

OFFICE OF THE PUBLIC ACCOUNTANT FOR 6/28/2013

TIME: 3:56  AM  PM BY: M.B.

PROCUREMENT APPEALS  
FILE NO OPA-PA: 13-005

IN THE APPEAL OF ) DOCKET NO. OPA-PA-13-005  
)  
)  
) APPELLANT'S COMMENTS ON  
VITOL, Asia Private Ltd., ) AGENCY REPORT: CERTIFICATE OF  
) SERVICE  
)  
Appellant. )  
)  
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**I. PROCEDURAL BACKGROUND**

1. On November 16, 2012, GPA held a public bid opening. Three companies submitted bids, Petrobras, Vitol and Jiershin.

2. Shortly after bid opening, GPA commenced sole source negotiations with Petrobras to extend incumbent contract No. GPA-001-10. This culminated in an agreement acknowledged and approved by the Consolidated Commissions on Utilities (CCU) on December 12, 2012, Under the terms of the agreement, Petrobras was to be allowed to raise its contractual price premium rate from \$42.91 to \$117.80 for low sulfur fuel and for, \$20.44 to \$92.80 for high sulfur fuel. This is approximately a 300% increase for low sulfur fuel and a 450% increase for high sulfur fuel. Both increased rates are exactly twenty-five cents below Vitol's bid.

3. By letter dated January 15, 20113, GPA informed Vitol that Vitol was the apparent successful offer or under IFB No. GPA-068-12 and that GPA was considering the award of a delivery order to cover the first six months' requirements commencing in March 2013.

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2 4. Thirty five days later after the CCU's approval of Petrobras renegotiated terms,  
3 on January 16, 2013, GPA rejected Jiershin's bid as a non-responsible. Forty eight days after  
4 the CCU approved, Jiershin protested to GPA.

5 5. By letter dated February 5, 2013, GPA informed Appellant that further action  
6 to acquire its fuel requirements under IFB No. GPA-068-12 were stayed in accordance with 5  
7 GCA §5425(g) pending resolution of Jiershin's protest. The letter further stated that GPA was  
8 proceeding to acquire these same requirements by extension of Petrobras' contract No. GPA-  
9 001-10 to allow time resolved issues raised by Jiershin's protest.  
10

11 6. By letter dated February 2013, Appellant protested, at the agency level, the  
12 proposed contractual action with Petrobras. On February 13, 2013 Appellant supplemented its  
13 protest to the agency. To date, appellant has received no formal response to its protest.  
14 However, this protest should be deemed denied based on 'GPA's public actions of seeking  
15 and, on February 26, 2013, receiving the PUC's approval to proceed with the contractual  
16 action with Petrobras.  
17

18 7. Although the Appellant has made both written and oral request for copies of  
19 documents concerning Petrobras' original rejection of an option to extent and the subsequent  
20 negotiation leading to the agreement acknowledged by the CCU on December 12, 2012, GPA  
21 has failed to date to fully comply, in violation of Guam's Sunshine Reform Act of 1999 and 5  
22 GCA §5251.  
23

## 24 II. COMMENTS ON THE AGENCY REPORT

25 A. The Agency Report does not answer the allegation of the Appeal.

26 The Guam Procurement regulations state that the Agency Report shall include a  
27 statement answering the allegations of the Appeal and setting forth findings, actions, and  
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1  
2 recommendations in the matter with any additional evidence or information deemed necessary  
3 in determining the validity of the Appeal. The statement shall be fully responsive to the  
4 allegations of the Appeal. 2 GAR 12105(g).

5  
6 The Procurement Record added a February 2, 2013 letter from Petrobras to GPA titled  
7 FUEL OIL SUPPLY CONTRACT EXTENSION. **(Exhibit A)** This letter had no supporting  
8 documents to it so it stands alone. How did this letter get generated and at whose bequest? It  
9 can be assumed that GPA initiated the contact and we continue to request any and all  
10 communications between the parties. As stated previously appellant had requested all  
11 documentation regarding the extension for the supply of oil to GPA. Upon review of the  
12 Procurement Record no other letters or emails are found in regards to the extension. This  
13 extension is the basis of the appellant's appeal. The Agency had provided much rationale as  
14 to why the original bids were cancelled but do not address the merits of the appeal. The  
15 Appellant is not protesting the cancelation for the original bid but the six month extension for  
16 the supply of oil. Thus the Agency response to the protest is incomplete.

17  
18 The Agency Report of seven pages consists of a two page list of documents and an  
19 overview basically stating the history of the bid. This hardly even touched the surface of the  
20 requirement for the agency to be "fully responsive to the allegations," and does not attempt to  
21 "setting forth findings, actions, and recommendations in the matter together with any  
22 additional evidence or information deemed necessary in determining the validity of the  
23 Appeal." The report does not even attempt to develop a defense of the agency action as is  
24 required under the rules. This leaves the OPA with the task of trying to determine the  
25 relational behind the denial of the Appellant's protest.  
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1  
2 Furthermore the Agency also failed to comply with two of the Guam Procurement  
3 Laws, which is to both “permit the continued development of procurement policies and  
4 practices” and to “provide for increased public confidence in the procedures followed in  
5 public procurement”. 5 GCA 5001(b)(2); 5 GCA 5001(b)(3).  
6

7 The Agency also contends that the OPA does not have jurisdiction over the claims due  
8 to the filing being untimely. This is interesting for the Agency to claim as it had not provided  
9 the requested documentation that the Appellant requested for several months. **(Exhibit “B”)**  
10 The Agency states that no appeal had been filed within the 14 days of a decision. As stated  
11 earlier the appeal is filed in reference to the actions of the PUC on February 26, 2013. On  
12 February 20, 2013, (Exhibit “C”) Appellant lodged a letter with the PUC protesting the  
13 actions of GPA going forward with the 6 month extension of the oil contract. As per the rules  
14 an administrative judge will review all protests and submit to the PUC whether there is a  
15 cause of action or not. No review was done by the PUC and only on May 8, 2013; **(Exhibit**  
16 **“D”)** was a copy of the minutes of the meeting delivered via email to this office. Thus ten  
17 days after receipt of the letter the protest was filed with the OPA. This office attempted to file  
18 this protest the day after the PUC hearing but it was rejected by the OPA because it did not  
19 contain a document stating the denial of the protest to the Agency.  
20  
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### 22 III. CONCLUSION

