

Invitation For Multi-Step Bid

No. GPA-046-21

PETROLEUM INSPECTION AND TESTING SERVICES

FOR

DIESEL FUEL OIL NO.2



Volume II

CONTRACT

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CONTRACT

CONTRACTOR

GUAM POWER AUTHORITY



IFB No. GPA-046-21

PETROLEUM INSPECTION AND TESTING SERVICES

FOR DIESEL FUEL OIL NO.2

FORMAL CONTRACT

This Agreement and Formal Contract ("Contract"), is made and entered into on the _____ day of _____, 2021 by and between:

Intertek Testing Services Guam, hereinafter referred to as CONTRACTOR, duly organized, licensed, registered and qualified to do business in Guam with its principal address at **Route 2A Santa Rita Industrial Drive Agat Guam USA 96915;**

– and –

Guam Power Authority, hereinafter referred to as the "Authority" or "GPA", a Public Corporation with its office located at the **Gloria B. Nelson Public Service Building 688 Route 15, Mangilao, Guam 96913;**

RECITALS

WHEREAS, GPA seeks the services an independent third-party Petroleum Inspection and Testing Company to comply with its contractual requirements with its fuel supplier; and

WHEREAS, GPA seeks to engage the professional services and assistance of **CONTRACTOR** to provide Petroleum Inspection and Testing services as are specified herein; and

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

WHEREAS, GPA has issued an Invitation for Bid for Petroleum Inspection and Testing Services for Diesel Fuel Oil No.2 under IFB GPA-046-21; and

WHEREAS, CONTRACTOR submitted a bid for the Petroleum Inspection and Testing Services for Diesel Fuel Oil No.2; and

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

WHEREAS, CONTRACTOR is fully willing to provide, and is capable of providing, the Petroleum Inspection and Testing Services for Diesel Fuel Oil No.2 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; **CONTRACTOR** and GPA hereby agree as follows:

SECTION 1. DEFINITIONS

“\$” refers to currency in U.S. dollars.

“ASTM” shall mean the American Society for Testing and Materials.

“API” shall mean the American Petroleum Institute.

“Approved” shall mean that the documents are satisfactory from the standpoint of interfacing with GPA-furnished components, and/or GPA has not observed any statement or feature that appears to deviate from the Specification requirements.

“Approved as Revised” shall mean that the 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.

“Barrel” shall mean a volume equivalent to 42 U.S. gallons.

“Change Order” shall mean a written instrument to CONTRACTOR signed by GPA authorizing an addition, deletion, or revision in services, or an adjustment in the purchase order price or the delivery time, issued after the effective date of this Contract.

“Contract” shall mean the Petroleum Inspection and Testing Services Contract executed as a result of this IFB.

“Contract Agreement (Agreement)” shall mean the written agreement between GPA and CONTRACTOR covering the furnishing of the 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 hereto by reference herein.

“Contract Documents” shall mean this Contract, the Tender documents, bonds (where required), these General Conditions, any Supplementary Conditions, the Specifications, and any other documents specifically identified in this Contract, together with all Modifications issued after execution of this Contract.

“Contracting Officer” shall mean the General Manager of the Guam Power Authority and shall include his authorized representatives.

“CONTRACTOR” shall mean 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 its 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 calendar days or the dates stated in the Agreement for furnishing the Goods and/or Special Services.

“Defective” shall mean an adjective which when modifying the word services refers to services which are unsatisfactory, faulty, deficient, do not conform to the Contract Documents, or do not meet the requirements of any Inspection, Testing, reference standard, test, or approval referred to in the Contract Documents.

“Effective Date of the Contract Agreement” shall mean the date indicated in the first paragraph of this Contract on which date this Contract becomes effective, or if no such date is indicated, the date by which this Contract is signed by both parties.

“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.

“Goods” shall mean all property required to be furnished by CONTRACTOR under the procurement documents.

“Modification” shall mean a written amendment of this Contract signed by both parties, or Change Order.

“Notice” shall mean and include all written notice demands, instructions, claims, approvals and disapprovals required to obtain compliance with contract requirements. The CONTRACTOR must provide and maintain a post office address within Guam and file the same with the Contracting Officer.

“GPA” or “Authority” shall mean the Guam Power Authority.

“Facility” shall mean the facilities where services are to be used for or incorporated into.

“Procurement Officer” shall mean The General Manager of the Guam Power Authority or his designee.

“PURCHASER” shall mean the Guam Power Authority with whom CONTRACTOR has entered into this Contract.

