

**Invitation For Bid
(Multi-Step Bid)**

BID No.: GWA 2006-15

PERFORMANCE MANAGEMENT CONTRACT

FOR THE

**GUAM WATERWORKS AUTHORITY
WASTEWATER TREATMENT PLANTS,
WASTEWATER COLLECTION SYSTEM AND
WASTEWATER LIFT STATIONS**



Volume I

Commercial Terms & Conditions

MAY 2006

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1. Introduction

The Guam Waterworks Authority (“GWA”), hereinafter referred to as GWA, is inviting Private Management Teams to participate in a Multi-Step Bid for a Performance Management Contractor (PMC), hereinafter referred to as PMC or Contractor, to manage, operate, construct, repair, and maintain GWA’s wastewater treatment plants, wastewater collection system as well as the wastewater lift stations (collectively referred to as “wastewater treatment plants, pump stations and collection system” or “wastewater system” or variants thereof).

The PMC shall be responsible for the following items:

- Management, Operation, and Maintenance of GWA’s wastewater treatment Plants, collection system and pump stations.
- Accomplishment of the Performance Improvement Projects described herein;
- Training and Supervision of GWA Staff who work in the areas defined or designated in this Bid;
- Meeting Specified Performance Standards as described hereunder;
- Inventory control and management of the areas covered by this Bid;
- Provide expert engineering, construction and management experience; and,
- Other responsibilities and duties as set forth in this Invitation for Bid.

This bid shall be conducted in a two step process. Step one will establish a Qualified Bidders List (“QBL”) based upon acceptable submitted data and information (or unpriced technical offers). Step one constitutes the period of time from the publication of the IFB announcement through the period of time that culminates in the notification of qualified Bidders. Step two is the submission and evaluation of the bid amount from the vendors identified on the QBL and will result in the award of a contract between GWA and the successful Bidder. Step Two constitutes the period of time following the completion of the Technical Proposal Evaluation and the notification of firms that qualify for the QBL, the submission of bids by the qualified firms, and will conclude upon the execution of the contract between the Bidder who submits the best prices and terms.

GWA will qualify the Bidders based on their proposal and the Qualitative Scoring Workbook Sheet (“QSWS”). The Bidders who meet the minimum qualifications will be notified by GWA and those Bidders will be eligible to proceed to the second step of the bid process which is the submission of sealed bid amounts. GWA will perform a comprehensive evaluation of each proposal and select the Bidder with the best bid based on the submitted Price Proposal Evaluation Workbook Sheet (“PPEWS”). If the selected vendor declines to execute a contract on terms and conditions acceptable to GWA, GWA may elect to either: (1) proceed to the next best Bidder; or (2) cancel the Bid.

Table 1 indicates the milestones for the bid process. GWA reserves the right to change the Bid process schedule at its sole discretion.

Table 1: Bid Schedule

Bid Process	Milestone	From Date	To Date
	Bid Announcement	5/16/06	
	Bid Documents Available	5/16/06	6/19/06
	Submit Questions	5/16/06	07/06/06
	Mandatory Pre-Bid Conference	6/19/06	6/19/06
	Site Visits	6/19/06	6/23/06
	Cut Off Date for Receipt of Questions	07/06/06	
	GWA Review and Answer Questions	5/16/06	07/11/06
	Vendor Prepare Bids	5/16/06	7/17/06
	Site Visits	07/10/06	07/12/06
Step One:	Cut Off Date for Receipt of Technical Proposals	7/17/06	
	Proposal Evaluation	07/17/06	07/28/06
	Determine & Notify Qualified Bidders	07/31/06	
Step Two:	Submission and Opening & Evaluation of Price Proposal / Selection of Vendor	8/14/06	
	Evaluation and Approval of Price and Terms	8/15/06	8/22/06
	Contract Negotiation and Finalization	8/23/06	9/5/06
	Contract Approval & Award	9/6/06	9/13/06
	Contract Mobilization	Initiate 30 days after Award	
	PMC Operational Commencement	Initiate 30 days after Award	

1.1. Invitation for Bid (IFB) Document Organization

Invitation for Bid documents are organized into five separate volumes, as follows:

- Volume I — Bid Terms and Conditions
- Volume II — Technical and Functional Requirements
- Volume III — GWA’s Wastewater System Technical Description
- Volume IV — Proposal Scoring Mechanism
- Volume V — Appendices

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

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

Bidders are reminded to submit the Price Proposal Evaluation Workbook in a separate sealed envelope marked “PRICE PROPOSAL” for Step Two of the IFB process.

1.2. Project Overview and Scope

This section describes the Performance Management Contract (Contract) in general functional terms. Volume II, Technical and Functional Requirements, shall describe the contractual relationship between GWA and the PMC in greater detail.

The Contract between the PMC and GWA shall take the form of a Fixed Management Fee Contract, whereby the parties establish contract and performance guarantees. In addition, the Contract shall include provisions for operations and maintenance supplies and services and the inventory management and control of Wastewater Division material inventory.

1.2.1. GWA Overview

GWA is a Guam Public Corporation that provides water and wastewater service throughout most of the island of Guam. GWA provides water services to approximately 39,000 customers and collects wastewater from about 21,000 sewer customers.

GWA is comprised of several departments and divisions that are currently undergoing review for both compensation and reorganization. At this time however, GWA management and operations departments and divisions are comprised of Executive Management which includes Human Resources, Chief Engineer, Laboratory & Compliance Services; Finance and Administration encompasses divisions of accounting, customer service, collection, procurement administration and data systems administration; Production & Treatment includes water production and disinfection, surface water treatment and wastewater treatment; and Collection & Distribution operates with divisions for support services, non-line assets, line assets and pump stations for both water distribution and wastewater collection.

GWA's department and divisions operate primarily out of a central office and warehouse space located at 578 North Marine Corps in Tamuning; however field crews from Production & Treatment and Collection & Distribution also have offices at various facilities located throughout the island.

1.2.2. Wastewater Division (Overview)

To service its wastewater customers, GWA owns and operates seven wastewater treatment plants. Five of the six plants are subject to conditions and limitations contained in their respective National Pollutant Discharge Elimination Systems (NPDES) permits. The treatment plants receive waste from GWA's collection and conveyance systems that include approximately seventy-three (73) wastewater pump stations. Based on a recent study compiled for GWA's Master Plan, the collection system is comprised of approximately 230 miles of pipeline ranging in size from 36" diameter to less than 10" diameter (per Brown and Caldwell Master Plan).

A full description of the wastewater system, including treatment plant, pumping stations and collection lines descriptions, evaluations and performance can be found in Volume III.

1.2.3. Wastewater Division Staff

GWA Wastewater Division is divided into 3 sections: Treatment, Collection Lines, and Collection Pumping Stations. Presently, there are 32 employees that report to the Collection & Distribution Manager (Water & Wastewater); 22 – Operations, 11 – Maintenance. There are also 19 employees that report to the Production & Treatment Manager (Water & Wastewater): 12 – Operations, 7 – Maintenance. Total wastewater employees are 54 (including managers). There are no current vacancies, however, GWA is undergoing an evaluation of the existing agency-wide organizational structure, position titles and staffing requirements to ensure adequate staffing. GWA will work closely with PMC with recommendations from both GWA consultant and PMC to review and address staffing issues.

An organizational chart, listing employees, their titles, years of service and current certifications can be found in Appendix H.

