

D. GRAHAM BOTHA, ESQ.
GPA Legal Counsel
Guam Power Authority
1911 Army Drive, Ste 227
Harmon, Guam, 96913
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RECEIVED
 OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEALS

DATE: 6/5/13
 TIME: 4:25 AM PM BY: Thyza
 FILE NO OPA-PA: 13-005

Attorney for the Guam Power Authority

**OFFICE OF THE PUBLIC AUDITOR
 PROCUREMENT APPEALS**

IN THE APPEAL OF)	DOCKET NO. OPA-PA-13-005
)	
VITOL, Asia Private Ltd.,)	AGENCY REPORT
)	
Appellant.)	
_____)	

Appellee GUAM POWER AUTHORITY (GPA), by and through its attorney, D. GRAHAM BOTHA, ESQ., hereby submits its Agency Report in the form required under 2 G.A.R. §12105:

- (a) A copy of the protest: **Previously submitted to the Office of the Public Auditor (“OPA”) on May 29, 2013, by GPA.**
- (b) A copy of the bid or offer submitted by the Appellant and a copy of the bid or offer that is being considered for award or whose bid or offer is being protested, if any had been submitted prior to the protest: **Previously submitted to the Office of the Public Auditor (“OPA”) on May 29, 2013, by GPA.**
- (c) A copy of the solicitation, including the specification or portions thereof relevant to the protest: **Previously submitted to the Office of the Public Auditor (“OPA”) on May 29, 2013, by GPA.**
- (d) A copy of the abstract of bids or offers or relevant or portions thereof relevant to the protest: **Previously submitted to the Office of the Public Auditor (“OPA”) on May 29, 2013, by GPA.**
- (e) Any other documents which are relevant to the protest, including the contract, if one has been awarded, pertinent amendments, and plans and drawings:

Previously submitted to the Office of the Public Auditor (“OPA”) on May 29, 2013, by GPA.

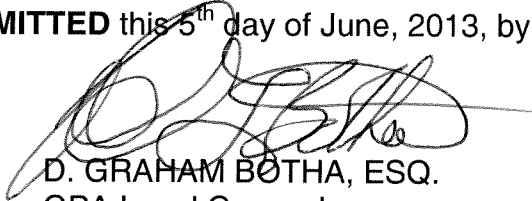
(f) The decision from which the Appeal is taken, if different than the decision submitted by Appellant: **Previously submitted to the Office of the Public Auditor (“OPA”) on May 29, 2013, by GPA.**

(g) A statement answering the allegation of the Appeal and setting forth findings, actions, and recommendations in the matter together with any additional evidence or information deemed necessary in determining the validity of the Appeal. The statement shall be fully responsive to the allegations of the Appeal: **Please see attached.**

(h) If the award was made after receipt of the protest, the report will include the determination required under 2 G.A.R. §9101(e): **Not applicable. The bid award in IFB-GPA-068-12 was cancelled based on the disqualification of all three bidders.**

(i) A statement in substantially the same format as Appendix B to this Chapter, indicating whether the matter is the subject of a court proceeding: **Previously submitted to the Office of the Public Auditor (“OPA”) on May 29, 2013, by GPA.**

RESPECTFULLY SUBMITTED this 5th day of June, 2013, by:



D. GRAHAM BÖTHA, ESQ.
GPA Legal Counsel

STATEMENT ANSWERING ALLEGATIONS OF APPEAL

(As required by 2 G.A.R. §12105(g))

I. RELEVANT BACKGROUND

A. GPA SOLICITS BIDS FOR INVITATION FOR BID GPA-068-012, SUPPLY OF RESIDUAL FUEL OIL NO. 6

On August 31, 2012, Guam Power Authority (“GPA”) issued Invitation for Bid, GPA-068-012, Supply of Residual Fuel Oil No. 6. Procurement Record, Tab”3”. Three companies submitted bids in response to the IFB, Jiershing, Vitol and Petrobras. Prior to submission of technical bids and sealed price proposals, the three bidders had an opportunity to submit questions regarding the IFB. GPA issued amendments I to III in response to these questions, and other amendments to clarify the IFB. Procurement Record, Tab “3”.

