

## **Invitation For Multi-Step Bid**

**No. GPA-040-23**

**BULK SUPPLY OF DIESEL FUEL OIL NO.2**



**Volume II**

**CONTRACT**

26

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**CONTRACT**

**(CONTRACTOR)**

**GUAM POWER AUTHORITY**

**2023**

**IFB No. GPA-040-23**

**BULK SUPPLY OF DIESEL FUEL OIL NO.2**

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## FORMAL CONTRACT

This Agreement and Formal Contract ("Contract"), is made and entered into on the 21<sup>st</sup> day of Feb, 2024 by and between:

Hyundai Corporation, hereinafter referred to as CONTRACTOR, duly organized, licensed, registered and qualified to do business in Guam with its principal address at 25, Yulgok-ro 2-gil, Jongno-gu, Seoul 03143, Korea

- and -

**GUAM POWER AUTHORITY**, hereinafter referred to as the "Authority" or "GPA", a Public Corporation with its office located at the Gloria Nelson Public Service Complex, Fadian Mangilao Guam;

## RECITALS

**WHEREAS**, GPA desires to maintain bulk supply of Diesel Fuel Oil No.2 for uninterrupted supply to the GPA Power Plants;

**WHEREAS**, GPA seeks to procure a new Contractor for the Bulk Supply of Diesel Fuel Oil No.2; and

**WHEREAS**, the Consolidated Commission on Utilities has determined that the (CONTRACTOR) is a preferred option for GPA to provide bulk supply of Diesel Fuel Oil No.2 requirements for the Authority;

**WHEREAS**, the Guam Public Utilities Commission has, through stipulation, ordered GPA to proceed with the procurement of a CONTRACTOR for the Bulk Supply of Diesel Fuel Oil No.2;

**WHEREAS**, GPA has issued an Invitation For a Multi-Step Bid for the Bulk Supply of Diesel Fuel Oil No.2 under IFB GPA-040-23; and

**WHEREAS**, CONTRACTOR submitted a bid in response to the Invitation for Bid for the Bulk Supply of Diesel Fuel Oil No.2;

**WHEREAS**, GPA, upon evaluation of the submitted bid proposals, determined that **CONTRACTOR** is the lowest responsive and responsible bidder;

**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; **CONTRACTOR** and GPA hereby agree as follows:

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

- "Fuel oil"** means a liquid hydrocarbon product satisfying the specifications in Schedule A
- "\$"** refers to currency in U.S. dollars.
- "ASTM"** shall mean the "American Society for Testing and Materials".
- "API"** shall mean the "American Petroleum Institute".
- "Gallon"** shall mean a U.S. standard gallon of 231 cubic inches at sixty degrees Fahrenheit.



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

**"Contract"** means the Contract for the Bulk Supply of Diesel Fuel Oil No.2 executed as a result of this IFB.

**"Contract Agreement (Agreement)"** shall mean the written agreement between GPA and CONTRACTOR covering the Bulk Supply of Diesel Fuel Oil No.2 any other Contract Documents either attached to the Agreement or made a part thereof by reference therein.

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

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

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

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

**"Delivery Time"** shall mean the total number of days or the dates stated in the Agreement for furnishing the product.

**"General Manager"** shall mean 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.



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

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

**"PURCHASER"** shall mean the Guam Power Authority with whom CONTRACTOR has entered into the Contract Agreement.

**"Seller"** shall mean the CONTRACTOR.

**"Territory"** shall mean the Territory of Guam.

**"OPA'90"** means the Oil Pollution Act of 1990 by the U.S. Congress.

**"Platt's Asia-Pacific/ Arab Gulf Marketscan"** refers to the source document for the fuel Contract pricing.

**"D.E.S."** means Delivered Ex- Ship.

**"Receiving facility"** means any wharf, dock, jetty, pier, quay, sea terminal, buoy, lighter, barge, vessel, or other suitable apparatus capable of receiving fuel oil in bulk.

**"RCOQ"** means the Refinery Certificate of Quality.





**SECTION 2. FUEL OIL TO BE SUPPLIED**

**CONTRACTOR** agrees to furnish and **GPA** agrees to accept and pay for all of **GPA's** diesel fuel oil requirements for power generating plants in Guam for the term of the Contract.

Fuel Oil to be supplied to **GPA** shall conform to the product quality requirements specified in Schedule A and shall come from sources not sanctioned by the United States government.

The estimated total fuel oil requirement is as follows:

ULSD Bulk Supply	Estimated Annual Requirement (Barrels per Year)
First (1 <sup>st</sup> ) Year	1,000,000 – 2,000,000
Second (2 <sup>nd</sup> ) Year	1,500,000 – 2,500,000
Third (3 <sup>rd</sup> ) Year	2,000,000 – 2,700,000

Although every attempt has been made to ensure its accuracy, **GPA** makes no guarantees that these quantities will be achieved but they may be exceeded. **GPA** expressly disclaims any liability whatsoever arising from reliance or non-reliance of the data provided.

The first delivery of fuel oil pursuant to the Contract is anticipated to be on or about **February 06, 2024**.

**SECTION 3. CONTRACT TERM**

The Contract Term shall be for THREE (3) years and shall commence on or about after 0:00 hour on **February 06, 2024**, and shall continue until midnight of **February 05, 2027**.

**GPA** shall have the right to extend the Contract for additional **TWO (2) years**, renewable annually, with mutual agreement of both parties.

Extension.

Prior to the expiration of the three-year Contract term, GPA may, at its election, extend the Contract for up to two additional one-year terms. GPA and CONTRACTOR may renew this agreement upon the mutual agreement of the parties.

**Notice of Extension.**

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

At the beginning of the 3<sup>rd</sup> Contract year GPA and the CONTRACTOR shall negotiate the Contract extension terms based on the optimum requirements of GPA. 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 later than six months before Termination Date. However, GPA may elect to reverse its decision without penalty at any time within six months of the end of the Contract period based on the CONTRACTOR's poor performance during this period and Contractor's failure to cure.

**SECTION 4. CONTRACT PRICE**

The total contract price in U.S. Dollars per barrel for all Diesel Fuel Oil No.2 delivered D.E.S. Guam (discharge port) to GPA shall be inclusive of all costs and liabilities incurred prior to delivery at discharge port, Cabras Island, Guam.

**DES (Delivered Ex- Ship) PROVISIONS:**

Under this term, the **CONTRACTOR** quotes a price including the cost of the goods, the marine insurance, and all transportation charges to the designated point of destination (**GPA**). Under this quotation, the **CONTRACTOR** must:

- (1) provide and pay for transportation to named point of destination (**GPA**);
- (2) pay applicable taxes or charges levied on the cargo outside Guam;
- (3) provide and pay for marine insurance;
- (4) provide war risk insurance;



- (5) obtain and dispatch promptly to **GPA**, or its agent, copies from the original document of a clean bill of lading, and also insurance policy or negotiable insurance certificate;
- (6) provide **GPA** with copies from the original document of certificates of origin, or any documents issued in the country of origin, or of shipment, or both, which **GPA** may require for importation of goods and, where necessary, for their passage in transit into another country.
- (7) where received-for-shipment ocean bill of lading may be tendered, be responsible for any loss or damage, or both, and other charges until the goods have been delivered into the custody of the ocean carrier to **GPA**;
- (8) where on-board ocean bill of lading is required, be responsible for any loss or damage, or both, and other charges until the goods have been delivered on board the vessel to **GPA**;

The **CONTRACT PRICE** shall be the **BID PRICE OFFER** calculated as the **BID REFERENCE PRICE** plus the Contractor's **FIXED PREMIUM FEE** in U.S. dollars per barrel for all fuel oil delivered to **GPA** at the Port of Guam.