“Seller” means the CONTRACTOR.

“Services” shall mean the services to be furnished by CONTRACTOR as required by this Contract.

“Territory” shall mean the Territory of Guam.

SECTION 2. OPERATION OF THIS CONTRACT

The Guam Power Authority’s responsibility for the enforcement of this Contract resides with the General Manager or his designee. The CONTRACTOR shall identify to GPA the

person(s) responsible for the implementation of the Contract and who shall act as the CONTRACTOR's point of contact.

SECTION 3. CONTRACTOR'S OBLIGATIONS

The CONTRACTOR shall be responsible for the proper Inspection and Testing, and the timely reporting of the product quantity and quality for determining the acceptability/unacceptability of cargo deliveries to GPA without any delays. If delays are experienced which are directly attributed to the Contractor, corresponding penalties, including but is not limited to wharfage/demurrage charges will be billed to the Contractor.

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

The CONTRACTOR shall establish a standard operating procedure or update existing procedures for preventing product contamination. The CONTRACTOR shall fulfill all other responsibilities related to petroleum Inspection and Testing.

3.1. Scope of Work

Contractor shall provide comprehensive product Inspection and Testing services on Petro-tanker Ships, Shoretanks, Pipelines and other sources relative to ship-to-shore, shore-to-ship, and shore-to-shore fuel transfer operations, at no additional cost to GPA.

Contractor shall be responsible for performing Petroleum Products Inspection and Testing Services for GPA in accordance with the standard petroleum industry practices (ASTM, API, ISO or alternate methods acceptable to GPA) on an as needed basis. Contractor shall provide comprehensive inspection, sounding, and product sampling services on Petro-Tanker Ships, Shoretanks, Pipelines and other sources relative to ship-to-shore, shore-to-ship, and shore-to-shore fuel transfer operations. The Contractor shall provide comprehensive product testing services under the quality specifications set forth in Schedule A.

A. Petroleum Inspection

Contractor responsibility shall include the following, but is not limited to:

- a. Provide qualified and competent Petroleum Inspectors. A valid certification issued by the International Federation of Inspection Agencies (IFIA) or equivalent is required.
- b. Intervention/ Supervision of cargo discharging and receiving operation; Inspection of pipelines, terminals, ship-to-shore, shore-to-ship, or shore-to-shore transfers; work closely with GPA and its contractors for the safe handling of petroleum products.
- c. Coordination with authorized Terminal and Vessel representatives to perform required function aboard the vessel and at the Shoretank Facility.
- d. Ship compartment inspection before and after cargo discharging for quantity determination;
- e. Shoretanks inspection before and after cargo receipt for quantity determination;
- f. Product sampling for quality determination;
- g. Coordination with the Testing Facility for the product quality determination for acceptability under the quality specifications set forth in Schedule A.
- h. Audit and investigate discrepancies and/or losses exceeding the following limits: 0.30% for in-transit variation (ship-to-ship) and 0.40% for shore-to-shore (loadport versus discharge port) variation.
- i. Document standard operating procedures, application manuals and process manuals for inspection and sampling of petroleum products.
- j. Submit comprehensive, accurate, and timely reporting of ship and shoretank inventory quantities. Provide loadport and discharge port cargo variance analysis (Four Point Analysis) in order to determine discrepancies of ship's cargo quantities for possible cargo claims.
- k. Perform sealing operations;
- l. Represent and defend GPA in all controversies that may arise pertaining to the cargo custody transfer;
- m. Perform other essential functions relative to petroleum inspection.

B. Petroleum Testing

Contractor responsibility shall include the following, but is not limited to:

- a. Testing of petroleum products on "As Needed" basis;
- b. Provide equipment and materials for the determination of the quality of petroleum products;

- c. Ensure standard quality control procedures are performed for the determination of the quality of petroleum products;
- d. Work closely with GPA and/or its authorized agents for the safe handling of petroleum products;
- e. Coordinate and cooperate with authorized Terminal, Dock and Vessel representatives to perform required function aboard the vessel and at the Shoretank Facility;
- f. Prioritize testing of critical parameters as required by GPA;
- g. Provide test results in a timely manner;
- h. Resolve controversies on fuel quantity and quality as it arises;
- i. Provide technical advice to GPA as may be required;
- j. Other essential functions relative to petroleum testing.