1.2.4. Scope of the Performance Management Contract

The PMC shall utilize best operation and maintenance practices, training, and management techniques to accomplish Key Performance Indicators (KPIs) for the GWA Wastewater Division such as:

- Equipment & Station Availability
- NPDES Permit Compliance
- Federal & Local Regulatory Compliance (i.e. Clean Water Act, EPA Stipulated Order)
- Sewage overflows at lift stations and manholes not exceeding GWA's current standards.
- Establish Reporting for Performance Measures (2002-2003 National Water and Wastewater Benchmarking Initiative Performance Measures as listed in Appendix I)

In addition to the KPIs, the Contract scope will include functional requirements that cover several key areas related to the operations and maintenance of the GWA wastewater system:

- Financing;
- Budget;
- Compensation Structure;

- Staffing;
- Training;
- Operations;
- Maintenance;
- Performance Improvement Projects;
- Operation, Maintenance and the provision of Goods and Services;
- Inventory Management and Control;
- Contract Terms; and,
- Communications and Reporting.

A full description of the required performance guarantees can be found in Appendix F – Performance Guarantees.

1.3. IFB Document Media

The five-volume set of IFB documents and all Amendments to this IFB shall be made available to Bidders on CD-ROM (inclusive of electronic spreadsheets and appendices) and via hard copy (upon request).

2. Instructions to Bidders

These instructions to Bidders are intended to provide guidance in the preparation of bids and do not constitute part of the bid or of the contract document.

This is a multi-step bid procurement. In Step One, only the submitted Technical Proposals will be evaluated and those submitting acceptable proposals will proceed to Step Two. In Step Two, those vendors who qualify under Step 1 will submit priced bids. Please note that the act of submitting a bid to this Invitation for Bid, constitutes an acceptance on the part of the Bidder that they have read each and every provision and agree to all terms and conditions contained within this bid and that the Bidder has read and understood all of the Bid Documents, including all information contained within the appendices.

2.1. Correspondence

2.1.1. Language

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

2.1.2. Commercial and Technical Correspondence

Any prospective Bidders desiring an explanation or interpretation of the solicitation, commercial terms, technical specifications, etc., must make a request in writing to GWA at the address listed below, referencing the Invitation for Bid contained above.

ATTENTION: DAVID R. CRADDICK
 GWA GENERAL MANAGER
 GUAM WATERWORKS AUTHORITY
 578 NORTH MARINE CORPS DRIVE
 TAMUNING, GU 96913

FAX: 1 (671) 646-2335

In addition, Bidders may also make this request by sending an e-mail message addressed to the GWA General Manager at pmc@guamwaterworks.org .

All inquiries must be received at the Office of the General Manager or received by GWA via e-mail to no later than 4:00PM, **July 6, 2006 (Chamorro standard time)**. Oral explanations or instructions should not be given, but if any are inadvertently or improperly given, no oral representation by any representative of either GWA will be binding and any action taken by the Bidder based upon such oral advice or clarification will be at the sole risk of the Bidder. Any information given to a prospective Bidder concerning a solicitation will be furnished promptly to all parties recorded by Procurement as having received the Invitation for Bid as an amendment to the solicitation if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective Bidders.

2.2. Examination of Technical and Functional Requirements and Bid Documents

Before submitting their proposal, Bidders must familiarize themselves with the nature and extent of the work, duly noting any local conditions that may affect the work to be done and the labor, materials, and equipment required.

Bidders are also required to carefully examine all bid documents inclusive of all technical and functional requirements and to inform themselves of all conditions and requirements for the execution of the proposed work. Ignorance on the part of Bidders of any part of the bid documents and Technical and Functional Requirements will in no way relieve them of the obligations and responsibilities assumed under the Contract.

2.3. Site Tours

All prospective Bidders are strongly encouraged to visit Guam and the Wastewater sites to study local conditions, facilities available, craft wages, roads, communications, and

transport facilities available. Bidders should also acquaint themselves with the relevant laws, rules, and regulations of Guam. Failure by the Bidder to tour the GWA wastewater or otherwise not familiarizing themselves with the relevant laws, rules and regulations will not relieve Bidder from the requirement to submit a complete and accurate bid.

For the purpose of familiarizing Bidders with the Wastewater Division, GWA will schedule Site Tours between June 19, 2006 thru June 23, 2006. Additional tours will also be scheduled on July 10, 2006 thru July 12, 2006. Arrangements for all tours shall be made through written correspondence with the GWA PMC Procurement Officer via facsimile or email.

2.4. Solicitation Amendment

Any amendment, modification or addendum issued by the Guam Waterworks Authority, prior to the opening of the proposals, for the purpose of changing the intent of the technical and functional requirements, clarifying the meaning or changing any of the provisions of this Invitation for Bid, shall be binding to the same extent as if written in the bid documents and will be deemed incorporated into the Contract whether specified in the Contract or not.

Any addendum issued will be made available to all Bidders via mail, fax, e-mail and/or posting to the GWA Website at <http://guamwaterworksauthority.org>. The Bidders shall acknowledge receipt of the amendment by a signature on one copy, which is to be returned to the GWA Procurement Manager. Acknowledgement may also be made by fax or e-mail.

2.5. Familiarity With Laws

The Bidder shall be familiar with all Federal (U.S.) and local laws, ordinances, rules and regulations of Guam that in any manner affect the work. Ignorance of law on the part of the Bidder will not relieve the Bidder from responsibility.

2.6. Cost of Bidding

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

2.7. Basis of Price/Cost Data Furnished with Technical Proposals

The Vendors are required to submit their price offers as found in the MS EXCEL Workbook, Price Proposal Evaluation.xls in a time and manner required by this Bid in a **separate sealed envelope marked "PRICE PROPOSAL" and indicating the date and time of bid package remittance.** The vendors are required as part of the data

requirements to furnish a fixed management fee, an O&M Spending Budget, and Performance Guarantees for each year of the contract as specified in the IFB documents.

2.8. Price/Cost Data

Bidders shall provide prices/costs in U.S. Dollars. The Bidder shall provide any equipment and material prices on the basis of CIF to the GWA job site unloaded ready for use and prices shall also include a breakdown of the price/cost data.

2.9. Documents Executed Outside Guam

The Power of Attorney, performance bond guarantee, and documents defining the constitution of the joint venture, consortium, company or firm, if executed outside Guam, whether required to be submitted with the proposals or after the award of the contract, must be authenticated by a Notary Public or other official duly authorized by law in the jurisdiction where they are authorized to witness sworn statements.

2.10. Step One Procedures

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

2.10.1. Submission of Bids

2.10.1.1. Proposal Contents

Each Proposal shall contain a complete and clear description of the proposed fixed management fees, Bidder management organization allocated for the Contract, technologies, methodologies, key performance indicator guarantees and all resources at its disposal that the Bidder will use to meet all functional requirements as set forth in the bid documents. Each proposal shall include the following:

- Cover and proposal checklist forms defined in Appendix A;
- Responses and supporting information to the questions raised in the Qualitative Scoring Workbook;
- Supplementary information described below.

Each proposal shall be submitted in the format and quantities outlined elsewhere.

2.10.1.2. Responses and Supporting Information to Qualitative Questions

The Bidder shall provide all responses and supporting information in writing to answer the questions raised in the Qualitative Scoring Workbook.

2.10.1.3. Electronic Copies of the Proposal Scoring Workbook

Bidders shall complete and submit one electronic copy each of the Qualitative Scoring Workbook.

2.10.1.4. Supplementary Information

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

1. A sufficient number of drawings, diagrams, catalogs, illustrations, and such other information as necessary to clearly support responses to the Qualitative requirements.
2. A PMC organization chart with the qualifications of each key project position category, plus a listing of the number of employees by category and their percent commitment on the Contract for each calendar year over the lifetime of the contract. Categories shall include project management, engineering, analysis, programming, training, and field support.
3. Three or more client references and project description summaries for work performed under similar scope to this project.

