Drawings, designs, or Specifications, if the supplies to be furnished are to be specially manufactured for GPA in accordance therewith;
- 2) Method of shipment or packing; or
- 3) Place of delivery.

GPA may at any time request changes in the services to be performed hereunder.

22.2 Time Period for Claim. Within 30 days after receipt of a written change order under SECTION 22 – 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 GPA is prejudiced by the delay in notification.

22.3 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.

## **SECTION 23 – SUCCESSORS AND ASSIGNMENTS**

This Agreement is binding upon the parties hereto and their respective heirs, successors and assigns. However, Contractor shall not assign, subcontract or otherwise transfer this Agreement, its interests herein or its responsibilities and duties hereunder without the prior written consent of GPA. For purposes of this section, any change in ownership of Contractor or its corporate entity shall be

deemed an assignment or transfer under this section. "Change in corporation entity" includes any sale or transfer of shares, the organization of corporate structure, alteration of the current ownership and organization of Contractor.

#### **SECTION 24 –REPRESENTATIVES OF GPA**

The GPA representative, for the purpose of this Agreement, shall be the Assistant General Manager of Operations, or such other person as GPA from time to time may designate in writing. Whenever approval or other authorization, or communication or submission to GPA is required by the terms of this Agreement, such request for approvals, authorizations, communications or submissions, shall be directed to the GPA representative and then executed by the General Manager. However, the Consolidated Commmission on Utilities reserves full authority to review or resolve any matter arising hereunder which is within its purview and authority.

#### **SECTION 25 – PROFESSIONAL RELATIONSHIP**

Contractor has undertaken a limited review of its records to determine its professional relationships with persons and entities in the utilities industry, and based upon that review, represents that it has the right to enter into this Agreement and it is not precluded from performing the Services to be provided hereunder. Contractor will notify GPA immediately if any additional relationships come to its attention. However, given Contractor's size, complexity, geographic dispersion and number of clients, it cannot assure GPA that all of such relationships have or will come to light.

#### **SECTION 26 – PERFORMANCE BOND**

Contractor shall submit to GPA a performance bond within thirty (30) days after the receipt of the Notice of Contract Award, in the amount of \_\_\_\_\_, payable to GPA in the form of a surety bond, surety company or surety bond acceptable to GPA's bankers, or a cash deposit in a local bank approved by GPA and callable upon proper demand. A performance bond is required in order to assure that Contractor will perform the terms and conditions of the Contract, and that Contractor will provide against direct or indirect damages that may be suffered during the duration of the Contract. The required performance bond shall be in such form that GPA shall approve in its

absolute discretion. Failure to furnish a performance bond at the time specified above and in the manner as provided shall be grounds for cancellation of Contract.

## **SECTION 27 – DISPUTE RESOLUTION**

27.1 Regular Meetings. Throughout the term of this Agreement representatives of GPA and the Contractor shall meet regularly to discuss the progress of the projects in order to ensure that the arrangements between the parties hereto proceed on a mutually satisfactory basis.

27.2 Informal Resolution. The parties hereto agree that in the event that there is any dispute or difference between them arising of this Contract or in the interpretation of any of the provisions hereof, they shall endeavor to meet together in an effort to resolve such dispute by discussion between them, but failing such resolution, the Chief Executives of GPA and the Contractor shall meet to resolve such dispute difference and the joint decision of such Chief Executives shall be binding upon the parties hereto and in the event that a settlement of any such dispute or difference is not reached pursuant to this sub-clause, then the provisions of Section 27.3 shall apply.

27.3 Formal Claims. Where any dispute is not resolved as provided for in the preceding Section 27.1 and 27.2 it shall be resolved pursuant to the Guam Procurement Law 5 GCA, Section 5001 et. seq. and the Government Claims Act, 5 GCA Section 2001 et. seq.

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

## **SECTION 28 - MISCELLANEOUS**

28.1 No Inducements. Each party to this Agreement acknowledges that no representation, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no agreement, statement, or promise not contained in this Agreement, shall be valid or binding.

28.2 Modifications. Any modification of this Agreement will be effective only if it is in writing signed by the party to be charged.

28.3 Approval By The Comission. For the purpose of this Paragraph and of the entire Agreement, the signature of the Chairman of the Consolidated Commmission on Utilities is the only signature that will bind GPA. GPA shall not be liable to Contractor for any work performed by Contractor prior to the approval of this Agreement by the Consolidated Commmission on Utilities and Contractor hereby expressly waives any and all claims for Service performed in expectation of this Agreement prior to its approval by the Consolidated Commmission on Utilities.

28.4 Compliance. Contractor shall be required to comply with all Federal and Territorial laws and ordinances applicable to the Services provided.

28.5 Notices. Any notice, demand or other document required or permitted to be delivered hereunder shall be in writing and may be delivered personally or shall be deemed to be delivered seven (7) days after deposit in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the parties at their respective address indicated below, or at such other address as may be theretofore been specified by written notice delivered in accordance herewith:

**TO CONTRACTOR:**

[ADDRESS]

**TO GPA:**

Post Office Box 2977  
Agana, Guam 96910  
Telephone No.: (671) 649-6818 / 647-9225  
Facsimile No.: (671) 647-6046 / 646-2512  
E-Mail Address: gpagm@ite.net

Notice may be given by facsimile transmission to the facsimile numbers indicated above, and shall be deemed to be delivered upon actual receipt by the party.

28.6 Non-waiver. GPA shall not consider any provisions of this Agreement waived unless GPA gives notice of such waiver in writing. Even if such notice has been given, such waiver shall not

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

28.7 Governing Law. This Agreement has been entered into Guam and shall be governed by and construed in accordance with the laws of Guam and all applicable federal laws.

28.8 Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable and this Agreement shall, to the extent possible and without destroying the intent of this Agreement, be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance therefrom.

28.9 Time. Time is of the essence in the Contract and in every part hereof.

28.10 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.

28.11 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.

28.12 Rights and Remedies. The duties and obligations imposed by this agreement 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.

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

28.14 Further Assurances. Each party hereto agrees to do all acts and things to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of this Agreement.

28.15 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

28.16 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.

28.17 Survival of Provisions. In order that the Parties may fully exercise their rights and

perform their obligations hereunder, such provisions of this Contract that are required to insure such exercise or performance shall survive the termination of this Contract for any cause whatsoever.

28.18 Language Not to be Construed Against the Drafter. No provision in this Contract is to be construed for or against any Party because the Party or its counsel drafted such provision.

**IN WITNESS WHEREOF**, the parties hereto have entered into this Agreement on the dates indicated by their respective names.

**CONTRACTOR**

---

Contractor's Duly Authorized Representative

---

Date

**GUAM POWER AUTHORITY**

---

John M. Benavente, P.E.  
General Manager

---

Date

---

Joseph P. Duenas  
Chairman, Consolidated Commission on Utilities

---

Date

**CERTIFIED AS TO FUNDS AVAILABLE**

---

GPA Certifying Officer

---

Date

**APPROVED AS TO FORM**

---

D. Graham Botha, Esq.  
Legal Counsel, GPA

---

Date

GUAM )  
 ) ss:

CITY OF MANGILAO )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, a Notary Public of Guam, duly commissioned and sworn, personally appeared \_\_\_\_\_, by and through its duly authorized representative, \_\_\_\_\_, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)

\_\_\_\_\_  
Notary Public

GUAM )  
 ) ss:

CITY OF MANGILAO )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, a Notary Public of Guam, duly commissioned and sworn, personally appeared \_\_\_\_\_, by and through its duly authorized representative, \_\_\_\_\_, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)

\_\_\_\_\_  
Notary Public

GUAM )  
 ) ss:

CITY OF MANGILAO )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, a Notary Public of Guam, duly commissioned and sworn, personally appeared \_\_\_\_\_, by and through its duly authorized representative, \_\_\_\_\_, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)

\_\_\_\_\_  
Notary Public

## **7.0 PERFORMANCE GUARANTEES**

The CONTRACTOR is required to comply with GPA's performance guarantees and consumption guidelines as described in this section.

