

BEFORE THE PUBLIC UTILITIES COMMISSION

**PETITION TO APPROVE AWARD
FOR ULSD DELIVERY TO SOUTH
PACIFIC PETROLEUM
CORPORATION BY PORT
AUTHORITY OF GUAM**

PAG DOCKET 22-01

ALJ REPORT



INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC”) pursuant to the February 3, 2022 Petition (hereinafter referred to as the “Petition”) for review and approval of the South Pacific Petroleum Corporation (“SPPC”) contract related to the delivery of Ultra-Low Sulfur Diesel fuel to its Load Centers, Above Ground Storage Tank and Gantry Cranes, filed by the Jose D. Leon Guerrero Commercial Port, Port Authority of Guam (“PAG” or the “Port”).

BACKGROUND

According to PAG, the Port is “the primary seaport in Micronesia,” and serves as a “transshipment port for the entire Western Pacific Region.”¹ “It operates the largest U.S. deep water seaport in the Western Pacific Region and currently handles over 2 million tons of cargo a year.”² In addition, it maintains “various cargo handling equipment to move cargoes and to support the maintenance of other cargo handling equipment.”³

¹ Determination of Need, p. 1 (Oct. 7. 2021).

² Determination of Need, p. 1.

³ Determination of Need, p. 1.

The Port, therefore, needs sufficient fuel for its cargo handling operations, specifically for cargo to be discharged, unloaded, loaded, and “stuffed.”⁴ This fuel is further required to ensure that such operations continue 24-hours daily, for any vessel, “in a safe and timely manner” and to “prevent costly delays” to consumers, its “customers and the people of Guam.”⁵ According to PAG, it utilizes Ultra-Low Sulfur Diesel (“ULSD”) fuel of about 15,000 gallons per month.⁶

On November 29, 2021, PAG issued IFB PAG-022-002, which sought the services of a contractor who could deliver ULSD to the Port’s gantry cranes, load centers, and above-ground storage tank.⁷ Thereafter, PAG received two bids.⁸ SPPC offered the lowest responsible and responsive bid of \$2.757 per gallon of ULSD, or about \$468,690.00 per year⁹ for 170,000 gallons of ULSD.¹⁰

On December 20, 2021, PAG issued SPPC a Notice of Intent to Award.¹¹ On January 20, 2022, PAG’s Board of Directors approved the contract award to SPPC and authorized PAG to petition the PUC for approval of the contract.¹²

⁴ Determination of Need, p. 1.

⁵ Determination of Need, p. 1.

⁶ Determination of Need, p. 1.

⁷ PAG Resolution No. 2022-03, p. 1 (Jan. 20, 2022) (“Resolution No. 2022-03”).

⁸ Resolution No. 2022-03, p. 1.

⁹ SPPC Bid, p. 37.

¹⁰ Resolution No. 2022-03, p. 1; Legal Review of IFB PAG-022-002, p. 2.

¹¹ Legal Review, p. 2.

¹² Resolution No. 2022-03, p. 1.

DISCUSSION

1. PAG's Contract Review Protocol

Pursuant to 12 G.C.A. §12105, PAG may not enter into any contractual agreements or obligations which could increase rates and charges without the PUC's express approval. Additionally, pursuant to PAG's current Contract Review Protocol, "[a]ll professional services contracts in excess of \$1,000,000" and "[a]ll internally financed contracts utilizing O&M funds in excess of \$1,000,000, whether or not the contract extends over a period of one year or several years" "shall require prior PUC approval under 12 G.C.A. §12004." Contract Review Protocol, PAG Docket 09-01, p. 1 (June 20, 2011). Further, with respect to multi-year contracts, PAG's Contract Review Protocol provides that "PAG must obtain PUC approval if the total costs over the entire procurement term exceed the review threshold."

2. Scope of Services, Contract Provisions, and Cost

The IFB sought a unit price for a gallon of ULSD fuel (for 170,000 gallons).¹³ As indicated in the IFB, the fuel is specifically for the Port's cargo handling and support equipment, namely: Gantry #4, Gantry #5, Gantry #6; the Port's 5 Load Centers; and the Port's 8,000-gallon above-ground fuel tank.¹⁴ The IFB requires the direct delivery of such fuel from the contractor's tanker truck to the Port's cranes, load centers, and fuel tank. The IFB requires safety hook-up fittings to transfer the fuel; and that the fueling must meet all local and federal requirements.¹⁵

¹³ IFB, p. 33.

¹⁴ IFB, p. 33.

¹⁵ IFB, p. 33.

All quantities and deliveries of fuel will be on an “as needed basis” and will be coordinated between PAG and the contractor.¹⁶

According to the IFB, the storage and handling of such fuel shall comply with applicable NFPA (National Fire Protection Association) flammable and combustible liquid code.¹⁷ Other provisions include cancellation of the contract should PAG have insufficient funds for payment to the contractor; the requirement of insurance coverage; and 24 hours notice for deliveries, among others.¹⁸

The IFB further provides for an initial three-year term, with two additional option years. The invoice cost of the ULSD is calculated based on a formula provided in Exhibit 1 of the IFB, which explains that the invoice price shall be the sum of the previous month’s average cost of the fuel plus the premium fee. The “fixed premium fee” is calculated as the Bid Price minus the monthly average cost of the fuel for the previous month.

According to PAG, it anticipates spending approximately \$460,000.00 per year for the delivery and fuel.¹⁹ PAG submits that the contract will be funded through its operations budget.²⁰

3. SPPC Guam

According to its website 76CircleKGuam.com, SPPC specifically offers bulk fuel delivery for commercial needs, as well as temporary fuel storage tanks. SPPC can also fuel a variety of vessels through its tanker truck, and has its own terminal on Cabras Island.

¹⁶ IFB, p. 33.

¹⁷ IFB, p. 33.

¹⁸ IFB, pp. 25-28.

¹⁹ Petition, p. 1.

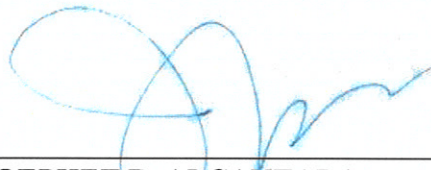
²⁰ Petition, p. 1.

RECOMMENDATION AND CONCLUSION

Based on the documentation provided, the ALJ finds that the subject contract is reasonable and necessary. The fueling of the Port's cargo handling and support equipment, namely: Gantry #4, Gantry #5, Gantry #6; the Port's 5 Load Centers; and the Port's 8,000-gallon above-ground fuel tank, is crucial to its operations. Indeed, the Port needs sufficient fuel for such cargo handling operations, and to ensure that such operations continue 24-hours daily, uninterrupted, and "in a safe and timely manner" in order to "prevent costly delays" to consumers, its "customers and the people of Guam."²¹ Based on the services it offers, as well as the fact that SPPC has its own terminal at the Port, it is clear that SPPC is qualified to provide the services set forth in the IFB.