23 Appellant urges the Public Auditor to examine the issues complained of. Appellant  
24 believes that its protest was proper and legitimate and that GPA had violated the Procurement  
25 Process and that the proposal set out would meet the agency’s needs and is in the best interest  
26 of the territory to enter into such contract. Appellant respectfully requests that the Public  
27

1 Auditor declare the contractual action between GPA and Petrobras for delivery of fuel Oil No.  
2  
3 6 null and void.

4 Appellant further requests that, should GPA allege an emergency need, GPA be  
5 directed to follow the provisions in Title 5 to seek a declaration of emergency with the award  
6 to Vitol notwithstanding Jiershin's protest in accordance with the procedures in 5 GCA §5425  
7 (g). Appellant also request that GPA be directed to expeditiously disclose all procurement  
8 records on contract No. GPA-001-10 and IFB No. GPA-068-12 to Vitol. Appellant requests  
9 bid preparation costs, protest costs another damages as allowed by law.  
10

11 Vitol stands ready to commence fuel deliveries on a 6 week mobilization notice. On  
12 information and belief GPA has a 90 day supply fuel oil as a result of Petrobras' February  
13 deliver. Given proper notice Vitol stands ready to make delivery without jeopardizing GPA's  
14 continued supply fuel.  
15

#### 16 **IV. RELIEF REQUESTED**

17 This appeal is brought in the context of a post award protest, as the award had been  
18 granted and the contract extended. Appellant believes that it has met all the requirements to  
19 be the only responsive and lowest bidder upon opening of the bid and as thus should be  
20 awarded the bid, on an emergency basis, as per the context of the proposal.  
21

22 Respectfully submitted this 28<sup>th</sup> day of June 2013 at Hagatna, Guam.  
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24 LAW OFFICE OF JOHN C. TERLAJE, P.C.

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27 **JOHN C. TERLAJE, ESQ.**  
28 Attorney for Appellant Vitol Asia Pte Ltd.

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**CERTIFICATE OF SERVICE**

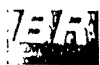
I, JOHN C. TERLAJE, do hereby certify that on June 28, 2013, I caused to be served a true and correct copy of the APPELLANT'S COMMENTS ON AGENCY REPORT upon the following:

Guam Power Authority  
P.O. Box 2977  
Hagatna, Guam 96932

Office of Public Accountability  
238 Archbishop Flores Street  
Suite 401 DNA Bldg. Hagatna, Guam 96910

Dated: 6/28/13.

  
\_\_\_\_\_  
**JOHN C. TERLAJE**



**PETROBRAS**  
SINGAPORE PRIVATE LTD.

FEBRUARY 2ND, 2013

To:  
GUAM POWER AUTHORITY  
Aturidat Ilekthresedat Guahan  
P. O. Box 2977, Hagatna  
Guam 96932-2977

FUEL OIL SUPPLY CONTRACT EXTENSION

REF: GUAM POWER AUTHORITY - PETROBRAS SINGAPORE PRIVATE LTD - FUEL OIL SUPPLY CONTRACT GPA-001-10

WE ARE PLEASED TO PRESENT THE FOLLOWING TERMS AND CONDITIONS:

1. BUYER:  
GUAM POWER AUTHORITY  
ATURIDAT ILEKTHRESEDAT GUAHAN  
P. O. BOX 2977, HAGATNA  
GUAM 96932-2977
2. SELLER:  
PETROBRAS SINGAPORE PRIVATE LTD  
8 EU TONG SEN STREET  
# 22-89 THE CENTRAL  
SINGAPORE – 059818
3. PRODUCT: FUEL OIL
4. QUALITY:

THE FUEL OIL DELIVERED HEREUNDER SHALL HAVE THE PHYSICAL AND CHEMICAL CHARACTERISTICS AS DESCRIBED IN THE FOLLOWING TABLE:

Description	Unit of Measure	Test Method	Alternative Method	Minimum Allowed	Maximum Allowed
Sulphur Content	%mass	ASTM D-4294	ASTM D-2622	N/A	LSFO= 1.19 HSFO = 2.00
Pour Point	Deg C	ASTM D-97	N/A	N/A	21
Flash Point	Deg C	ASTM D-93	N/A	66	N/A
Kinematic Viscosity	cSt at 50°C	ASTM D-445	ASTM D-2161		180
Sediment by Extraction	%mass	ASTM D-473	N/A	N/A	0.1

E. A

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Water by Distillation	% by volume	ASTM D-95	N/A	N/A	0.5
Vanadium Content	Parts per million	ASTM D-5708	a) UOP 800 b) ASTM D-5184 c) ASTM D-5863 d) IP 501 e) IP 433 f) ISO 14597 g) IP 470 h) IP 465 i) EN 13131	N/A	100
Silicon Content	Parts per million	ASTM D-5184	a) IP 470 b) IP 377 c) ISO 10487 d) IP 501	N/A	Combined Al+Si Not to exceed 70 ppm.
Aluminum Content	Parts per million	ASTM D-5184	a) IP 470 b) IP 377 c) ISO 10487 d) IP 501	N/A	
Guaranteed Gross Heating Value (HHV)	Million BTU per US Barrel	ASTM D-240	N/A	6.3	N/A
Micro-Carbon Residue	%mass	ASTM D-4530	ASTM D-5245 ASTM D-189	N/A	15
Ash	%mass	ASTM D-482	N/A	N/A	0.1
Asphaltenes	%mass	ASTM D-6560	IP 143	N/A	7
Sodium	ppm	ASTM D-5863/B	ASTM D-5708/B IP 288	N/A	80
Total Sediment (Existent)	%mass	ISO 10307-2	ASTM D-4870 IP 377	N/A	0.15
Compatibility	a) Cleanliness ratio	ASTM D-4740	N/A	N/A	a) 2
	b) Compatibility ratio				b) 2
API Gravity		ASTM D-287	ASTM D-1298 and conversion	11.2	23
Density at 15°C	Kg/L	ASTM D-287	ASTM D-1298 ASTM D-4052		0.991
Odour				Report	
Hydrogen Sulfide content (in liquid phase)	Mg/kg	IP-399	IP-570	N/A	2
Used lubricating Oil (ULO)					The fuel shall be free of ULO
Zinc	Mg/kg	IP-501	IP 470		15
Phosphorus	Mg/kg	IP-501	IP 500		15
Calcium	Mg/kg	IP-501	IP 470		30

**5. CONTRACT PERIOD**

THIS CONTRACT TERM SHALL BE FOR SIX (6) MONTHS AND SHALL COMMENCE ON MARCH 1, 2013 AND SHALL CONTINUE UNTIL MIDNIGHT OF AUGUST 31, 2013, WITH OPTION TO EXTEND FOR ONE (1) ADDITIONAL SIX (6) MONTHS TERM, UPON MUTUAL AGREEMENT OF BOTH PARTIES.