### **7.1 EQUIVALENT AVAILABILITY**

For contract guarantee purposes, the Equivalent Availability Performance Measure shall be measured for each contract year by:

- Measuring the individual unit equivalent availability factor (EAF) expressed in percentage for each unit, and for the total as a whole for the contract year;
- Verifying the EAF reported by the CONTRACTOR with GPA's calculations based on reports submitted to the Generation Division and PSCC.

EAF shall be reported daily, weekly and monthly, as required by GPA's Generation Division.

The individual unit equivalent availabilities shall be calculated in accordance with standard NERC GADS definitions based on actual unit availabilities and outages, including the effects of all full and partial, scheduled and maintenance outages, and planned and forced deratings.

Measurement shall be consistent with procedure as described in this document, and as specified in other sections of this IFB. Actual Performance shall be compared with the minimum performance guarantee, and shall be subject to bonuses and penalties as applicable.

### **7.2 EFOR**

For contract guarantee purposes, the Equivalent Forced Outage Rate Performance Measure shall be measured for each contract year by measuring the individual unit equivalent forced outage rate (EFOR) expressed in percentage of each unit for the contract year. EFOR shall be reported daily, weekly and monthly, as required by GPA's Generation Division. The

individual unit equivalent forced outage rate shall be calculated in accordance with standard NERC GADS definitions. GPA reserves the right to impose additional penalties or consider contract termination for EFOR exceeding 4%.

### **7.3 HEAT RATE AND EFFICIENCY**

The Peaking Units are currently required by the Guam PUC to have a maximum Gross Heat Rate of 11,500 BTU/KWH. Each unit shall be required to meet or perform better than the Gross Heat Rate requirements required by GPA. The CONTRACTOR and GPA will track improvement in or compliance with required Gross Heat Rate performance by evaluating overall performance for each unit corresponding to GPA's LEAC periods.

In addition to Gross Heat Rate, each unit is required to track Gross and Net Efficiency (KWH/gal) and include in regular (daily, monthly) reports. The CONTRACTOR and GPA will track improvement in efficiency by evaluating the 12-month running gross and net efficiency.

### **7.4 AVERAGE FUEL PRICES**

GPA shall determine actual monthly average fuel prices in \$/Mbtu for diesel (#2) oil based on documented purchase costs and sample heat content measurements. Such determinations shall exclude the effects of financial hedges unless such hedges directly impact the incremental cost of fuel, i.e. the cost of the last Mbtu of fuel burned.

Average fuel prices for each contract year shall equal the weighted average of the monthly prices, where the weighting factors are the actual monthly system-wide fuel consumption in Mbtu.

## 8.0 INCENTIVES & PENALTIES

GPA is contracting a CONTRACTOR to perform against the following key performance indicators:

- Equivalent Availability Factor (EAF)
- Net Heat Rate
- Gross and Net Efficiency

### 8.1 EAF Performance Measure

GPA is contracting a CONTRACTOR to assure that the Aggreko Temporary Power Units achieve high equivalent availability factors (EAF). The CONTRACTOR shall track and compute the EAF for each unit as defined by the North American Electric Reliability Council (NERC) or its successors. The EAF computation shall be computed up to two decimal places.

Should Yigo Diesel Generators unavailability be caused by any factor which is completely and totally beyond the control of the CONTRACTOR, such as *force majeure*, catastrophic equipment failure or unavailability solely caused by the failure of GPA to provide sufficient manpower, fuel or water, GPA and the CONTRACTOR shall meet and discuss appropriate adjustments in accordance with the following procedures:

- EAF credit shall start from the determination of the root-cause of the outage and terminate when the unit is restored into service, except for *force majeure* events, where the EAF shall start upon the occurrence of such event; and
- Throughout the EAF credit period, the outage unit shall be assumed to be in the pre-failure unit condition as per the NERC guidelines.

The Equivalent Availability Performance Period shall commence from the CONTRACTOR's contract commencement date to the first anniversary of the

commencement date. Subsequent performance periods shall fall between contract commencement anniversary dates except for the last contractual year where the performance period is the contract termination date.

The Minimum Equivalent Availability Performance Guarantees required by GPA are listed in Table 3. These values will be used for evaluating CONTRACTOR incentives or penalties.

Table 2  
Minimum Equivalent Availability Performance Guarantees

Contract Year	Total Unit Availability
1	75%
2	85%
3	95%
4	95%
5	95%

The CONTRACTOR shall compute the EAF for each unit for each performance period.

The EAF benefit or penalty shall be computed as follows:

For each unit, the incentive or penalty shall be applicable to the succeeding year's Fixed Management Fee, as follows:

Incentive Adjustment = (Actual %EAF – GPA Minimum %EAF)

x Annual Management Fee

Penalty Adjustment = (Actual % EAF – GPA Minimum %EAF)]

x Annual Management Fee

**\*\*\* EXAMPLE FOR ILLUSTRATION PURPOSES ONLY\*\*\***

GPA's Minimum Guarantee:

Contract Year	All Units
1	75%

And Performance Management Fees as follows:

Contract Year	Annual Management Fee
1	\$500,000.00
2	\$500,000.00

### **BONUS**

Total Units EAF = 90% EAF

Bonus =  $(90\% - 75\%) \times \$500,000 = \$75,000$  **bonus to be added to succeeding year's**

**Annual Management Fee; therefore, Contract Year 2 AMF = \$ 575,000.00**

### **PENALTY**

Total Units EAF = 80%

Penalty =  $(70\% - 75\%) \times \$500,000 = 25,000$  **penalty to be deducted to succeeding year's**

**Annual Management Fee; therefore, Contract Year 2 AMF = \$ 475,000.00**

## **8.2 EFOR Performance Measure**

In addition to achieving high EAFs, GPA requires the CONTRACTOR to assure that the Units achieve low equivalent force outage rates (EFOR). The CONTRACTOR shall track and compute the EFOR for each unit as defined by the North American Electric Reliability Council (NERC) or its successors. The EFOR shall be computed to two decimal places. There will be no bonus or penalty associated with EFOR. The Authority reserves the right to extend this CONTRACTOR contract for a year-by-year extension up to five extensions if the EFOR performance measure is met.

## **8.3 Heat Rate and Efficiency Performance**

As discussed in Section 7.0, GPA and the CONTRACTOR shall establish a baseline heat rate based on the actual heat rate for the twelve months prior to the contract commencement. Any consistent improvement in the Net Heat Rate Performance Baseline shall be evaluated by the CONTRACTOR, and reported to GPA. The report shall include illustration, analysis

and justification of the improvements. If the improvements are consistent and sustained through at least twelve months, or if the improvements involve significant cost savings or increase in efficiency or availability, then GPA may provide incentives to the CONTRACTOR. The incentives may be in the form of shared fuel cost savings, additional funding for O&M activities, or through other means as may be proposed by the CONTRACTOR and approved by GPA.

Any heat rate performance above 15% of the baseline, GPA may impose penalties to the CONTRACTOR equivalent to the additional fuel cost compared to the theoretical heat rate if the baseline was met. For heat rate efficiency sustained continuously for 12 months (12-months running heat rate of less than 11,500 BTU/KWH), GPA will consider sharing the savings in fuel cost to the CONTRACTOR.

The CONTRACTOR is also required to track each unit's gross and net efficiency performance, and include in its regular reports, actual and 12-month rolling gross and net efficiencies. Any consistent improvement in the Net Heat Rate Performance shall be evaluated by the CONTRACTOR, and reported to GPA. The report shall include illustration, analysis and justification of the improvements. If the improvements are consistent and sustained through at least 12 consecutive months, or if the improvements involve significant cost savings or increase in efficiency or availability, then GPA may provide incentives to the CONTRACTOR. The incentives may be in the form of shared fuel cost savings, additional funding for O&M activities, or through other means as may be proposed by the CONTRACTOR and approved by GPA.