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

4. A copy of the Bidder's Articles of Incorporation or other applicable forms concerning business organization (i.e. partnership, sole proprietorship, etc.) and By-Laws;
5. Affidavit of Disclosure of Major Shareholder (Appendix D);
6. Audited financial information on Bidder's firm and all subcontractors and required proof of financial capacity to perform the required services described herein that will be used in the performance management of GWA's wastewater system. This information shall be complete for the last five-years. Bidders must include their Dunn and Bradstreet Number or Other Major Credit Rating Agency rating.
7. Certificate of Good Standing to conduct business in jurisdiction of residence;
8. Non-collusion Affidavit (Appendix E);

9. Information regarding outstanding claims against the Bidder, if any; and,

10. Bid Bond (Appendix L). Bid Bonds are to be submitted in the sealed envelope along with the pricing data due to the fact that bid bonds are required by Guam law to be 15% of the overall bid and the bid amount is to not be disclosed until after the Technical Proposals have been evaluated. The Bid Bond will also continue in force and shall not be release until the bidder provides a 100% performance bond in a form approved by GWA which may be required to be amended each year if the O&M expenses are modified. **Deficiencies in the Bid Bond may result in the disqualification of the bidder.**

2.10.2. Proposal Submittals

2.10.2.1. Manual Proposal Submittal

Bidders shall submit their proposals using the manual procedures set forth below.

2.10.2.2. Non-repudiation Issues

GWA has structured its Manual IFB submittal procedures to ensure non-repudiation of the submitted proposals. In this IFB, non-repudiation is strong and substantial evidence of the identity of the sender and owner of the proposal and of proposal's integrity in so far as it being unaltered from its original sent state, sufficient to prevent a party from successfully denying the origin, submission or delivery of the proposal and the integrity of its contents. Non-repudiation applies to both parties to this IFB transaction. It binds the sender as well as precludes the recipient from denying the exchange of information and material upon the receipt of secure acknowledgement from the recipient.

GWA and the Bidder shall manage the Manual IFB Submittal Process to address non-repudiation, security and confidentiality inclusive but not limited to the following:

- Manually executed signatures and printed media documents;
- Chain of custody receipts;
- Manual time-stamps for receipt of IFB materials;
- Machine generated Fax confirmation reports;
- Physical delivery of printed material proposals;
- Physically secured area storage of IFB materials.

2.10.2.3. Signature of Bidder

A duly authorized person must sign the Bidder's proposals. All names shall be typed or printed below the signature. A proposal submitted by a corporation must bear the seal of

the corporation, be attested to by its Secretary, and be accompanied by necessary Power-of-Attorney documentation.

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

2.10.2.4. Manual Proposal Submittal Package Format And Handling

This section describes the proposal package format and content required by GWA that is specific to manual submittal of proposals. The Manual IFB Proposal Submittal Process is characterized by a preponderance of the submitted material in tangible printed media form that is hand-delivered by the specified location of the Bidder and to an authorized agent of the Guam Waterworks Authority. Both the Bidders and GWA agents are live human beings. In addition, both parties perform non-repudiation of the proposal through the execution of manually executed signatures, seals and time stamps.

Bidders are required to submit one original and six (6) bound copies of their proposal including one completed electronic copy on one disk of the Qualitative Scoring Workbook. The Bidders are advised to keep a copy of the completed Workbooks and test the electronic copy on disk prior to sending it off to GWA.

2.10.2.5. Marking and Packaging of Proposals

As a general rule, the manually submitted Proposals shall be submitted in separate sealed packages with the following information clearly marked on the outside of each side:

- 1) "TECHNICAL (UNPRICED) PROPOSAL"
- 2) "PERFORMANCE MANAGEMENT CONTRACT GWA WASTEWATER SYSTEM"
- 3) The Bidder's Name;
- 4) INVITATION FOR BID NUMBER;
- 5) CLOSING DATE and TIME (Chamorro Standard Time).

6) Addressed As follows:

ATTENTION: DAVID R. CRADDICK
 GENERAL MANAGER
 GUAM WATERWORKS AUTHORITY
 578 NORTH MARINE CORPS DRIVE
 TAMUNING, GU 96913

If the Bidder's Proposal cannot fit within one box or chooses to submit more than one box, each box must be labeled with the following:

- i. Box Number Within the Set of Submitted Boxes
- ii. The Total Number of Boxes Submitted.

2.10.2.6. Receipt and Handling of Manually Submitted Proposals

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

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

GWA makes no warranties regarding the submission process.

2.10.2.8. Electronic Proposal Submittal Package Format And Handling

Electronic submission of bids is not available for this bid.

2.10.3. Technical Proposal Submission Date

The Technical Proposal opening date and time is July 17, 2006, 2:00 p.m. Chamorro standard time. This opening time and date is also referred to as the Proposal submittal deadline or submittal date. Technical Proposals shall not be accepted after the proposal opening date.

2.10.4. Proposal Changes During Bid Process

Changes may be made to the Technical Proposal(s) at any time prior to the proposal submittal due date. Changes made after the submittal date may be made only if they are allowed under the Guam Procurement Law and accompanying regulations.

2.10.5. Evaluation of Technical Proposals

After the Close of the Technical Proposal submission date, GWA will evaluate the Proposals. GWA will use the score from the Qualitative Scoring Workbook to evaluate the contents of Proposals and categorize the Proposals as:

- a. acceptable;
- b. potentially acceptable, that is reasonable susceptible of being made acceptable; or
- c. unacceptable. The Procurement Officer shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

The Procurement Officer may initiate Step Two if there are sufficient acceptable Unpriced Technical Proposals to assure effective price competition in the second phase without technical discussions. If the Procurement Officer finds that such is not the case, the Procurement Officer shall issue an amendment to this Invitation for Bid or engage in technical discussions with Bidders as set forth below.

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

2.10.5.1. Discussions of Proposals

GWA may conduct discussions with any Bidder to determine such Bidder's qualifications for further consideration and explore with the Bidder the scope and nature of the required services, method of performance and the relative utility of alternative methods of approach. During the course of such discussions, the Procurement Officer shall not disclose any information derived from a technical offer to any other Bidder.

Each Bidder is requested not to contact GWA on any matter relating to its proposal, from the time of submission of the Proposals to the time the contract is awarded, except to respond to inquiries by GWA.

2.10.5.2. Notice of Unacceptable Proposal

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

2.11. Step Two Procedures.

Upon completion of evaluation of Technical Proposals, qualified Bidders will be notified and GWA will proceed with the Step Two of the multi-step bid.

2.11.1. Request for Submission of Price Proposal

Following the close of Step One, Each selected Bidder from the Qualified Bidders list will be notified and GWA will request the Bidder to submit their Price Offer in the MS EXCEL workbook Priced Proposal Evaluation.xls. The manner, as well as the terms and conditions for the submission of the Price Proposal / Offer will be the same as those for the Technical Proposal. Following the close of bid submission, GWA will select a vendor based on a comprehensive evaluation of the price offer as specified in Volume IV.

2.11.1.1. Proposal Changes During Bid Process

Changes may be made to the Price Offer prior to the close of the Price Proposal submittal due date.

2.11.1.2. Proposal Validity

All price/cost data submitted with the Bidders' proposals shall remain firm and open for acceptance for a period of not less than six (6) months after the Proposal submittal date defined elsewhere and thereafter shall be subject to renewal by mutual agreement between the Bidder and GWA. **Bidder shall state the actual date of expiration in their proposal.**

2.11.2. Preliminary Examination of Priced Offer

GWA will examine the Priced Offer on the opening date to determine whether they are complete, whether any computational errors have been made, whether required sureties

have been furnished, whether the documents have been properly signed, and whether the Priced Offers are generally in order.

Arithmetical errors will be rectified on the following bases. If there is discrepancy between the unit price and the total price, including any discounts, that is obtained by multiplying the unit priced and quantity, the unit price shall prevail and the total price shall be corrected. If the Bidder does not accept the correction of the error, its bid will be rejected. If there is a discrepancy between words and figures, the amount in words will prevail.