Based on this record, the ALJ recommends that the PUC approve the IFB award to SPPC and approve the contract related to the delivery of ULSD to the Port's gantry cranes, load centers, and above-ground storage tank; and for a cost of up to \$468,690.00 per year²² for 170,000 gallons of ULSD. A proposed Order for the PUC is attached hereto for the PUC's consideration.

Respectfully submitted this 21st day of February, 2022.



JOEPHET R. ALCANTARA
Administrative Law Judge

P223008.JRA

²¹ Determination of Need, p. 1.

²² SPPC Bid, p. 37.

BOARD OF DIRECTORS

*Francisco G. Santos, Chairman
Nathan T. Taimanglo, Vice Chairman
Isa Marie C. Koki, Board Secretary
Dorothy P. Harris, Member
Dr. Judith P. Guthertz, Member*



Resolution No. 2022-03

RELATIVE TO PETITIONING THE PUBLIC UTILITIES COMMISSION (PUC) FOR THE APPROVAL OF THE AWARD TO SOUTH PACIFIC PETROLEUM CORPORATION FOR THE DELIVERY OF ULTRA-LOW SULFUR DIESEL TO THE PORT AUTHORITY OF GUAM'S GANTRY CRANES, LOAD CENTERS, AND ABOVE GROUND STORAGE TANK

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE PORT AUTHORITY OF GUAM:

WHEREAS, on November 29, 2021, the Port Authority of Guam (PAG) issued an Invitation for Bid IFB-PAG-022-002 for the delivery of Ultra-Low Sulfur Diesel (ULSD) to the Port Authority of Guam's gantry cranes, load centers, and above ground storage tank; and

WHEREAS, a total of two (2) firms submitted their proposals, namely IP&E Guam and South Pacific Petroleum Corporation (SPPC); and

WHEREAS, after the opening of all sealed bids and determining that all bidders were determined to have met the standards of responsibility and responsiveness as outlined in the Guam Procurement Rules and Regulations. South Pacific Petroleum Corporation was the lowest bidder, offering a price of \$2.757 per gallon, or approximately \$470K per year for 170,000 gallons of ULSD; and

WHEREAS, this bid is made possible through local funds of the Port Authority of Guam; now therefore be it

RESOLVED, the Port Authority Board of Directors authorizes Management to petition the Public Utilities Commission (PUC) to review and approve the contract award to South Pacific Petroleum Corporation in accordance with the Contract Review Protocol for the Port Authority of Guam; and be it further

RESOLVED, the Chairman certify to, and the Secretary attest to, the adoption hereof and that a copy of this resolution be sent to the Public Utilities Commission.

PASSED AND ADOPTED UNANIMOUSLY BY THE BOARD OF DIRECTORS THIS 20th DAY OF JANUARY, 2022.

**FRANCISCO G. SANTOS
CHAIRMAN, BOARD OF DIRECTORS
PORT AUTHORITY OF GUAM**

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**ISA MARIE C. KOKI
SECRETARY, BOARD OF DIRECTORS
PORT AUTHORITY OF GUAM**





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ATURIDAT I PUETTON GUAHAN
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Telephone: 671-477-5931/35 Facsimile: 671-477-2689/4445
Website: www.portguam.com



Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

MEMORANDUM

TO: Procurement File
FROM: General Manager
RE: Ultra Low Sulfur Diesel Delivery Services (REBID); IFB-PAG-022-002

The following determinations are made to justify the Port Authority of Guam's (Port) approval of the above referenced procurement:

AG ISSUANCE OF AG FORM 9

On November 9, 2021 the AG's Office issued AG form 8 with an AG Reference No. PAG 21-0712 under the guidance of Port Legal Counsel Christine K. Claveria for the above referenced procurement.

DETERMINATION OF PLANNING

The PAG has previously determined that there is a need to issue an Invitation for Bid ("IFB") to acquire services for Ultra-Low Sulfur Diesel Fuel ("ULSD"). *See* Determination of Need (Dec. 02, 2019).

The Port Authority of Guam's Transportation Department ensures that the Port has enough fuel for the various types of cargo handling and support equipment's to continue to operate and meet the demand of all cargoes anticipated to be discharged, loaded, de-vanned and stuffed. Having the sufficient amount for fuel will ensure that all of the Port cargo handling and support equipment's on hand will continue to operate 24 hours on a daily basis for any vessel operation and Special Service Request in a safe and timely manner and to prevent costly delays to our customers and the people of Guam.

All planning documents including the Requisition Request, Approved Budget, Determination of Need, Determination re: Use of Multi-Term Contract, Market Research, correspondence, and all relevant documents have been inserted into the procurement file as justification for the "planning of procurement."

ADVERTISEMENT

On November 29, 2021, an advertisement was placed in the Guam Daily Post soliciting bids for Ultra-Low Sulfur Diesel Fuel. Four (4) firms /companies registered and picked up copies and/or downloaded the IFB packet from the PAG website. As a result of the five (4) registered offerors, the undersigned determines that the PAG has been transparent, open, and fair in the solicitation of the above referenced IFB.

The published advertisement and registration sheet have been recorded and placed in the procurement file.

SUBMITTALS

The above referenced IFB is a rebid of IFB-PAG-001-021. The deadline for bid submittals was scheduled for Tuesday, December 14, 2021 at 2:00 PM. Two (2) firms/companies submitted their bids on or before the bid submittal deadline.

BID ANALYSIS, PRICE OFFER, and NOIA

The bids were opened and read publicly on December 14, 2021 at 2:00 PM. The bid documents were reviewed by the Port's Procurement Division. As a result of the review of the bid documents submitted, it was determined that the bids met the standards of responsibility and responsiveness as outlined in the Guam Procurement Rules and Regulations.

It was further determined that South Pacific Petroleum Company (SPPC) was the lowest responsible and responsive bidder, offering a price of \$2.757 per gallon, or approximately \$470,000.00 per year for 170,000 gallons of ULSD. This is a sample formula in which invoices shall be calculated, the previous month average (float with Singapore MOPS) and the premium fee. The fixed premium fee is the equivalent of the bid price minus the monthly average of the previous month. To determine the invoice price, the following formula is used:

$$\begin{aligned}\text{Bid Offer} - \text{Previous Month Average (MOPS)} &= \text{Fixed Premium} \\ \text{Bid Offer} + \text{Fixed Premium} &= \text{Invoice Price}\end{aligned}$$

A Notice of Intent to Award ("NOIA") was sent to SPPC on December 20, 2021. A Notice of Results was also issued to the only other bidder informing them that their bid was rejected due to high price and that SPPC was recommended for award. SPPC acknowledged receipt of the NOIA on December 24, 2021. Accordingly, it is determined that South Pacific Petroleum Company (SPPC) was the lowest responsible and responsive bidder.