**BID REFERENCE PRICE:**

The **BID REFERENCE PRICE** shall be based on the Platt's Singapore Products Assessment for Fuel Oil Cargoes "Gasoil 10 ppm" for January 10, 2023.

Reference date: January 10, 2023

	<u>Low (\$/bbl)</u>	<u>High (\$/bbl)</u>
Gasoil 10 ppm	\$109.52	\$109.56

The following is a sample calculation of the mean price for "Gasoil 10 ppm" published in the **Platt's Marketscan, Singapore Products Assessments** for Fuel Oil Cargoes for January 10, 2023.

Mean Singapore Spot = Low + High Price Assessments:

$$= \frac{\$109.52 + \$109.56}{2} \text{ per barrel}$$

$$= \$109.540 \text{ per barrel}$$

**BID REFERENCE PRICE = \$109.540 per barrel (in 3 decimals)**

**BID PRICE OFFER (D.E.S. Ex-Ship Guam):**

Contract for the Bulk Supply of Diesel Fuel Oil No.2	BASE PERIOD THREE (3) YEARS US\$/BBL (3 decimals)			EXTENSION PERIOD TWO (2) YEARS US\$/BBL (3 decimals)	
	First (1 <sup>st</sup> ) Year Base Period	Second (2 <sup>nd</sup> ) Year Base Period	Third (3 <sup>rd</sup> ) Year Extension	First (1 <sup>st</sup> ) Year Extension	Second (2 <sup>nd</sup> ) Year Extension
Fixed Premium Fee	\$8.080	\$8.080	\$8.080	\$7.880	\$7.880

**SECTION 5. INVOICE PRICE DETERMINATION**

Price shall be based on the arithmetic average of the mean of the high/low quotations for "Gasoi 10 ppm" as published in Platts Asia Pacific/Arab Gulf Marketscan under the heading "FOB Singapore" priced for five (5) valid consecutive quotations immediately prior to B/L date and five (5) immediately after the B/L date plus the FIXED PREMIUM FEE.

In case of "No Posting" on the B/L date, no price will be used and the remaining 10-days average will be used. All price postings are at the prices effective dates.

**Sample Calculation:**

**B/L date = January 10, 2023**

**Marketscan Postings, Commodity Price for Gasoil 10 ppm (\$/bbl)**

	<u>Date</u>		<u>Low</u>	<u>High</u>	<u>Avg</u>
5	Jan 03, 2023	(Tue)	116.38	116.42	116.400
4	Jan 04, 2023	(Wed)	108.98	109.02	109.000
3	Jan 05, 2023	(Thu)	109.11	109.15	109.130
2	Jan 06, 2023	(Fri)	107.58	107.62	107.600



1	Jan 09, 2023	(Mon)	110.51	110.55	110.530
B/L	Jan 10, 2023	(Tue)	109.52	109.56	109.540
1	Jan 11, 2023	(Wed)	112.72	112.76	112.740
2	Jan 12, 2023	(Thu)	115.61	115.65	115.630
3	Jan 13, 2023	(Fri)	118.18	118.22	118.200
4	Jan 16, 2023	(Mon)	119.11	119.15	119.130
5	Jan 17, 2023	(Tue)	119.50	119.54	<u>119.520</u>
Reference Price (Mean Arithmetic Average, \$/bbl) =					<b>113.402</b>

Reference Price \$/bbl	Fixed Premium Fee \$/bbl	Invoice Price \$/bbl
\$113.402	\$8.080	<b>\$121.482</b>

For invoice calculation purposes, quantity shall be reported in barrels at standard sixty degrees Fahrenheit (60°F) as declared in the Bill of Lading.

Invoices for Fuel Oil delivered pursuant to quantity and quality prescribed under the terms of this contract shall be submitted to **GPA** along with 2 sets of copies of the original loadport documents that includes, but is not limited to:

- a. Bill Of Lading
- b. Certificate of Quantity
- c. Certificate of Quality
- d. Cargo Manifest
- e. Certificate of Origin
- f. Surveyor's Inspection Report
- g. Vessel Ullage Report
- h. Timelog
- i. Receipt of Sample
- j. Master's Receipt of Documents
- k. Notice of Readiness at Loadport
- l. Certificate of Vessel Compartment Cleanliness/Dryness
- m. Material Safety Data Sheet (MSDS)

**SECTION 6. TERMS OF PAYMENT**

Payment shall be made in U.S. Dollars Funds without off-set, deduction, or counter-claim within THIRTY (30) calendar days (30-days net term) after the Bill of Lading date provided vessel tenders its NOR within TWELVE (12) days after the B/L date, otherwise it extends day by day (B/L date inclusive). In case payment due date falls on a Bank holiday or Saturday in Guam, payment shall be made immediately preceding banking day. However, should payment due falls on Sunday or Monday bank holiday in Guam, payment shall be made on the immediately following banking day.

Payment shall be available at Seller's account on Maturity Date. If Buyer fails to pay on the maturity date, Seller shall be reimbursed for the interests related to the time of delay. Interest Rate shall be calculated based on the one month London Interbank Offered Rate (LIBOR) for US Dollar Deposits offered by Bloomberg Publication at 11:00 A.M. London Time, as quoted on page BBAM in effect on the date buyer's payment was due, plus one and one-half percent (1.5%) per annum.

In the event that a duly executed Documentary Letter of Credit (L/C) is amended or cancelled due to error or adjustments caused by the **CONTRACTOR**, the **CONTRACTOR** shall reimburse **GPA** for any penalties for the amendment or cancellation of the LC.

The **CONTRACTOR** shall endeavor to assist **GPA** to revise the payment due dates if requested by **GPA** accordingly. **GPA** has the right to request for revision of the payment due dates and Contractor has the right to reject it at its sole discretion.

**CONTRACTOR** may provide **GPA** a Line of Credit, but it is not a requirement in the contract. The amount of **GPA's** credit line under this contract shall not exceed :

(Amount in Words \_\_\_\_\_) (US\$ \_\_\_\_\_),

available at **CONTRACTOR** system.

If the amount due under this contract exceeds the **GPA's** credit limit, then as a loading condition, for the amount not covered under the credit line, **GPA** shall:



- (i) Make advance payment not later than one day before the cargo is loaded; OR
- (ii) Open a **DOCUMENTARY LETTER OF CREDIT (L/C)** at a first class international bank mutually agreeable to both **GPA** and the **CONTRACTOR**.

#### **SECTION 7. PAYMENT OF TAXES AND OTHER GOVERNMENT CHARGES**

**All fuels under the terms of this Contract are exempt from the Government of Guam Liquid Fuel Tax and the Government of Guam Gross Receipts Tax as provided by 12 G.C.A., Section 8115.**

CONTRACTOR shall be responsible for filing appropriate tax returns or other filings and requesting rebates, credits, drawbacks or exemptions.

In the event any liquid fuel tax or gross receipts tax or other tax including, but not limited to, excise tax, duty, toll, fee, charge for other exaction or the amount equivalent thereto, and any increase thereof, now or hereafter imposed, levied or assessed by the United States Government, the Government of Guam, the Port Authority of Guam, or other instrumentality or agency thereof in connection with and as a result of the sale of fuel oil herein provided for is collectible or payable by **CONTRACTOR**, (except taxes, penalties, fees or other charges that may be imposed on **CONTRACTOR** because of **CONTRACTOR**'s failure to make proper tax filings including requests for credits, exemptions, drawbacks or rebates) it shall be paid by **GPA** as part of the fuel price set forth herein, on demand by **CONTRACTOR**. Any such payment shall be in addition to the price otherwise herein provided for.