The CONTRACTOR shall ensure that the products in GPA's storage tanks meet the Fuel Specifications required by GPA. The CONTRACTOR shall not cause to contaminate the product stored in the bulk storage tanks, and shall be liable for any product contamination resulting from the negligent acts of its employees or agents. Such negligent acts shall be subject to claims by GPA against the CONTRACTOR.

3.2. Contractor Facility.

Contractor must maintain an Inspection and laboratory facility in Guam. Petroleum testing facility shall hold a valid certification issued by a recognized institution such as ISO, etc. Such certification shall be provided to GPA.

3.3. Personnel.

The CONTRACTOR shall provide qualified and competent personnel to deliver the services required by the Authority. CONTRACTOR shall provide all personnel required to safely, efficiently, and legally receive all vessel shipments and other fuel movement operations as may be required by the Authority. The CONTRACTOR shall provide adequate number of qualified and trained personnel to properly conduct Petroleum Inspection and Testing Services for Diesel Fuel Oil No.2.

3.4. Testing Standard and Laboratory Capability

- a. Contractor must be capable of providing the testing services for all the parameters listed in Schedule A in the Guam laboratory facility.
- b. Contractor must follow testing protocols as per ASTM, API, ISO and other internationally recognized testing standards and as agreed with GPA.
- c. Contractor must and shall continue to participate in various Laboratory Correlation schemes such as ASTM Inter-Laboratory Crosscheck Program, Global round robin program, the US Navy Correlation Program, Shell Main Products Correlation Schemes, or other program as may be suggested by GPA. Contractor shall provide GPA with a most recent copy of the certificate of participation from the program it is presently enrolled.
- d. In the event of equipment breakdown, Contractor shall exert its best effort to restore or replace the defective equipment expeditiously. Contractor may sub-contract testing services to other qualified and petroleum-certified laboratory facility in Guam at no additional cost to GPA. Prices shall be at the contract price or lesser.

3.5. Delivery Time

- a. Contractor must deliver accurate and speedy results. Inspection and Testing must be treated as urgent and results must be provided as quickly as possible without compromising accuracy and quality.
- b. Contractor shall monitor delivery times to include custody transfer reports, monitoring and logging of receipt, testing and reporting of results of the sample(s). Delivery time for complete custody transfer report and test results shall be provided to GPA no later than 4 working days after completion of cargo receipt and receipt of the sample(s), respectively.
- c. Contractor must make every effort to improve over-all efficiency.

3.6. Reporting

- a. Contractor shall have the ability to tailor its reports in a format that will satisfy the client's needs. These reports can be delivered either by hard copy

or electronically. Electronic transmittals must allow the merging of documents or extraction of pages.

- b. Contractor shall submit comprehensive, accurate, and timely reporting of product quantities and qualities.
- c. Contractor shall determine and immediately report to GPA, any significant discrepancies between the loadport and discharge port cargo quantity, quality analysis, or out-of-specification quality results for potential cargo claims.

3.7. Sample Handling

Samples shall be retained at the Contractor's facility no less than ninety (90) days at no additional cost to GPA. Samples exceeding the retention period shall be disposed by the Contractor at no additional cost to GPA.

3.8. Coordination with GPA.

Contractor shall coordinate with the GPA and its agents for all Petroleum Inspection and Testing related activities.

3.9. Access to Facility.

Contractor shall provide GPA safe access to its inspection and laboratory facility. Contractor shall familiarize, expose, or allow GPA staff to witness and/or observe laboratory testing along with specifying the particular analyses of interest.

3.10. Others

Contractor shall perform other relevant petroleum inspection and testing functions as may be required by GPA.

SECTION 4. (INTENTIONALLY LEFT BLANK)

SECTION 5. CONTRACT TERM

5.1 Term.

The term for the Petroleum Inspection and Testing Services Contract for Diesel Fuel Oil No.2 shall be for a three (3) year period commencing on or about December 1, 2021 and shall continue until the midnight of November 30, 2024.

GPA shall have the right to extend the contract for two (2) additional one-year (1-year) terms with the mutual consent of both parties.

5.2 Extension.

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

5.3 Notice of Extension.

GPA shall notify CONTRACTOR in writing 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 years.

At the beginning of the 3rd contract year GPA and the CONTRACTOR shall negotiate the contract extension terms based on the optimum requirements for the facility. These requirements shall be considered as starting negotiation points between GPA and the 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 6. COMPENSATION FOR SERVICES

- (a) GPA shall pay CONTRACTOR for costs and services rendered hereunder in accordance with this Agreement. Compensation for services performed and provided by CONTRACTOR at the rate stipulated in this section. Payment shall be made within 30 days of after receipt of an acceptable invoice. In the event of any dispute with regard to any portion of the invoice, the undisputed portion shall be paid pending

settlement of the dispute. Should GPA fail to make any payment due to CONTRACTOR under this Agreement, GPA shall pay interest to CONTRACTOR in accordance with the provisions of the Prompt Payment Act, 5 GCA Sections 22502-22507.