Amendment III, dated October 25, 2012, clarified certain questions raised by prospective bidders, amended the bid guarantee requirement and replaced certain pages in the bid form and contract price sections. Each bidder acknowledged Amendment III, and subsequently submitted a bid which was opened on November 6, 2012. The Abstract of Bids identified the three bidders, and the bids submitted by each. Procurement Record, Tab “13”. A Notice of Intent of Possible Award to Vitol Asia dated January 15, 2013 was sent to all bidders. Procurement Record, Tab”23”. Jiershing filed a timely protest on January 29, 2013 (Tab “25”), and a stay of procurement dated January 30, 2013, was sent to all bidders. (Tab “26”). Vitol submitted several protest letters after the stay of procurement was provided to all bidders. As a result of the

Jiershin protest, GPA re-evaluated all of the bids, and determined that all bidders, including Vitol, would be subject to rejection based on either being non-responsive pursuant to 5 GCA §3116 and 2 GAR §3115, or that the bid submitted was not responsive, that is, it does not conform in all material respects to the Invitation for Bids pursuant to 5 GCA §3109(n)(2).

Jiershin withdrew its protest of the IFB by letter dated March 29, 2013, (Tab "36"), and GPA issued a letter cancelling IFB-GPA-068-12, dated April 2, 2013, which together with a lift of stay, was sent to all bidders. (Tab "37").

II. JURISDICTION

A. THE OFFICE OF THE PUBLIC AUDITOR (OPA) HAS NO JURISDICTION OVER THE CLAIMS RAISED BY VITOL, AS ITS PROTEST REGARDING IFB-068-12 WAS NOT FILED IN A TIMELY MANNER

The Notice of Appeal filed by Vitol on Appendix A, Notice of Appeal Form, on May 20, 2013, indicates that a decision being appealed was made on February 26, 2013. 5 GCA §5425(a) provides that any actual or prospective bidder, offeror, or contractor who may be aggrieved in connection with the method of source selection, solicitation or award of a contract, may protest to the Chief Procurement Officer, the Director of Public Works or the head of a purchasing agency. The protest shall be submitted in writing within fourteen (14) days after such aggrieved person knows or should know of the facts giving rise thereto. Vitol's attorney states on the face of his procurement appeal form that he is protesting a decision made on February 26, 2013, which protest was filed on May 20, 2013. More than fourteen (14) days has elapsed and therefore the protest filed by Vitol's attorney was not timely.

In addition, a copy of the notice of cancellation of IFB-068-12 and a lift of stay was

provided to all bidders, including Vitol, on April 2, 2013. If Vitol's attorney intended to protest the cancellation of this procurement, he would have needed to file a protest fourteen (14) days after the notice of cancellation pursuant to 5 GCA §5425(a). In either case, Vitol's attorney filed his notice of appeal on May 20, 2013, which is untimely under any theory of protest pursuant to 5 GCA §5425. 5 GCA §5425(e) provides that a decision under subsection (c) of this section including a decision there under regarding entitlement to costs as provided by subsection (h) of this section, may be appealed by the protestant, to the Public Auditor within fifteen (15) days after receipt by the protestant of the notice of decision.

Similarly with regard to claims raised by Vitol with regard to an extension of a contract with Petrobras, which was entered into on March 1, 2010, no protest by Vitol or anyone else was made when the contract was entered into, and Vitol has no standing to bring this matter before the OPA, as there is no jurisdiction for the OPA. Vitol's protest was previously denied by the PUC with regard to this same issue.

II. DISCUSSION

A. THE VITOL BID WAS NON-RESPONSIVE, AND THE BID WAS PROPERLY CANCELLED AS ALL THREE BIDDERS WERE EITHER NON-RESPONSIBLE OR NON-RESPONSIVE TO THE INVITATION FOR BID

Procurement law requires that GPA award to the lowest responsible and **responsive** bidders. A responsive bidder is a person who has submitted a bid which conforms in all material respects to the Invitation for Bid. 5 GCA§5201(g) and 2 GAR, Div. 4, Chap. 3, §3109(n)(2). Further, any bidder's offering which does not meet the acceptability requirements shall be rejected as non-responsive. 2 GAR, Div. 4, Chap. 3, §3109(n)(3)(c).