All bid documents, bid submittal sheets, correspondence, and all relevant documents have been inserted into the procurement file as justification for the bid acceptance and bid evaluation.

TYPE OF CONTRACT

This will be a multi-term Professional Services Contract Agreement for the delivery service of ULSD. This is a three (3) year contract with two (2), one (1) year renewals, provided this contract does not exceed the total contract term of five (5) years. The Port previously determined that a multi-term contract best serves the agency's need by encouraging competition or otherwise promote economies in territory procurement. A multi-term contract will also prevent delays of service, downtime, and any lapse of service to obtain such commodity.

The Determination re: Use of Multi-Term Contract and all supporting documents have been inserted into the procurement file as justification for a multi-term contract.

DETERMINATION OF RELATIONSHIP WITH CONTRACTOR

The undersigned determines that the relationship between SPPC and the Port Authority of Guam is professional and that SPPC is an independent contractor, whose is responsible and responsive as required by Guam Procurement Law and is authorize to do business on Guam.

DETERMINATION

The above referenced procurement was first initiated back in December 2019, and has been routed through three different attorneys for review. In the interim, it was necessary for the PAG to continue on a month-to-month contract with SPPC while the legal review was pending, which resulted in seventeen (17) contract extensions. Due to the significant amount of time that has since passed, the unstable and rising market price of ULSD, the unforeseen sequence of events (i.e. COVID-19 and the absence of Port legal counsel), and the interrupted legal review, it was the undersigned's recommendation that the PAG cancel and rebid the above referenced procurement as soon as reasonably possible.

Further, although initially estimated above \$500,000, the cost of the project was reduced below the \$500,000 threshold and therefore, the requirements of Title 5 GCA § 5150, were no longer warranted at the time. However, because the actual bid amount and calculations when applied to the contract period exceeded \$500,000, the undersigned determined that legal guidance was necessary at every phase of the above referenced procurement in order to comply with the mandates of Guam Procurement Law. Thus, the PAG immediately engaged Staff Attorney and SAAG Claveria to assist and provide legal guidance moving forward in the rebid of this procurement.

Accordingly, the rebid of the above referenced procurement was commenced in November 2021 under the guidance of Port Legal Counsel and Special Assistant Attorney General Christine Claveria. Attorney Claveria participated and provided legal guidance throughout all phases of this procurement.

Thus, based on the foregoing, and after a thorough review of the entire procurement process for the above referenced procurement, the undersigned determines that SPPC has met the requirements of procurement law and is deemed responsible. The undersigned also determines the total price offered by SPPC is fair and reasonable. It is further determined that SPPC has met the requirements of the procurement law and is determined to be the lowest, most responsible and most responsive bidder.

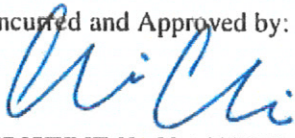
Finally, the undersigned determines, subject to Attorney Claveria's comments, that the procurement process was conducted in accordance with Guam Procurement Law Title 5, Chapter 5 of the GCA and 2 GAR Div. 4. Furthermore, it is determined that the Port's procurement officials conducted their efforts in an open, fair, and transparent manner and in the best interest of the Port and the People of Guam.

Finally, this determination is made for the current IFB only.

Port Authority of Guam


RORY J. RESPICIO
General Manager

Concurred and Approved by:


CHRISTINE K. CLAVERIA
Port Staff Attorney
Special Assistant Attorney General

**GOVERNMENT OF GUAM
GENERAL TERMS AND CONDITIONS**

SEALED BID SOLICITATION AND AWARD

Only those Boxes checked below are applicable to this bid.

- [X] 1. **AUTHORITY:** This solicitation is issued subject to all the provision of the Guam Procurement Act (5GCA, Chapter 5) and the Guam Procurement Regulations (copies of both are available at the Office of the Complier of laws, Department of Law, copies available for inspection at the PORT AUTHORITY OF GUAM). It requires all parties involved in the Preparation, negotiation, performance, or administration of contracts to act in good faith.
- [X] 2. **GENERAL INTENTION:** Unless otherwise specified, it is the declared and acknowledged intention and meaning of these General Terms and conditions for the bidder to provide the Government of Guam (Government) with specified services or with materials, supplies or equipment completely assembled and ready for use.
- [X] 3. **TAXES:** Bidders are cautioned that they are subject to Guam Income Taxes as well as all other taxes on Guam Transactions. Specific information on taxes may be obtained from the Director of Revenue and Taxation.
- [X] 4. **LICENSING:** Bidders are cautioned that the Government will not consider for award any offer submitted by a bidder who has not complied with the Guam Licensing Law. Specific information on licenses may be obtained from the Director of Revenue and Taxation.
- [X] 5. **LOCAL PROCUREMENT PREFERENCE:** All procurement of supplies and services where possible, will be made from among businesses licensed to do business on Guam in accordance with section 5008 of the Guam Procurement Act (5GCA, Chapter 5) and Section 1-104 of the Guam Procurement Regulations.
- [X] 6. **COMPLIANCE WITH SPECIFICATIONS AND OTHER SOLICITATION REQUIREMENTS:** Bidders shall comply with all specifications and other requirements of the Solicitation.
- [X] 7. **"ALL OR NONE" BIDS:** NOTE: By checking this item, the Government is requesting all of the bid items to be bid or none at all.
The Government will not award on an itemized basis.
- [X] 8. **INDEPENDENT PRICE DETERMINATION:** The bidder, upon signing the Invitation for Bid, certifies that the prices in his bid were derived at without collusion, and acknowledge that collusion and anti-competitive practices are prohibited by law. Violations will be subject to the provision of Section 5651 of that of the Guam Procurement Act. Other existing civil, criminal or administrative remedies are not impaired and may be in addition to the remedies in Section 5651 of the Government code.
- [X] 9. **BIDDER'S PRICE:** The Government will consider not more than two (2) (Basic and Alternate) item prices and the bidder shall explain fully each price if supplies, materials, equipment, and/or specified services offered comply with specifications and the products origin. Where basic or alternate bid meets the minimum required specification, cost and other factors will be considered. Failure to explain this requirement will result in rejection of the bid.
- [X] 10. **BID ENVELOPE:** Envelope shall be sealed and marked with the bidder's name, Bid number, time, date and place of Bid Opening.
- [X] 11. **BID GUARANTEE REQUIREMENT:** Bidder is required to submit a Bid Guarantee Bond or standby irrevocable Letter of Credit or Certified Check or Cashier's Check in the same bid envelope to be held by the Government pending award. The Bid Guarantee Bond, Letter of Credit, Certified Check or Cashier's Check must be issued by any local surety or banking institution licensed to do business on Guam and made payable to the Treasure of Guam in the amount of fifteen percent (15%) of his highest total bid offer. The Bid Bond must be submitted on Government Standard Form BB-1 (copy enclosed). Personal Checks will not be accepted as Bid Guarantee. If a successful Bidder (contractor) withdraws from the bid