For Net Heat Rate, the penalty calculation shall be as follows:

- For each unit, for each contract year,

$$\text{Theoretical Fuel Consumption} = [\text{Total Annual Output in KWH} \times \text{Baseline Heat Rate} \\ \text{in BTU/KWH}] / \text{Avg. Heating Value (BTU/BBL)}$$

- For each contract year, if Total Actual Fuel Consumption for each unit is greater than 115% of the Theoretical Fuel Consumption for each unit, PENALTY will be calculated as follows:

Penalty = Difference of Actual and 115% of the theoretical Fuel Consumption

X (Total KWH produced by both units / Total KWH produced by  
the plant)

X Fuel Cost

Where fuel cost = Average Fuel Cost as reported by GPA Plant Accounting

Heat Rate Performance shall be evaluated at the end of each contract year and added to the CONTRACTOR invoice as an additional line item.

#### **8.4 Maximum Bonus/Penalty Payment**

The total of Bonus and Penalties each year shall not exceed 20% of the Annual Management Fee.

## **SCHEDULE A**

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# **Yigo Diesel Generators Technical Description**

## **1.0 INTRODUCTION**

### **1.1 Purpose and Scope**

This document provides technical information about the Yigo Diesel Generators to prospective proponents of the Performance Management Contract (PMC), such as the plant's design, historical performance, operation, maintenance activities, future maintenance, capital requirements and condition assessment.

The technical assessment of the Yigo Diesel Generators relies upon the input from experienced and knowledgeable plant, corporate and support personnel. The information contained in this Technical Review is the Guam Power Authority's best effort at organizing, documenting and describing in their best words the overall condition of the plant equipment. All efforts have been taken to represent the status of the plant as accurately as possible to the prospective proponents. However, although every effort has been taken to represent the plant's condition in a fair manner, not every item or actual condition of some equipment can be represented in this document.

The review of the description, history and condition of the plant and its major equipment and systems was accomplished by performing physical inspections, and reviewing documentation. The review included but was not limited to an assessment of the plant's design and layout, capacity, system redundancy and equipment operations and maintenance (O&M) history. GPA's previous Contractor, Aggreko, has contributed significantly to the development of this volume.

Historical performance indicators regarding capacity, availability and heat rate can be referenced in this section. Key plant description, historical and condition assessment documents, drawings and procedures were reviewed to gain insight to the plant's overall condition.

The historical documentation of equipment and systems reviews was not intended to be all inclusive, but rather to provide a reasonable perspective of the operating and maintenance history of the plant. The technical review is intended to be a factual description of the facility and refrains from offering conjecture or opinion, except where clearly identified. It is assumed that prospective proponents of this PMC will conduct their own verifying due diligence effort.

### **1.2 Plant Description**

The Yigo Diesel Generators was originally operated and maintained by the Aggreko International Projects Limited as a temporary plant under 1-year IPP contract with the Guam Power Authority. GPA extended the contract for 4 years under a lease to own contract.

The plant consists of 39 generator sets enclosed in standard size ISO 20 foot containers with integrated lifting forgings on the corners. These units are rated individually at a 1014 kW gross output and are operated in either prime power or standby mode. Each engine is equipped with a Selective Catalyst Reduction (SCR) unit to mitigate emissions of NOx and CO. All engines run on ultra-low sulfur diesel fuel that contain less than 15 parts per million (ppm) of sulfur.

The generator set uses an QSK50G4 engine and PE734C2 generator end that are manufactured by

Cummins. The engines are four stroke, 16 cylinder, water cooled, turbo charged, low temperature aftercooled type.

The engine oil lubrication system includes pump, strainer and sump all fitted internally with the engine block. It has a maximum oil capacity of 48 gallons (182 liters). The specification is as per API/ASTM/SAE/CD or equivalent. Recommended oils are Castrol Tecton T 15W-40, Shell Rimula 15W 40. Refer to manufacturers data for all filter information.

The engine cooling consists of a pump, thermostat, heater and radiator assembly.

The engine fuel system consists of an internal fuel tank, Racor & Fleetguard filters, fine fuel filter, fuel pump, injection pump and nozzles.

The exhaust system consists of the exhaust ducting, exhaust silencer complete with spark arrestor and rain cap assembly.

### **1.3 General History**

The power plant is designed to be temporary with engines and auxiliary equipment that are portable. The plant is configured with three to six engines at 460 voltage connected to one 11500 voltage transformer. The voltage output is further step out to 34500 voltage on the GPA electrical grid.

The Yigo Diesel Plant was constructed and commissioned by Aggreko International Projects Limited in January 2016, to support the demand load of the island after the loss of Cabras 3 & 4 power plant in September 2015.

Between 2016 through March 2020, the following repair and maintenance activities were completed for the units:

- In 2016, repairs were made on underground high voltage cables
- In 2016, TX-6 transformer was replaced
- In 2016, the fuel flow meter on fuel skid no. 1 was replaced.
- In 2016, 11 kV switchgear controls upgrade
- In 2017, the concrete ramp was modified
- In 2017, the DEF pump skid performance was improved with addition of an accumulator
- In 2018, TX-1 and TX-2 transformers were inspected
- In 2018, the main transformers were inspected
- In 2018, two generators Gen#1 and #2 were replaced
- In 2018, fuel level switches were installed on fuel storages tank #110 and #120
- In 2018, four generators were replaced
- In 2018, inspection and maintenance was performed on transformers Tx1 and Tx2
- In 2018, inspection and maintenance was performed on one of switchgears
- In 2019, two generators Gen#14 and #17 were replaced
- In 2020, fuel meter counter on fuel pump skid no. 2 was replaced

## **2.0 Site Description and Characteristics**

### **2.1 General Location**

The plant is located in the municipality of Yigo, Guam. It is adjacent to GPA's Yigo Combustion Turbine Power Plant and shared a common perimeter fence, pond, and entrance/exist road with the Yigo Combustion Turbine.

Guam is the largest and southernmost island of the Marianas archipelago. The westernmost possession of the United States since 1898, the island is at 13.48° north latitude and 144.45° east longitude. Guam is approximately 1,500 nm southeast of Tokyo; 2,100 nm southeast of Hong Kong; 1,500 nm east of Manila; and 3,100 nm northwest of Sydney; 6,000 nautical miles (nm) west of San Francisco; 3,700 nm west-southwest of Honolulu. The island is composed of both volcanic material and limestone base seabed material from coral deposits.

Guam's climate is tropical marine; generally warm and humid, moderated by northeast trade winds. Guam's temperature ranges between 73 and 90 degrees Fahrenheit (23 and 32 degrees Celsius). It has a mean annual temperature of 81 degrees (27 degrees C). May and June are the hottest months of the year. However, there is little seasonal temperature variation. The coolest and least humid months, December through February, are marked by prevailing westerly trade winds. The average humidity varies from an early morning high of 86% to an afternoon low of 72%. The high moisture content of the atmosphere during the rainy season, combined with the warm temperatures, contributes to the rapid deterioration of manufactured materials through rust, rot and mildew.

The average yearly rainfall ranges between 90 and 110 inches (229 and 279 cm). There are two seasons, the dry and the rainy. The dry season (fanumnangan) lasts from December through June. The rainy season (fanuchanan) prevails within the remaining months. Guam's subterranean water lens supplies fresh water far in excess of the island's present needs.

### **2.2 Site Location and Description**

The power plant is located on the northern side of the island of Guam in Yigo Municipality. The plant is accessible from highway 1 and is located on the main road nearby the island only non-profit animal shelter and welfare society GAIN. The units' basement level is located approximately 6 feet above the mean sea level of the Pacific Ocean.

The remainder of the Yigo site has the Yigo Combustion Turbine Plant and their associated common structures such as fuel oil storage tanks, fire hydrants and ponding basin.

### **2.3 Transmission Line Interface**

The power plant is interconnected to the GPA transmission network via three 34.5kV transmission lines:

- Yigo CT-Harmon 34.5KV Line #1;
- Yigo CT-Andersen 34.5 kV Line #2;
- Yigo T-30 34.5 kV Transformer

The Yigo site provides peaking and emergency power to the island wide power grid. Out of a total installed gross capacity of 420 MW, 62 MW is sited at the Yigo Site. Other peaking combustion turbines and black start diesels are strategically located throughout the island and interconnected via various high voltage transmission lines.

Each of the plants' units is protected by an existing generator unit-tripping scheme. This scheme will trip each unit as required to prevent instability of the system as well as overload conditions.