IFB Amendment III, dated October 25, 2012, was acknowledged by all bidders, prior to the submission on final bids on November 16, 2012. (Tab "12"). Page 16a gave explicit instructions that Section 2.01 Table 1 was a mandatory bid. Vitol filled in the first 2 columns, but under the third and fourth columns put in "NO OFFER" under both LSFO and HSFO. (Tab "14"). Page 9 indicates that "all blank spaces in the bid forms must be correctly filled in where indicated and the bidder must state the prices (both in words and numerals). In case of conflict between words and numerals, the words, unless obviously incorrect, will govern." (Tab "3"). Page 10 indicates under Submission of Bids that "(a) the bidder is required to bid on all items called for in the Bid Form. (b) ... Bids containing any conditions, omissions, unexplained erasures or alterations or items not called for in the proposal or irregularities of any kind shall be rejected by the GPA as being incomplete." Vitol attached to its price proposal a five page "Terms and conditions Addendums" which makes changes and takes exception to fuel oil volume, contract term, contract price, term of payment, letter of indemnity, payment of taxes and other government charges, contract audit, product and quality, government laws and regulations, specifications, permits and responsibilities, termination for convenience, and governing law. (Tab "14").

Page 13 of the IFB provides that "bids will be reviewed and evaluated by GPA based on the mandatory bid items and will determine the lowest and most responsive bidder for each item ... 17(A)(2) ... whether the bidder's ultimate offer meets and conforms with the announced requirement of GPA in all material respects." (Tab "3"). The failure by Vitol to fill out the mandatory price table completely as provided for in the IFB, along with the exceptions taken by Vitol attached to their price proposal,

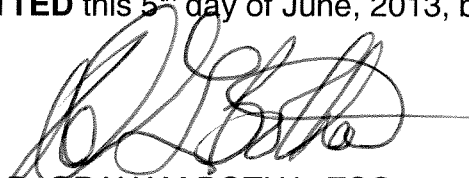
demonstrate that the Vitol bid was properly rejected as non-responsive as the Vitol bid clearly did not conform in all material respects to the Invitation for Bid. 5 GCA§5201(g) and 2 GAR, Div. 4, Chap. 3, §3109(n)(2). Since Vitol's bid offering clearly did not meet the acceptability requirements it was rejected as non-responsive. 2 GAR, Div. 4, Chap. 3, §3109(n)(3)(c).

To the extent not previously discussed or covered above, GPA denies each and every allegation made by Vitol in its Notice of Appeal filed with the OPA on May 20, 2013.

CONCLUSION

GPA requests that the appeal of Vitol be dismissed, on the grounds that the appeal was not filed in a timely manner, and that the Vitol bid was appropriately rejected as being non-responsive to the specifications contained in IFB-068-12. GPA further requests that the Public Auditor award all legal and equitable remedies that GPA may be entitled to as a result, to include attorney's fees and costs incurred by GPA.

RESPECTFULLY SUBMITTED this 5th day of June, 2013, by:



D. GRAHAM BOTHA, ESQ.
GPA Legal Counsel



Vitol Asia Pte Ltd

260 Orchard Road
#13-01 The Heeren
Singapore 238855
Telephone : (65) 6737 9922
Facsimile : (65) 6887 0854
Telex : RS 33473 Vitol
Co. Regn. No. 199001917Z

DATE: 12 NOVEMBER 2012

TO : GUAM POWER AUTHORITY
ATTN: MR JOAQUIN C. FLORES, P.E.
GENERAL MANAGER OF GUAM POWER AUTHORITY

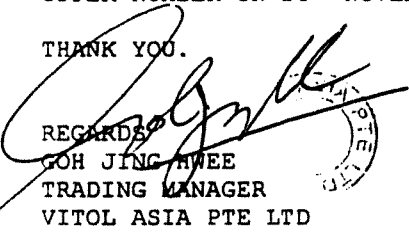
GPA-068-12 (SUPPLY OF RESIDUAL FUEL OIL NO.6

PLEASE FIND ATTACHED OUR BID DOCUMENTS FOR ABOVEMENTIONED TENDER CONSISTING OF:

- BID FORM
- BID GUARANTEE
- NON-COLLUSION AFFADAVIT
- AFFADAVIT OF DISCLOSURE OF MAJOR SHAREHOLDERS
- RESTRICTIONS AGAINST SEX OFFENDERS AFFADAVIT
- WAGE DETERMINATION
- NO GRATUITUIES OF KICKBACKS AFFADAVIT
- ETHICAL STANDARDS AFFADAVIT
- TERMS AND CONDITIONS ADDENDUMS

PLEASE NOTE THAT FOR TENDER DOCUMENTS 16A AND 17A WE WILL BE FILLING IN THE OFFER NUMBER ON 16TH NOVEMBER 2012.