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**6. QUANTITY**

CONTRACTOR AGREES TO FURNISH AND GPA AGREES TO ACCEPT AND PAY FOR ALL OF GPA'S RESIDUAL FUEL OIL REQUIREMENTS FOR POWER GENERATING PLANTS IN GUAM FOR THE TERM OF THE CONTRACT. THE ESTIMATED TOTAL FUEL OIL REQUIREMENT IS ABOUT ONE MILLION AND FIVE HUNDRED THOUSAND BARRELS PER SEMESTER (1,500,000 BBL/SEMESTER).

THE MINIMUM PURCHASE UNDER THE CONTRACT IS 150,000 METRIC TONS PER SEMESTER. THE MAXIMUM PURCHASE UNDER THE CONTRACT IS 250,000 METRIC TONS PER SEMESTER. THE MINIMUM LOT SIZE REQUIRED FOR EACH DELIVERY IS 35,000MT.

**7. DELIVERY**

DES CABRAS ISLAND, GUAM. ANY DEVIATION REQUESTED BY BUYER SHALL BE FOR BUYER'S ACCOUNT AND SUBJECT TO SELLER'S APPROVAL.

**8. PRICE**

8.1. LOW SULPHUR FUEL OIL (LSFO): (1.19%<sub>w</sub> SULPHUR MAX): DES CABRAS ISLAND, GUAM, PRICE SHALL BE BASED ON THE ARITHMETIC AVERAGE OF THE MEAN OF THE HIGH/LOW QUOTATIONS FOR "HSFO 180 CST" AS PUBLISHED IN PLATTS ASIA PACIFIC/ARAB GULF MARKETSCAN UNDER THE HEADING "SINGAPORE" PRICED FOR FIVE (5) VALID CONSECUTIVE QUOTATIONS IMMEDIATELY PRIOR TO B/L DATE, THE B/L DATE AND FIVE (5) IMMEDIATELY AFTER THE B/L DATE PLUS A PREMIUM OF USD 117.80/MT (ONE HUNDRED AND SEVENTEEN DOLLARS AND EIGHTY CENTS PER METRIC TON).

8.2. HIGH SULPHUR FUEL OIL (HSFO): (2.00%<sub>w</sub> SULPHUR MAX): DES CABRAS ISLAND, GUAM, PRICE SHALL BE BASED ON THE ARITHMETIC AVERAGE OF THE MEAN OF THE HIGH/LOW QUOTATIONS FOR "HSFO 180 CST" AS PUBLISHED IN PLATTS ASIA PACIFIC/ARAB GULF MARKETSCAN UNDER THE HEADING "SINGAPORE" PRICED FOR FIVE (5) VALID CONSECUTIVE QUOTATIONS IMMEDIATELY PRIOR TO B/L DATE, THE B/L DATE AND FIVE (5) IMMEDIATELY AFTER THE B/L DATE PLUS A PREMIUM OF USD 92.80/MT (NINETY TWO DOLLARS AND EIGHTY CENTS PER METRIC TON).

8.3. IN CASE "NO POSTING" ON THE B/L DATE, NO PRICE WILL BE USED AND THE REMAINING 10-DAYS AVERAGE PRICE WILL BE USED. ALL PRICE POSTINGS ARE AT THE PRICES EFFECTIVE DATES.

8.4. FOR INVOICE CALCULATION PURPOSE, QUANTITY SHALL BE REPORTED IN METRIC TONNES AS DECLARED IN BILL OF LADING.

**9. PAYMENT**

PAYMENT SHALL BE MADE IN US DOLLARS FUNDS WITHOUT OFFSET, DEDUCTION OR COUNTERCLAIM WITHIN THIRTY (30) CALENDAR DAYS (30 DAYS NET TERM) AFTER THE BILL OF LADING DATE PROVIDED VESSEL TENDERS ITS NOR WITHIN FIFTEEN (15) DAYS AFTER THE B/L DATE, OTHERWISE IT EXTENDS DAY BY DAY (B/L DATE INCLUSIVE). IN CASE PAYMENT DUE ON BANK HOLIDAY OR SATURDAY IN GUAM, PAYMENT SHALL BE MADE IMMEDIATELY PRECEDING BANKING DAY. HOWEVER, SHOULD PAYMENT DUE FALLS ON SUNDAY OR MONDAY BANK HOLIDAY IN GUAM, PAYMENT SHALL BE MADE ON THE IMMEDIATELY FOLLOWING BANKING DAY.

THERE WILL BE NO AVAILABLE CREDIT LINE FOR GPA. LETTER OF CREDIT SHALL BE OPENED NO LATER THAN TWO DAYS BEFORE THE BEGINNING OF LOADING WINDOW AT A FIRST CLASS INTERNATIONAL BANK MUTUALLY AGREEABLE TO BOTH GPA AND THE CONTRACTOR.



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PAYMENT SHALL BE AVAILABLE AT SELLER'S ACCOUNT ON MATURITY DATE. IF BUYER FAILS TO PAY ON THE MATURITY DATE, SELLER SHALL BE REIMBURSED FOR THE INTERESTS RELATED TO THE TIME OF DELAY. INTEREST RATE SHALL BE CALCULATED BASED ON THE ONE MONTH LONDON INTERBANK OFFERED RATE (LIBOR) FOR US DOLLAR DEPOSITS OFFERED BY BLOOMBERG PUBLICATION AT 11:00 A.M. LONDON TIME, AS QUOTED ON PAGE BBAM IN EFFECT ON THE DATE BUYER'S PAYMENT WAS DUE, PLUS THREE PERCENT (3.0%) PER ANNUM.