2.11.3. Evaluation Criteria and Comparison of Priced Offers

GWA will evaluate and compare the Priced Offers for Bidder's Technical Proposals that were determined during Step One to be responsive to the bid document requirements. GWA's evaluation of price offers shall compare Fixed Management Fees, O&M Spending Budget and performance guarantees. The Scoring Mechanism is further explained in Volume IV.

2.12. General Proposal Guidelines And Requirements

2.12.1. Amendments to the Bid Document

GWA may elect to change the IFB documents in whole or part. GWA shall send all Amendments to the IFB documents via fax and/or e-mail.

2.12.2. Proprietary Data

For the purposes of this solicitation and submitted proposals, the laws, rules and regulations of Territory of Guam governing confidentiality shall govern. Bidders may designate only those portions of the either the Technical or Price Proposal that contain trade secrets or other proprietary data that are to remain confidential.

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

2.12.3. Acceptance of Proposals

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

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

2.12.4. Solicitation Cancellation or Delay

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

- a) The supplies and services being provided are no longer required;
- b) The solicitation did not provide consideration of other factors of significance to the Territory;
- c) All otherwise acceptable proposals received have clearly unreasonable price/cost data;
- d) There is reason to believe that the proposals may not have been independently arrived at in open competition, may have been collusive and may have been submitted in bad faith;

Any individual proposal may be rejected in whole or in part when in the best interest of the Territory.

2.12.5. Disqualification of Bidder

When, for any reason, collusion or other anticompetitive practices are suspected among Bidders or offerors, a notice of the relevant facts shall be transmitted to the Guam Attorney General. Bidders suspected of collusion or other anticompetitive practices may be suspended or debarred from participating in future procurement opportunities for a specified period.

2.12.6. False Statements In Proposal

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

2.13. Award of Contract

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

The successful Bidder will be notified in writing (letter or e-mail or fax) of the intent to award the contract, and will be required to send to Guam, within ten (10) days of the date of receipt of such notice, a representative or representatives with proper Power-of-Attorney for the purpose of executing a contract with such alterations or additions thereto as may be required to adopt such contract to the circumstances of the proposal.

The successful Bidder shall provide the required 100% Performance Bond within ten working days of receipt of the GWA Notice of Intent to Award which shall be in an amount and form approved by GWA prior to the release of the bid bond.

Failure on the part of the successful Bidder to provide a Performance Bond and/or to enter into a contract with GWA shall be sufficient grounds for the annulment of the award. The negotiations may then be resumed with the next most qualified Bidder.

2.14. Bid and Performance Bond Requirements

2.14.1. Performance Bond Form, Amount and Duration

The required performance bond shall be in the form as prescribed in Appendix B. At the beginning of the Contract and at the beginning of each GWA Fiscal Year during which time the Contract is in effect, the PMC shall provide and maintain a performance bond in the amount equal to the **Fixed Management Fee** for that full or partial fiscal year within the term of the contract. If the PMC is declared by GWA to be in default under the Contract, GWA may exercise any or all rights and remedies it possesses under the provisions of the performance bond.

The GWA Fiscal Year begins on October 1 and ends on September 30 of the following calendar year.

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

The PMC shall provide a Performance Bond executed by a surety company licensed to do business on Guam. A list of surety companies licensed to do business on Guam is provided in Appendix C.

2.14.3. Bid Bond Form and Amount

A bid bond in the amount of 15% is required and may be provided in the following manner:

- a. Cash, Bank Draft or Certified Check made payable to the Guam Waterworks Authority;
- b. By wire transfer to Guam Waterworks Authority, account number 0601-014149, routing number 121405115, Bank of Guam, PO Box BW, Hagåtña, GU 96932
- c. Irrevocable Letter of Credit;
- d. Surety Bond (see Appendix L) – valid if accompanied by:
 - (1) Current Certificate of Authority to do business on Guam issued by the Department of Revenue and Taxation;
 - (2) Power of Attorney issued by the Surety to the Resident General Agent
 - (3) Power of Attorney issued by two (2) major officers of the Surety to whoever is signing on their behalf.

Bonds, submitted as a Bid Guarantee, without the appropriate dollar amount, containing signatures and supporting documents are invalid and bids will be rejected.

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

3. Proposal Forms

This Section describes the forms required for submission of the Proposal.

The following forms in Appendices A, D, E, and L and MS EXCEL Workbooks must be completed:

- a) Appendix A, Proposal Checklists
- b) Appendix B, Performance Bond

- c) Appendix C, List of Surety Companies Licensed To Do Business In Guam
- d) Appendix D, Major Shareholders Disclosure Affidavit
- e) Appendix E, Non-collusion Affidavit
- f) Appendix F, Performance Guarantees
- g) Appendix G, Penalty Assessments
- h) Appendix H, Wastewater Division Organization Charts
- i) Appendix I, Performance Measures
- j) Appendix L, Bid Bond Form and Instructions
- k) Qualitative Proposal Scoring.xls
- l) Price Proposal Evaluation.xls

These Forms and Workbooks will be available on CD-ROMs provided to Bidders.

3.1. Technical Proposal Forms

The following referenced forms are contained in Appendix A, Appendix D, Appendix E. The Price Proposal form is found in Appendix L. All forms shall be completed and submitted with the appropriate proposal.

3.1.1. Document Receipt Checklist

The Bidder shall complete Form A-1 by initialing the Invitation For Bid Documents received from Guam Waterworks Authority, including the latest IFB Amendment received. This Form is an acknowledgement of receipt, review and understanding of the IFB documents.

3.1.2. Proposal Submittal Checklist

The Bidder shall complete Form A-2. This Form provides an inventory of documents submitted by the Bidder in response to the Proposal requirements.

3.1.3. Major Shareholders Disclosure Affidavit

The Bidder shall fill out the Major Shareholders Disclosure Affidavit form in Appendix D and submit it with its Proposal.

3.1.4. Non-collusion Affidavit

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

3.2. Price Proposal Form

3.2.1. Annual Fixed Management Fee Price and O&M Spending/Cost Data Sheet

The qualified Bidders shall complete the Annual Fixed Management Fee Price and O&M Spending/Cost Data Sheet contained in the MS EXCEL Workbook Price Proposal Evaluation.xls. This workbook outlines the Bidder's Annual Fixed Management Fee, and O&M Spending proposal. Qualified Bidders shall proposed a Fixed Management Fee and an O&M budget based on the form for each contract year.

3.2.2. Performance Guarantee Proposal

The Bidder shall complete the Performance Guarantee Proposal contained in the same workbook above. This workbook outlines the Bidder's minimum performance guarantees.

4. Conditions of Contract

4.1. Definitions

Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof.

4.1.1. Approved

The word "Approved," when applied by Engineer to Contractor's drawings or documents shall mean that the drawings or documents are satisfactory from the standpoint of interfacing with GWA-furnished components, and/or that Engineer has not observed any statement or feature that appears to deviate from the Specification requirements.

4.1.2. Approved As Revised

The words "Approved As Revised," when applied by a GWA Engineer to Contractor's drawings or documents shall mean that the drawings or documents are approved as defined above, except that the corrections shown are required for the proper interfacing with GWA-furnished components or are necessary to be in conformance with the Specification's requirements.

4.1.3. Change Order

A written instrument to Contractor signed by GWA authorizing an addition, deletion, or revision in the goods or special services, or an adjustment in the purchase order price or the delivery time, issued after the effective date of the Contract.

4.1.4. Seller

The Contractor

4.1.5. Day

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

4.1.6. Delivery Time

The total number of days or the dates stated in the Agreement for furnishing the Goods and/or Special Services

4.1.7. Defective

An adjective which when modifying the words Goods or Special Services refers to Goods or Special Services which are unsatisfactory, faulty, deficient, do not conform to the Contract, or do not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract.