or fails to enter into contract within the prescribed time, such Bid guarantee will be forfeited to the Government of Guam. Bids will be disqualified if not accompanied by Bid Bond, Letter of Credit, Certified Check or Cashier's check. Bidder must include in his/her bid, valid copies of a Power of Attorney from the Surety and a Certificate of Authority from the Government of Guam to show proof that the surety company named on the bond instrument is authorized by the Government of Guam and qualified to do business on Guam. For detailed information on bonding matters, contact the Department of Revenue and Taxation. Failure to submit a valid Power of Attorney and Certificate of Authority on the surety is cause for rejection of bid. **Pursuant to 5 GCA § 5212, all competitive sealed bidding for the procurement of supplies or services exceeding \$25,000.00 a 15% Bid Security of the total bid price must accompany the bid package. The bid bond, Letter of Credit, Certified Check or Cashier's Check will serve as Bid Security for this procurement.**

- [X] 12. **PERFORMANCE GUARANTEE:** Bidders who are awarded a contract under this solicitation, guarantee that goods will be delivered or required services performed within the time specified. Failure to perform the contract in a satisfactory manner may be cause for suspension or debarment from doing business with the Government of Guam. In addition, the Government will hold the Vendor liable and will enforce the requirements as set forth in Section 40 of these General Terms and Conditions.
- [X] 13. **SURETY BONDS:** Bid and Bid Bonds coverage must be signed or countersigned in Guam by a foreign or alien surety's resident general agent. The surety must be an Insurance Company, authorized by the government of Guam and qualified to do business in Guam. Bids will be disqualified if the Surety Company does not have a valid Certificate of Authority from the Government of Guam to conduct business in Guam.
- [X] 14. **COMPETENCY OF BIDDERS:** Bids will be considered only from such bidders who, in the opinion of the Government, can show evidence of their ability, experience, equipment, and facilities to render satisfactory service.
- [X] 15. **DETERMINATION OF RESPONSIBILITY OF BIDDERS:** The GENERAL MANAGER reserves the right for securing from Bidders information to determine whether or not they are responsible and to inspect plant site, place of business; and supplies and services as necessary to determine their responsibility in accordance with Section 15 of these General Terms and Conditions.
(2 GAR, Div. 4 § 3116)
- [X] 16. **STANDARD FOR DETERMINATION OF LOWEST RESPONSIBLE BIDDER:**
In determining the lowest responsible offer, the GENERAL MANAGER shall be guided by the following:
- a) Price of items offered.
 - b) The ability, capacity, and skill of the Bidder to perform.
 - c) Whether the Bidder can perform promptly or within the specified time.
 - d) The quality of performance of the Bidder with regards to awards previously made to him.
 - e) The previous and existing compliance by the Bidder with laws and regulations relative to procurement.
 - f) The sufficiency of the financial resources and ability of the Bidder to perform.
 - g) The ability of the bidder to provide future maintenance and services for the subject of the award.
 - h) The compliance with all of the conditions to the Solicitation.
- [X] 17. **TIE BIDS:** If the bids are for the same unit price or total amount in the whole or in part, the GENERAL MANAGER will determine award based on 2 GAR, Div. 4, § 3109(o) (2) or to reject all such bids.
- [X] 18. **BRAND NAMES:** Any reference in the Solicitation to manufacturer's Brand Names and number is due to lack of a satisfactory specification of commodity description. Such preference is intended to be descriptive, but not restrictive and for the sole purpose of indicating prospective bidders a description of the article or services that will be satisfactory. Bids on comparable items will be considered provided the bidder clearly states in his bid the exact articles he is offering and how it differs from the original specification.
- [] 19. **DESCRIPTIVE LITERATURE:** Descriptive literature(s) as specified in this solicitation must be furnished as a part of the bid and must be received at the date and time set for opening Bids. The literature furnished must clearly identify the item(s) in the Bid. The descriptive literature is required to establish, for the purpose of evaluation and award, details of the product(s) the bidder proposes to furnish including design, materials, components, performance characteristics, methods of manufacture, construction,

assembly or other characteristics which are considered appropriate. Rejection of the Bid will be required if the descriptive literature(s) do not show that the product(s) offered conform(s) to the specifications and other requirements of this solicitation. Failure to furnish the descriptive literature(s) by the time specified in the Solicitation will require rejection of the bid.

- [] 20. **SAMPLES:** Sample(s) of item(s) as specified in this solicitation must be furnished as a part of the bid and must be received at the date and time set for opening Bids. The sample(s) should represent exactly what the bidder proposes to furnish and will be used to determine if the item(s) offered complies with the specifications. Rejection of the Bid will be required if the sample(s) do not show that the product(s) offered conform(s) to the specifications and other requirements of this solicitation. Failure to furnish the sample(s) by the time specified in the Solicitation will require rejection of the Bid.
- [] 21. **LABORATORY TEST:** Successful bidder is required to accompany delivery of his goods with a Laboratory Test Report indicating that the product he is furnishing the Government meets with the specifications. This report is on the bidder's account and must be from a certified Testing Association.
- [X] 22. **AWARD, CANCELLATION, & REJECTION:** Award shall be made to the lowest responsible and responsive bidder, whose bid is determined to be the most advantageous to the Government, taking into consideration the evaluation factors set forth in this solicitation. No other factors or criteria shall be used in the evaluation. The right is reserved as the interest of the Government may require to waive any minor irregularity in bid received. The GENERAL MANAGER shall have the authority to award, cancel, or reject bids, in whole or in part for any one or more items if he determines it is in the public interest. Award issued to the lowest responsible bidder within the specified time for acceptance as indicated in the solicitation, results in a bidding contract without further action by either party. In case of an error in the extension of prices, unit price will govern. It is the policy of the Government to award contracts to qualified local bidders. The Government reserves the right to increase or decrease the quantity of the items for award and make additional awards for the same type items and the vendor agrees to such modifications and additional awards based on the bid prices for a period of thirty (30) days after original award. No award shall be made under this solicitation which shall require advance payment or irrevocable letter of credit from the government (2 GAR, Div.4 §1103).
- [] 23. **MARKING:** Each outside container shall be marked with the Purchase Order number, item number, brief item description and quantity. Letter marking shall not be less than 3/4" in height.
- [X] 24. **SCHEDULE FOR DELIVERY:** Successful bidder shall notify the PORT AUTHORITY OF GUAM, Telephone Nos. 477-5931, at least twenty-four (24) hours before delivery of any item under this solicitation.
- [] 25. **BILL OF SALE:** Successful supplier shall render Bills of Sale for each item delivered under this contract. Failure to comply with this requirement will result in rejection of delivery. The Bill of Sale must accompany the items delivered but will not be considered as an invoice for payment. Supplier shall bill the Government in accordance with billing instructions as indicated on the Purchase Order.
- [] 26. **MANUFACTURER'S CERTIFICATE:** Successful bidder is required, upon delivery of any item under this contract, to furnish a certificate from the manufacturer indication that the goods meet the specifications. Failure to comply with this request will result in rejection of delivery payment. Supplier shall bill the Government in accordance with billing instructions as indicated on the Purchase Order.
- [X] 27. **INSPECTION:** All supplies, materials, equipment, or services delivered under this contract shall be subject to the inspection and/or test conducted by the Government at destination. If in any case the supplies, materials, equipment, or services are found to be defective in material, workmanship, performance, or otherwise do not conform with the specifications, the Government shall have the right to reject the items or require that they be corrected. The number of days required for correction will be determined by the Government.
- [] 28. **MOTOR VEHICLE SAFETY REQUIREMENTS:** The Government will only consider Bids on motor vehicles which comply with the requirements of the National Traffic and Motor Vehicle safety Act of 1966 (Public Law 89-563) and Clean Air Act as amended (Public Law 88-206), that are applicable to Guam. Bidders shall state if the equipment offered comply with these aforementioned Federal Laws.
- [] 29. **SAFETY INSPECTION:** All motor vehicles delivered under this contract must pass the Government of Guam Vehicle Inspection before delivery at destination.