**10. GOVERNING LAW AND DISPUTES:**

*THIS CONTRACT SHALL IN ALL RESPECTS BE GOVERNED BY LAWS OF GUAM. THE PROVISIONS OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS ARE EXPRESSLY EXCLUDED.*

*THIS CONTRACT SHALL NOT BE CONSTRUED TO CONFER ANY BENEFIT ON ANY PERSON NOT BEING A PARTY TO THIS CONTRACT NOR SHALL IT PROVIDE ANY RIGHTS TO SUCH PERSON TO ENFORCE ANY OF ITS PROVISIONS. THE PROVISIONS OF THE ENGLISH CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999 ARE EXPRESSLY EXCLUDED.*

*IN THE EVENT OF ANY CONTROVERSY, DISPUTE OR DIFFERENCE OF ANY NATURE (A "DISPUTE") BETWEEN THE PARTIES ARISING FROM OR IN CONNECTION WITH THIS CONTRACT, EITHER PARTY MAY GIVE NOTICE TO THE OTHER IN WRITING OF THE EXISTENCE OF SUCH DISPUTE SPECIFYING ITS NATURE AND THE POINTS AT ISSUE. IF THE DISPUTE SHALL NOT HAVE BEEN AMICABLY RESOLVED WITHIN THIRTY (30) CALENDAR DAYS FROM THE DATE OF SAID NOTICE, THEN THE SAME SHALL BE EXCLUSIVELY AND DEFINITELY RESOLVED THROUGH FINAL AND BINDING ARBITRATION IN NEW YORK, BY THE AMERICAN ARBITRATION ASSOCIATION ("AAA"), IN ACCORDANCE WITH THE RULES OF ARBITRATION OF SUCH INSTITUTION IN EFFECT AS OF THE DATE THE EXISTENCE OF THE CONTROVERSY IS NOTIFIED BY ONE OF THE PARTIES. THE ARBITRATION SHALL BE CONDUCTED BY THREE ARBITRATORS, UNLESS ALL PARTIES TO THE DISPUTE AGREE TO A SOLE ARBITRATOR WITHIN THIRTY (30) DAYS AFTER THE FILING OF THE ARBITRATION. EACH PARTY TO THE DISPUTE SHALL APPOINT ONE ARBITRATOR WITHIN THIRTY (30) DAYS OF THE FILING OF THE ARBITRATION, AND THE TWO ARBITRATORS SO APPOINTED SHALL SELECT THE PRESIDING ARBITRATOR WITHIN THIRTY (30) DAYS AFTER THE LATTER OF THE TWO ARBITRATORS HAVE BEEN APPOINTED BY THE PARTIES TO THE DISPUTE. IF A PARTY TO THE DISPUTE FAILS TO APPOINT ITS PARTY-APPOINTED ARBITRATOR OR IF THE TWO PARTY-APPOINTED ARBITRATORS CANNOT REACH AN AGREEMENT ON THE PRESIDING ARBITRATOR WITHIN THE APPLICABLE TIME PERIOD, THEN LCIA SHALL APPOINT THE REMAINDER OF THE THREE ARBITRATORS. THE ARBITRATION PROCEEDINGS SHALL BE CONDUCTED IN ENGLISH AND THE ARBITRATOR(S) SHALL BE FLUENT IN THE ENGLISH LANGUAGE. THE AWARD OF THE ARBITRAL TRIBUNAL SHALL BE FINAL AND BINDING. JUDGMENT ON THE AWARD OF THE ARBITRAL TRIBUNAL MAY BE ENTERED AND ENFORCED IN ANY COURT HAVING JURISDICTION THEREOF. THE COSTS OF THE ARBITRATION PROCEEDINGS, INCLUDING ATTORNEYS' FEES, SHALL BE BORNE IN THE MANNER DETERMINED BY THE ARBITRAL TRIBUNAL. ANY RIGHT TO APPEAL OR CHALLENGE ANY ARBITRAL DECISION OR AWARD IS HEREBY WAIVED. THE PARTIES MAY SEEK A PRELIMINARY INJUNCTION OR OTHER PRELIMINARY JUDICIAL RELIEF, IF IN ITS JUDGMENT SUCH ACTION IS NECESSARY TO AVOID IRREPARABLE DAMAGE. IT IS EXPRESSLY AGREED THAT INDIRECT, SPECIAL, PUNITIVE AND CONSEQUENTIAL DAMAGES SHALL NOT BE AWARDED.*

**11. LAYTIME AND DEMURRAGE:**

**11.1. LAYTIME:** SHIP LAYTIME OF THIRTY-SIX (36) HOURS AT THE DISCHARGE PORT SHALL COMMENCE SIX (6) HOURS AFTER THE TENDER OF NOTICE OF READINESS (NOR) OR WHEN THE VESSEL BERTHS, WHICHEVER OCCURS FIRST, AND TO CEASE UPON LAST CARGO HOSES DISCONNECTION.

**11.2. DEMURRAGE:** AS PER CHARTER PARTY RATES. CLAIMS SHALL BE SUBMITTED TO GPA WITHIN 90 DAYS AFTER BILL OF LADING DATE. AFTER THIS PERIOD, NO CLAIMS SHALL BE ACCEPTED BY ANY PARTIES.



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**12. OTHER TERMS:**

AS PER PETROBRAS SINGAPORE PRIVATE LIMITED – GUAM POWER AUTHORITY CONTRACT REF GPA-001-10 WITH ITS AMENDMENTS NUMBER 1 AND 2, EXCEPT FOR THE AMENDMENTS MENTIONED BELOW. THESE SECTIONS SUPERSEDES ANY OTHER SECTIONS IN THE AGREEMENT, PROPOSAL, RECAP OR CONTRACT. ALL OTHER PROVISIONS OF THE CONTRACT SHALL REMAIN THE SAME.

**Section 1.02. FUEL OIL TO BE SUPPLIED**  
SHALL BE DELETED ENTIRELY.  
AND REPLACE WITH:

CONTRACTOR AGREES TO FURNISH AND GPA AGREES TO ACCEPT AND PAY FOR ALL OF GPA'S RESIDUAL FUEL OIL REQUIREMENTS FOR POWER GENERATING PLANTS IN GUAM FOR THE TERM OF THE CONTRACT. THE ESTIMATED TOTAL FUEL OIL REQUIREMENT IS ABOUT ONE MILLION AND FIVE HUNDRED THOUSAND BARRELS PER SEMESTER (1,500,000 BBL/SEMESTER).