4.1.8. Drawings

Drawings are all official drawings approved by GWA's Chief Engineer and showing the character and scope of the Goods to be furnished.

4.1.9. Effective Date of the Contract Agreement

The date indicated in the Purchase Agreement on which it becomes effective, or if no such date is indicated, the date by which the Purchase Contract is signed by both all necessary parties having approval to enter into a contract on behalf of their respective organizations.

4.1.10. Engineer

Wherever the words "Engineer" or "Engineer" appear in the Contract Documents, it shall mean either GWA's Chief Engineer or an Engineer in the employ of GWA". GWA shall assign Engineers as is required to cover specialized areas of expertise.

4.1.11. Engineer's Instructions

Written instructions issued by the Chief Engineer which clarify or interpret the Contract Documents or order minor changes or alterations in the Goods or Special Services to be furnished but which do not involve a change in the Purchase Price or the Delivery Time.

4.1.12. General Manager

The General Manager is the Chief Executive Officer of the Guam Waterworks 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 Waterworks Authority.

4.1.13. Goods

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

4.1.14. Modification

A written amendment of the Contract signed by both parties, or Change Order.

4.1.15. Owner

The Guam Waterworks Authority (An autonomous instrumentality of the Government of Guam).

4.1.16. Point of Delivery

The place at which property in the goods shall pass to GWA shall be CIF landed at job-site, Guam, unloaded and ready for use.

4.1.17. Project

The plant, facilities, or works the Goods and Services are to be used for or incorporated into.

4.1.18. Purchaser

The Guam Waterworks Authority with whom Contractor has entered into the Contract Agreement.

4.1.19. Contract Agreement (Agreement)

The written agreement between GWA and Contractor covering the furnishing of the Goods, Special Services, and other services in connection therewith evidencing what is contemplated and agreed to between the parties including any other Contract Documents either attached to the Agreement or made a part thereof by reference therein.

4.1.20. Contract Documents

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

4.1.21. Procurement Officer

The General Manager of the Guam Waterworks Authority or the General Manager's designee or designees.

4.1.22. Contractor

The PMC with whom GWA has entered into the Contract.

4.1.23. Site or Site

The Site is the area where the Project is to be constructed or executed. In this case, the SITE is the GWA's entire wastewater system as delineated in Volume II Technical and Functional Requirements and Volume III Wastewater System Technical Description.

4.1.24. Special Services

Any and all services to be furnished by Contractor for the GWA wastewater system as required by the Contract.

4.1.25. Territory

The Territory of Guam.

4.2. Contract (or "Agreement")

Prior to entering into a formal agreement, GWA and Contractor shall resolve and document any differences between the Contractor's proposal and the bid documents.

The Contract between GWA and Contractor shall consist of the bid documents, as resolved by the Contractor's final negotiated Proposals and by GWA bid and the bid

amendments, as adjusted by a prioritized list of documents generated during the evaluation and negotiation processes and agreed to and acknowledged in writing by both parties. These documents may consist of, but are not limited to, written answers to questions, letters, and written clarifications to the proposal.

Any formal contract document shall reference GWA's Bid documents and the Contractor's proposal. No oral agreement or understanding or statement shall modify the Contract or any obligations thereunder. Changes to the above documents can only be made in accordance with the procedure for modifications as defined in **Section 4.15 Changes**.

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

The bid documents are intended to be complementary, what is called for by one shall be as binding as if called for by all. If not otherwise specified in the bid documents, these General Conditions shall apply. If, during performance of the Agreement Contractor detects a discrepancy in the bid documents, Contractor shall so report to Bid Administrator or the Procurement Officer in writing at once and shall obtain a written interpretation or clarification from them prior to proceeding further; however, Contractor shall not be liable to GWA for failure to report any conflict, error, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof or should reasonably have known thereof.

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

4.3. Indemnity

Contractor agrees as a condition precedent that by virtue of the submission of a bid that Contractor shall indemnify and hold the Commissioners of the Consolidated Commission on Utilities, GWA, GWA employees and GWA's authorized agents harmless from any claim, liability or product liability, loss, damage, demand, cause of action or suit, expense,

or fee of legal counsel arising out of or in connection with the Goods or Special Services provided by the Contractor. This provision may not be modified by contract and the submission of a bid or proposal is the bidder's acknowledgment and acceptance of this provision.

4.4. Shipment, Delivery, and Acceptance of Goods

Shipment and delivery of the Goods shall be in accordance with this Paragraph except as otherwise provided or specified in the Contract Documents.

All goods will be delivered at the point of delivery set forth in the Contract. Contractor shall select the means and methods of transportation and shall pay all costs associated therewith, including insurance, freight, and all other charges and costs necessary to effectuate shipment to the point of delivery.

GWA and/or the GWA Engineers reserve the right to inspect the Goods upon delivery for the purpose of identifying the Goods and general verification of quantities.

4.5. Accounting

For accounting purposes and for use in establishing property records, GWA may require Contractor to provide a reasonable price breakdown of the total price into separate prices applying to the individual items supplied under the Agreement.

Where the Agreement covers the reimbursement of the traveling or living expenses of the Contractor's employees or agents, the Contractor agrees to furnish complete itemization and breakdowns of such expenses when requested by GWA which will be reviewed and approved prior to any payment being made by GWA.

In the event of any changes to or termination of the Contract, or the furnishing of goods or services on a labor hour or a cost reimbursable basis, Contractor shall supply information in such detail as may be reasonably required by GWA to support all applicable charges. GWA, or an independent auditor designated by GWA, shall have the right to audit, during normal working hours, Contractor's accounts and records relating to such charges. The expense of such audit will be borne by GWA.

4.6. Waiver of Claims

The making and acceptance of final payment will constitute:

A waiver of all claims by GWA against Contractor, except claims arising from unsettled liens, claims relative to defective goods or special services appearing after final payment, or from failure to comply with the Contract or the terms of any special guarantees

specified therein; nor will final payment constitute a waiver by GWA of any rights in respect of Contractor's continuing obligations 'under the Bid Documents or any Contract between the parties; and

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

4.7. Supervision and Coordination by Contractor

Contractor shall competently and efficiently manage, supervise, and direct production of the goods and furnishing of special services and coordinate all operations required to deliver the goods and furnish any required special services.

Contractor shall designate, in writing to GWA, at least two persons with authority to act on behalf of Contractor with respect to Contractor's obligations under the Contract (at least one of whom shall be on Guam and available at all times), and all communications given to or received from those persons will be binding on Contractor.

Contractor shall perform all such activities as an independent contractor and not as an agent of GWA. When others furnish materials and equipment for assembly by the Contractor, Contractor shall receive, unload, store, and handle it and become responsible therefore as though Contractor was furnishing such materials and/or equipment under the Agreement.

4.8. Substitutions

If Contractor wishes to furnish or use a substitute item of material or equipment, Contractor shall make written application to Engineer for acceptance thereof certifying that the proposed substitute will perform adequately the function as called for by the general design, be similar and of equal substance to that specified, and be suited to the same use and capable of performing the same function as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not prejudice the Contractor's warranty or timely delivery of the Goods, whether or not acceptance of the substitute will require a change in any of the Contract Documents to adapt the design to the substitute and whether or not incorporation or use of the substitute in connection with the production of the Goods is subject to payment of any license fee or royalty.

All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair, and replacement service will be indicated. The Chief Engineer may require Contractor to furnish at Contractor's expense such additional data about the proposed substitute as is required by the Chief Engineer. GWA may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

4.9. Documentation and Drawings

The Agreement will not be deemed satisfactorily completed until all requirements have been complied with including, but not limited to, proper material documentation, final drawings and reproductions, and other requirements stated in the Contract Documents. GWA may withhold final payment hereunder, pending completion of all such requirements by the Contractor.