- (b) 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.
- (c) 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 7. CONTRACT PRICE

The Contract Price constitutes the total consideration to be paid by GPA to CONTRACTOR for the complete delivery of all Contract Items, and for performing other services in connection therewith in accordance with the Contract Documents as amended by the parties pursuant to the Agreement. The Price or Cost for each Contract Item under this Agreement shall remain fixed during the term of this Agreement. Unless expressly provided otherwise in the Contract Documents, the Contract Price is not subject to escalation in respect of materials and/or labor cost or any other factor or variation in rates of exchange, and all duties, responsibilities, and obligations assigned to or undertaken by 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. 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.

Item A: Inspection Fee

Contract Period	3-Year Base Period \$/bbl (in 3 decimals)	1 st Year Extension Option \$/bbl (in 3 decimals)	2 nd Year Extension Option \$/bbl (in 3 decimals)
Inspection Fee	\$0.012	\$0.013	\$0.014

Item B: Testing Fee

Item	Test Parameter	3-Year Base Period (\$)	1 st Year Extension (\$)	2 nd Year Extension (\$)
1	Flash Point	\$59.40	\$61.18	\$61.18
2	Cloud Point	\$65.00	\$66.95	\$66.95
3	Bottom Sediment & Water	\$48.80	\$50.26	\$50.26
4	Distillation Temp: a. 10% recovered b. 50% recovered c. 90% recovered d. 95% recovered	\$64.80	\$66.74	\$66.74
5	Kinematic Viscosity	\$58.40	\$60.15	\$60.15
6	Aromatic Hydrocarbons: a. Total Aromatic Hydrocarbons b. Dicyclic Aromatic Hydrocarbons c. Tricyclic and higher Aromatic Hydrocarbons	\$377.00	\$388.31	\$388.31
7	Olefin Content	\$172.80	\$177.98	\$177.98
8	Ash	\$48.80	\$50.26	\$50.26
9	Sulfur	\$160.90	\$165.73	\$165.73
10	Sulfur Mercaptan	\$90.00	\$92.70	\$92.70
11	Copper Strip Corrosion Rating (3hrs min at 50oC)	\$37.80	\$38.93	\$38.93
12	Cetane Index	\$108.00	\$111.24	\$111.25
13	Carbon Residue on 10% distillation residue	\$64.80	\$66.74	\$66.74
14	Lubricity, HFRR @ 60oC	\$369.40	\$380.48	\$380.48
15	Conductivity	\$28.10	\$28.94	\$28.94
16	Density @ 15oC	\$27.00	\$27.81	\$27.81
17	Gravity, API @ 60oF	\$27.00	\$27.81	\$27.81
18	Color	\$32.40	\$33.37	\$33.37
19	Hydrogen Sulfide in Liquid	\$281.00	\$289.43	\$289.43
20	Strong Acid No.	\$42.10	\$43.36	\$43.36
21	Total Acid No.	\$43.20	\$44.50	\$44.50
22	Odour	\$12.00	\$12.36	\$12.36

23	Stability (Oxidation), 16Hrs	\$349.90	\$360.40	\$360.40
24	Appearance @ ambient temp	\$12.00	\$12.36	\$12.36
25	Haze Rating	\$12.00	\$12.36	\$12.36
26	Particulate Contamination	\$181.00	\$186.43	\$186.43
27	Water content	\$70.00	\$72.10	\$72.10
28	Filter Blocking Tendency (FBT)	\$237.00	\$244.11	\$244.11
29	Fatty Acid Methyl Ester (FAME)	\$291.00	\$299.73	\$299.73
30	Guaranteed Heating Value (HHV)	\$129.80	\$133.69	\$133.69
31	Metals: a. Na b. K c. Ca d. V e. Pb f. Ni g. Zn h. Cu i. Ba	\$360.00	\$370.8	\$370.80
	TOTAL	\$3,681.40	\$3,977.21	\$3,977.21

SECTION 8. QUALITY ASSURANCE

Product quality specification is listed in Schedule A.