THE MINIMUM PURCHASE UNDER THE CONTRACT IS 150,000 METRIC TONS PER SEMESTER. THE MAXIMUM PURCHASE UNDER THE CONTRACT IS 250,000 METRIC TONS PER SEMESTER. THE MINIMUM LOT SIZE REQUIRED FOR EACH DELIVERY IS 35,000MT.

**Section 1.03. TERM**  
PARAGRAPH 2: SHALL BE DELETED ENTIRELY AND REPLACE WITH:

THIS CONTRACT TERM SHALL BE FOR SIX (6) MONTHS AND SHALL COMMENCE ON MARCH 1, 2013 AND SHALL CONTINUE UNTIL MIDNIGHT OF AUGUST 31, 2013, WITH OPTION TO EXTEND FOR ONE (1) ADDITIONAL SIX (6) MONTHS TERM, UPON MUTUAL AGREEMENT OF BOTH PARTIES.

**Section 1.04. CONTRACT PRICE**  
ADD:  
FIXED PREMIUM FEE FOR THE SIX (6) MONTHS CONTRACT EXTENSION FROM MARCH 1ST 2013 TO AUGUST 31, 2013 SHALL BE AS FOLLOWS:

1. LOW SULPHUR FUEL OIL (LSFO): (1.19% SULPHUR MAX): USD 117.80/MT (ONE HUNDRED AND SEVENTEEN DOLLARS AND EIGHTY CENTS PER METRIC TON)
2. HIGH SULPHUR FUEL OIL (HSFO): (2% SULPHUR MAX): USD 92.80/MT (NINETY TWO DOLLARS AND EIGHTY CENTS PER METRIC TON).

**Section 1.05 INVOICE PRICE DETERMINATION**  
SHALL BE DELETED ENTIRELY.  
AND REPLACE WITH:

LOW SULPHUR FUEL OIL (LSFO): (1.19%<sub>w</sub> SULPHUR MAX): DES CABRAS ISLAND, GUAM, PRICE SHALL BE BASED ON THE ARITHMETIC AVERAGE OF THE MEAN OF THE HIGH/LOW QUOTATIONS FOR "HSFO 180 CST" AS PUBLISHED IN PLATTS ASIA PACIFIC/ARAB GULF MARKETSCAN UNDER THE HEADING "SINGAPORE" PRICED FOR FIVE (5) VALID CONSECUTIVE QUOTATIONS IMMEDIATELY PRIOR TO B/L DATE, THE B/L DATE AND FIVE (5) IMMEDIATELY AFTER THE B/L DATE PLUS A PREMIUM OF USD 117.80/MT (ONE HUNDRED AND SEVENTEEN DOLLARS AND EIGHTY CENTS PER METRIC TON).



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HIGH SULPHUR FUEL OIL (HSFO): (2.00%<sub>w</sub> SULPHUR MAX): DES CABRAS ISLAND, GUAM, PRICE SHALL BE BASED ON THE ARITHMETIC AVERAGE OF THE MEAN OF THE HIGH/LOW QUOTATIONS FOR "HSFO 180 CST" AS PUBLISHED IN PLATTS ASIA PACIFIC/ARAB GULF MARKETSCAN UNDER THE HEADING "SINGAPORE" PRICED FOR FIVE (5) VALID CONSECUTIVE QUOTATIONS IMMEDIATELY PRIOR TO B/L DATE, THE B/L DATE AND FIVE (5) IMMEDIATELY AFTER THE B/L DATE PLUS A PREMIUM OF USD 92.80/MT (NINETY TWO DOLLARS AND EIGHTY CENTS PER METRIC TON).

IN CASE "NO POSTING" ON THE B/L DATE, NO PRICE WILL BE USED AND THE REMAINING 10-DAYS AVERAGE PRICE WILL BE USED. ALL PRICE POSTINGS ARE AT THE PRICES EFFECTIVE DATES.

FOR INVOICE CALCULATION PURPOSE, QUANTITY SHALL BE REPORTED IN METRIC TONNES AS DECLARED IN BILL OF LADING.

**Section 1.07 TERMS OF PAYMENT**  
 SHALL BE DELETED ENTIRELY.  
 AND REPLACE WITH:

PAYMENT SHALL BE MADE IN US DOLLARS FUNDS WITHOUT OFFSET, DEDUCTION OR COUNTERCLAIM WITHIN THIRTY (30) CALENDAR DAYS (30 DAYS NET TERM) AFTER THE BILL OF LADING DATE PROVIDED VESSEL TENDERS ITS NOR WITHIN FIFTEEN (15) DAYS AFTER THE B/L DATE, OTHERWISE IT EXTENDS DAY BY DAY (B/L DATE INCLUSIVE). IN CASE PAYMENT DUE ON BANK HOLIDAY OR SATURDAY IN GUAM, PAYMENT SHALL BE MADE IMMEDIATELY PRECEDING BANKING DAY. HOWEVER, SHOULD PAYMENT DUE FALLS ON SUNDAY OR MONDAY BANK HOLIDAY IN GUAM, PAYMENT SHALL BE MADE ON THE IMMEDIATELY FOLLOWING BANKING DAY:

THERE WILL BE NO AVAILABLE CREDIT LINE FOR GPA. LETTER OF CREDIT SHALL BE OPENED NO LATER THAN TWO DAYS BEFORE THE BEGINNING OF LOADING WINDOW AT A FIRST CLASS INTERNATIONAL BANK MUTUALLY AGREEABLE TO BOTH GPA AND THE CONTRACTOR. PAYMENT SHALL BE AVAILABLE AT SELLER'S ACCOUNT ON MATURITY DATE. IF BUYER FAILS TO PAY ON THE MATURITY DATE, SELLER SHALL BE REIMBURSED FOR THE INTERESTS RELATED TO THE TIME OF DELAY. INTEREST RATE SHALL BE CALCULATED BASED ON THE ONE MONTH LONDON INTERBANK OFFERED RATE (LIBOR) FOR US DOLLAR DEPOSITS OFFERED BY BLOOMBERG PUBLICATION AT 11:00 A.M. LONDON TIME, AS QUOTED ON PAGE BBAM IN EFFECT ON THE DATE BUYER'S PAYMENT WAS DUE, PLUS THREE PERCENT (3.0%) PER ANNUM.