## **2.4 Community**

The island has a population of approximately 170,000 people excluding tourists. Tourism, the number one business of Guam, adds approximately 15,000 at any time to the island's total at any given time. The United States military has a big presence on the island. The US Navy base is located at the island south end. The Andersen Air Force has its operation only two miles from the Yigo site. The United States military has proposed to relocate 8,000 marines plus families to Guam increasing the military presence on the island.

The US Navy recently turned over the operation of the shipyard to a private contractor. The private contractor has a multi-year contract to operate the shipyard, primarily in support of the Navy ship repair. This facility has tremendous maintenance equipment and capabilities as would be expected of a remote ship repair facility. This facility if utilized properly could be a strategic asset to the PMC contractor in that, maintenance alliances and services may be developed to support various aspects of the facilities maintenance needs.

## **2.5 Site Map**

Site maps will be provided upon request.

## **2.6 Site Infrastructure and Utilities**

The station's utilities include potable water, electric power, communications and sewage discharge lines.

### **Domestic Water**

Domestic potable water is provided to the plant by the Guam Waterworks from one of their close-by deep waterwells. This source of water is used for the potable needs. The same water supply charges the fire hydrants on the plant property.

### **Station Electrical**

The auxiliary power system for the Yigo Diesel plant consists of the following equipment:

- 11.5kV/34.5 kV Step-up transformer
- 11.5kV/34.5 kV Switchgear
- 11.5 kV Auxiliary transformers.

The table below contains a description of the aforementioned transformers.

Two 11.5 kV/34.5 kV step-up transformers, the first transformer is connected to 21 generator sets and the second to 18, serve to export power out of the Yigo Diesel Generators to GPA's substations and then distributed from there to the customers. Part of each power generator's electrical power production is diverted to the one of the 11.5 kV auxiliary transformers (TX#6) to provide station power to the plant. The auxiliary transformer is connected to the generator before the main transformer. They are also used to isolate the generator sets during maintenance.

Yigo Diesel Generators Transformers

Name	Location	Quantity	Input Source	Input Voltage	Output Voltage	Equipment	Historical Maintenance Record
Main Transformer	Yigo Switch Yard	Two transformers	39 Generator Set	11.5 kV	Stepped up to 34.5 kV	Provides power to IWPS on 34.5 kV North and South Buses	Maintenance performed by Aggreko.
Switchgear	Yigo Switch Yard	Two switchgear	39 Generator Set	11.5 kV	34.5 kV		Maintenance performed by Aggreko.
Auxiliary Transformer	Adjacent to Generator Sets	Seven transformers	39 Generator Set	460 V	Stepped down to 11.5 kV	Provides Station Power to plant	Maintenance performed by Aggreko.

## 2.9 Station Lighting

Station Lighting consists of all interior lighting that are alongside of the Yigo Diesel plant. The main panel breaker for most of all the lights is located inside the auxiliary transformer TX#6.

## 2.10 Emergency Generators

Yigo Diesel presently has one emergency generator located near the workshop container. The generator is a 125 kW diesel generating set. It is connected to the 460 V, 3-phase, MCC board providing plant lighting and power to the various plants' equipment.

## 2.11 DC Batteries

Each generator set is equipped with 6- 24 VDC battery and charging system.

## **2.12 Communications System**

The plant is equipped with telephone system consisting of two landlines and mobiles. The landlines are located in the control room. The mobiles are issued to the supervisor and maintenance crew.

## **2.13 Incident Mitigation Capabilities**

The plant has a series of Standard Operating Procedures (SOP). The following SOP's pertain to these issues:

- Oil Spill Containment, Clean-up and Reporting;
- Hazard Communication Program;
- Employees Hazard Reporting;
- Emergency Condition (Support Services Section).

## **2.14 Fire Hazard Mitigation**

### **Station Fire Protection System Descriptions**

The station fire protection system components consist fire hydrant, smoke detectors and fire extinguishers.

### **Hydrants and Piping**

The Yigo Diesel facility is equipped with permanently installed fire hydrants. Most fire hydrants are located around the perimeter of the facility by the access roads. The fire hydrants are tied to the Guam Water Authority water lines and are always under pressure through their system series of towers and storage tanks. The hydrants are shared with Yigo Combustion Turbine Plant.

### **Locally Mounted Fire Extinguishers and Smoke Detectors**

Fire extinguishers are located in the transformers, generator sets, storage and tool room, fuel storage tank and pump areas and workshop and safety equipment room. Smoke detectors are located in control room, offices, workshop, supply and tool rooms.

## **2.15 Security Operations**

GPA is currently responsible for

- Emergency incident and alarm response;
- Incident investigation;

GPA safety division protects the plant and other locations are responsible for station access and control. This is provided through a local security company.

## **2.16 Support Structures and Facilities**

This section provides a description of the following support facilities that GPA may make available to the new contractor:

- Central Maintenance;
- Power System Control Center;
- Generation Administration, Engineering and support offices; and,
- Parts inventory storage.

Approximately 11 personnel are assigned to the Central maintenance group, and approximately 12 are assigned to the Central dispatch center. One person is assigned to the warehouse operation.

Under the previous contractor, there were 26 personnel under the contractor who are responsible for maintenance, engineering, parts inventory storage.

### **3.0 Process & Equipment Description**

Initial operation of the Yigo Diesel Plant began in 2016. The plant rated output is 40 MW, however it can increase the output to 42MW. The plant is situated on a small track of land on the islands west central side. The following is a description of the plant's major equipment, systems, the major historical events and the overall condition assessment of the equipment.

#### **Miscellaneous Equipment**

##### **Stacks**

Each generator set is equipped with 3-meter smoke stack. They are in good working conditions.

##### **Building, General**

The power plant mainly consists of sixty-four 20 foot welded steel containers that include generator sets, transformers, offices, shops and fuel storage tanks and pumps. Each generator set container can be access to the inside through lockable doors. Access to the roof of the container can be gained using the integral ladder on the side of the container.

##### **Battery Chargers**

The generator sets have built in battery chargers.

##### **Waste Oil and By-products**

The previous contractor hired a third party who disposes waste oil, waste absorbent, oily rags used in operation and maintenance used in support of maintenance on a monthly basis.

#### **Diesel Engine Controls and Instrumentations**

Description of equipment and system & History: The generator sets are equipped with a CM2050 Electronic Control Module and a GEMPAC System.

The CM2050 controls the engine output. The GEMPAC System monitors the safety circuits and set the operation mode of the generator.

Condition Assessment: The CM2050 and GEMPAC system are operating well.

### **3.1 Fuel Supply**

#### **Diesel Oil Storage and Transfer System**

Description of equipment and system: Yigo Diesel Plant is operated using diesel fuel oil (ULSD). The diesel fuel oil is delivered by tankers operated by local oil companies i.e., Shell or Mobil and is loaded in the storage tank daily at Yigo CT plant. From the large tank, the oil is then transferred to the Yigo Diesel plant's day tanks and is metered using the M-15 series flow meter with flow indicator.

During start-up and operation, the oil is pumped from the day tanks to the generator set's 1131-L (usable) internal tank.

#### **Diesel Oil Storage and Transfer Equipment Description**

Description of equipment:

Fuel Oil Storage Tank (T#110) – The plant has 1 outdoor C.R.T. type, 24,000-gallon tank. The tank is approximately 10 feet in diameter and 35 feet in length.

Day Tank - The plant has 10 outdoor steel containerized type, 5,000-gallon tanks. The tanks are approximately 20 feet in length, 8 feet in width and 8.5 feet high. Weight about 22 tons with fuel.

Fuel Oil Pumps – Two Gorman Rupp pumps skid mounted are used by the plant. The pumps have a capacity of 172 – 185 gallons per min. (122 degrees F). 10 HP, 3-phase, 415-Volt, 2900-rpm motors, drives the pumps.

History: The tanks and pumps are in good working conditions.

#### **Oil Transfer System and Pumps Condition**

Condition Assessment: All equipment is in good working order.

#### **Oil Quality Sampling and Testing**

Description of equipment and system: Oil quality is sampled and tested off-island and reported back via a third party testing company.