Contractor shall supply all the necessary equipment required to perform all Inspection and Testing requirements. Equipment shall be calibrated per API, ASTM or other appropriate standards. Records of equipment calibration shall be available upon request of GPA at all times.

Contractor shall be accountable for the integrity of any test or measurement data either performed by Contractor or its sub-Contractor or agents. Contractor agrees that for any such data:

- The Contractor shall maintain a quality assurance and quality control system to detect and correct erroneous data.
- All reports shall be complete and accurate.
- All reports shall be submitted in a timely manner.

- d. Specified industry standard test and equipment calibration procedures shall be followed. Any changes or modification shall require prior approval by GPA.
- e. Contractor's personnel shall be properly trained in analysis and data management.

CONTRACTOR shall be solely responsible for the cost resulting from any direct damages due to failure in quality caused by the negligence of the CONTRACTOR.

SECTION 9. WARRANTY

The CONTRACTOR's obligation to deliver and perform services in connection therewith in accordance with the Agreement is absolute, and the CONTRACTOR warrants and guarantees to GPA that all services will be in accordance with the Contract Documents.

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.

SECTION 10. DEFECTIVE WORK

No work or material which may be defective will be considered accepted as a consequence of the failure of the GPA to discover or to point out said defects.

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

If at any time GPA notifies THE CONTRACTOR in writing that any of the Services are defective, THE CONTRACTOR shall promptly provide acceptable services. If THE CONTRACTOR fails to do so, GPA may obtain the alternate or substitute services elsewhere. All costs of correcting or of obtaining services elsewhere will be charged against THE CONTRACTOR.

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

SECTION 11. DEFAULT

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

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

SECTION 12. LICENSES, PERMITS, TAXES, AND RESPONSIBILITIES

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

SECTION 13. SUBCONTRACTS

Nothing contained in the contract documents shall be construed as creating any contractual relationship between any sub-CONTRACTOR and the GPA. The diffusion or sections of the specifications are not intended to control the CONTRACTOR in dividing the work among subcontractors or to limit the work performed by any trade.

The CONTRACTOR shall be as fully responsible to the GPA for the acts and omissions of subcontractors and of persons employed by them, as Contractor is for the acts and omissions of persons directly employed by Contractor.

The CONTRACTOR shall be responsible for the coordination of the subcontractors engaged in work under this Contract.

The CONTRACTOR shall, without additional expense to the GPA, utilize the services of specialty subcontractors on those parts of the work which are specified to be performed by specialty subcontractors.

GPA will not undertake to settle any differences between the CONTRACTOR and his subcontractors or between subcontractors.

The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the work including waiver of mechanics liens to bind subcontractors by the terms of the contract documents insofar as applicable to the work of subcontractors and to give the GPA any exercise over the CONTRACTOR under any provisions of the contract documents.

SECTION 14. ASSIGNMENT OF AGREEMENT

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

SECTION 15. EQUAL OPPORTUNITY

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

- 15.3 The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the GPA, advising the said labor union or workers' representative of the CONTRACTOR's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

SECTION 16. PROHIBITION AGAINST GRATUITIES, KICKBACKS, AND FAVORS TO THE TERRITORY

GCA 5 §5630(c) prohibits the CONSULTANT against gratuities, kickbacks, and favors to the Territory and Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth in the Guam Procurement Laws and Regulations.

SECTION 17. RESTRICTION AGAINST CONTRACTORS EMPLOYING CONVICTED SEX OFFENDERS FROM WORKING AT GOVERNMENT OF GUAM VENUES

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

It states:

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

(1) warranties that no person providing services on behalf of the 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 18. CLAIMS AND DISPUTES

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

GPA and CONTRACTOR agree to attempt resolution of all controversies which arise under, or are by virtue of, this Contract through mutual agreement. If the controversy is not resolved by mutual agreement, the controversy shall be decided by GPA in writing within sixty (60) days after the CONTRACTOR shall request GPA in writing to issue a final decision, or within such longer period as may be agreed upon by the parties, then CONTRACTOR may proceed as though GPA had issued a decision adverse to the CONTRACTOR.

GPA shall immediately furnish a copy of the decision to the CONTRACTOR, by certified mail with a return receipt requested, or by any other method that provides evidence of receipt. GPA's decision shall be final and conclusive, unless fraudulent or unless the CONTRACTOR appeals the decision as follows:

(A) For disputes involving money owed by or to GPA under this Contract, the CONTRACTOR files appeal of the decision in accordance with the Government Claims Act by filing a government claim with GPA no later than eighteen months after the decision is rendered by GPA or from the date when a decision should have been rendered.