At the time of each submission, Contractor shall in writing call it to the Chief Engineer's attention to any deviations that the drawings or documents may have from the requirements of the Specification or Contract Documents. Contractor shall also direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals. Contractor's submission of any drawing or document bearing Contractor's approval shall constitute a representation to GWA and Engineer that Contractor assumes full responsibility for having determined and verified the design criteria, quantities, dimensions, installation requirements, materials, catalog numbers, and similar data and that Contractor has reviewed or coordinated each drawing or document with the requirements of the Contract Documents.

Engineer's review and approval of Contractor's drawings or documents will be only for conformance with the design concept of the Goods and for compliance with the information given in the Contract Documents. Such review and approval will not extend to design data reflected in drawings or documents that is peculiarly within the special expertise of Contractor or any party dealing directly with Contractor. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. Contractor shall make corrections required by Engineer when drawings or documents are marked "Approved As Revised" and shall return the required number of corrected copies.

GWA and/or Engineer shall have the right to reproduce any and all drawing, prints, or other data or documents received from Contractor that are considered necessary for engineering, construction, or other purposes, despite any notice to the contrary appearing on the item. When a drawing or document approval is required by the Specifications, Contractor shall not commence production of any part of the Goods affected thereby until such drawing or document has been reviewed and approved by Engineer.

Engineer's review and approval of Contractor's drawings or documents will not relieve Contractor from responsibility for any deviations from the Contract Documents unless Contractor has in writing called Engineer's attention to such deviation at the time of submission and Engineer has given written concurrence and approval to the specific deviation, nor will any concurrence or approval by Engineer relieve Contractor from responsibility for errors or omissions in the drawings or documents submitted.

4.10. Continuing Performance

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

4.11. Access to Goods in Production

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

4.12. Expediting

Contractor shall expedite delivery of the Goods and any related work of subcontractors. When requested or required by the Contract Documents, Contractor shall also provide GWA with an itemized schedule for engineering, outsourcing, fabrication, and shipping, which shall be followed by expediting reports including status of deliveries of materials and/or equipment purchased from subcontractors, if any, each month during its performance under the Agreement. If Contractor encounters delay in obtaining materials, or foresees any delay in its own manufacturing works, Contractor shall immediately inform GWA of such situation.

GWA and/or its designee shall be allowed reasonable access to Contractor's and its subcontractor's works for the purpose of expediting project progress. Any expediting done by GWA shall not relieve Contractor from its obligations as to the Delivery Time specified in the Agreement.

4.13. Compliance with Law

Contractor shall comply, and secure compliance by its subcontractors, with all applicable laws or regulations in connection with the Goods and services furnished hereunder. This includes the securing of any business or other licensing, certifications, or permits required.

If Contractor discovers any variance between the provisions of applicable laws and regulations and the drawings, Specifications, and other technical data furnished by the GWA, Contractor shall promptly notify GWA in writing thereof and obtain necessary changes from GWA before proceeding with the work affected thereby.

4.14. Price Adjustment

4.14.1. Price Adjustment Methods

Any adjustment in contract price within the parameters of this contract shall be made in one or more of the following ways:

- a) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- b) By unit prices specified in the contract or subsequently agreed upon;
- c) By the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract or subsequently agreed upon;
- d) In such other manner as the parties may mutually agree; or
- e) In the absence of agreement between the parties, by a unilateral determination by the GWA Procurement Officer of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the Procurement

4.14.2. Submission of Cost or Pricing Data

The Contractor shall provide cost or pricing data for any price adjustments subject to the provisions of Section 3118 (Cost or Pricing Data) of the Guam Procurement Regulations.

4.15. Changes

4.15.1. Change Order

By a written document, at any time, and without notice to surety, the GWA Procurement Officer may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:

- a) Drawings, designs, or Specifications, if the supplies to be furnished are to be specially manufactured for the Territory in accordance therewith;
- b) Method of shipment or packing; or
- c) Place of delivery.

4.15.2. Time Period of Claim

By a written document, at any time, and without notice to surety, the GWA Procurement Officer may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:

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

Within 30 days after receipt of a written change order under **Paragraph 4.15.1 Change Order**, unless the Procurement Officer extends such period in writing, The Contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the Contractor's claim unless the Territory is prejudiced by the delay in notification.

4.15.3. Claims Barred After Final Payment

No claim by the Contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract.

4.15.4. Other Claims Not Barred

In the absence of such a Change Order, nothing in this clause shall be deemed to restrict the Contractor's right to pursue a claim arising under the contract if pursued in accordance with the clause entitled, "Claims Based on the General Officer's Actions or Omissions, - Notice of Claim", or for breach of contract.

4.16. Contract Price

The Contract Price constitutes the total consideration to be paid by GWA to the Contractor for the complete delivery of the Goods, Special Services, and for performing other services in connection therewith in accordance with the Contract Documents as amended by the parties pursuant to the Agreement. Unless expressly provided otherwise in the Contract Documents, the Contract Price is not subject to escalation in respect of materials and/or labor cost or any other factor or variation in rates of exchange, and all duties, responsibilities, and obligations assigned to or undertaken by the Contractor shall be at its expense without change in the Contract Price. Charges, fees, Contractor's profit, and all other expense shall be deemed to be included in the Contract Price. Furthermore, the Contract Price includes management fees and incentive/penalty payments. Therefore, the Contract Price is dynamic but bounded.

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

4.17. Payment Milestones and Schedule

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

Milestones shall not be scheduled more frequently than once every month. GWA will not approve a milestone payment until all preceding milestones have been approved. GWA will make payments within thirty (30) days from GWA's acknowledge receipt and approval of the invoice for the completed milestone.

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

- Fixed Monthly Management Fees;
- Reimbursement Payments for Operations and Maintenance related expenditures as agreed to and scheduled between GWA and the Contractor.
- Reimbursement Payments for Performance Improvement Projects (PIP) and Capital Improvement Projects (CIP) related expenditures as agreed to and scheduled between GWA and the Contractor.
- Incentive Compensation Payments due to:
 - Reduction of Power Consumption
 - O&M Expense Savings]

The payment milestones for monies due to GWA from the Contractor are as follows (to be evaluated and paid pursuant to the contract terms regarding such):

- Penalty Compensation Payments due to Contractor's failure to meet its minimum performance guarantees.
 - NPDES Non-Compliance
 - Station Availability
 - Overflows at Lift Stations Exceeding Specified Limits
 - Redundant Equipment Availability
 - O&M Expenses in Excess of Proposed Budget
 - Overtime Expenses in Excess of 10% of Regular Labor

4.18. Force Majeure

Force Majeure referred to herein shall mean an occurrence beyond the control and without the fault or negligence of the party affected including, but not limited to, acts of God or the public enemy, expropriation or confiscation; changes in law procedures, war, rebellion, or riots; floods, unusually severe weather that could not reasonably have been anticipated; fires, explosions, epidemics, catastrophes, or other similar occurrences which

are not within the control of the party affected. However, the following shall not be considered as Force Majeure:

- a) Delay caused by lack or inability to obtain raw materials, congestion at Contractor's or its subcontractor's facilities, or elsewhere; market shortages, or similar occurrences, or
- b) Delay, either on the part of the Contractor or its subcontractors, caused by shortages of supervisors or labor, inefficiency, or similar occurrences, or
- c) Sabotage, strikes, or any other concerted acts of workmen, which occur only in the facilities of the Contractor or its subcontractors.

Should the circumstances of Force Majeure continue over a period of ninety (90) days, GWA has the right, if no other understanding is reached, to terminate the whole Contract or any part thereof in accordance with Paragraph 4.28. Any delay or failure in performing the obligations under the Contract of the parties hereto shall not constitute default under the Contract or give rise to any claim for damages or loss or anticipated profits if, and to the extent, such delay or failure is caused by Force Majeure, and if a claim is made therefore.