**Section 1.10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA**  
 SHALL BE DELETED ENTIRELY.

**Section 2.01 PRODUCT AND QUALITY**  
 SHALL BE DELETED ENTIRELY.  
 AND REPLACE WITH:

THE FUEL OIL DELIVERED HEREUNDER SHALL HAVE THE PHYSICAL AND CHEMICAL CHARACTERISTICS AS DESCRIBED IN THE FOLLOWING TABLE:

Description	Unit of Measure	Test Method	Alternative Method	Minimum Allowed	Maximum Allowed
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WA



**PETROBRAS**  
SINGAPORE PRIVATE LTD.

Sulphur Content	%mass	ASTM D-4294	ASTM D-2822	N/A	LSFO= 1.19 HSFO = 2.00
Pour Point	Deg C	ASTM D-97	N/A	N/A	21
Flash Point	Deg C	ASTM D-93	N/A	66	N/A
Kinematic Viscosity	cSt at 50°C	ASTM D-445	ASTM D-2161		180
Sediment by Extraction	%mass	ASTM D-473	N/A	N/A	0.1
Water by Distillation	% by volume	ASTM D-95	N/A	N/A	0.5
Vanadium Content	Parts per million	ASTM D-5708	a) UOP 800 b) ASTM D-5184 c) ASTM D-5863 d) IP 501 e) IP 433 f) ISO 14597 g) IP 470 h) IP 465 i) EN 13131	N/A	100
Silicon Content	Parts per million	ASTM D-5184	a) IP 470 b) IP 377 c) ISO 10487 d) IP 501	N/A	Combined Al+Si Not to exceed 70 ppm.
Aluminum Content	Parts per million	ASTM D-5184	a) IP 470 b) IP 377 c) ISO 10487 d) IP 501	N/A	
Guaranteed Gross Heating Value (HHV)	Million BTU per US Barrel	ASTM D-240	N/A	6.3	N/A
Micro-Carbon Residue	%mass	ASTM D-4530	ASTM D-5245 ASTM D-189	N/A	15
Ash	%mass	ASTM D-482	N/A	N/A	0.1
Asphaltenes	%mass	ASTM D-6560	IP 143	N/A	7
Sodium	ppm	ASTM D-5863/B	ASTM D-5708/B IP 288	N/A	80
Total Sediment (Existent)	%mass	ISO 10307-2	ASTM D-4870 IP 377	N/A	0.15
Compatibility	a) Cleanliness ratio	ASTM D-4740	N/A	N/A	a) 2
	b) Compatibility ratio				b) 2
API Gravity		ASTM D-287	ASTM D-1298 and conversion	11.2	23
Density at 15°C	Kg/L	ASTM D-287	ASTM D-1298 ASTM D-4052		0.991
Odour				Report	
Hydrogen Sulfide content (in liquid phase)	Mg/kg	IP-399	IP-570	N/A	2
Used Lubricating Oil (ULO)				The fuel shall be free of ULO	
Zinc	Mg/kg	IP-501	IP 470		15



**PETROBRAS**  
SINGAPORE PRIVATE LTD.

Phosphorus	Mg/kg	IP-501	IP 500		15
Calcium	Mg/kg	IP-501	IP 470		30

NOTE ITEM 18: CONTRACTOR SHALL ENSURE THAT EACH SHIPMENT OF FUEL OIL IS COMPATIBLE WITH A REPRESENTATIVE SAMPLE OF THE PREVIOUS SHIPMENT OF THE SAME GRADE. TESTING FOR COMPATIBILITY WILL BE CONDUCTED AT LOADPORT ACCORDING TO THE TEST METHOD ASTM D-4740 MUTUALLY AGREED BETWEEN BOTH PARTIES AND THE CONTRACTOR WILL GUARANTEE SPOT RATING OF 2 OR BETTER. THE AUTHORITY RESERVES THE RIGHT TO REQUIRE THE SUPPLIER TO ADD AND TO CONDUCT ADDITIONAL TESTS AS MAY BE REQUIRED.

**Section 3.03 SPECIFICATIONS**  
SHALL BE DELETED ENTIRELY.

**Section 3.05 FORCE MAJURE**  
PLEASE ADD THE FOLLOWING PARAGRAPH: "FORCE MAJEURE CLAIMS SHALL BE SUBMITTED WITHIN SIXTY (60) DAYS. AFTER THIS PERIOD, NO CLAIMS SHALL BE ACCEPTED BY ANY PARTIES."

**12.10. Section 3.11 DISPUTES**  
SHALL BE DELETED ENTIRELY  
AND REPLACE WITH:

**GOVERNING LAW AND DISPUTES:**

THIS CONTRACT SHALL IN ALL RESPECTS BE GOVERNED BY LAWS OF GUAM. THE PROVISIONS OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS ARE EXPRESSLY EXCLUDED.

THIS CONTRACT SHALL NOT BE CONSTRUED TO CONFER ANY BENEFIT ON ANY PERSON NOT BEING A PARTY TO THIS CONTRACT NOR SHALL IT PROVIDE ANY RIGHTS TO SUCH PERSON TO ENFORCE ANY OF ITS PROVISIONS. THE PROVISIONS OF THE ENGLISH CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999 ARE EXPRESSLY EXCLUDED.

IN THE EVENT OF ANY CONTROVERSY, DISPUTE OR DIFFERENCE OF ANY NATURE (A "DISPUTE") BETWEEN THE PARTIES ARISING FROM OR IN CONNECTION WITH THIS CONTRACT, EITHER PARTY MAY GIVE NOTICE TO THE OTHER IN WRITING OF THE EXISTENCE OF SUCH DISPUTE SPECIFYING ITS NATURE AND THE POINTS AT ISSUE. IF THE DISPUTE SHALL NOT HAVE BEEN AMICABLY RESOLVED WITHIN THIRTY (30) CALENDAR DAYS FROM THE DATE OF SAID NOTICE, THEN THE SAME SHALL BE EXCLUSIVELY AND DEFINITELY RESOLVED THROUGH FINAL AND BINDING ARBITRATION IN NEW YORK, BY THE AMERICAN ARBITRATION ASSOCIATION ('AAA'), IN ACCORDANCE WITH THE RULES OF ARBITRATION OF SUCH INSTITUTION IN EFFECT AS OF THE DATE THE EXISTENCE OF THE CONTROVERSY IS NOTIFIED BY ONE OF THE PARTIES. THE ARBITRATION SHALL BE CONDUCTED BY THREE ARBITRATORS, UNLESS ALL PARTIES TO THE DISPUTE AGREE TO A SOLE ARBITRATOR WITHIN THIRTY (30) DAYS AFTER THE FILING OF THE ARBITRATION. EACH PARTY TO THE DISPUTE SHALL APPOINT ONE ARBITRATOR WITHIN THIRTY (30) DAYS OF THE FILING OF THE ARBITRATION, AND THE TWO ARBITRATORS SO APPOINTED SHALL SELECT THE PRESIDING ARBITRATOR WITHIN THIRTY (30) DAYS AFTER THE LATTER OF THE TWO ARBITRATORS HAVE BEEN APPOINTED BY THE PARTIES TO THE DISPUTE. IF A PARTY TO THE DISPUTE FAILS TO APPOINT ITS PARTY-APPOINTED ARBITRATOR OR IF THE TWO PARTY-APPOINTED ARBITRATORS CANNOT REACH AN AGREEMENT ON THE PRESIDING ARBITRATOR