Notwithstanding these provisions, should the payment of any such charges described in this section be unduly burdensome to **GPA**, it shall be grounds for renegotiation for an equitable adjustment in price.

**CONTRACTOR** shall be solely responsible for filings and payment of income tax or taxes measured on net income.

#### **SECTION 8. WARRANTY AND CLAIMS**

**CONTRACTOR** warrants that the fuel oil shall meet the specification prescribed herein under Schedule A, and other pertinent sections. If the fuel oil fails to meet the specifications herein, **CONTRACTOR** shall be liable for any direct damages resulting therefrom.

**CONTRACTOR** shall be solely responsible for any damages caused by the **CONTRACTOR** or its agents during the process of oil shipment and delivery.

Claims against the **CONTRACTOR** for direct costs incurred on account of their negligent actions shall be given in writing together with all supporting documents, invoices and correspondence by **GPA** within thirty days (30) from date of delivery of fuel oil as specified in Section 4.

#### **SECTION 9. TITLE, CUSTODY AND RISK OF LOSS**

Title to the fuel oil and custody thereof shall pass from **CONTRACTOR** to **GPA** when the fuel oil has passed the vessel's permanent flange hose connection at the discharge port.

#### **SECTION 10. PRODUCT AND QUALITY**

The fuel oil delivered hereunder shall have the physical and chemical characteristics as described in Schedule A.

The Authority reserves the right to require the supplier to add and to conduct additional tests as may be required.

#### **SECTION 11. QUANTITY AND QUALITY ASSURANCE**

(a) Inspection of fuel oil cargo loading and discharge to determine quantity and quality shall be witnessed and or conducted by the appointed third party independent Inspector mutually acceptable to **GPA** and the **CONTRACTOR**. Such independent inspector shall also perform or witness the required sampling, gauging, and inspection of vessel and shore tanks before and after loading at load port as well as discharge port, Guam. Final determination shall be based on the



discharge port findings. All quantity calculations and correction to volume at sixty (60) degree (Fahrenheit) shall be in accordance with the ASTM-IP Petroleum Measurement Tables, Table 6- the latest edition published shall be applicable. All costs and charges for the inspections for the load port shall be borne by the **CONTRACTOR**, and costs at the discharge port shall be equally shared by **GPA** and the **CONTRACTOR**.

(b) Load port samples from each individual shore loading tanks prior to loading and vessel's composite samples from all vessel's cargo compartments after loading shall be obtained by the independent inspector who shall perform or witness the required tests for quality certification. Shore tank composite from each individual shore loading tanks and vessel composite samples shall be separately tested and the quality must conform to the specifications under Schedule A of the contract.

Vessel's composite samples from all vessel's cargo compartments shall also be obtained by the inspector for the consignee, **GPA**, in care of the ship's master. All Samples shall be equally divided into THREE (3) parts, sealed, properly identified, and designated with the required "Chain of Custody of Samples" documentations.

(c) The quality of the cargo to be delivered shall be determined by an independent inspector mutually acceptable to GPA and the **CONTRACTOR** and is to be based on the ship composite samples taken at the port of discharge in such a manner as to secure samples which are representative of the entire cargo delivery. Discharge tanks samples and ship's composite samples shall be divided into THREE (3) parts. One part shall be for **CONTRACTOR** and TWO (2) parts shall be for **GPA**, and **GPA** shall utilize one sample for recertification and reserve the other sample as a retained referee sample. All discharge port samples shall be presented by the inspector for **GPA** in care of the Master of the ship. All samples shall be retained for not less than ONE HUNDRED TWENTY (120) days after delivery. In the event of dispute as to quality, analysis of the samples taken at the discharge port shall be made by an independent inspector, which analysis shall be final and binding upon both parties.

**GPA** reserves the right to reject any or all deliveries that fail to conform to the quality requirements specified in Schedule A.



Copies of the Certificate of Quality of the vessel composite samples, together with the other shipping documents (B/L, certificate of origin, cargo manifest, certificate of origin, certificate of quantity with shore tank measurement report, Refinery Certificate of Quality, etc) must be transmitted by fax or e-mail to GPA immediately or no later than 3 days after completion of loading.

Original/copy of the quality analysis certificates and ship's "certificate of cleanliness" issued before loading to be handed over with the other shipping documents (B/L, Certificate of Origin, Cargo Manifest, Certificate of Quality, Certificate of Quantity with shore tank measurement report, etc.) upon arrival of vessel at discharge port.

It is understood that any delay as may be incurred in discharge due to unavailability of copy of the Bill of Lading will be for **CONTRACTOR's** account. Furthermore, the correct documentation in original format is required in order to establish to the full satisfaction of GPA.

GPA has the right to reject any cargo outside the specification limits. GPA shall notify the Contractor of any rejected delivery by fax or e-mail. Contractor shall promptly deploy a replacement vessel carrying on-spec products to Guam within 12 days from the date of GPA's notice of rejection.

Notwithstanding the above conditions, Contractor shall not be relieved of any responsibilities or penalties provided for in the Contract. In addition, GPA shall impose all applicable penalties for failure of the Contractor to provide the replacement cargoes in a timely manner. Contractor shall be liable for all direct expenses as a result of the delayed arrival of the shipment beyond the last day of the original 5 days ETA date.

## **SECTION 12. QUANTITY DETERMINATION**

Quantity determination shall be performed by an independent third party inspector mutually acceptable to GPA and the CONTRACTOR. Quantity shall be based from the load port shore tanks gauges as to be reflected as Bill of Lading quantity NET barrels at

sixty degrees Fahrenheit (60 °F). The Certificate of Quantity shall separately use the density from each individual shore loading tanks.

All quantities shall be corrected to volume at sixty degrees Fahrenheit (60 °F) in accordance with the ASTM-IP Petroleum Measurement Table, Table 6B, the latest edition published shall be applicable. A copy of the load port shore tank measurements shall be included as supplemental documents.

Quantity certification prepared by independent third party inspector shall be final and binding upon both parties.

In the event of the variances between the B/L quantity and the discharge port (shore tanks) receipts, The AUTHORITY shall pay (absorb) a quantity shortfall up to FORTY PERCENT OF ONE PERCENT (0.40 %) of the barrel established quantity; shortages beyond the 0.40% shall be covered by the **CONTRACTOR**.

If the cargo for GPA is not segregated and discharged to more than one party, the Certificate of Quantity for GPA and payment shall be based on the shoretank receipt quantities as established by an independent third party inspector at the discharge port.

### **SECTION 13. SECURITY OF SUPPLY**

For security of supply, **CONTRACTOR** reserves the right to supply fuel oil meeting GPA specifications from any source. In the event that supplies are taken from such other places, then the price to Guam will remain the same as established in Section 4 above.