THANK YOU.


REGARDS
GOH JING HWEE
TRADING MANAGER
VITOL ASIA PTE LTD

Part I. INSTRUCTIONS

A. Bid Form. Please revise as follows:

Date: 09 NOV 2012

To: MR. JOAQUIN C. FLORES, P.E.
GENERAL MANAGER OF GUAM POWER AUTHORITY

Gentlemen:

The undersigned (hereafter called the Bidder), a VITOL ASIA PTE LTD ESTABLISHED AT 260 ORCHARD ROAD #13-01 THE HEKREN SINGAPORE 238855

(Corporation, Partnership or Individual)

organized and/or licensed to do business under the laws of SINGAPORE, hereby proposes and agrees to provide necessary Supply of Residual Fuel Oil No.6, all in accordance with the specifications set forth under Section 2.01 of the contract and other contract documents prepared by the Guam Power Authority for the sum of:

1. MANDATORY BID - SECTION 2.01 TABLE 1

Bid Offer		Two (2)-Year Contract Base Period	First (1 st) Year Contract Extension	Second (2 nd) Year Contract Extension	Third (3 rd) Year Contract Extension
LSFO 1.19% _w Sulfur Max	US\$/MT (3 decimals)	860.36	875.36	NO OFFER	NO OFFER
	Amount in Words	EIGHT HUNDRED SIXTY POINT THIRTY SIX	EIGHT HUNDRED SEVENTY FIVE POINT THIRTY SIX		
HSFO 2.00% _w Sulfur Max	US\$/MT (3 decimals)	835.36	850.36	NO OFFER	NO OFFER
	Amount in Words	EIGHT HUNDRED THIRTY FIVE POINT THIRTY SIX	EIGHT HUNDRED FIFTY POINT THIRTY SIX		

2. OPTIONAL BID OFFER - SECTION 2.01 TABLE 2

Bid Offer		Two (2)-Year Contract Base Period	First (1 st) Year Contract Extension	Second (2 nd) Year Contract Extension	Third (3 rd) Year Contract Extension
LSFO 1.19% Sulfur Max	US\$/MT (3 decimals)	866.36	881.36	NO OFFER	NO OFFER
	Amount in Words	EIGHT HUNDRED SIXTY SIX POINT THIRTY SIX	EIGHT HUNDRED EIGHTY ONE POINT THIRTY SIX		
HSFO 2.00% Sulfur Max	US\$/MT (3 decimals)	841.36	856.36	NO OFFER	NO OFFER
	Amount in Words	EIGHT HUNDRED FORTY ONE POINT THIRTY SIX	EIGHT HUNDRED FIFTY SIX POINT THIRTY SIX		

3. OPTIONAL BID OFFER - SECTION 2.01 TABLE 3

Bid Offer		Two (2)-Year Contract Base Period	First (1 st) Year Contract Extension	Second (2 nd) Year Contract Extension	Third (3 rd) Year Contract Extension
LSFO 1.19% Sulfur Max	US\$/MT (3 decimals)	872.36	887.36	NO OFFER	NO OFFER
	Amount in Words	EIGHT HUNDRED SEVENTY TWO POINT THIRTY SIX	EIGHT HUNDRED EIGHTY SEVEN POINT THIRTY SIX		
HSFO 2.00% Sulfur Max	US\$/MT (3 decimals)	852.86	867.86	NO OFFER	NO OFFER
	Amount in Words	EIGHT HUNDRED FIFTY TWO POINT EIGHTY SIX	EIGHT HUNDRED SIXTY SEVEN POINT EIGHTY SIX		

The undersigned has examined the specifications and other contract documents and is familiar with the local conditions at the place where the Contract is to be performed.