[] 30. **GUARANTEE:**

a) Guarantee of Vehicle Type of Equipment:

The successful bidder shall guarantee vehicular type of equipment offered against defective parts, workmanship, and performance, for a period of not less than one (1) year after date of receipt of equipment. Bidder shall also provide service to the equipment for at least one (1) year. Service to be provided shall include, but will not be limited to tune ups (change of spark plugs, contact points and condensers) and lubrication (change of engine and transmission oil). All parts and labor shall be at the expense of the bidder. All parts found defective and not caused by misuse, negligence or accident within the guarantee period shall be repaired, replaced, or adjusted within six (6) working days after notice from the Government and without cost to the Government. Vehicular type of equipment as used in this context shall include equipment used for transportation as differentiated from tractors, backhoes, etc.

b) Guarantee of Other Type of Equipment:

The successful bidder shall guarantee all other types of equipment offered, except those mentioned in 30a, above, against defective parts, workmanship, and performance for a period of not less than three (3) months after date of receipt of equipment. Bidder shall also provide service to the equipment for at least three (3) months. All parts found defective within that period shall be repaired or replaced by the Contractor without cost to the Government. Repairs, adjustments or replacements of defective parts shall be completed by the contractor within six (6) working days after notice from the Government.

(c) Compliance with this Section is a condition of this Bid.

[X] 31. **REPRESENTATION REGARDING ETHICS IN PUBLIC PROCUREMENT:** The bidder or contractor represents that it has not knowingly influenced and promises that it will not knowingly influence a Government employee to breach any of the ethical standards and represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth on Chapter 11 (Ethics in Public Contracting) of the Guam Procurement Act and in Chapter 11 of the Guam Procurement Regulations.

[X] 32. **REPRESENTATION REGARDING CONTINGENT FEES:** The contractor represents that it has not retained a person to solicit or secure a Government contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business (GPR Section 11-207).

[X] 33. **EQUAL EMPLOYMENT OPPORTUNITY:** Contractors shall not discriminate against any employee or applicant of employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that employees are treated equally during employment without regards to their race, color, religion, sex, or national origin.

[X] 34. **COMPLIANCE WITH LAWS:** Bidders awarded a contract under this Solicitation shall comply with the applicable standard, provisions, and stipulations of all pertinent Federal and/or local laws, rules, and regulations relative to the performance of this contract and the furnishing of goods.

[] 35. **CHANGE ORDER:** Any order issued relative to awards made under this solicitation will be subject to and in accordance with the provisions of Section 6-101-03.1 of the Guam Procurement Regulations.

[X] 36. **STOP WORK ORDER:** Any stop work order issued relative to awards made under this solicitation will be subject to and in accordance with the provisions of Section 6-101-04.1 of the Guam Procurement Regulations.

[X] 37. **CANCELLATION OF INVITATION FOR BIDS OR REQUEST FOR PROPOSALS:** Any Invitation for Bid may be cancelled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the Territory in accordance with regulations promulgated by the Policy Office. The reasons therefor shall be made part of the contract file.

[X] 38. **TIME FOR COMPLETION:** It is hereby understood and mutually agreed by and between the contractor and the Government that the time for delivery to final destination or the timely performance of certain services is an essential condition of this contract. If the contractor refuses or fails to perform any of the provisions of this contract within the time specified in the Purchase Order (from the date Purchase

Order is acknowledged by vendor), then the contractor is in default. Defaults will be treated subject to and in accordance with the provisions of 2 GAR, Div. 4 § 6101(8)