### **SECTION 14. GOVERNMENT LAWS AND REGULATIONS**

(a) If at any time during the term of the Contract the Government of the United States or the Territory of Guam enacts laws or issues regulations which would prevent GPA from burning the type of fuel oil to be supplied hereunder, GPA shall use its best efforts to obtain an exemption. In the event GPA cannot obtain an exemption from such laws and regulations, **CONTRACTOR** shall



use his best efforts to furnish **GPA** substitute fuel oil which complies with such governmental laws and regulations at the same price set out herein, or if unreasonable, at a price to be renegotiated by the parties. If the substitute fuel oil causes an increase or decrease in **CONTRACTOR**'s cost of performance of the Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly. Any claim of **CONTRACTOR** for adjustment under this section must be asserted in writing within thirty (30) days from date of receipt by **CONTRACTOR** of the notification of substitute fuel oil in compliance with Government laws, rules and regulations. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this Contract entitled "Disputes". However, nothing in this clause shall excuse the **CONTRACTOR** from proceeding with the Contract fuel oil specifications as changed in order to comply with Government laws, rules and regulations. Only in the event that the parties cannot mutually agree upon the price at which **CONTRACTOR** is to furnish such substitute fuel oil, and **CONTRACTOR** refuses to provide such substitute fuel oil at the Contract price set out herein shall **GPA** then have the option of purchasing from other sources fuel oil at a lower price than that offered by **CONTRACTOR** in such negotiations which complies with such laws and regulations, but in any event, the **CONTRACTOR** shall have no recourse, other than those specified herein.

(b) **CONTRACTOR** shall at all times comply with all applicable laws and regulations of the Territory of Guam and the Federal Government and their respective agencies.

#### **SECTION 15. PERMITS AND RESPONSIBILITIES**

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

#### **SECTION 16. FORCE MAJEURE**

No failure or omission by either party to carry out or to observe any of the terms, provisions or conditions of the Contract shall, except in relation to obligations to make payments under the Contract, give rise to any claim by one party against the party in question or be deemed to be a breach of the Contract if such failure or omission arises from any cause reasonably beyond the control of the party, including but without prejudice to the generality of the foregoing:



- (a) War, etc. War, hostilities, acts of public enemy or belligerents, sabotage, blockade, revolution, insurrection, riot or disorder;
- (b) Restraints. Arrest or restraint of princes, rulers or peoples;
- (c) Confiscation. Expropriation, requisition, confiscation or nationalization;
- (d) Rationing. Embargoes, export or import restrictions or rationing or allocation, whether imposed by law, decree or regulation or by voluntary cooperation of industry at the insistence or request of any governmental authority or person purporting to act therefore;
- (e) Regulations. Interference by restriction or onerous regulations imposed by civil or military authorities, whether legal or de facto and whether purporting to act under some constitution, decree, law or otherwise;
- (f) Acts of God. Acts of God, fire, frost or ice, earthquake, storm, lightning, tide, tidal wave, or peril of the sea, accident of navigation or breakdown or injury of vessels;
- (g) Loss for Tankers. Loss of tanker tonnage due to sinking by belligerents or to governmental taking whether or not by formal requisition;
- (h) Accidents. Accidents to or adjuncts of shipping navigation;
- (i) Strikes. Epidemics, quarantine, strikes or combination of workmen, lockouts, or other labor disturbances;
- (j) Explosions. Explosion, accidents by fire or otherwise to wells, pipes, storage facilities, refineries, installations, machinery;
- (k) Taking by Government. Unavailability of fuel because of the election of the government of the country of its origin to take royalty product in kind;
- (l) Other Events. Any event, matter or thing wherever occurring and whether or not of the same class or kind as those set forth, which shall not be reasonably within the control and without the fault or negligence of the party affected thereby.



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

#### **SECTION 17. NOTICE TO OTHER PARTY**

Either party whose obligations may be affected by any of the forces or causes set out in Section 16, supra, shall promptly notify the other party in writing, giving full particulars thereof as soon as possible after the occurrence of such force or cause. Such party shall exercise due diligence to remove such cause with all reasonable dispatch and to resume performance at the earliest practicable time.

#### **SECTION 18. PAYMENT REQUIRED**

Notwithstanding the provisions of Section 16, supra, **GPA** shall not be relieved of any obligation to make payments for any fuel delivered to Guam dock/**GPA** tanks hereunder; however, during the force majeure condition the obligation shall be suspended, except for fuel oil deliveries made prior to the force majeure condition.

#### **SECTION 19. PRORATION OR EQUITABLE ALLOCATION**

If any of the events enumerated in Section 16, supra, have occurred, **CONTRACTOR** shall prorate or otherwise allocate in a fair and equitable manner among its customers, including **GPA**, the supplies of fuel oil **CONTRACTOR** has available for delivery at the time of the occurrence or for the duration of such event taking into account **GPA's** unique situation as Guam's total dependence on fuel oil. **CONTRACTOR** shall also seek an alternative source of fuel oil to fulfill its contractual obligations.

#### **SECTION 20. ALTERNATE SUPPLY**

In the event **CONTRACTOR** is unable to fulfill its obligations under this Contract as a result of Section 16, supra, **GPA** may at its sole discretion seek an alternative source of fuel oil so long as such condition shall exist.

In the event **CONTRACTOR** is unable to fulfill its obligations under this Contract as a result of any negligence on the part of the Contractor, **GPA** may at its sole discretion seek an alternative source of fuel oil so long as such condition of negligence shall exist. If the cost of fuel during such period of negligence shall exceed the Contract price as provided in Section 4, the **CONTRACTOR** shall be liable to **GPA** for the difference, which may be taken from the Performance Bond.

#### **SECTION 21. RESUMPTION OF PERFORMANCE**

If **CONTRACTOR** is prevented from delivering or **GPA** is prevented from receiving all or any fuel to be sold under the Contract for the reasons which fall within the provisions of Section 16, supra, then the party so prevented shall, as to the remainder of the fuel not affected thereby, promptly resume performance of the Contract. No curtailment or suspension of deliveries or payment under the causes listed in Section 16, supra, shall operate to extend the term of or terminate the Contract unless the occurrence of force majeure will materially impair, for an indefinite period of time, the parties' ability to perform the Contract.

#### **SECTION 22. GOVERNING LAW AND DISPUTES**

This CONTRACT shall in all respects be governed by the Laws of Guam. The provisions of the United Nations Convention on Contracts for the International Sale of Goods are expressly excluded.

This CONTRACT shall not be construed to confer any benefit on any person not being a party to this Contract nor shall it provide any rights to such person to enforce any of its provisions. The provisions of the English Contracts (Rights of Third Parties) Act 1999 are expressly excluded.

In the event of any controversies, dispute or difference of any nature (a "Dispute") between the parties arising from or in connection with this Contract, either party may give notice to the other





in writing of the existence of such dispute specifying its nature and the points at issue. If the dispute shall not have been amicably resolved within thirty (30) days from the date of the said notice, then the same shall be exclusively and definitely resolved through final and binding arbitration in New York, by the AMERICAN ARBITRATION ASSOCIATION ('AAA'), in accordance with the rules of arbitration of such institution in effect as of the date the existence of the controversy is notified by one of the parties. The arbitration shall be conducted by three arbitrators, unless all parties to the dispute agree to a sole arbitrator within thirty (30) days after the filing of the arbitration. Each party to the dispute shall appoint one arbitrator within thirty (30) days of the filing of the arbitration, and the two arbitrators so appointed shall select the presiding arbitrator within thirty (30) days after the latter of the two arbitrators have been appointed by the parties to the dispute. If a party to the dispute fails to appoint its party-appointed arbitrators or if the two party-appointed arbitrators cannot reach an agreement on the presiding arbitrator within the applicable time period, then LCIA shall appoint the remainder of the three arbitrators. The arbitration proceedings shall be conducted in English and the arbitrator(s) shall be fluent in the English language. The award of the arbitral tribunal shall be final and binding. Judgment on the award of the arbitral tribunal may be entered and enforced in any court having jurisdiction thereof. The cost of the arbitration proceedings, including attorneys' fees, shall be borne in the manner determined by the arbitral tribunal. Any right to appeal or challenge any arbitral decision or award is hereby waived. The parties may seek a preliminary injunction or other preliminary judicial relief, if in its judgment such action is necessary to avoid irreparable damage. It is expressly agreed that indirect, special, punitive and consequential damages shall not be awarded.