The bid security attached, without endorsement, in the sum of not less than FIVE HUNDRED THOUSAND DOLLARS (US\$500,000.00) of the total annual amount of the bid premium fee, is furnished to the Government as a guarantee that the contract will be executed and a performance and payment bond

furnished within fifteen (15) calendar days after the acceptance of the bid of the undersigned. In the event that the undersigned bidder shall fail to execute the contract and furnish a satisfactory performance and payment bond under the conditions and within the time specified in this bid, the bid security shall be forfeited as liquidated damages for the delay and additional work and costs caused thereby in obtaining another bidder. The undersigned hereby agrees that the amount of the attached bid security is a reasonable forecast of potential damages and is not a penalty.

If written notice of the acceptance of this bid is mailed, telegraphed or delivered to the undersigned within sixty (60) calendar days after the opening thereof, the undersigned agrees to execute the form of agreement included as one of the contract documents, and to furnish a performance and payment bond in an amount equal to TWENTY FIVE MILLION DOLLARS (US\$25,000,000.00) within fifteen (15) calendar days after receipt of such notice.

The undersigned understands that GPA reserves the right to reject any or all bids or to waive any informality or technicality in any bids in the interest of the Government.

Attached hereto is an affidavit as proof that the undersigned has not engaged into any collusion with any person with respect to this bid or any other bid or the submitting of bids for the contract for which this bid is submitted.


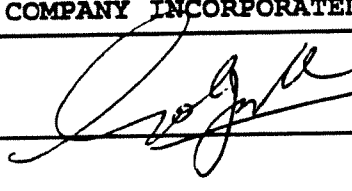
RESPECTFULLY SUBMITTED BY:

VITOL ASIA PTE LTD (A COMPANY INCORPORATED IN SINGAPORE)

(CONTRACTOR)

MR. GOH JING HWEE

(BY)



TRADING MANAGER

(TITLE)

260 ORCHARD ROAD #13-01, THE HEEREN, SINGAPORE 238855

(BUSINESS ADDRESS)



ANZ
Reg No F00002839E
Ocean Financial Centre
18-00, 10 Collyer Quay
Singapore 049315
Tel: 6681 8022
Fax: (65) 6681 8020
SWIFT: ANZBSGSXXXX
www.anz.com

**Irrevocable
Standby Letter of Credit No.
SO30798140**

Beneficiary:
Guam Power Authority
Aturidat Ilektrisedat Guahan,
P.O Box 2977, Agana, Guam, Guam (US)

Applicant:
Vitol Asia Pte Ltd
260 Orchard Road Hex13-01
The Heeren Singapore 238855
Co Regn No 199001917Z Singapore

Date of Issue:
November 09, 2012

Date and Place of Expiry:
February 07, 2013 Singapore

SLC Amount:
Not Exceeding USD 500,000.00 Five Hundred Thousand and
00/100 United States Dollars

We issue our Irrevocable Standby Letter of Credit subject to the following terms and conditions.

This Standby Letter of Credit is available with ANZ, Ocean Financial Centre, 18-00, 10 Collyer Quay, Singapore 049315 Singapore by payment when accompanied by the following documents.

Special Conditions:
STANDBY LETTER OF CREDIT NO. SO30798140

APPLICANT: VITOL ASIA PTE LTD

BENEFICIARY: GUAM POWER AUTHORITY, ATURIDAT ILEKTRESEDAT GUAHAN, P.O BOX 2977, AGANA, GUAM

L/C ISSUE DATE: 09 NOVEMBER 2012

L/C EXPIRY DATE: 07 FEBRUARY 2013



ETHICAL STANDARDS AFFIDAVIT

AFFIDAVIT
(Proposer)

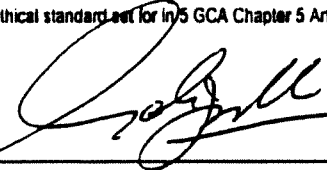

Republic of Singapore,
TERRITORY OF GUAM
HAGATNA, GUAM

SS:

GOH JING HWEE being first duly sworn, deposes and says:

That I am ~~(the Sole Proprietor, a Partner or Officer of the Offeror)~~

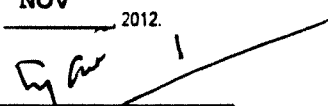
That Offeror making the foregoing Proposal, that neither he or nor of the Offeror's officers, representatives, agents, subcontractors, or employees of the Offeror have knowingly influenced any government of Guam employee to breach any of the ethical standards set forth in 5 GCA Chapter 5 Article 11, and promises that neither he nor any officer, representative, agent, subcontractor, or employee of Offeror will knowingly influence any government of Guam employee to breach any ethical standard set for in 5 GCA Chapter 5 Article 11.