### **3.2 Electrical System**

#### **Main Transformers**

Description of equipment and system: The plant has two main transformer manufactured by ABB. The transformers are outdoor, three-phase, core type, two winding, mineral oil immersed, forced oil and forced cooled. Each transformer has a rated capacity of 25 MVA. The low voltage side is 12.5 kV and the high side provides 33 kV (+/-2 x 2.5%). The connections on the low side are Delta while the high side is Wye (neutral). Insulation levels are BIL, and the low voltage is rated at 170 kV with the high side rated at 75 kV. The insulation of the low side bushings is 250 kV and the high side is 125 kV. The

frequency of the transformer is 60 cycles while the impedance is 10% (at 80 MVA base). The ambient temperature is designed at 40 degrees C. The oil temperature rise is 50 degrees C, (by thermometer) and the winding temperature rise is 55 degrees C.

Condition Assessment: Both main transformers were recently inspected. They are operating within designed limits at full load.

### **Ormazabal Medium Voltage Switchgear (34.5kV)**

Description of equipment and system: The Ormazabal Switchgear is located in the Yigo Substation, and is maintained by T&D Substation. The switchgear isolates the 34.5kV main transformers during maintenance. It is a SF6 gas insulated switchgear manufactured by Ormazabal.

History & Condition Assessment: There are no known problems with this switchgear and it is operating within all design limits.

### **Unit Auxiliary Transformer**

Description of equipment and system: There are seven auxiliary transformers. These transformers are located on adjacent to the generator sets. The auxiliary transformers are connected to the generator before the main transformers. These transformers step down the generator voltage from 11.5 kV to 460 Volts. At the 460 volt switchgear panels located on the main turbine operating floor.

The unit auxiliary transformers are three-phase, core type two windings, cooling with mineral oil and both air and forced cooled. The capacity is 5,000 KVA and the high voltage is rated at 13.8 kV (with +5, +2.5, and 0%). The low voltage is 4.16 kV. The high voltage winding is a Delta and the low voltage winding is a Wye (neutral). The high voltage insulation is designed at 110 kV while the low is rated at 75 kV, as well as the neutral. The bushing insulation for the high side is 150 kV and the low is 90 kV. The design ambient air temperatures are 40 degrees C, while the oil temperature and winding temperature rise is 55 degrees C. ABB manufactured these transformers.

History & Condition Assessment: It is in good working order and available for service.

### **ZS1 Switchgear (15 kV)**

Description of equipment and system: The plant has one primary distribution ZS1 switchgear serving all generator sets. It is rated at 15 kV voltage and 2500 Amps feeder current. It is manufactured by ABB.

### **Emission Control and Reporting**

The generator sets at the Yigo Diesel Plant are equipped with Selective Catalyst Reduction (SCR) system to lessen NOx emission. The SCR system was installed and commissioned in May 3, 2017. The SCR system consist of the individual SCR unit mounted on each generator set, three Diesel Exhaust Fluid (DEF) Storage tanks, four unloading and supply pumps. The DEF consumes by the plant is urea at the rate of about 2.67 Gal/MWh. It burns completely in the exhaust process, leaving no waste

product.

### **3.3 Emergency Power**

Description of equipment and system: Emergency Power is provided by the 125 kW generator set. It feeds the 630A main distribution panel.

History & Condition Assessment: It is in good working order and available for service.

### **3.4 Station Lighting System**

(NOTE: See 2.5.1.3 Station Lighting also for further details)

### **3.5 Other Items**

#### **Remote Operation from Dispatch**

The site has PLC installed for remote operation,

#### **Fleet Maintenance**

The ERP system Aggreko used to track the operation and maintenance requirements of the units is called “Infor M3”. This is an internal system that was not turned-over to GPA.

## **4.0 Station Performance**

### **Heat Rate**

Description of equipment heat rate results: Aggreko Inc., conducted performance testing of the plant on March 2016. The results are as follows:

0.2847 l/kWh (13.20 Gal/kWh) = 10,307 BTU/kWh based on the measured fuel quality

In practice, the Heat Rate is dependent on fuel quality, ambient temperature, load operation (baseload or frequent ramping) as well as the loading levels of individual generators. For reference, over the last two years the average monthly Heat Rate can be inferred from the bulk fuel and energy meter readings was 2-4% higher than measured under test conditions.

Expectations Assessment: Heat Rate (Performance) improvement targets will be established in the bid requirements and contract requirements. GPA is looking for improvements in plant heat rate. For specific details as to the new desired performance, levels please refer to the Incentive Assessment section of the bid requirements.

### **Current Unit Status**

Following is the breakdown of each unit including its deration if any, work notes, and the current status

Unit	Derated	Notes	Status
G-1	500kw	Front and rear oil seal leak. Engine high blow by.	Unavailable
G-2	700kw	Silencer Box leak. Radiator Leak. Main Alternator Inspection (Abnormal Noise). EICS CFR submitted. Rubber Bullet Element Replacement Required. Derated due to excessive exhaust manifold leak. <b>Abnormal Combustion Inspection Pending.</b>	Unavailable
G-3		Cylinder head coolant leak. SCR dosing box repair. Coolant top up.	Available
G-4		Idler Gear Inspection- Idler Gear End Float Excessive. End Float- 0.031". Recommended for Emergency Use Only. Excessive Cylinder Head Coolant Leak.	Available
G-5	800kw	<b>Engine high Blow by.</b>	Available
G-6	620kw	RB Radiator fan motor failure. As per GPA, Awaiting repair schedule. Derated to 620KW due to RB radiator fan failure.	Available
G-7		Radiator Leak. SCR Exhaust Leak at Flange. Idler Gear End Float Excessive. End Float- 0.028". Water pump failure. RB turbo charger inspection found crack on the housing. <b>Waiting for parts (water pump, turbo charger, Idler gear repair)</b>	Unavailable (Waiting for Parts)
G-8	950kw	Cylinder Head Leak. <b>Engine high Blow by.</b>	Available
G-9		High Lead Content in Oil Sample Results. Main Bearing Signs of Wear. Metal Shavings Present in Sump & Oil Filters. New Oil & New Oil Filters Fitted. EICS Component Failure Report Submitted. To be used for Spare Parts. <b>Major Overhaul/Replacement Required.</b>	RTS Undetermined
G-10			Available
G-11			Available
G-12	920kw	Pending Turbo Charger Hump Hose.	Unavailable (Waiting for Parts)
G-13		Radiator Leak. Front Seal leak. RB Turbocharger failure & RB Exhaust Bellow Cracked.	Unavailable (Waiting for Parts)
G-14		RB Turbo Oil Leak and RB Exhaust Bellow Cracked. Cylinder Exhaust Leak. Excessive White Smoke. Oil in Coolant Suspected.	Unavailable

Unit	Derated	Notes	Status
G-15	700kw	Main alternator excitation armature burnt & AVR.	Unavailable
G-16			Available
G-17			Available
G-18		Cracked Exhaust Silencer Box Flange Leak. On-Local Control.	Available
G-19	700kw		Available
G-20	850kw	Engine high blow by. Silencer box excessive exhaust leak, need a replacement. Silencer box removal.	Unavailable
G-21		Monitor Next Oil Sample Results. (elevated Lead levels). Electrical Fault Inspection- Work in Progress.	Unavailable
G-22		After cooler R1 temperature sensor alarm. Damaged air intake valve at port #4.	Unavailable (Waiting for Parts)
G-23	850kw	<b>Engine high Blow by.</b>	Available
G-24		RB Exhaust Bellow Cracked. Container Roof Leak.	Unavailable (Waiting for Parts)
G-25	700kw	Radiator Leak. <b>Engine high blow by.</b> OCV Filter Replacement Pending.	Unavailable
G-26			Available
G-27		DOWN HARD. Connecting Rod Bearing Failure. Crankshaft Damage. Work Stopped. Engine Pushed Back in and Closed. No Longer Needed for G#32 Repairs. <b>Major Overhaul/Replacement Required.</b> Radiator fan greasing.	Engine
G-28		DOWN HARD. Inspection initial findings of seized bearings. MPFE Inspected on 24-May 2021. <b>Major Overhaul Required.</b> Radiator fan greasing.	Engine
G-29		Radiator Leak. Lead level slightly high monitor on next oil sample. Broken RB Exhaust Bellow.	<b>Unavailable (Waiting for Parts)</b>
G-30		Seized Engine Inspection Pending By Vendor. Work in Progress.	Unavailable
G-31		Service Meter Reader Gauge Issue, GEMPAC dry contact signal failure, PPU awaiting replacement.	Available
G-32		Engine Re-Assembled and Pushed Back into Container. Extensive Damage to Majority of Gears at Front of Engine. Repairs Stopped. <b>Major OverHaul/Replacement Recommended.</b>	Engine