#### **SECTION 23. CONTRACTOR'S INSURANCE**

The **CONTRACTOR** shall maintain an insurance policy or ensure that vessel nominated have in place an insurance policy for oil pollution (throughout the entire period of the voyage to and from the discharge port) with coverage consistent with the provisions in compliance to the requirements of the U.S. Oil Pollution Act of 1990 (OPA 90) and any amendments thereto. This includes, but is not limited to, compliance with oil spill cleanup plan, financial responsibility, and all other provisions of OPA 90.

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At a minimum, **CONTRACTOR** or the nominated vessel shall carry the following insurance coverages and shall provide **GPA** evidence of these coverages (in the form of a Certificate of Insurance with the applicable wordings and endorsements) prior to vessel loading:

#### **ENVIRONMENTAL POLLUTION LIABILITY**

At a minimum, **CONTRACTOR** or the nominated vessel must carry and have in force Environmental Pollution Liability insurance with limits not less than \$50,000,000 (USD FIFTY MILLION DOLLARS) each condition and in the aggregate to include coverage for First party clean-up costs. The carrier must be rated not less than AM Best A rated and minimum financial size of IX. This coverage must be primary and non-contributory.

#### **MARINE LIABILITY**

At a minimum, **CONTRACTOR** or the nominated vessel must carry and have in force Marine Liability insurance with limits not less than \$50,000,000 (USD CONTRACTOR FIFTY MILLION DOLLARS) each occurrence and in the aggregate. The carrier must be rated not less than AM Best A rated and minimum financial size of IX. This coverage must be primary and non-contributory.

#### **SECTION 24. INDEMNITY**

**CONTRACTOR** shall indemnify and hold **GPA** harmless from all damages to persons or property or to receiving facilities and delivery facilities, regardless of ownership, including the cost of enforcement of the indemnity, actually and proximately caused by **CONTRACTOR** or its agents in making deliveries hereunder. **CONTRACTOR** shall be responsible for cleaning up any oil spillage caused by it or its agent or **CONTRACTORS** during the process of oil delivery. **CONTRACTOR** shall carry at all times appropriate levels of insurance as determined by **GPA** and by Local and Federal Regulatory Agencies to cover any such damage. The **CONTRACTOR** shall ensure that any vessel owned or chartered by the Contractor for deliveries under this agreement shall meet the requirements of the U.S. Oil Pollution Act of 1990 (OPA 90).

#### **SECTION 25. TRANSPORTATION**



The Authority shall nominate and advise the **CONTRACTOR** of the 10-day delivery date range not later than THIRTY-FIVE (35) days before the 1<sup>st</sup> calendar day of the delivery date range. The **AUTHORITY** and **CONTRACTOR** shall mutually agree to narrow down to a 5-day delivery date range TWENTY-FIVE (25) days prior to the 1<sup>st</sup> day of the 5-day delivery date range.

- (a) **CONTRACTOR** shall arrange for the transportation of the fuel oil from loading port to the Guam dock, and give **GPA** or its agents at least FIFTEEN (15) days prior notice of the approximate arrival date of each tanker.

All risk of loss, cost and liabilities prior to the time of passage of title of the fuel oil to shall be on the **CONTRACTOR**. **CONTRACTOR** or its agents shall further arrange for the use of pier receiving facilities owned by the Port Authority of Guam (PAG) or its Facility Manager, U.S. Coast Guard, U.S. Custom and Immigration inspections, Guam Commercial Port authorities, Guam tug services, Port Stevedores services, and others as necessary for the safe berthing of fuel tankers and obtaining clearance for the discharging of the cargo at the sole expense of the **CONTRACTOR**.

**GPA** shall exercise due diligence and make its best effort to assist the **CONTRACTOR** in arranging for safe berthing facilities to accommodate vessels at the F-1 dock with the following information:

Maximum LOA	259meters
Minimum LOA	100 meters
Maximum Breadth	45 meters
Maximum Vessel Draft Alongside	16.4592 meters
Maximum Displacement	108,840 metric tons
Maximum Free Board	23 meters

The above information is subject to change and **CONTRACTOR** shall at all times abide by the requirements of latest edition of the Port and Terminal Information Handbook.

**GPA** shall provide the **CONTRACTOR** an estimated cargo quantity to be delivered approximately THIRTY-FIVE (35) days from estimated 10-day delivery date range.

**GPA** shall provide notification to the **CONTRACTOR** as to the final cargo delivery quantity approximately TWENTY-FIVE (25) days prior to the first (1<sup>st</sup>) day of the estimated 5-day delivery



date range which will also be specified in this final notice. **GPA** estimates a single delivery requirement in the range of ONE HUNDRED FIFTY THOUSAND BARRELS TO TWO HUNDRED FIFTY THOUSAND BARRELS (150,000 bbls-250,000 bbls).

For each delivery, the **CONTRACTOR** will have an operational tolerance of FIVE PERCENT (5%) on the cargo size, as well as the obligation to deliver the shipment within defined delivery date range, as has been notified by **GPA**.

GPA shall have the right to cancel or change the previously notified cargo size and/or delivery date within THIRTY (30) calendar days prior to the first day of the delivery range without penalty.

**(b) Tanker nomination procedures:**

The **AUTHORITY** shall advise the contractor of projected "tankers' schedule and quantities per slate" TWENTY-FIVE (25) days before the commencement of the contract, and **CONTRACTOR** agrees to provide all fuel requirements of **GPA** as advised and all succeeding cargo requirements thereafter.

**(i) Vessel Specification:**

All vessels nominated by the **CONTRACTOR** for fuel oil deliveries to **GPA** shall meet the vessel vetting requirements and be pre-approved by the dock Facility Manager (F-1 Dock or alternate facility).

The **CONTRACTOR** or its agents shall be responsible in seeking vessel clearance from the dock Facility Manager. In the event that vessels owned or chartered by the **CONTRACTOR** do not meet the dock Facility Manager's specification, **CONTRACTOR** shall have the vessel shortfalls corrected or have another vessel nominated and ensure that a suitable vessel is cleared for timely delivery of cargo to **GPA**. The **CONTRACTOR** or its agents shall be responsible for the scheduling and reservation of the dock with the dock Facility Manager.

The **CONTRACTOR** shall ensure that the vessel assigned to perform the voyage should be rid of any slop before reaching the designated port and have adequate slops – storage capacity to ensure that unloading of any slops is avoided.



(c) **Ship Lay time and Demurrage:**

Ship lay time at the discharge port shall commence six (6) hours after the tender of Notice of Readiness (NOR) or when the vessel berths whichever occurs first, and to cease upon last cargo hoses disconnection. Official NOR shall be tendered/ re-tendered after completion of inspection and clearance for conducting cargo discharging operations is granted by the Port Authorities.

However, if the vessel arrives before the first day of the agreed arrival date range, lay time shall not commence until 06:00 AM on the first day of the agreed arrival date range or the time discharge commences whichever is earlier. If the vessel arrives after the last day of the agreed arrival date range lay time shall commence at the time discharge commences.

If regulations of the Port Authorities prohibit the discharge of cargo at night, the time so lost shall not count as used lay time.