(B) For all other disputes arising under this Contract, the CONTRACTOR files an appeal with the Office of the Public Accountability pursuant to 5 G.C.A. §§ 5706(a) and 5427(e) within sixty days of GPA's decision or from the date the decision should have been made.

The CONTRACTOR shall exhaust all administrative remedies before filing an action in the Superior Court of Guam in accordance with applicable laws.

The Contractor may but is not obligated to exhaust administrative remedies before filing an action in the Superior Court of Guam in accordance with applicable laws. Notwithstanding anything to the contrary in this Agreement, Contractor is entitled to submit or file any action or dispute to the Superior Court of Guam in accordance with applicable laws at any time.

SECTION 19. TERMINATION FOR CONVENIENCE

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

Either party may terminate the performance of the services under this Contract in accordance with this clause in whole, or in part, at the discretion or in the best interest of such party, by providing sixty (60) days prior notice to the other party.

SECTION 20. 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 Guam, GPA may in its sole discretion terminate this Contract upon 30 days written notice.

SECTION 21. AMENDMENT AND WAIVER

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

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

SECTION 22. GOVERNING LAW

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

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

Either party waives all rights against the other party to claim consequential, special or punitive damages.

SECTION 23. RELATIONSHIP OF PARTIES

Nothing contained in the Contract as awarded to the successful offeror shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between 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 supplier of services and beneficiary.

SECTION 24. NOTICE TO OTHER PARTY

Either party whose obligations may be affected by any of the forces or causes set out in Section 29, shall promptly notify the other party in writing, giving full particulars thereof as soon as possible after such occurrence of such force or cause. Such party shall exercise due diligence to remove such cause with all reasonable dispatch and shall exert every efforts to resume performance at the earliest practicable time.

SECTION 25. NOTICES

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

To: INTERTEK TESTING SERVICES GUAM

(CONTRACTOR)

FAX Number: 671 649 8231

Address: Route 2A Santa Rita Industrial Drive Agat Guam USA 96915

TO: GUAM POWER AUTHORITY
Attention: General Manager

FAX Number (671) 648-8163

P.O. Box 2977, Hagatna

Guam 96932-2977

SECTION 26. CONTRACTOR'S AND SUBCONTRACTOR'S INSURANCE

26.1. Mandatory Insurance Requirements.

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

1. **General Liability.** General Liability including products, completed operations and contractual coverage for this Agreement. It shall have coverage for "on an occurrence basis" commercial general liability which includes GPA's and CONTRACTOR's protective and contractual liabilities, and have a general aggregate limit of One Million US Dollars (US\$1,000,000), a products and completed operations aggregate limit of One Million US Dollars (US\$1,000,000), and a single occurrence limit of One Million US Dollars (US\$1,000,000), and One Million US Dollars (US\$1,000,000) for any of the above.
2. **Auto Liability.** Auto Liability covering bodily injury and property damage. It shall carry coverage for owned, hired and non-owned vehicles, which includes endorsement for loss, property damage or destruction and personal bodily injury in single aggregate minimum amount of One Million US Dollars (US\$1,000,000) for each occurrence.
3. **Worker's Compensation and Employer's Liability.** Worker's Compensation and Employer's Liability – Statutory Limits. The coverage shall include all employees and all statutory limits and requirements for workers' compensation for the Territory of Guam, and including but not limited to employers' (CONTRACTOR) liability for employee bodily injury.

26.2. Certificate of Insurance.

CONTRACTOR shall furnish certificates of insurance 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.

26.3. Insurance Company and Agent.

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

SECTION 27. INDEMNITY

Both parties shall indemnify, defend and hold harmless the other party against all loss, damage, or expense (including reasonable attorney's fees incurred by each party) arising out of the performance of the services, including injury or death to any person or persons resulting from the negligent acts or omission of the either party or the either parties' employees, servants, agents or subcontractors.

The maximum aggregate liability of Contractor in contract, tor (including negligence and breach of statutory duty) or otherwise for any breach of this Agreement or any matter arising out of or in connection with the Services to be provide in accordance with this Agreement shall be an amount equal to the fees paid by GPA and/or its supplier to Contractor for the Services performed in accordance with this Agreement.

SECTION 28. RESPONSIBILITY OF CONTRACTOR TO ACT IN EMERGENCY

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

SECTION 29. FORCE MAJEURE.