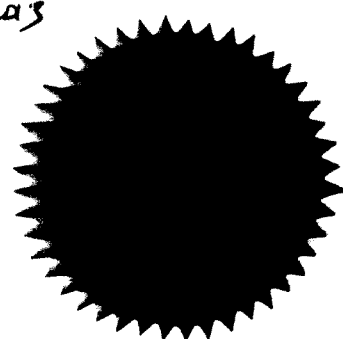



Signature of Individual if Proposer is a Sole Proprietorship;
~~Partner, if the Proposer is a Partnership;~~
Officer, if the Proposer is a Corporation

MR. GOH JING HWEE
TRADING MANAGER
VITOL ASIA PTE LTD

SUBSCRIBED AND SWORN to before me this 9TH day of NOV 2012.


Notary Public
In and for the Territory of Guam
My Commission Expires: 31 MAR 2013



Terms and Conditions Addendums

Section 1.02 Fuel Oil to be Supplied

Please include a +/-10% tolerance at Contractor's option to be applicable to the fuel oil volume to be supplied by the Contractor.

LSFO 1.19% Sulfur Max, 1,000,000bbls/year +/-10% at Contractor's option

HSFO 2.00% Sulfur Max, 2,000,000bbls/year +/-10% at Contractor's option.

The quantity to be delivered in each individual shipment shall be minimum quantity of 230,000bbls +/-10% at Contractor's option.



Section 1.03 Contract Term.

Delete: " The contractual obligation of GPA...under the Contract."

Section 1.04 Contract Price

Item (5) : insert 'copies of' before 'a clean bill of lading...'

Item (6) : insert 'copies of' before 'certificates of origin...'

Section 1.07 Term of Payment

Delete "provided vessel tenders its NOR within TEN(10) days after the BL date, otherwise it extends day by day (B/L date inclusive)."

The following documents to be included in the documentary Letter of Credit for payment purpose.

- 1 COMMERCIAL INVOICE, DULY SIGNED.
- 2 1/3 ORIGINAL PLUS 3 NON-NEGOTIABLE COPIES CLEAN ON BOARD OCEAN BILLS OF LADING, ISSUED OR ENDORSED TO THE ORDER OF xxxx MARKED 'FREIGHT PAYABLE AS PER CHARTER PARTY.

IN CASE DOCUMENTS 2 TO 5 ABOVE ARE NOT AVAILABLE UPON NEGOTIATION , PAYMENT ON MATURITY DATE TO BE EFFECTED AGAINST PRESENTATION OF BENEFICIARY'S COMMERCIAL INVOICE (SWIFT INVOICE ACCEPTABLE) AND BENEFICIARY'S LETTER OF INDEMNITY (SWIFT LETTER OF INDEMNITY) ISSUED IN THE FOLLOWING FORMAT:



-QUOTE-

DATE:

TO :

LETTER OF INDEMNITY

DEAR SIRs,

WE REFER TO A CARGO OF _____ METRIC TONS OF XXXX SHIPPED ON BOARD THE TANKER ' '_____' PURSUANT TO THE BILLS OF LADING DATED _____.

ALTHOUGH WE HAVE SOLD AND TRANSFERRED TITLE OF SAID CARGO TO YOU, WE HAVE BEEN UNABLE TO PROVIDE YOU WITH THE 1/3 ORIGINAL BILLS OF LADING AND OTHER SHIPPING DOCUMENTS COVERING THE SAID SALE.

IN CONSIDERATION OF YOU PAYING THE FULL PURCHASE PRICE OF U.S. DOLLARS _____, WE HEREBY EXPRESSLY WARRANT THAT WE HAVE GOOD AND MARKETABLE TITLE, FREE AND CLEAR OF ANY LIEN OR ENCUMBRANCE TO SUCH MATERIAL AND THAT WE HAVE FULL RIGHT AND AUTHORITY TO TRANSFER SUCH TITLE AND EFFECT DELIVERY OF SUCH MATERIAL TO YOU.