Unit	Derated	Notes	Status
		<b>Silencer Box Removed. Frame fabricated to protect against external elements.</b> Secured LV Cable Entry Port. RB space fan removal	
G-33	900kw	Silencer Box Leak LB. Water Pump Oil Leak. Front Seal Leak <b>Engine high blow by.</b>	Available
G-34			Available
G-35		DOWN HARD. Parts Required Listing, Deep Inspection. Removing Damaged Parts. Engine Manually Turned-over. GPA Megger of G28 & G35 Completed. <b>Further Work Paused. Major Overhaul Required.</b>	Engine/Electrical
G-36	850kw		Available
G-37		Excessive Coolant Leak. Excessive Oil Leak (Cracked Sump Pan). Pending MPFE Inspection/Repair.	Unavailable
G-38			Available
G-39			Available

#### 4.3 Engine Hours

Unit	Engine Hours
G-1	18,001
G-2	14,803
G-3	15,682
G-4	16,455
G-5	18,646
G-6	22,055
G-7	19,539
G-8	15,617
G-9	13,139
G-10	12,188
G-11	15,159
G-12	15,085
G-13	26,353
G-14	20,529
G-15	18,939
G-16	19,285
G-17	15,850

Unit	Engine Hours
G-18	18,567
G-19	20,696
G-20	15,665
G-21	18,023
G-22	23,084
G-23	26,492
G-24	8,392
G-25	25,254
G-26	18,186
G-27	21,271
G-28	23,364
G-29	13,009
G-30	24,946
G-31	11,099
G-32	14,979
G-33	26,504
G-34	15,794
G-35	12,366
G-36	19,435
G-37	22,334
G-38	13,887
G-39	14,530

## 5.0 Plant Organization

The historical number of employees operating the plant are as follows:

### AGGREKO STAFF (2016-2020):

- Head of Operations (1)
- Area Operation Manager (1)
- Operations Supervisor (1)
- Mechanical Technicians
  - 5 Aggreko International

- 8 Service Crew (Local)
- Electrical Technicians
  - 3 Aggreko International
  - 6 Service Crew (Local)
- Electrician (1 Local Hire)
- Storeman (1 Local Hire)
- HSE Representative, Admin Clerk (1 Local Hire)

**GPA CURRENT STAFF:**

- 3 Operators

## **SCHEDULE B**

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# **Fuel Supply Specifications and Arrangements**

**FUEL SUPPLY SPECIFICATIONS**

The specifications for the Fuel Supply for the Yigo Diesel Generators will be as follows:

**Light Fuel Oil (Distillate No. 2)**

Parameter	Unit of Measure	Limit	
		Minimum	Maximum
Density @ 15 °C	Kg/m3	820	850
Kinematic Viscosity @ 40°C	cSt	1.9	4.1
Flash Point	°C	60	
Pour Point	°C		10
Cloud Point	°C		20
Ramsbottom Carbon Residue (on 10% distillation residue)	% by weight		0.20
Ash	% by weight		0.005
Water & Sediments	% by weight		0.05
Sulfur	% by weight		0.5
Gross Heating Value	MMBTU/bbl		5.7

**FUEL SUPPLY ARRANGEMENTS**

Delivery	GPA and PMC will liaise to prepare weekly fuel schedules showing anticipated times and quantities of fuel to be utilized by the Power Plant. GPA shall be responsible for ensuring the availability of fuel supplies, for the payment therefore, and for all arrangements with the suppliers.
Fuel Oil Storage	The existing fuel oil storage tanks at the Yigo CT Power Plant shall be utilized by PMC. The PMC shall comply with GPA Generation Division SOPs for fuel supply storage.
Testing	PMC shall calibrate the fuel tanks in an approved manner. Upon each delivery of fuel to and, from time to time thereafter, a suitable sample will be taken and analyzed jointly by the PMC and GPA to ensure that it meets the specifications as shown above.
Metering	Meters shall be calibrated by PMC and tested every six months under the PMC Routine O&M Spending Budget by a third party agreed between PMC and GPA.
Variation in rate Of delivery	PMC and GPA will liaise in estimating the fuel required to comply with GPA's annual, monthly and weekly systems operating plans.
Security	PMC shall be responsible for all security and safety arrangements in respect of the fuel in the Site tanks.
Spill Prevention Control and Countermeasure Plan (SPCC Plan)	<ol style="list-style-type: none"> <li>1. PMC shall be responsible for the preparation of the SPCC plan for the facility for EPA and GPA's approval.</li> <li>2. PMC shall be responsible for the full compliance of the Facility SPCC plan.</li> </ol>
Best Management Plan (BMP)	PMC shall be responsible for the preparation of the Facility BMP plan for EPA and GPA's approval, including full compliance with the plan

## SCHEDULE C TECHNICAL PROPOSAL WORKSHEET

IFB GPA-023-23 Performance Management Contract for the  
Yigo Diesel Generators

**PROPOSAL REFERENCE CHECKLIST: Supporting Information referenced in Proposal**

Item	Bidder Checklist Items	Checklist Weight	Please indicate where supporting information for this checklist item is located within the proposal. Example: Page 85; or Section A Part 2; or see attachment labeled "Power Plant Operation Experience", etc.
1	<b>Business Structure and Business Approach</b>	<b>8</b>	
	Company Information for Bidder and its affiliates	2	
	Supporting information showing Business Structure (Company Literature, etc.)	2	
	Supporting information showing Nature of Services Provided (for BIDDER and its affiliates)	2	
	A copy of Articles of Incorporation and By-Laws, or similar document	1	
	Other relevant references concerning business organization (for BIDDER and affiliates)	1	
2	<b>Power Plant Management, Operation and Maintenance</b>	<b>30</b>	
	Description and supporting information showing successful experience with the management and operation of Diesel Units Similar to Aggreko Units	10	
	Description and supporting information showing successful experience with routine and major maintenance of Diesel Units Similar to Aggreko Units	10	
	Illustration of past experience with meeting performance and/or operation & maintenance guarantees with contracts similar to GPA's.	10	
3	<b>Root-Cause Failure Analysis</b>	<b>21</b>	
	Experience and expertise on failure modes and effects analysis with Diesel Units Similar to Aggreko Units	7	
	Experience and expertise on failure modes and effects analysis of supporting systems / balance of plant	7	
	Brief description of successful implementation of remedies.	7	
4	<b>Generation Outage Planning</b>	<b>21</b>	
	List methods considered as "best practice" in industry, for outage planning or management of major capital improvement projects for Diesel Units Similar to Aggreko Units	7	
	List actual types of plant overhaul experience, from planning, execution up to completion	7	
	Supporting information related to critical repairs, major maintenance work completed for Diesel Units Similar to Aggreko Units.	7	
5	<b>Plant Engineering &amp; Technical Services</b>	<b>24</b>	
	Supporting information showing successful previous experience providing Plant Engineering & Technical Services to Diesel Units Similar to Aggreko Units.	8	
	Supporting information showing successful completion of critical projects for Diesel Units Similar to Aggreko Units.	8	
	Supporting information showing successful experience with Project Management, Field Installation & Acceptance Testing.	8	
6	<b>Unit Transfer, Preparation and Clean-up of Facility</b>	<b>20</b>	
	List methods considered as "best practice" in industry, for transfer of Diesel Units from one location to another.	8	
	Supporting information showing successful experience with facility preparation.	6	
	Supporting information showing successful experience with facility clean-up.	6	
7	<b>Procurement, Inventory Planning and Management</b>	<b>20</b>	
	Describe experience with procurement for materials and Diesel Units Similar to Aggreko Units.	5	
	Describe experience with inventory control and management for Diesel Units Similar to Aggreko Units.	5	
	Describe experience with procurement of OEM and non-OEM Support.	5	
	Describe experience with emergency procurement for expedited repairs.	5	
8	<b>Performance Management &amp; Reporting</b>	<b>10</b>	
	Describe experience reporting key performance indicators such as EAF and EFOR, following GADS definitions.	5	
	Describe experience tracking and reporting key performance indicators for Diesel Units Similar to Aggreko Units.	5	