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

- (a) War, etc. War, hostilities, acts of public enemy or belligerents, sabotage, blockade, revolution, insurrection, riot or disorder;

- (b) Restraints. Arrest or restraint of princes, rulers or peoples;
- (c) Confiscation. Expropriation, requisition, confiscation of nationalization;
- (d) Rationing. Embargoes, export or import restrictions or rationing or allocation, whether imposed by law, decree or regulation or by voluntary cooperation of industry at the insistence or request of any governmental authority or person purporting to act therefore;
- (e) Regulations. Interference by restriction or onerous regulations imposed by civil or military authorities, whether legal or de facto and whether purporting to act under some constitution, decree, law or otherwise;
- (f) Acts of God. Acts of God, fire, frost or ice, earthquake, storm, lightning, tide, tidal wave, or peril of the sea, accident of navigation or breakdown or injury of vessels, pandemics;
- (g) Loss of Tankers. Loss of tanker tonnage due to sinking or capture by belligerents, to include acts of piracy or to governmental taking whether or not by formal requisition;
- (h) Accidents. Accidents to or adjuncts of shipping navigation;
- (i) Strikes and Quarantine. Epidemics, quarantine, strikes or combination of workmen, lockouts, or other labor disturbances;
- (j) Explosions. Explosion, accidents by fire or otherwise to wells, pipes, storage facilities, refineries, installations, machinery;
- (k) Taking by Government. Unavailability of fuel because of the election of the government of the country of its origin to confiscate, retain, ban export, or otherwise prevent shipment of fuel;
- (l) Mechanical Breakdown. Unavailability of GPA's electric generating plant and any, or all, appurtenances thereto, including transmission and distribution facilities, due to any mechanical operate as designed, emergency outages of equipment or facilities for the purpose of making repairs to avoid breakdown thereof or damage thereto other than regularly scheduled repairs or regular maintenance; or

- (m) Other Events. Any event, matter or thing wherever occurring and whether or not of the same class or kind as those set forth, which shall not be reasonably within the control and without the fault or negligence of the party affected thereby.

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

Invocation of Force Majeure

The party invoking Force Majeure shall perform the following:

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

Should the circumstances of *Force Majeure* continue over a period of ninety (90) days, either party 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 this 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.

Force majeure claims shall be submitted within 90 days. After this period, no claims shall be accepted by any parties.

SECTION 30. ATTORNEY'S FEES AND COSTS

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

SECTION 31. REMEDIES

Any dispute arising under or out of this contract is subject to the provisions of Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations. Notwithstanding anything to the contrary in this Agreement, Contractor is entitled to submit or file any dispute to the Superior Court of Guam in accordance with applicable laws.

SECTION 32. COVENANT AGAINST CONTINGENT FEES

The Contractor represents and warrants that it has not employed or retained any company or person, other than a bonafide employee working solely for the Contractor to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bonafide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award of making of this Contract. For breach or violation of this warranty, GPA shall have the right to annul this Contract without liability, or in its discretion to deduct from the Contract Price of consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

SECTION 33. WAGE DETERMINATION (5 GCA ARTICLE 13)

- a. The CONTRACTOR shall pay its employees whose purpose in whole or in part is the direct delivery of services in accordance with the Wage Determination applicable to this Contract.
- b. In addition to the subsection above, the CONTRACTOR shall pay said employees health and similar benefits having a minimum value as detailed in the Wage Determination, and shall pay them a minimum of ten (10) paid holidays per year.
- c. The CONTRACTOR is advised that the Guam Department of Labor, or its successor, shall monitor compliance with the provisions of 5 GCA Article 13, Wage and Benefit Determination. The Director of the Department of Labor, or that person's successor, shall investigate possible or reported violations of the provisions of the law, and shall forward such findings to GPA. The Department of Labor, or its successor, shall promulgate rules and regulations, pursuant to the Administrative Adjudication law, as needed to ensure the equitable investigation of violations and the maintenance of due process, as well as the assessment of any monetary penalties in the event of a violation, providing that such monetary penalties shall be limited to assessment of no less than One Hundred Dollars (\$100.00) per day, and no more than One Thousand Dollars (\$1,000.00) per day, until such time as a

violation has been corrected, as well as the payment of all back wages and benefits due.