- [X] 39. **JUSTIFICATION OF DELAY:** Bidders who are awarded contracts under this Solicitation, guarantee that the goods will be delivered to their destination or required services rendered within the time specified. If the bidder is not able to meet the specified delivery date, he is required to notify the GENERAL MANAGER of such delay. Notification shall be in writing and shall be received by the GENERAL MANAGER at least twenty-four (24) hours before the specified delivery date. Notification of delay shall include an explanation of the causes and reasons for the delay including statement(s) from supplier or shipping company causing the delay. The Government reserves the right to reject delay justification if, in the opinion of the GENERAL MANAGER, such justification is not adequate.
- [X] 40. **SERVICE-DISABLED VETERAN OWNED BUSINESS PREFERENCE:** Bidding is subject to the policy in favor of Service-Disabled Veteran Owned Business as defined in 5 GCA sections 5011 and 5012.
- [X] 41. **LIQUIDATED DAMAGES:** When the contractor is given notice of delay or nonperformance as specified in Paragraph 1 (Default) of the Termination for Default Clause of this contract and fails to cure in the time specified, the contractor shall be liable for damages for delay in the amount of one-fourth of one percent (1%) of outstanding order per calendar day from date set for cure until either the territory reasonable obtains similar supplies or services if the contractor is terminated for default, or until the contractor provides the supplies or services if the contractor is not terminated for default. To the extent that the contractor's delay or nonperformance is excused under Paragraph 40 (Excuse for Nonperformance or Delayed Performance) of the Termination for Default Clause of this contract, liquidated damages shall not be due the territory. The contractor remains liable for damages caused other than by delay. **2 GAR, Div. 4 §6101(d).**
- [X] 42. **PHYSICAL LIABILITY:** If it becomes necessary for the Vendor, either as principal, agent or employee, to enter upon the premises or property of the Government of Guam in order to construct, erect, inspect, make delivery or remove property hereunder, the Vendor hereby covenants and agrees to take, use, provide and make all proper, necessary and sufficient precautions, safeguards and protections against the occurrence of any accidents, injuries or damages to any person or property during the progress of the work herein covered, and to be responsible for, and to indemnify and save harmless the Government of Guam from the payment of all sums of money by reason of all or any such accidents, injuries or damages that may occur upon or about such work, and fines, penalties and loss incurred for or by reasons of the violations of any territorial ordinance, regulations, or the laws of Guam or the United States, while the work is in progress. Contractor will carry insurance to indemnify the Government of Guam against any claim for loss, damage or injury to property or persons arising out of the performance of the Contractor or his employees and agents of the services covered by the contract and the use, misuse or failure of any equipment used by the contractor or his employees or agents, and shall provide certificates of such insurance to the Government of Guam when required.
- [X] 43. **INSURANCE COVERAGE REQUIRED:** The amount of insurance required shall be determined by the Port's General Manager depending upon the type of activity conducted, or to be conducted by the owners or operators of vehicles entering the Port's facilities other service providers accessing on foot.
- A. Commercial General Liability including Broad Form Property Damage and Contractual Liability \$1,000,000.00 combined single limit of liability
 - B. Worker's Compensation – Statutory
 - C. Automobile Liability - \$1,000,000.00 combined single limit of liability

Insurance Company: The insurance coverage(s) must be issued by those insurance companies who are licensed to do business on Guam, as determined by the Insurance Commissioner of the Department of Revenue and Taxation.

Additional Insurance Provision: All Commercial insurance policies possessed by owners or operators of vehicles entering or using the Port's facilities and/or grounds must name the Port as an additional Insured in their policies and specify that the Port shall be given at least thirty (30 days' prior written notice of any cancellation, material change or reduction in coverage.

Proof of Insurance: An Insurance Certificate must be issued listing all the vehicles, equipment, trucks covered under the insurance policy and filed with the Port Police Division. The insurance should include;

Name of the Insured (The Port must be shown as an Additional Insured on all Commercial insurance policies)
Policy Number

Effective Date of Policy
Limits of Insurance
Description of Coverage Provided; and
Name of Issuing Company

A certified copy of the Insurance Certificate must be carried in each vehicle, equipment and/or truck entering the Port facilities. This proof of insurance must be provided to the Port Police Division on an annual basis at least ten (10) days before the insurance policy expires.

Notice of Loss: In the event a Port tenant or user is involved in an accident within the Port's facilities or while on Routes 11A or 11B (Cabras Highway) and results in bodily injury or property damage, the Port Police Division must be immediately notified.

Workers' Compensation: All business entities entering or using the Port's facilities must also possess Workers' Compensation Insurance coverage as prescribed by Guam laws and copies of such Certificate of Insurance are to be filed with the Port Police Division. Each certification shall specify that the Port shall be given at least thirty (30) days prior written notice of any cancellation, material change or reduction in coverage.

Interchange Agreement: In lieu of fulfilling the maximum the maximum insurance requirements listed herein, the Port user must provide to the Port a current Interchange Agreement. The primary company must have fulfilled the maximum insurance requirements listed above. The Interchange Agreement must specifically state and name the Port user as additional insured and the duration of coverage. The Port must be notified thirty (30) days prior written notice of any cancellation, materials change or reduction in coverage.

[X] 44. Contract will be cancelled if funds not appropriated or insufficient, and that government will timely inform contractor. 2 GAR, Div.4 §3121(e) (1) (C) and 2 GAR, Div.4 § 3121(e)(1)(D).

[] 45. If cancelled, contractor will be reimbursed unamortized reasonably incurred non-recurring costs. 2 GAR, Div.4 § 3121(e) (1) (G).

[X] 46. **CONTACT FOR CONTRACT ADMINISTRATION:** If your firm receives a contract as a result of this Solicitation, please designate a person whom we may contact for prompt administration.

Name: _____ Title: _____

Address: _____ Telephone: _____

GOVERNMENT OF GUAM

SEALED BID SOLICITATION INSTRUCTIONS

1. **BID FORMS:** Each bidder shall be provided with one (1) sets of Solicitation forms. Additional copies may be provided upon request. Bidders requesting additional copies of said forms will be charged per page in accordance with 5 GCA § 10203 of the Government Code of Guam. All payments for this purpose shall be by cash, certified check or money order and shall be made payable to the PORT AUTHORITY OF GUAM (EO 86-24).
2. **PREPARATIONS OF BIDS:**
 - 2.0 Bidders are required to examine the drawings, specifications, schedule, and all instructions. Failure to do so will be at bidder's risk.
 - 2.1 Each bidder shall furnish the information required by the Solicitation. The bidder shall sign the Solicitation and print or type his name on the Schedule. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent are to be accompanied by evidence of this authority unless such evidence has been previously furnished to the issuing office.
 - 2.2 Unit price for each unit offered shall be shown and such price shall include packing unless otherwise specified. A total shall be entered in the amount column of the Schedule for each item offered. In case of discrepancies between a unit price and extended price, the unit price will be presumed to be correct.
 - 2.3 Bids for supplies or services other than those specified will not be considered. Time, if stated as a number of days, means calendar days and will include Saturdays, Sundays, and holidays beginning the day after the issuance of a Notice to Proceed. Time stated ending on a Saturday, Sunday or Government of Guam legal holiday will end at the close of the next business day.
3. **EXPLANATION TO BIDDERS:** Any explanation desired by a bidder regarding the meaning or interpretation of the Solicitation, drawings, specifications, etc., must be submitted in writing and with sufficient time allowed for a written reply to reach all bidders before the submission of their bids. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective bidder concerning a Solicitation will be furnished to all prospective bidders in writing as an amendment to the Solicitation if such information would be prejudicial to informed bidders.
4. **ACKNOWLEDGEMENT OF AMENDMENTS TO SOLICITATIONS:** Receipt of an amendment to a Solicitation by a bidder must be acknowledged by signing an acknowledgement of receipt of the amendment. Such acknowledgement must be received prior to the hour and date specified for receipt of bids.
5. **SUBMISSION OF BIDS:**
 - a) Bids and modifications thereof shall be enclosed in sealed envelopes and addressed to the office specified in the Solicitation. The bidder shall show the hour and date specified in the Solicitation for receipt, the Solicitation number, and the name and address of the bidder on the face of the envelope.
 - b) Telegraphic bids will not be considered unless authorized by the Solicitation. However, bids may be modified or withdrawn by written or telegraphic notice, provided such notice is received prior to the hour and date specified for receipt (see paragraph 6 of these instructions).
 - c) Samples of items, when required, must be submitted within the time specified, unless otherwise specified by the Government, at no expense to the Government. If not destroyed by testing, samples will be returned at bidder's request and expense, unless otherwise specified by the Solicitation.
 - d) Samples or descriptive literature should not be submitted unless it is required on this solicitation. Regardless of any attempt by a bidder to condition the bid, unsolicited samples or descriptive

literature will not be examined or tested at the bidder's risk, and will not be deemed to vary any of the provisions of this Solicitation.