IFB GPA-023-23 Performance Management Contract for the  
Yigo Diesel Generators

**PROPOSAL REFERENCE CHECKLIST: Supporting Information referenced in Proposal**

Item	Bidder Checklist Items	Checklist Weight	Please indicate where supporting information for this checklist item is located within the proposal. Example: Page 85; or Section A Part 2; or see attachment labeled "Power Plant Operation Experience", etc.
	<b>Environmental Compliance Review, Monitoring and Requirements</b>	<b>15</b>	
	Experience in reviewing and evaluating test data.	3	
	Experience in evaluating plant water discharge	3	
9	Hazardous waste handling and disposal program review; monitoring and evaluation	3	
	Experience and expertise on performance tests for emissions	3	
	Supporting documents showing knowledge and experience in complying with environmental regulations applicable to steam turbine plants on Guam	3	
	<b>Federal and Regulatory Compliance</b>	<b>18</b>	
	Supporting documents showing knowledge and experience in complying with federal regulations and other applicable laws on Guam, such as OPA 90, Guam Fire Code, and others.	6	
10	Supporting documents showing experience and certifications necessary for regulatory reporting applicable on Guam, such as those required by USEPA, Guam EPA, etc	6	
	Supporting documents showing compliance with all federal regulations and applicable laws	6	
	<b>Financial Information Checklist</b>	<b>10</b>	
	Brief description of company's financial position and capability.	1	
	Documentation (such as balance sheet, income statement, financial statement, financial ratio) for the last five years showing company's financial position and capability, audited or reviewed by Certified Public Accountant(s) or other qualified auditing/reviewing firm.		
11	Did BIDDER provide complete and detailed financial records?	3	
	Were the financial records submitted audited by qualified auditing body or reviewed by qualified reviewing/auditing firm?	3	
	What is the quality of company's financial position?	3	
	<b>Insurance Policy</b>	<b>5</b>	
12	Provide proof of compliance with GPA's Insurance Requirements, such as a copy of insurance policy similar to those required by GPA in this bid.	3	
	Other documentation providing details on your insurance policy, for GPA's review	2	
	<b>Client References</b>	<b>10</b>	
13	At least three (3) client references for similar or larger contracts (Client Name, Position, Company, description of contract with Bidder or affiliates).	5	
	At least three (3) letters from current and/or previous clients describing relationship with Bidder, and Bidder's contract performance, for contracts similar to GPA's	5	
	<b>Mobilization Capability Checklist</b>	<b>10</b>	
14	Proof Of Capability To Mobilize Full Support Services No Later Than <b>30</b> days after contract signing.	10	

IFB GPA-023-23 Performance Management Contract for the  
Yigo Diesel Generators

**PROPOSAL REFERENCE CHECKLIST: Supporting Information referenced in Proposal**

Item	Bidder Checklist Items	Checklist Weight	Please indicate where supporting information for this checklist item is located within the proposal. Example: Page 85; or Section A Part 2; or see attachment labeled "Power Plant Operation Experience", etc.
15	<b>BIDDER Detailed Questions</b>	<b>78</b>	
	Describe your operational model for supporting O&M activities for GPA's Yigo Diesel Generators.	10	
	Describe your company's position on O&M procedure utilization and outage planning activities.	8	
	Describe your company's views on the best method of utilizing and balancing internal and external resources (GPA employees vs. contracting out).	5	
	Describe your proposed staffing model including staffing optimization plan, for both your employees and GPA employees. For bidder's proposed staffing, please include experience and qualifications of each staff to be assigned to this contract.	8	
	Please present a proposed organization chart of the PMC organization and the areas of responsibilities for each position. Include the minimum skill level of each position provided by the PMC.	10	
	Please present a plan to minimize unplanned outages.	8	
	Please present a plan to maintain or improve reliability.	8	
	Describe additional resources the can be provided to assist GPA in critical repairs or major maintenance work.	8	
	Please present a plan for the transfer of Aggreko Units to other locations. The CONTRACTOR's role will mainly be to manage and coordinate all activities.	8	
	Please present your willingness, capability and desire to offer optional financing of GPA's Critical Repairs/Major Maintenance Activities, should GPA require such. Please specify limits and terms of financing available.	5	

## SCHEDULE C TECHNICAL PROPOSAL WORKSHEET

IFB GPA-023-23 Performance Management Contract for the Guam Power Authority  
Yigo Diesel Generators

## Qualitative Proposal Scoring Information

Item	Bidder Checklist Items	Checklist Weight	Maximum Raw Rating Score	Maximum Weighted Score
	<b>Business Structure and Business Approach</b>	<b>8</b>		<b>40</b>
1	Company Information for Bidder and its affiliates	2	5	10
	Supporting information showing Business Structure (Company Literature, etc.)	2	5	10
	Supporting information showing Nature of Services Provided (for BIDDER and its affiliates)	2	5	10
	A copy of Articles of Incorporation and By-Laws, or similar document	1	5	5
	Other relevant references concerning business organization (for BIDDER and affiliates)	1	5	5
	<b>Power Plant Management, Operation and Maintenance</b>	<b>30</b>		<b>150</b>
2	Description and supporting information showing successful experience with the management and operation of Diesel Units Similar to Aggreko Units	10	5	50
	Description and supporting information showing successful experience with routine and major maintenance of Diesel Units Similar to Aggreko Units	10	5	50
	Illustration of past experience with meeting performance and/or operation & maintenance guarantees with contracts similar to GPA's.	10	5	50
	<b>Root-Cause Failure Analysis</b>	<b>21</b>		<b>105</b>
3	Experience and expertise on failure modes and effects analysis with Diesel Units Similar to Aggreko Units	7	5	35
	Experience and expertise on failure modes and effects analysis of supporting systems / balance of plant	7	5	35
	Brief description of successful implementation of remedies.	7	5	35
	<b>Generation Outage Planning</b>	<b>21</b>		<b>105</b>
4	List methods considered as "best practice" in industry, for outage planning or management of major capital improvement projects for Diesel Units Similar to Aggreko Units	7	5	35
	List actual types of plant overhaul experience, from planning, execution up to completion.	7	5	35
	Supporting information related to critical repairs, major maintenance work completed for Diesel Units Similar to Aggreko Units.	7	5	35
	<b>Plant Engineering &amp; Technical Services</b>	<b>24</b>		<b>120</b>
5	Supporting information showing successful previous experience providing Plant Engineering & Technical Services to Diesel Units Similar to Aggreko Units.	8	5	40
	Supporting information showing successful completion of critical projects for Diesel Units Similar to Aggreko Units.	8	5	40
	Supporting information showing successful experience with Project Management, Field Installation & Acceptance Testing.	8	5	40
	<b>Unit Transfer, Preparation and Clean-up of Facility</b>	<b>20</b>		<b>100</b>
6	List methods considered as "best practice" in industry, for transfer of Diesel Units from one location to another.	8	5	40
	Supporting information showing successful experience with facility preparation.	6	5	30
	Supporting information showing successful experience with facility clean-up.	6	5	30
	<b>Procurement, Inventory Planning and Management</b>	<b>20</b>		<b>100</b>
7	Describe experience with procurement for materials and sDiesel Units Similar to Aggreko Units	5	5	25
	Describe experience with inventory control and management for Diesel Units Similar to Aggreko Units	5	5	25
	Describe experience with procurement of OEM and non-OEM Support.	5	5	25
	Describe experience with emergency procurement for expedited repairs.	5	5	25