- d. In the event there is a violation, the CONTRACTOR may be placed on probationary status by the Chief Procurement Officer of the General Services Agency, or its successor, for a period of one (1) year. During the probationary status, the CONTRACTOR shall not be awarded any contract by any instrumentality of the Government of Guam. In the event the CONTRACTOR is placed on probationary status, or has been assessed a monetary penalty pursuant to 5 GCA Article 13, the CONTRACTOR may appeal such penalty or probationary status to the Superior Court of Guam.
- e. The CONTRACTOR has submitted a Declaration of Compliance with Wage Determination laws with the most recent Wage Determination promulgated by the U.S. Department of Labor attached.
- f. Upon any renewal of this Contract, GPA and the CONTRACTOR agree that the Wage Determination promulgated by the U.S. Department of Labor on a date most recent to the renewal shall apply to the Contract.

SECTION 34. REPRESENTATION REGARDING ETHICAL STANDARDS

The 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 5 GCA Chapter 5 Article 11 (Ethics in Public Contracting) of the Guam Procurement Act and in Chapter 11 of the Guam Procurement Regulations.

SECTION 35. COUNTERPARTS

This Contract may be executed in several counterparts, each of which shall be an original, and all of which together shall constitute but one instrument. Delivery of an executed counterpart of a signature page to this Contract by facsimile or by electronic mail in portable document file (pdf) format, shall be effective as delivery of a manually executed counterpart to this Contract.

SECTION 36. CONTRACT BINDING EFFECT

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

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

CONTRACTOR:

GPA:

INTERTEK TESTING SERVICES GUAM

GUAM POWER AUTHORITY



JOSE RICHARD Z. GAMO
Regional Managing Director



for JOHN M. BENAVENTE, P.E.
General Manager

Date: March 30, 2022

Date: April 4, 2022

APPROVED AS TO FORM:

By: D Graham Botha
D. GRAHAM BOTHA, Esq.,
GPA Staff Attorney

Date: April 1, 2022

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	deg C		5
Bottom Sediment & Water	D2709	vol %		0.05
Distillation Temp:				
a. 10% recovered	D86	degC	180	230
b. 50% recovered	D86	degC	230	310
c. 90% recovered	D86	degC	282	360
d. 95% recovered	D86	degC	300	370
Kinematic Viscosity	D445	mm ² /s at 40 degC	1.9	4.1
Aromatic Hydrocarbons:				
a. Total Aromatic Hydrocarbons	D6591 or IP391	wt%		30
b. Dicyclic Aromatic Hydrocarbons	D6591 or IP391	wt%		5
c. Tricyclic and higher Aromatic Hydrocarbons	D6591 or IP391	wt%		1
Olefin Content	D1319	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 @ 15°C	D4052 or D1298	kg/m3	820	850
Gravity, API @ 60oF	D1298 or D4052		35	41
Color	D1500			2.0

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		4
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	
Metals:				
a. Na	D7111	ppmw		0.1
b. K	D7111	ppmw		0.1
c. Ca	D7111	ppmw		Less than 0.1
d. V	D7111	ppmw		Less than 0.1
e. Pb	D7111	ppmw		Less than 0.1
f. Ni	D7111	ppmw		Less than 0.1
g. Zn	D7111	ppmw		Less than 0.1
h. Cu	D7111	ppmw		Less than 0.1
i. Ba	D7111	ppmw		Less than 0.1

Notes:

- A. Contractor must operate and maintain its own petroleum-certified laboratory facility in Guam and must have the capability of testing all the parameters listed in Schedule A.
- B. GPA shall allow the Contractor a testing capability of at least 60% in its Guam facility for a temporary period not to exceed 8 months from contract signing. Thereafter, all test parameters listed in Schedule A above must be 100% tested in Guam.
 - i. Contractor may sub-contract testing services to other petroleum-certified laboratory facility in Guam or its off-island affiliate during the 8-months grace period at no additional cost to GPA. Prices shall be at the contract price or lesser.

- ii. Contractor may sub-contract testing services to other petroleum-certified laboratory facility in Guam after the 8-months grace period at no additional cost to GPA. Prices shall be at the contract price or lesser.
- C. For the purpose of determining the preliminary acceptance of the product for the commencement of the cargo discharging, Contractor is required at a minimum, to prioritize the test for the following critical parameters:
 - 1. Sulfur
 - 2. Conductivity
 - 3. API gravity
 - 4. Density
 - 5. Water by distillation
 - 6. Flash Point

Testing and submittal of test results for the critical parameters shall be expedited and transmitted immediately to GPA or its assigns as soon as the result for each test parameter is completed.

- D. Contractor shall continue, expedite and complete the testing of the remaining parameters. Results shall be transmitted immediately to GPA or its assigns as soon as completed and immediately notifying GPA of non-conforming results.