WE FURTHER AGREE TO MAKE ALL REASONABLE EFFORTS TO OBTAIN AND SURRENDER TO YOU AS SOON AS POSSIBLE THE FULL SET OF ORIGINAL BILLS OF LADING, AND OTHER SHIPPING DOCUMENTS TO PROTECT, INDEMNIFY AND SAVE YOU HARMLESS FROM AND AGAINST ANY AND ALL DAMAGES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) WHICH YOU MAY SUFFER BY REASON OF THE ORIGINAL BILLS OF LADING AND OTHER SHIPPING DOCUMENTS REMAINING OUTSTANDING, OR BREACH OF THE WARRANTIES GIVEN ABOVE INCLUDING BUT NOT LIMITED TO ANY CLAIMS AND DEMANDS WHICH MAY BE MADE BY A HOLDER OR TRANSFEREE OF INTEREST IN OR LIEN ON THE CARGO OR PROCEEDS THEREOF.

OUR OBLIGATION TO INDEMNIFY YOU IS, OF COURSE, SUBJECT TO THE CONDITION THAT YOU SHALL GIVE US NOTICE OF ASSERTION OF ANY CLAIM (S) AND FULL OPPORTUNITY TO CONDUCT THE DEFENCE THEREOF AND THAT YOU SHALL NOT SETTLE ANY SUCH CLAIM (S) WITHOUT OUR APPROVAL.



THIS LETTER OF INDEMNITY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH ENGLISH LAW AND THE PARTIES SHALL SUBMIT TO THE JURISDICTION OF THE HIGH COURT OF JUSTICE OF ENGLAND.

THIS LETTER OF INDEMNITY SHALL EXPIRE UPON OUR TENDERING THE FULL SET OF ORIGINAL BILLS OF LADING AND OTHER SHIPPING DOCUMENTS TO YOU.

YOURS FAITHFULLY,
VITOL ASIA PTE LTD
AUTHORISED SIGNATURE(S)

Section 1.08 Payment of Taxes and Other Government Charges

To delete this clause completely.

Section 1.11 Contractor Facility Audit

To delete this clause completely.

Section 2.01 Product and Quality

To delete the following text that appears immediately prior to Table 1 - "Any regulatory changes to the specification set forth in Section 2.01 shall automatically replace the requirement set thereto."

Section 3.02 Government Laws and Regulations.

To delete this clause.

Section 3.03 Specifications

To delete this clause.

Section 3.04 Permits and Responsibilities

To delete this clause.



Section 3.11 Disputes

In the revised version of this Section as notified by GPA to the Bidders in their letter of 8 October 2012, please replace "This CONTRACT shall in all respects be governed by the laws of Guam." with "This CONTRACT shall in all respects be governed by English law."

Section 3.14 Transportation

Please add under (a): Contractor shall further narrow a 3 days arrival date range at least 7 days prior to the arrival of the 3 days.

In the 6th paragraph, replaced "Twenty One(21)" by "Thirty (30)"

Delete this section: "GPA shall have the right to cancel or change... Of the delivery range without penalty".

Under (C), item (i), delete "The vessel must be able to ...laytime used for calculating demurrage".

Section 4.04 Penalty clauses

Replace the first 4 lines of clause (b) with the following:

"In the event that any fuel, according to the analysis results of either the composite vessel sample or the "Umpire" sample has one or more quality characteristics outside the contractual specifications set in Section 2.01 but GPA, in its sole discretion, agrees nevertheless to take delivery of such fuel, then as the sole and exclusive remedy available to GPA for the fuel being outside the contractual specifications, the relevant penalty set out below shall be imposed:"

Delete from paragraph (b) "It is expressly agreed that...or partially from both." and replace with the following:

"It is expressly agreed that the present penalty clauses shall be imposed regardless of whether damages were or not suffered by the GPA due to the delay in delivering the fuel and fuel quality outside contractual specifications."



Section 4.07 Termination for Convenience

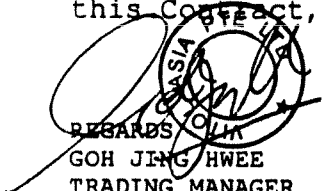
To delete this completely.

Section 5.08 Governing Law

Replace this clause with:

"Section 5.08 Incoterms

To the extent not inconsistent with the other provisions of this Contract, Incoterms 2000 shall apply to this Contract."


REGARDS,
GOH JING HWEE
TRADING MANAGER
VITOL ASIA PTE LTD