IFB GPA-023-23 Performance Management Contract for the Guam Power Authority  
Yigo Diesel Generators

**Qualitative Proposal Scoring Information**

Item	Bidder Checklist Items	Checklist Weight	Maximum Raw Rating Score	Maximum Weighted Score
8	<b>Performance Management &amp; Reporting</b>	<b>10</b>		<b>50</b>
	Describe experience reporting key performance indicators such as EAF and EFOR, following GADS definitions.	5	5	25
	Describe experience tracking and reporting key performance indicators for Diesel Units Similar to Aggreko Units.	5	5	25
9	<b>Environmental Compliance Review, Monitoring and Requirements</b>	<b>15</b>		<b>75</b>
	Experience in reviewing and evaluating test data.	3	5	15
	Experience in evaluating plant water discharge	3	5	15
	Hazardous waste handling and disposal program review; monitoring and evaluation	3	5	15
	Experience and expertise on performance tests for emissions	3	5	15
	Supporting documents showing knowledge and experience in complying with environmental regulations applicable to steam turbine plants on Guam	3	5	15
10	<b>Federal and Regulatory Compliance</b>	<b>18</b>		<b>90</b>
	Supporting documents showing knowledge and experience in complying with federal regulations and other applicable laws on Guam, such as OPA 90, Guam Fire Code, and others.	6	5	30
	Supporting documents showing experience and certifications necessary for regulatory reporting applicable on Guam, such as those required by USEPA, Guam EPA, etc.	6	5	30
	Supporting documents showing compliance with all federal regulations and applicable laws.	6	5	30
11	<b>Financial Information Checklist</b>	<b>10</b>		<b>50</b>
	Brief description of company's financial position and capability.	1	5	5
	Documentation (such as balance sheet, income statement, financial statement, financial ratio) for the last five years showing company's financial position and capability, audited or reviewed by Certified Public Accountant(s) or other qualified auditing/reviewing firm.			
	Did BIDDER provide complete and detailed financial records?	3	5	15
	Were the financial records submitted audited by qualified auditing body or reviewed by qualified reviewing/auditing firm?	3	5	15
	What is the quality of company's financial position?	3	5	15
12	<b>Insurance Policy</b>	<b>5</b>		<b>25</b>
	Provide proof of compliance with GPA's Insurance Requirements, such as a copy of insurance policy similar to those required by GPA in this bid.	3	5	15
	Other documentation providing details on your insurance policy, for GPA's review.	2	5	10
13	<b>Client References</b>	<b>10</b>		<b>50</b>
	At least three (3) client references for similar or larger contracts (Client Name, Position, Company, description of contract with Bidder or affiliates).	5	5	25
	At least three (3) letters from current and/or previous clients describing relationship with Bidder, and Bidder's contract performance, for contracts similar to GPA's.	5	5	25
14	<b>Mobilization Capability Checklist</b>	<b>10</b>		<b>50</b>
	Proof Of Capability To Mobilize Full Support Services No Later Than 30 days after contract signing.	10	5	50

IFB GPA-023-23 Performance Management Contract for the Guam Power Authority  
Yigo Diesel Generators

**Qualitative Proposal Scoring Information**

Item	Bidder Checklist Items	Checklist Weight	Maximum Raw Rating Score	Maximum Weighted Score
	<b>BIDDER Detailed Questions</b>	<b>78</b>		<b>390</b>
	Describe your operational model for supporting O&M activities for GPA's Aggreko Temporary Power Units..	10	5	50
	Describe your company's position on O&M procedure utilization and outage planning activities.	8	5	40
	Describe your company's views on the best method of utilizing and balancing internal and external resources (GPA employees vs. contracting out).	5	5	25
	Describe your proposed staffing model including staffing optimization plan, for both your employees and GPA employees. For bidder's proposed staffing, please include experience and qualifications of each staff to be assigned to this contract.	8	5	40
15	Please present a proposed organization chart of the PMC organization and the areas of responsibilities for each position. Include the minimum skill level of each position provided by the PMC.	10	5	50
	Please present a plan to minimize unplanned outages.	8	5	40
	Please present a plan to maintain or improve reliability.	8	5	40
	Describe additional resources the can be provided to assist GPA in critical repairs or major maintenance work.	8	5	40
	Please present a plan for the transfer of Aggreko Units to other locations. The CONTRACTOR's role will mainly be to manage and coordinate all activities.	8	5	40
	Please present your willingness, capability and desire to offer optional financing of GPA's Critical Repairs/Major Maintenance Activities, should GPA require such. Please specify limits and terms of financing available.	5	5	25
	<b>PROPOSER Qualifications Score</b>	<b>300</b>		<b>1500</b>

<b>THRESHOLDS:</b>	
<b>Minimum Score - Acceptable Proposal</b>	1,050.00
<b>Maximum Compliance Score</b>	1,500.00
<b>Minimum Percent Score - Acceptable Proposal</b>	70.0%

<b>RATINGS GUIDE:</b>	
<b>5 - Excellent and plentiful relevant qualifications and project experience. Very highest client references.</b>	
<b>3 - Average relevant qualifications and project experience. Average client references.</b>	
<b>1 - Poor relevant qualifications and few relevant projects. Fair Client references.</b>	
<b>0 - No substantial relevant experience.</b>	

SCHEDULE D: BID FORM  
IFB GPA-023-23 Performance Management Contract for the Guam Power Authority  
Yigo Diesel Generators

BIDDER:

TOTAL BASE CONTRACT PERIOD COST	\$	-	<< BASIS OF AWARD
BASE CONTRACT PERIOD + Option Years	\$	-	

Instructions to Bidders:

- (1) Fill-out ANNUAL MANAGEMENT FEE and O&M BUDGET for each Contract Year, including Option Years 1 and 2. Front-loaded fees and Escalation are not allowed.
- (2) BIDDERS not following the instructions shall have their Price Proposal rejected for non-responsiveness.

BASE CONTRACT PERIOD		CONTRACT YEAR 1	CONTRACT YEAR 2	CONTRACT YEAR 3	OPTION YEAR 1	OPTION YEAR 2
		2023-2024	2024-2025	2025-2026	2026-2027	2027-2028
1	ANNUAL MANAGEMENT FEE					
2	O&M BUDGET					
ANNUAL TOTALS		\$ -	\$ -	\$ -	\$ -	\$ -
		Total 3-Year Base Contract		\$ -	Total 5-Year Contract	\$ -
		No. of FTE				



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 'låhi

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_LLC_0609.pdf)  
[https://www.govguamdocs.com/revtax/docs/SwornAnnualReport\\_Corporations.pdf](https://www.govguamdocs.com/revtax/docs/SwornAnnualReport_Corporations.pdf)  
[https://www.govguamdocs.com/revtax/docs/Renewal\\_LLP\\_Registration\\_r1106.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.



# GUAM POWER AUTHORITY

ATURIDĀT ILEKTRESEDĀT GUĀHAN  
P.O.BOX 2977 • HAGĀTŊA, 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 &amp; 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 &amp; 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 &amp; Position</u>	<u>Street Address (Principal Place of Business)</u>	<u>Contact Information</u>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>

Further, affiant sayeth naught.

Date: 

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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 

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 day of 

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 ,  
20 

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 .

Notary Public 

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In and for the Territory of Guam

My Commission expires 

---

 .

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 shame, 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

NO GRATUITIES OR KICKBACKS AFFIDAVIT

AFFIDAVIT  
(Offeror)

TERRITORY OF GUAM                    )  
  )  
HAGATNA, GUAM                        )                    SS:

\_\_\_\_\_, 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

SUBCRIBED AND SWORN to before me this \_\_\_\_day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public  
In and for the Territory of Guam  
My Commission Expires:



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:

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



GUAM POWER AUTHORITY

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

Lourdes A. Leon Guerrero  
I Maga 'hâga

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.*

## 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 **no less than One Hundred Fifty Thousand Dollars (US\$150,000.00)**. 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 equivalent to **one (1) year’s Fixed Management Fee** for that full or partial fiscal year within the term of the contract as security for the faithful performance and proper fulfillment 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 31 a, 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 as specified under Section 11 – TERMINATION 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.