6. **FAILURE TO SUBMIT BID:** If no bid is to be submitted, do not return the solicitation unless otherwise specified. A letter or postcard shall be sent to the issuing office advising whether future Solicitations for the type of supplies or services covered by this Solicitation are desired.

7. **LATE BID, LATE WITHDRAWALS, AND LATE MODIFICATIONS:**

- a) Definition: Any bid received after the time and date set for receipt of bids is late. Any withdrawal or modification of a bid received after the time and date set for opening of bids at the place designated for opening is late (Guam Procurement Regulations 2 GAR, Div.4 §3109(k)).
- b) Treatment: No late bid, late modification, or late withdrawal will be considered unless received before contract award, and the bid, modification, or withdrawal would have been timely but for the action or inaction of territorial personnel directly serving the procurement activity.

8. **DISCOUNTS:**

- a) Notwithstanding the fact that prompt payment discounts may be offered, such offer will not be considered in evaluating bids for award unless otherwise specified in the Solicitation. However, offered discounts will be taken if payment is made within the discount period, even though not considered in the evaluation of bids.
- b) In connection with any discount offered, time will be computed from date of delivery and acceptance of the supplies to the destination as indicated in the purchase order or contract. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the Government check.

9. **GOVERNMENT FURNISHED PROPERTY:** No material, labor or facilities will be furnished by the Government unless otherwise provided for in the Solicitation.

10. **SELLER' INVOICES:** Invoices shall be prepared and submitted in quadruplicate (one copy shall be marked "original") unless otherwise specified. Invoices shall be "certified true and correct" and shall contain the following information: Contract and order number (if any), item numbers, description of supplies or services, sizes, quantities, unit prices, and extended total. Bill of lading number and weight of shipment will be shown for shipments made on Government bills of lading.

11. **RECEIPT, OPENING AND RECORDING OF BIDS:** Bids and modifications shall be publicly opened in the presence of one or more witnesses, at the time, date, and place designated in the Invitation for Bids. The name of each bidder, the bid price, and such other information as is deemed appropriate by the Procurement Officer, shall be read aloud and recorded, or otherwise made available. The names and addresses of required witnesses shall be recorded at the opening. The opened bids shall be available for public inspection except to the extent the bidder designates trade secrets or other proprietary data to be confidential as set forth in accordance with Section 12, below. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. Prices, makes and models or catalogue numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary (Guam Procurement Regulations 2 GAR, Div.4 §3109(k)).

12. **CONFIDENTIAL DATA:** If a bidder considers any information submitted in its bid to be confidential, the bidder must identify in writing to the Government those portions which it considers confidential, and must request in writing that those portions be kept confidential. Only trade secrets and proprietary data will be considered confidential. If there is a request for confidentiality, the Government will render a decision on the request as soon as practicable after bids are opened. The Government will advise any bidder requesting confidentiality, of the Government's decision in writing. If the Government does not agree with a bidder's request, then the Government will inform the bidder that it may lodge a protest regarding any part of the Government's decision by following the procedure for protests outlined in Chapter 9 of the Guam Procurement Regulations.

13. **PROHIBITION AGAINST GRATUITIES AND KICKBACKS:** With respect to this procurement and any other contract that bidder may have or wish to enter into with the Government, the bidder represents that he/she has not violated, is not violating, and promises that he will not violate the prohibition against gratuities and kickbacks set forth in the Guam Procurement Regulations.

14. **STATEMENT OF QUALIFICATIONS:** The ability capacity and skill of the Bidders to perform; Whether the bidder can perform promptly or within the specified time; The quality of performance of the Bidder with regards to awards previously made to him; The sufficiency of the financial resources and ability of the bidders to perform; and the compliance with all of the conditions to the solicitation.

15. **WAGE AND BENEFIT COMPLIANCE-CONTRACTORS PROVIDING SERVICES**

- a) Contractor with regard to all person its employs whose purpose in whole or in part is the direct delivery of services contracted for with the Government of Guam in this procurement, shall pay such employees in accordance with the Wage Determination for Guam and the Northern Marianas Islands issued and promulgated by the U.S. Department of Labor for such labor as is employed in the direct deliverance of deliverables to the government of Guam. 5 GCA § 5801 Contractor shall be responsible for flowing down this obligation to its subcontractors.
- b) The Wage Determination most recently issued by the U.S. Department of Labor at the time this Agreement was awarded to Contractor shall be used to determine wages and benefits which shall be paid to employees pursuant to this clause. 5 GCA § 5801
- c) Should any contract contain a renewal clause, then at the time of renewal adjustments there shall be stipulations contained in that contract for applying the Wage Determination, so that the Wage Determination promulgated by the U.S Department of Labor on a date most recent to the renewal date shall apply. 5 GCA § 5801
- d) In addition to the Wage Determination detailed above, health and similar benefits for employees having a minimum value as detailed in the Wage Determination issued and promulgated by the U.S. Department of Labor shall apply. Contractor shall pay a minimum of ten (10) paid holidays per annum per employee. 5 GCA § 5802
- e) Any violation of Contractor or its subcontractor's obligations of this section shall be investigated by the Guam Department of Labor and may include a monetary penalty assessment by the Guam Department of Labor 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. 5 GCA § 5803
- f) In addition to any and all other breach of contract actions the Government of Guam may have under this procurement, in the event there is a violation in the process set forth in subsection (e) above, Contractor may be placed on probationary status by the GENERAL MANAGER of the General Service Agency, or its successor, for a period of one (1) year.

During the probationary status, a Contractor shall not be awarded any contract by any instrumentality of the Government of Guam. A Contractor who has been placed on probationary status, or has been assessed a monetary penalty pursuant to 5 G.C.A. Article 13 Title 5 may appeal such penalty or probationary status to the Superior Court of Guam. 5 GCA § 5804

- g) Contractor along with all proposed Offerors and submitter under this procurement were required to submit a Declaration of Compliance with Wage Determination laws as part of this procurement with a copy of the most recent Wage Determination for Guam and the Northern Marianas Islands issued and promulgated by the U.S. Department of Labor. 5 GCA §5805
- h) The applicable USDOL Wage Determination Rate Revision (as defined by subsections (b) and (c)) is to this Agreement. Contractor agrees to provide upon written request by the Government of Guam written certification of its compliance with its obligations as part of each invoice, along with the names of any employees, their positions, and detailed wage and benefits paid in keeping with this section. Additionally, upon request by Government of Guam the Contractor shall submit source documents as to those individuals provide direct services in part or whole under this Agreement and its payments to them of such wages and benefits.