(i) **Ship Demurrage:**

If lay time allowed is exceeded, GPA shall be liable to pay the **CONTRACTOR** for applicable demurrage. However, any delay due to vessel inspection and clearance by Local and Federal Authorities, breakdown of the vessel's equipment, or failure by vessel to comply with the requirements of the discharge port with respect to equipment aboard, shall not be counted in the lay time used for calculating demurrage. Waiting period for berthing, port formalities, product ullaging, product sampling and testing for quality conformance, and/or other delays caused by the vessel shall be deducted in the lay time calculation.

The vessel must be able to attain a discharge pressure of up to one hundred (100) psi measured at the Dock manifold. Time lost for slow discharging shall be deducted from the lay time used for calculating demurrage. Cargo stripping period in excess of two (2) hours shall also be deducted from the lay time used for calculating demurrage.

Demurrage cost if payable by **GPA** shall be at the single voyage demurrage rate specified in the single voyage Charter Party of the vessel loading the cargo in question and the **CONTRACTOR** shall furnish **GPA** with a copy of such Charter Party. Such charges must be submitted to **GPA** within 90 days after Bill of Lading date.

**CONTRACTOR** 's and **GPA**'s rights and duties under [Section 24](#) and [Section 25](#) do not supersede or control the provisions of Section 16 Force Majeure.

(d) **Dock Use Lay time Charges:**

Dock lay time of thirty-six (36) hours at the discharge port, to commence upon commencement of cargo discharging, and to cease upon last cargo hose disconnection. Dock lay time charges in excess of the first thirty-six (36) hours are paid by **GPA** to the dock Facility Manager.

In the event that the allowable lay time of thirty-six (36) hours is exceeded due to delays caused by the vessel, the Contractor shall reimburse **GPA** for any charges in excess of the allowable lay time. Calculation for reimbursement shall be based on the Surveyor's time log or Letter of Protest issued to the Vessel's Officer converted to time units multiplied by the dock excess lay time charge cost.

**SECTION 26. COORDINATION – AMMUNITION LOADING**

(a) The **CONTRACTOR** is hereby advised and agrees that the unloading of fuel oil is not permitted during the time that the unloading or loading of ammunition is taking place at the U.S. Navy's ammunition wharf.

(b) Coordination to prevent conflict in unloading between ammunition and fuel oil will be effected jointly by responsible parties representing the U.S. Navy, the Port Authority, **GPA** and the **CONTRACTOR**. Any charges that may result because of demurrage caused by delay in discharge of fuel oil related to ammunition unloading or loading will be borne by the **GPA**, provided that notice of arrival of tanker is given to **GPA** by the **CONTRACTOR** at least FIFTEEN (15) days prior to ETA Guam. In absence of such notice any delay costs shall be borne solely by the **CONTRACTOR**.

**SECTION 27. FAILURE TO SUPPLY**

If the **CONTRACTOR** refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure the timely delivery of fuel oil supply or commits any other substantial breach of this Contract, **GPA** may notify the **CONTRACTOR** in writing of the delay or non-performance and if not cured within THIRTY (30) days of the date of notification, **GPA** may



terminate the Contract in whole or such part of the Contract as to which there has been a delay or a failure to properly perform. In the event of termination in whole or in part, **GPA** reserves the right to procure fuel oil supply from another source immediately upon issuance of such notification or whenever it deems appropriate.

#### **SECTION 28. FAILURE TO PAY**

Failure to pay an invoice and any late penalties, if any, within a period of THIRTY (30) days from the due date of such invoice, shall be a default and should such a default not be cured within THIRTY (30) days of default, **CONTRACTOR** may, at its option, do either of the following:

- (a) Terminate the Contract forthwith or forthwith suspend delivery under the contract until further notice, on notifying GPA orally or by notice in writing; or
- (b) Continue to supply fuel oil and bring suit in the Superior Court of Guam for amounts past due and as they become due.

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

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

#### **SECTION 30. PENALTY CLAUSES**

##### **(a) Late Deliveries**

- (1) In case of five (5) delayed deliveries beyond the last day of the stipulated delivery date range on the discharge port, after the stipulated delivery date as set out in the nomination

procedure, **GPA** reserves the right to terminate the present contract by his written notification, without obligation to indemnify the **CONTRACTOR**.

(2) **CONTRACTOR** accepts to pay **GPA** for every delayed delivery beyond the last day of the five (5) days stipulated delivery date range as set out in the nomination procedure, a penalty equivalent to:

- \$0.10/bbl multiplied by the Bill of Lading quantity for each day of delay if delivery is less than five days late.
- \$0.20/bbl multiplied by the Bill of Lading quantity for each day of delay if delivery is more than five days late.

In case of delay due to **GPA's** fault or Force Majeure, the time of delivery shall be correspondingly extended, the **CONTRACTOR** waiving any respective claim against **GPA**.

(b) **Quality Outside Contractual Specifications**

In the event that any fuel, according to the analysis results of either the composite vessel sample or the "Umpire" sample has one or more quality characteristics outside the contractual specifications set in Schedule A, then in addition to any other rights or remedies available to the **GPA** under this contract a penalty will be imposed according to the following:

- (1) If the bottom sediment and water exceeds the specification limit, then a price reduction shall be made for all water and non-petroleum sediment in excess of maximums specified in Schedule A multiplied by the Bill of Lading Quantity.
- (2) If the heating value is less than the specification limit, then there will be a price reduction calculated as the ratio of the Out-of- Specification heating value and the Guaranteed Heating Value specified in Schedule A, multiplied by the Bill of Lading Quantity.

If any other quality parameter (besides the ones stated in) exceeds the specifications' limits, then a penalty will be agreed between **GPA** and **CONTRACTOR**.

It is expressly agreed that the present penalty clauses shall be imposed regardless of whether damages were or not suffered by the **GPA** due to the delay in delivering the fuel and fuel quality outside contractual specifications, and that the **GPA** reserves the right to claim cumulatively both the amount of the penalty clauses and indemnification for every direct damage suffered by him

due to **CONTRACTOR** non-contractual actions or omissions. If during the period of this contract the **GPA** is forced to purchase fuel oil in order to maintain the **GPA's** Power Stations on full commercial load as a result of failure on the part of the **CONTRACTOR** to deliver fuel oil in accordance with the terms of this contract (save for events of Force Majeure) any additional cost borne by the **GPA** over and above the price provided for in this Contract will be liable to be refunded to the **GPA** either by payment from the **CONTRACTOR** or by way of reduction from his debts to the **CONTRACTOR** or from the Good Performance Bond of the Contract, or partially from both.

**GPA** reserves the right to retain the amount of the penalty clauses from his debts to the **CONTRACTOR** or from the Good Performance Bond of the Contract, or partially from both.

Notwithstanding the above conditions, **GPA** reserves the right to reject any or all deliveries that fail to conform to the quality requirements specified in Schedule A.

#### **SECTION 31. DEFAULT**

"If the PARTY refuses or fails to perform any of their obligations under this agreement, non-breaching PARTY shall notify the PARTY either by e-mail or in writing within thirty (30) days of the breach. If the PARTY does not remedy the breach within thirty (30) days after the date of notification, non-breaching PARTY may by giving notice to the other PARTY terminate the Agreement in whole or suspend taking of delivery under the Contract.

In the event of partial termination or suspension under this provision, GPA reserves the right to procure fuel supply from another source upon notification to CONTRACTOR either by e-mail or in writing. Fuel to be procured shall be at the prevailing market price at the time of partial termination or suspension.