**PETROBRAS**  
**SINGAPORE PRIVATE LTD.**

WITHIN THE APPLICABLE TIME PERIOD, THEN LCIA SHALL APPOINT THE REMAINDER OF THE THREE ARBITRATORS. THE ARBITRATION PROCEEDINGS SHALL BE CONDUCTED IN ENGLISH AND THE ARBITRATOR(S) SHALL BE FLUENT IN THE ENGLISH LANGUAGE. THE AWARD OF THE ARBITRAL TRIBUNAL SHALL BE FINAL AND BINDING. JUDGMENT ON THE AWARD OF THE ARBITRAL TRIBUNAL MAY BE ENTERED AND ENFORCED IN ANY COURT HAVING JURISDICTION THEREOF. THE COSTS OF THE ARBITRATION PROCEEDINGS, INCLUDING ATTORNEYS' FEES, SHALL BE BORNE IN THE MANNER DETERMINED BY THE ARBITRAL TRIBUNAL. ANY RIGHT TO APPEAL OR CHALLENGE ANY ARBITRAL DECISION OR AWARD IS HEREBY WAIVED. THE PARTIES MAY SEEK A PRELIMINARY INJUNCTION OR OTHER PRELIMINARY JUDICIAL RELIEF, IF IN ITS JUDGMENT SUCH ACTION IS NECESSARY TO AVOID IRREPARABLE DAMAGE. IT IS EXPRESSLY AGREED THAT INDIRECT, SPECIAL, PUNITIVE AND CONSEQUENTIAL DAMAGES SHALL NOT BE AWARDED

**Section 3.14 TRANSPORTATION**  
**(c1) SHIP DEMURRAGE**

ADD AFTER SECOND PARAGRAPH:

"AFTER THIS PERIOD, NO CLAIMS SHALL BE ACCEPTED BY ANY PARTIES."

**Section 4.05 DEFAULT**

SHALL BE DELETED ENTIRELY AND REPLACED BY:

"IF THE PARTY REFUSES OR FAILS TO PERFORM ANY OF THEIR OBLIGATIONS UNDER THIS AGREEMENT, NON-BREACHING PARTY SHALL NOTIFY THE PARTY EITHER BY E-MAIL OR IN WRITING WITHIN THIRTY (30) DAYS OF THE BREACH. IF THE PARTY DOES NOT REMEDY THE BREACH WITHIN 30 DAYS AFTER THE DATE OF NOTIFICATION, NON-BREACHING PARTY MAY BY GIVING WRITTEN NOTICE TO PARTY TERMINATE THE AGREEMENT IN WHOLE OR SUSPEND TAKING OF DELIVERY UNDER THE CONTRACT.

IN THE EVENT OF PARTIAL TERMINATION OR SUSPENSION UNDER THIS PROVISION, GPA RESERVES THE RIGHT TO PROCURE FUEL OIL SUPPLY FROM ANOTHER SOURCE IMMEDIATELY UPON NOTIFICATION TO CONTRACTOR EITHER BY E-MAIL OR IN WRITING. FUEL TO BE PROCURED SHALL BE AT THE PREVAILING MARKET RATE AND THE CONTRACTOR SHALL BE LIABLE FOR THE DIFFERENCE BETWEEN THE CONTRACT PRICE AND THE PREVAILING MARKET PRICE AT THE TIME OF PARTIAL TERMINATION OR SUSPENSION.

IN THE EVENT OF TERMINATION, THE CONTRACTOR SHALL NOT BE LIABLE FOR THE DIFFERENCE BETWEEN THE CONTRACT PRICE AND THE PREVAILING MARKET PRICE AT THE TIME OF TERMINATION."

**Section 5.04 ASSIGNMENT**

SHALL BE DELETED ENTIRELY AND REPLACED BY:

"NEITHER PARTY SHALL HAVE THE RIGHT TO TRANSFER OR ASSIGN THIS AGREEMENT, IN WHOLE OR IN PART, OR ANY RIGHT AND OBLIGATIONS ARISING THEREFROM, TO A THIRD PARTY WITHOUT THE PRIOR WRITTEN CONSENT OF THE OTHER PARTY, SUCH CONSENT NOT TO BE UNREASONABLY WITHHELD. ANY ATTEMPTED ASSIGNMENT OR TRANSFER WITHOUT SUCH PRIOR CONSENT SHALL BE NULL AND VOID.



**PETROBRAS**  
**SINGAPORE PRIVATE LTD.**

NOTWITHSTANDING THE FOREGOING, BOTH PARTIES SHALL HAVE THE RIGHT TO ASSIGN THIS AGREEMENT TO AN AFFILIATE WITHOUT THE OTHER PARTY'S WRITTEN CONSENT REQUIRED. IN CASE OF SUCH ASSIGNMENT, THE ASSIGNING PARTY SHALL INFORM THE OTHER PARTY THEREOF IN WRITING AND WITHOUT UNDUE DELAY.

FOR THE PURPOSES OF THIS AGREEMENT, "AFFILIATE" MEANS ANY COMPANY OR LEGAL ENTITY WHICH (A) CONTROLS EITHER DIRECTLY OR INDIRECTLY A PARTY HERETO, OR (B) IS CONTROLLED DIRECTLY OR INDIRECTLY BY SUCH PARTY, OR (C) IS DIRECTLY OR INDIRECTLY CONTROLLED BY A COMPANY OR ENTITY WHICH DIRECTLY OR INDIRECTLY CONTROLS SUCH PARTY. "CONTROL" FOR PURPOSES OF THE PREVIOUS SENTENCE MEANS THE ABILITY TO DIRECT THE MANAGEMENT AND POLICIES OF A COMPANY OR LEGAL ENTITY, WHETHER THROUGH OWNERSHIP OF SECURITIES, BY CONTRACT OR OTHERWISE.