16. **ETHICAL STANDARDS:** With respect to this procurement and any other contract that the Contractor may have, or wish to enter into, with any government of Guam agency, the Contractor represents that it has not knowingly influenced, and promises that it will not knowingly influence, any government employee to breach any of the ethical standards set forth in the Guam Procurement Law and in any of the Guam Procurement Regulations.

17. **PROHIBITION AGAINST CONTINGENT FEES:** The Contractor represents that he has not retained any person or agency upon an agreement or understanding for a percentage, commission, brokerage, or other contingent arrangement, except for retention of bona fide employees or bona fide established commercial selling agencies, to solicit or secure this Agreement or any other contract with the government of Guam or its agencies.

18. **CONTRACTOR'S WARRANTY AS TO EMPLOYEES AND SEX OFFENSES. Reference 5 GCA 5253 (b)**

Contractor warrants 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 of 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.

Contractor warrants that if any person providing services on behalf of 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. Any contractor found in violation of this section, after notice from the Government of Guam, after notice from the contracting authority of such violation, shall within twenty-four (24) hours, take corrective action and shall report such action to the contracting authority. Failure to take corrective action with the stipulated period may result in the temporary suspension of the contract at the discretion of the Government of Guam.

19. **POLICY IN FAVOR OF SERVICE-DISABLED VETERAN OWNED BUSINESSES** P.L. 31-115 (September 20, 2011) 5 GCA § 5011 and § 5012 In the procurement of any supply or service, (except for professional services), if such supply or service is offered by a Service-Disabled Veteran Owned Business "SDVOB", as defined in 5 GCA § 5012, that is at least fifty one percent (51%) owned by service-disabled veteran(s), and if the supply or service is available within the period that is required for the procurement, and the price for the supply or service does not exceed one hundred five percent (105%) of the lowest bidder price, a preference shall be given to that SDVOB by the Government of Guam, and the supply or service shall be purchased from said SDVOB. This shall be in addition to any other procurement benefit the SDVOB may qualify for under Guam law. A business concern is a qualified SDVOB if: (a) the business concern is licensed to do business on Guam; (b) the business concern maintains its headquarters on Guam; (c) the business concern is at least fifty-one (51%) owned by a service-disabled veteran(s) who served in the active U.S. military service, was discharged or released under honorable conditions and whose disability is service-connected as demonstrated by a DD214, and certified by an award letter from the U.S. Department of Veterans Affairs; the DD214 and Disability award letter from U.S. Department of Veterans Affairs are submitted to the Government of Guam procuring agency for every service offered; and the service disabled veteran(s) owner(s) of the business concern has filed individual tax returns on Guam for a period of at least three (3) consecutive years.

| ITEM NO. | DESCRIPTION | QUANTITY | UNIT | UNIT PRICE | EXTENSION |
|----------|------------------------------|----------|-------|------------|-----------|
| 1.1 | Ultra-Low Sulfur Diesel Fuel | 170,000 | Gals. | \$ _____ | \$ _____ |

Fuel for Port Cargo Handling and Support Equipments are as follows:

Gantry #4, Gantry #5, Gantry #6, Load Centers (LC1,2,3,4,5) and any other future acquired equipments. These equipments are not designed to travel on the road. The Port also has an 8,000 gal capacity above ground fuel tank. Method of delivery will be direct delivery of fuel from bidder's fuel tanker truck to Port's above ground fuel tank, Gantries, Load Centers and any other future acquired equipments. The Bidder must be able to provide any required safety hook-up fittings needed to transfer the diesel fuel. Fueling should meet all local and federal requirements.

PROVISIONS:

Contract Period: The contract period will be for three (3) years with two (2) additional options each option will be one (1) year each renewal upon the availability of funds.

Contract Price: Price submitted shall be fixed premium fee for the duration of the contract period.

Fuel Requirements: The Ultra-Low Sulfur Diesel Fuel must meet Guam Public Law 30-184 Requirements, which indicates the effective start date of January 01, 2011.

Delivery: Delivery date and quantity will on an as needed basis and will be coordinated between the successful bidder and the requesting agency/department.

Additional Requirements:

1. In the event that other agencies within the Government of Guam, having the same requirements, upon notification and acceptance of additional requirements, the effective price of said bid shall be used as the confirmed price. This additional requirement shall not exceed the term of this bid.
2. The successful bidder must ensure that they meet all the Port Authority of Guam credentials requirements for their employees and equipment's to properly enter the Port Authority of Guam. List of these requirements may vary by the type of business action and service that is being performed. The Port Authority of Guam, Port Police office will determine that type of credentials needed for service being provided.

Fuel Handling and Storage: The storage and handling of liquid fuels such as gasoline and Diesel shall be in accordance with NFPA flammable and combustible liquid code (NFPA No. 30-1969) which is incorporated by reference as specified in Section 1910.6,29 CFR CH.XVII.

Physical Liability: If it becomes necessary for the bidder, either as principle, agent or employee, to enter the premises or property of the Port Authority of Guam/Government of Guam in order to construct, erect, inspect, make delivery or remove property here under, the bidder covenants and agrees to take, use, provide and make all proper, necessary and sufficient precautions, safeguards and protections against the occurrence of any accidents, injuries or damages to any person or property during the progress of work herein covered and to be responsible for, and to indemnify and save harmless the Port authority of Guam/Government of Guam from payment of all sums of money by reason of all or any such accidents, injuries or damages that may occur upon such work, and fines, penalties and loss incurred for or by reason of the violations of any territorial ordinances, regulations, or laws of Guam or the United States while work is in progress. Contractor will carry insurance to indemnify the Port Authority of Guam/Government of Guam against claims for loss, damage or injury to property or persons arising out of the performance of the contractor or his employees and agents of the services covered by the contract and the use, misuse or failure of any equipment used by the contractor or his employees or agents, and shall provide certifications of such insurance to the Port Authority of Guam/Government of Guam when required.

These specifications have been developed by Mr. Raymond B. Santos, Mr. Joaquin P. Pangelinan of the Maintenance and Operations divisions and was approved by Port Management Mr. Dominic G. Muna, Mr. Luis

R. Baza, and Mr. Rory J. Respicio All items on these Bid specifications pertains to purchasing and delivering of Ultra-Low Sulfur Diesel Fuel.