The CONTRACTOR shall be liable for the difference between the contract price and the prevailing market price at the time of termination."



## **SECTION 32. ATTORNEYS FEES**

Should a default by either party result in litigation, the successful party shall be entitled to recover its reasonable attorney's fees from the defaulting party.

## **SECTION 33. TERMINATION FOR CONVENIENCE**

### **(a) Termination.**

The delivery of fuel oil supply under this Contract may be terminated by **GPA** in accordance with this clause in whole, or from time to time in part.

Any such termination shall be effected by delivery to the **CONTRACTOR** of a written Notice of Termination specifying the extent to which supply of fuel oil under the Contract is terminated, and the Contract shall be terminated effective ONE HUNDRED TWENTY (120) days after receipt of notice by **CONTRACTOR**.

In the case of termination of this Contract, GPA shall reimburse the **CONTRACTOR** of all the expenses related to the period of the Performance Bond that were not used.

### **(b) CONTRACTOR's Obligations.**

The **CONTRACTOR** shall incur no further obligations in connection with the terminated fuel oil supply delivery and on the date set in the Notice of Termination the **CONTRACTOR** will stop delivery of fuel oil to the extent specified. The **CONTRACTOR** shall also terminate outstanding orders and Contracts, if any, as they relate to the terminated Contract for fuel oil supply. The **CONTRACTOR** shall settle the liabilities and claims arising out of the termination of orders and Contracts, if any, connected with the terminated fuel oil supply delivery. **GPA** may direct the **CONTRACTOR** to assign the Contractor's right, title and interest under the terminated orders or Contracts to **GPA**. The **CONTRACTOR** must still deliver fuel oil supply not terminated by the Notice of Termination and may incur obligations as are necessary to do so.

### **(c) Right to Supplies.**

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**GPA** may require the **CONTRACTOR** to transfer title of fuel oil cargo in transit to Guam at the time of receipt by Contractor of **GPA's** Notice of Termination.

(d) **Compensation.**

- (1) The **CONTRACTOR** shall submit a termination claim specifying the amounts due because of the termination for convenience. If the **CONTRACTOR** fails to file a termination claim within ONE (1) year from effective date of termination, **GPA** may pay the **CONTRACTOR**, if at all, an amount set in accordance with subparagraph (3) of this paragraph.
- (2) **GPA** and the **CONTRACTOR** may agree to a settlement provided the **CONTRACTOR** has filed a termination claim supported by cost or pricing data to the extent required by Section 3-403 (Cost or Pricing Data) of the Guam Procurement Regulations and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by **GPA**, the proceeds of any sales of supplies and manufacturing materials under the Guam Uniform Commercial Code, and the Contract price of the fuel supply not terminated.
- (3) Absent complete agreement under subparagraph (1) of this paragraph, **GPA** may pay the **CONTRACTOR** the following amounts, provided payments agreed to under subparagraph (2) shall not duplicate payments under this subparagraph:
  - (i) Fuel oil Contract prices for supplies or services accepted under the Contract by **GPA**;
  - (ii) Costs incurred in preparing to perform and performing the terminated portion of the delivery of fuel oil plus a fair and reasonable profit on such portion of the delivery (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted fuel oil supplies or services; provided, however, that if it appears that the **CONTRACTOR** would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
  - (iii) Costs of settling and paying claims arising out of the termination of Contracts

or orders pursuant to paragraph (2) of this clause. These costs must not include costs paid in accordance with subparagraph (3)(ii) of this paragraph;

(iv) The reasonable settlement costs of the **CONTRACTOR** including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract for the termination and settlement of Contracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the **CONTRACTOR** under this subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the **CONTRACTOR** reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under the Uniform Commercial Code.

#### **SECTION 34. REMEDIES CUMMULATIVE**

Each and all remedies available to a party in the event of the other party's failure to comply timely with any or all the terms and conditions of the Contract may be exercised independently or in combination (such rights being nonexclusive one with the other). The remedies set forth in the Contract are in addition to, and not in lieu of, all of the remedies available at law or in equity.

#### **SECTION 35. COVENANT AGAINST CONTINGENT FEES**

The **CONTRACTOR** warrants no person or selling agency has been employed or retained to solicit or secure the Contract upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agency maintained by the **CONTRACTOR** for the purpose of securing business. For breach or violation of this warranty, **GPA** shall have the right to annul the Contract without liability or, in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.



**SECTION 36. NOTICE**

Except as otherwise expressly specified herein, any notice to be given hereunder by either party to the other shall be deemed sufficiently given if in writing and enclosed in an envelope properly stamped and addressed to the party at the address set forth in this section, and deposited in the United States mail. Either party may change its address by giving FIFTEEN (15) days prior written notice to the other party. Such address until further notice shall be:

**GPA:** General Manager  
 Guam Power Authority  
 Post Office Box 2977  
 Hagatna, Guam 96932-2977  
 TELEFAX: (671) 648-9225

**CONTRACTOR:** Hyundai Corporation  
25, Yulgok-ro 2-gil, Jongno-gu, Seoul 03143, Korea  
TEL: +82-2-390-1266  
FAX: +82-2-390-1054

**SECTION 37. INTEREST OF OTHER PARTIES**

**CONTRACTOR** warrants that no member of the governing body of **GPA**, and no other officer, employee, or agent of **GPA** who exercises any functions or responsibilities in connection with the work to which the Contract pertains, and no employee, agent or member of the Guam Legislature or other public official of the Government of Guam, has or shall have any personal economic or financial interest, direct or indirect, in the Contract.

**SECTION 38. ASSIGNMENT**

**CONTRACTOR** declares that the only persons or parties interested in the Contract as principals are named herein and that the Contract is made without participation by or benefit to any other person, firm or corporation, except as specified herein.

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**CONTRACTOR** agrees that it will not assign to nor permit Contract participation in whole or in part by any other person, firm or corporation not specified as a principal without the prior written consent of **GPA**. If such assignment is permitted, **CONTRACTOR** will guarantee the performance of all terms and obligations of the Contract, and such assignment shall not alter **CONTRACTOR**'s obligations hereunder. No assignee of **CONTRACTOR** shall have the right to assign the Contract without **GPA**'s consent which may be given or refused at **GPA**'s absolute discretion.

#### **SECTION 39. TIME**

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

#### **SECTION 40. AMENDMENT AND WAIVER**

Neither the Contract nor any provision hereof may be changed, waived, altered, amended, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, alteration, amendment, discharge or termination is sought. For purposes of this Contract, the signature of the Chairman or his designee, of the Consolidated Commission on Utilities is required to bind the **AUTHORITY**.

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

#### **SECTION 41. DESCRIPTIVE HEADINGS**

The descriptive headings of the several Sections and Subsections in this Invitation are inserted for convenience only and shall not be deemed to affect the meaning or construction of any provision hereof.

#### **SECTION 42. RELATIONSHIP OF PARTIES**

Nothing contained in the Contract shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of

any association between **CONTRACTOR** and **GPA**, and no provisions contained in the Contract nor any acts of the parties shall be deemed to create any relationship between **GPA** and **CONTRACTOR**, other than the relationship of buyer and seller.

#### **SECTION 43. NUMBER AND GENDER**

In the Contract the masculine gender includes the feminine and neuter, the singular number includes the plural, and the word "person" includes corporation, partnership, firm or association wherever the context so requires.