4.18.1. Invocation of Force Majeure

The party invoking Force Majeure shall perform the following:

- a) Notify the other party as soon as reasonably possible by facsimile, e-mail, telex, cable or messenger/courier of the nature of Force Majeure, anticipated exposure time under Force Majeure, and the extent to which the Force Majeure suspends the affected party's obligations under the Contract;
- b) Consult with the other party and take all reasonable, prudent steps to minimize the losses of either party resulting from the Force Majeure;
- c) Resume the performance of its obligations as soon as possible after the Force Majeure condition ceases.

4.18.2. Delivery Time and Force Majeure

Only a Change Order may change contractual Delivery Times. The Contractor as provided in **Paragraph 4.15** and its sub-paragraphs shall file all claims for an extension in the Delivery Time.

The Delivery Time will be extended in an amount equal to time lost due to delays caused by Force Majeure if a claim is made therefore as provided in this Paragraph. No

amendment to the Contract Price, however, shall be allowable because of Force Majeure occurrences.

Notwithstanding the foregoing, all time limits stated in the Contract documents (or any Purchase Order executed as a result thereof, are of the essence in the agreement. The provisions of this paragraph shall not exclude recovery for damages (including compensation for additional professional services) for delays not caused by Force Majeure.

4.19. Warranty

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

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

The Contractor shall be responsible for remedying all defects, without limitation, in design, materials, workmanship, operating characteristics, or performance of the Goods developing within twelve (12) months from the date on which the Goods were placed in continuous service, or within twenty-four (24) months from the date of final payment, whichever date shall first occur, or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee or by any specific provisions of the Contract Documents or a manufacturer's warranty. Contractor shall be the warranty administrator for all Goods and Services hereunder but shall provide GWA notice and a detailed description of all warranty work (including goods) provided.

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

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

4.20. Tests and Inspections

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

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

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

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

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

4.21. Remediating Defective Goods

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

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

In the event that the PMC does not take prompt action to fulfill its obligations hereunder as required by GWA and to the satisfaction of GWA, GWA may, after ten (10) days written notice to the PMC, and without prejudice to any of its rights under the Agreement, accept the defective Goods and carry out the remedial work itself instead of requiring correction or removal and replacement, and charge the Contractor for the costs of the

work. In an emergency where delay would cause serious risk of loss or damage, GWA may take such action without prior notice to or waiting for action by the Contractor.

4.21.1. Remediating Defective Special Services

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

4.21.2. Cost of Remediating Defects

All direct, indirect, and other costs of correcting, removing, and replacing defective Goods or of obtaining Special Services elsewhere and of exercising GWA's rights and remedies under **Paragraph 4.4, 4.19**, and other sections as they apply, will be charged against the Contractor and, if incurred prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents and a reduction in the Purchase Price, or if incurred after final payment, an appropriate amount will be paid by the Contractor to GWA. Such direct, indirect, and other costs will include, in particular but without limitation, compensation for additional professional services required and all costs of repair and replacement of Goods, or property of GWA or others destroyed or damaged by correction, removal, or replacement of defective Goods. The Contractor shall not be allowed an extension of the Delivery Time because of any delay in performance attributable to the exercise by GWA of GWA's rights and remedies under this paragraph.

4.22. Stop Work Order

4.22.1. Order to Stop Work

The Procurement Officer may, by written order to the Contractor, at any time, and without notice to any surety, require the Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding ninety-days (90-days) after the order is delivered to the Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a 'stop work order' issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Procurement Officer shall either:

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

4.22.2. Cancellation or Expiration of the Order

If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contract price shall be modified in writing accordingly, if:

- a) The stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
- b) The Contractor asserts a claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

4.22.3. Termination of Stopped Work

If a stop work order is not canceled and the work covered by such order is terminated for default or Convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

4.23. Termination for Convenience

4.23.1. Termination

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

4.23.2. Contractor's Obligations

The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Procurement Officer may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the GWA. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

4.23.3. Right to Supplies

The Procurement Officer may require the Contractor to transfer title and deliver to GWA in the manner and to the extent directed by the Procurement Officer:

- a) Training materials;
- b) Any delivered supplies; and,
- c) Such partially completed supplies and materials, parts, maps, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called “manufacturing material”) as the Contractor has specifically produced or specially acquired for the performance of the terminated part of this contract.

The Contractor shall, upon direction of the Procurement Officer, protect and preserve property in the possession of the Contractor in which the Territory has an interest. If the Procurement Officer does not exercise this right, the Contractor shall use best efforts to sell such supplies and manufacturing materials in accordance with the standards of **Uniform Commercial Code of Guam (UCCG), Section 2706**. Utilization of this Section in no way implies that the Territory has breached the contract by exercise of the Termination for Convenience Clause.

4.23.4. Compensation Under Termination for Convenience

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

- a) The Contractor shall submit a termination claim specifying the amounts due because of the termination for Convenience together with cost or pricing data to the extent required by **Section 3118 (Cost or Pricing Data) of the Guam Procurement Regulations** bearing on such claim. If the Contractor fails to file a termination claim within one year from the effective date of termination, the Procurement Officer may pay the Contractor, if at all, an amount set in accordance with subparagraph (c) of this Paragraph.
- b) The Procurement Officer and the Contractor may agree to a settlement provided the Contractor has filed a termination claim supported by cost or pricing data to the extent required by **Section 3118 (Cost or Pricing Data) of the Guam Procurement Regulations** and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by GWA, the proceeds of any sales of supplies and manufacturing materials, and the contract price of the work not terminated.

- c) Absent complete agreement under Subparagraph (b) of this Paragraph, the Procurement Officer shall pay the Contractor the following amounts, provided payments agreed to under Subparagraph (b) shall not duplicate payments under this subparagraph:
- i. Contract prices for supplies or services accepted under the contract;
 - ii. Costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted supplies or services; provided, however, that if it appears that the Contractor would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - iii. Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to **Paragraph 4.23.2** of this clause. These costs must not include costs paid in accordance with other subparagraphs of this Paragraph;
 - iv. The reasonable settlement costs of the Contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract for the termination and settlement of subcontracts there under, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract. The total sum to be paid to the Contractor under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the Contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph (b) of this Paragraph, and the contract price of work not terminated.
- d) Cost claimed, agreed to, or established under subparagraph (b) and (c) of this Paragraph shall be in accordance with **cost principals as provided under the Guam Procurement Regulations**.

4.24. Termination for Default

4.24.1. Default

If the Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract, or

any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Procurement Officer may notify the Contractor in writing of the delay or non-performance and if not corrected in ten days or any longer time specified in writing by the Procurement Officer, such officer may terminate the Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part the Procurement Officer may procure similar supplies or services in a manner and upon terms deemed appropriate by the Procurement Officer. The Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess cost incurred on procuring similar goods or services.

4.24.2. Contractor's Duties

Notwithstanding termination of the contract and subject to any directions from the Procurement Officer, the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Contractor in which GWA has an interest.

4.24.3. Compensation

Payment for completed supplies delivered and accepted by the GWA shall be at the contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by the Contractor and the Procurement Officer; if the parties fail to agree, the Procurement Officer shall set an amount subject to the Contractor's rights under the Guam Procurement Regulations. The GWA may withhold from amounts due the Contractor such sums as the Procurement Officer deems to be necessary to protect the GWA against loss because of outstanding liens or claims of former lien holders and to reimburse the Purchaser for the excess costs incurred in procuring similar goods and services.