#### **SECTION 44. SUCCESSORS IN INTEREST**

Each and all of the covenants, conditions, and restrictions in the Contract shall inure to the benefit of and shall be binding upon the permitted assignees and successors in interest of either party.

#### **SECTION 45. PARTIAL INVALIDITY**

Should any part of the Contract for any reason be declared to be invalid, such decision shall not affect the validity of any remaining portion thereof, which remaining portion shall remain in force and effect as if the Contract had been executed with the invalid portion thereof eliminated, and it is hereby declared the intention of the parties that they would have executed the remaining portion of the Contract without including any such part, parts, or portions which may, for any reason, be hereafter declared invalid.

#### **SECTION 46. EQUAL OPPORTUNITY CLAUSE**

During the performance of the Contract the **CONTRACTOR** agrees as follows:

(a) The **CONTRACTOR** will not discriminate against any employee or applicant for employment because of race, color, religion, sex, political opinion or affiliation, or national origin. The **CONTRACTOR** will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, political opinion or affiliation, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demoting, or transfer; recruitment or recruitment

advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The **CONTRACTOR** agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the **GPA** setting forth the provisions of this equal opportunity clause.

(b) The **CONTRACTOR** will, in all solicitations or advertisements for employees placed by or on behalf of the **CONTRACTOR**, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, political opinion or affiliation, or national origin.

**SECTION 47. PROHIBITION AGAINST GRATUITIES, KICKBACKS, AND FAVORS TO THE TERRITORY**

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

**SECTION 48. RESTRICTION AGAINST CONTRACTOR EMPLOYING CONVICTED SEX OFFENDERS FROM WORKING AT GOVERNMENT OF GUAM VENUES**

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

- (b) All contracts for services to agencies listed herein shall include the following provisions: (1) warranties that no person providing services on behalf of the **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.

#### SECTION 49. CONTRACT BINDING EFFECT

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

This Contract is binding upon the **CONTRACTOR** only if **CONTRACTOR** has been awarded the Contract in response to the **IFB GPA-040-23**. This Contract is subject to the approval of **GPA** and the Public Utilities Commission and it shall not be binding on part of **GPA** until such approval is made as evidenced by the signatories below.

For the **Guam Power Authority (GPA):**

  
\_\_\_\_\_  
John M. Benavente, P.E.  
General Manager

2/21/2024

DATE

For **(CONTRACTOR) CORPORATION**  
(Company Name and Seal)  
  
Mong Hyuck Chung  
Chairman & C.E.O.  
CONTRACTOR, Duly Authorized  
REPRESENTATIVE OF COMPANY

21<sup>st</sup>, Feb, 2024

DATE

APPROVED AS TO FORM:

  
\_\_\_\_\_  
General Counsel  
GUAM POWER AUTHORITY

2/21/2024

DATE





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**SCHEDULE A: PRODUCT QUALITY SPECIFICATION**

The Authority may require the supplier to conduct additional test as necessary for plant's performance/efficiency evaluation. All test methods shall be follow the latest version.

**DIESEL FUEL OIL NO. 2**

DESCRIPTION	ASTM TEST METHOD	UNIT OF MEASURE	LIMITS	
			Minimum	Maximum
Flash Point	D93	deg C	60	
Cloud Point	D2500 or D5771	deg C		5
Bottom Sediment & Water	D2709	vol %		0.05
Distillation Temp, 10% recovered	D86	degC	180	270
Distillation Temp, 50% recovered	D86	degC	230	310
Distillation Temp, 90% recovered	D86	degC	280	360
Distillation Temp, 95% recovered	D86	degC	300	370
Kinematic Viscosity	D445	mm <sup>2</sup> /s at 40 degC	1.9	4.1
Total Aromatic Hydrocarbons	D6591 or IP391	wt%		30
Dicyclic Aromatic Hydrocarbons	D6591 or IP391	wt%		5
Tricyclic and higher Aromatic Hydrocarbons	D6591 or IP391	wt%		1
Olefin Content	D1319 or JPI-5S-49 2007	vol%		5
Ash	D482	wt%		0.01
Sulfur	D5453 or D7039	ppmw		10
Sulfur Mercaptan	D3227	ppmw		3
Copper Strip Corrosion Rating (3hrs min at 50oC)	D130			No. 1
Cetane Index	D976		46	
Carbon Residue on 10% distillation residue	D189 or D524 or D4530 or D6371	wt%		0.2
Lubricity, HFRR @ 60oC	D6079	micron		400
Conductivity	D2624 or D4308	pS/m	100	600
Density @ 15oC	D4052 or D1298	kg/m3	820	850
Gravity, API @ 60oF	D1298 or D4052		35	41
Color	D1500 or D6045			2.0

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Hydrogen Sulfide in Liquid	IP 570A	mg/kg		2.0
Strong Acid No.	D974	mg KOH/g		Nil
Total Acid No.	D974	mg KOH/g		0.2
Odour	Indirect			Merchantable
Stability (Oxidation), 16Hrs	D2274	mg/L		20
Appearance @ ambient temp	D4176			Clear, bright and free from particulates and water
Haze Rating	D4176			1
Particulate Contamination	D6217	mg/L		8
Water content	D6304	mg/kg		100
Filter Blocking Tendency (FBT)	D2068 or IP387			1.35
Fatty Acid Methyl Ester (FAME)	D7371-14 or EN14078	vol%		0.1
Guaranteed Heating Value (HHV)	D240	MMBTU/bbl	5.70	
Static Dissipation Additives (Stadis 450)	Declared			Report
Lubricity Additive	Declared			Report
Biodiesel Content	Declared			NIL
Virgin Vegetable & Animal Oils	Declared			NIL
Unhydrotreated Cracked Components	Declared			NIL
Na	D7111	ppmw		0.3
K	D7111	ppmw		0.3
Ca	D7111	ppmw		Less than 0.1
V	D7111	ppmw		Less than 0.1
Pb	D7111	ppmw		Less than 0.1
Ni	D7111	ppmw		Less than 0.1
Zn	D7111	ppmw		Less than 0.1
Cu	D7111	ppmw		Less than 0.1
Ba	D7111	ppmw		Less than 0.1

#### Notes on Schedule A:

**Odour.** The odor shall be typical and characteristic of mild hydrocarbon smell, but must not be unusually strong, repulsive, or obnoxious. The fuel delivered shall be subject to inspection by regulatory agencies such as the United States Environmental Protection Agency (USEPA), or by an independent third-party inspector, should issues related to odour arise. In the event that such unusually strong, repulsive, or obnoxious odor is detected and is deemed due to the quality of the product delivered by the Contractor, the product shall be replaced at the Contractor's expenses.

**Hydrogen Sulfide in Liquid Phase.** Individual samples shall be drawn on the ship compartments. Report shall be based on the mathematical average of the test results.

**Hydrogen Sulfide in Vapour.** The Contractor or its agent is required to disclose the Hydrogen Sulfide concentration for each cargo compartment on a daily basis upon sailing from the load port. The Contractor shall ensure that the Hydrogen Sulfide concentration in vapour phase on board the vessel does not exceed 80 ppm prior to cargo arrival on Guam.

In the event that the Hydrogen Sulfide levels are exceeded on cargo arrival, the vessel will be required to leave the Guam port and de-gas to the required concentration and all costs shall be borne by the Contractor.

**Haze Rating 1.** No visible free water, particulates or sediment shall be present in the product.





SCHEDULE B: F-1 DOCK PORT AND TERMINAL INFORMATION  
HANDBOOK

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## SCHEDULE C: F-1 DOCK FACILITY- VESSEL VETTING PROCEDURE

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