4.24.4. Excuse for Nonperformance or Delayed Performance

Except with respect to defaults of subcontractors, the Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if the Contractor has notified the Procurement Officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; act of the Territory and any other governmental entity in its sovereign restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the Contractor shall not be deemed to be in default, unless the supplies or services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the Contractor to meet the

contract requirements. Upon request of the Contractor, the Procurement Officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the GWA under the clause entitled "Termination For Convenience", Paragraph 4.23. (As used in the Paragraph of this clause the term "subcontractor" means subcontractor at any tier.)

4.24.5. Erroneous Termination for Default

If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph 4.24.4(Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for Convenience of GWA, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for Convenience of GWA, the contract shall be adjusted to compensate for such termination and the contract modified accordingly subject to the Contractor's rights under Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations.

4.24.6. Additional Rights and Remedies

The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

4.25. Disputes

All controversies between GWA and the Contractor, which arise under, or are by virtue of, this contract and which are not resolved by mutual agreement, shall be resolved under Guam Procurement Law and the Government Claims Act.

4.26. Consequential Damages

Unless expressly provided for otherwise in this Agreement, neither party, including their agents and employees, shall be liable to the other party for consequential damages, including, but not limited to, loss of use, loss of profit and interest due to breach of contract, breach of warranty, negligence, or any other cause whatsoever, provided nothing herein shall relieve Contractor from its liability for injury to persons or property, including property of GWA, whether such liability arises in contract, including breach of warranty, or tort, including negligence.

4.27. Notices

Whenever any provision of the Contract Documents requires the giving of written notice it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice. Notices sent to GWA are not effective unless delivered to responsible management officials having charge over the area which is the subject of the notice and also being sent to the offices of the General Manager and Chief Engineer for the Guam Waterworks Authority. These officials will be determined prior to execution of the contract.

4.28. Computation of Time

When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the time computation.

4.29. Language and Trade Terms

All communications, documents, and execution of services hereunder, unless otherwise designated, shall be in the English language. INCOTERMS (International Rules for the Interpretation of Trade Terms) published by the International Chamber of Commerce in 1980 and any subsequent revisions thereto shall govern interpretation of trade terms in the Contract Documents

4.30. Governing Law

The laws of Guam shall govern the validity and interpretation of these conditions, the Agreement and legal relations of the parties. All disputes regarding this Bid or the Contract resulting therefrom shall be brought in the Courts of Guam regardless of any jurisdiction or choice of law doctrine.

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

Contractor shall not sublet the Agreement in whole or in part without the prior written consent of GWA. Any sub-contract shall bind the subcontractor to the same terms and conditions as provided in the Contract. Written consent of GWA for subletting shall not relieve Contractor of any of his obligations under the Agreement.

4.31. Non-waiver

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

4.32. Severability

If any work, phrase, clause, article, or other provision of this Agreement is or is deemed or adjudicated or otherwise found to be against public policy, void, or otherwise unenforceable, then said work, phrase, clause, article, or other provision shall be deleted or modified, in keeping with the express intent of the parties hereto as necessary to render all the remainder of this Agreement valid and enforceable. All such deletions or modifications shall be the minimum necessary to effect the foregoing.

4.33. Rights and Remedies

The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, will be in addition to, and shall not be construed in any way as a limitation of any rights and remedies available to any or all of them which are otherwise imposed or available by law or contract, by special warranty or guarantee, or by other provisions of the Contract, and the provisions of this paragraph shall be as effective as if repeated specifically in the Contract in connection with each particular duty, obligation, right, and remedy to which they apply. All representations, warranties, and guarantees made in the Contract will survive final payment and termination or completion of this Agreement.

4.34. New material

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

4.35. Claims based on the General Manager's Action or Omissions

If any action or omission on the part of the General Manager, or his/her designee, requiring performance changes within the scope of the contract constitutes the basis for a claim by the Contractor for additional compensation, damages, or an extension of time for completion, the Contractor shall continue with performance of the contract in compliance with the directions or orders of such officials, but by so doing, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) The Contractor shall have given prior written notice to the General Manager, or his/her designee:
 - i. Prior to the commencement of the work involved, if at that time the Contractor knows of the occurrence of such action or omission;
 - ii. Within thirty (30) days after the Contractor knows of the occurrence of such action or omission, if the Contractor did not have such knowledge prior to the commencement of the work; or
 - iii. Within such further time as may be allowed by the Procurement Officer in writing. This notice shall state that the Contractor regards the act or omission as a reason that may entitle the Contractor to additional compensation, damages, or an extension of time. The Procurement Officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Procurement Officer or designee of such officer.
- (2) The notice required by subparagraph (1) of this Paragraph describes as clearly as practicable at the time the reasons why the Contractor believes that additional compensation, damages, or an extension of time may be remedies to which the Contractor is entitled; and
- (3) The Contractor maintains and, upon request, makes available to the Procurement Officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

4.35.1. Limitations of Clause

Nothing herein contained shall excuse the Contractor from compliance with any rules of law precluding GWA and its officers and any Contractors from acting in collusion or bad

faith in issuing or performing change orders that are clearly not within the scope of the contract.

4.35.2. Standards of Design and Workmanship

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

4.36. Standard Work Schedule

Work scheduled and performed by the Contractor on GWA's premises shall conform to published GWA working hours and shall account for GWA's observed holidays and any other requirement under GWA's Personnel Rules and Regulations.

4.37. Interference with Operation

Interference with normal operation of GWA's facilities or equipment, or that of any Contractors or subcontractors on GWA's premises, shall be avoided. The GWA's representative will determine in advance whether such interference is unavoidable and will establish the necessary procedures under which the interferences will be allowed.

4.38. Release of Information

The Contractor shall not release any information, including the Contract price, concerning this project or any part thereof in any form, including advertising, news releases, or professional articles, without the prior express written permission of GWA as to the subject matter being released and without informing GWA as to the entire content of any such release..

4.39. Liens

In the event that a lien of any nature shall at any time be filed against the hardware, firmware, or software or the Contractor's facility by any person, firm, or corporation which has supplied material or services at the request of the Contractor, and for the cost of which the Contractor is liable under the terms of the Contract, the Contractor agrees, promptly on demand of GWA and at the Contractor's expense, to take any and all action necessary to cause any such lien to be released or discharged therefrom. The Contractor

agrees to hold GWA harmless from all liens, claims, or demands in connection with the Work.

4.40. Title

Title to any of the hardware, firmware, and software, management practices, training and other documents and/or processes required by GWA to continue the improved operations and maintenance of the GWA wastewater system will pass to GWA upon placement of the equipment within GWA's premises prior to commencement of its installation, subject to GWA's inspection thereof. Contractor shall retain a copy of all documents that result from this Bid for a period of not less than three (3) years from the conclusion of any Contract entered into with GWA.

The Contractor shall retain title and be responsible for movement and damage or loss of any good or equipment from the delivery carrier onto the premises and the subsequent unpacking of the equipment until such time as the equipment is ready and assembled for use.

If, for any reason, the Work is terminated prior to its completion, the title to all the Work performed to that time including all hardware, firmware, software, management practices, training and other documents and/or processes required by GWA to continue the improved operations and maintenance of the GWA wastewater system, whether in the Contractor's facility, in transit, or on GWA's premises, shall immediately pass to GWA.

4.41. Insurance

Contractor shall not commence work under any Contract until they have obtained all insurance required under this Bid and owner has approved such insurance, nor shall the Contractor allow any Subcontractor to commence work on this subcontract until all similar insurance required of the Subcontractor has been so obtained and approved. He shall maintain all insurance required during the course of the work.

4.42. Contractors and Subcontractors Insurance

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

1. General Liability including products, completed operations and contractual coverage for this Agreement in the amount of \$1,000,000 combined limit. Owner shall be an additional insured.

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

4.42.1. Indemnification

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

4.42.2. Certificate of Insurance

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

4.42.3. 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.