THIS AGREEMENT SHALL BE BINDING UPON, AND INURE TO THE BENEFIT OF THE SUCCESSORS AND PERMITTED ASSIGNEES OF THE PARTIES."

Section 6.08 GOVERNING LAW  
SHALL BE DELETED ENTIRELY.

VENINA VELOSA DA FONSECA  
MANAGING DIRECTOR  
PETROBRAS SINGAPORE PTE LTD

JOAQUIN C. FLORES, P.E.  
GENERAL MANAGER  
GUAM POWER AUTHORITY

Venina Velosa da Fonseca  
Managing Director  
Petrobras Singapore Private Limited  
Reg. No. 200604967H



LAW OFFICES OF  
JOHN C. TERLAJE

2ND FLR, SUITE 216 • 194 HERNAN CORTES AVE., HAGĀTÑA GUAM 96910  
TELEPHONE: (671) 477-8894 / 477-8895 • FAX: (671) 472-8896

---

February 12, 2013

Guam Power Authority  
P.O. Box 2977  
Hagatna, Guam 96932

Attention: Joaquin C. Flores, General Manager  
Jamic C. Pangelinan, Supply Management Administrator

**Re: Invitation for Bid Number GPA-068-12 FOR THE SUPPLY OF  
RESIDUAL FUEL OIL NO. 6 TO COMMENCE IN MARCH 2013**

I have been retained as counsel by Vitol Asia Pte. Ltd., and kindly request inspection the following documents during normal hours and copies of the same:

1. The Fuel Oil Supply Contract No. GPA-001-10 between the Guam power Authority and Petrobras Singapore Private Limited, including all clauses, terms and conditions, and amendments;
2. Any and all correspondence from Petrobras Singapore Private Limited, or its representative(s), indicating Petrobras willingness or unwillingness to accept extension of its contract No. GPA-001-10 beyond expiration of the original term;
3. The Record of Procurement required by Title 5 of the Guam Code, section 5249, to the extent that it relates to any and all considerations or efforts to extend Petrobras' contract No. GPA-001-10 beyond the original expiration date, public inspection of which is provided for by Title 5 of the Guam Code, section 5251;
4. Solicitation for Supply Residual Fuel Oil No. 6, IFB No. GPA-068-12, including all amendments and/or modifications;
5. The Abstract of Bids received in response to IFB No. GPA-068-12;
6. The complete bids submitted by Jiershing GT Ohng Company LLC and Petrobras Singapore Private Limited in response to IFB No. GPA-068-12, public inspection of which is provided for by Title 5 of the Guam Code, section 5211 (d);
7. Each Bid Bond or Bid Security submitted with the bids of Jiershing GT Ohng Company LLC and Petrobras Singapore Private Limited in response to IFB No. GPA-068-12;
8. All request by any bidder to correct or withdraw its bid submitted in response to IFB No. GPA-068-12;

Ex 1 B.

9. All protests filed by or any part related to IFB No. GPA-068-12 including but not limited to any protest(s) filed by Petrobras Singapore Private Limited or Jiershing GT Ohng Company LLC;
10. Any determination of necessity to continue with the procurement of made since the 30 November 2012 pursuant to Title 5 of the Guam Code, Section 5425(g), or any other provision of law or regulation;
11. Any Declaration of emergency made since the 30 day of November 2012 pursuant to Title 5 of the Guam Code, section 5215;
12. Any Declaration of Emergency as described in Title 5 of the Guam Code Sections 5215 and/or 5425(g) made since the 30 November 2012;
13. All notices issued by Guam Power authority pursuant to Title 5 of the Guam Code, Section 5425(g), indicated Guam Power Authority's intention or determination to continue with the procurement of Fuel Oil pursuant to IFB No. GPA-06-12;
14. Any determination made sin the 30 November 2012 pursuant to Title 5 of the Guam Code, section 5214 authorizing procurement of Fuel Oil on a sole source basis from Petrobras Singapore Private Limited or Jiercshing GT Ohng Company LLC.

Thank you for attention and cooperation in this matter. If you should have any questions regarding this letter please feel free to call me.

Sincerely,

  
John C. Terfaje



# GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUAHAN  
P.O. BOX 2977 HAGATNA, GUAM U.S.A. 96932-2977

February 20, 2013

Law Offices of John C. Terlaje  
2<sup>nd</sup> Floor, Suite 216  
194 Hernan Cortez Avenue  
Hagatna, Guam 96910

ATTN: Attorney John C. Terlaje  
SUBJECT: Freedom of Information Act, Inspect & Copy IFB Documents  
REF.: IFB GPA-068-12 for Supply of Residual Fuel Oil No. 6

Dear Mr. Terlaje,

This is in response to your company's request under the "Freedom of Information Act", a copy of all documents related to GPA-068-12, for the Supply of Residual Fuel Oil No. 6 to commence in March 2013.

Attached are copies relative to IFB No.: GPA-068-12 for the Supply of Residual Fuel Oil No. 6:

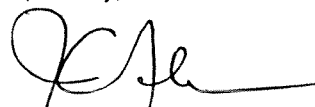
1. Fuel Oil Supply Contract Extension with Petrobras Singapore Private Ltd. Dated February 02, 2013
2. Invitation for Bid No.: GPA-068-12, Supply of Residual Fuel Oil No. 6
3. Bid Abstract, IFB No.: GPA-068-12, Supply of Residual Fuel Oil No. 6
4. IFB Package, Jier Shing GT Ohng Company LLC
5. IFB Package, Petrobras Singapore Private Ltd.
6. Letter of Credit, Jier Shin Korea Co. Ltd., LC No.: 7-0000581-00 Dated 11/13/2012, \$500,000.00
7. Bid Bond, Petrobras Singapore Private Ltd., Bond No.: OGT12000053, \$5,000.00
8. Protest letter submitted Jier Shing GT Ohng Company LLC through its legal counsel Calvo Fisher & Jacob LLP dated January 29, 2013 and Request for Reconsideration dated January 18, 2013
9. CCU Resolution Nos.: 2012-80 (Authorizing the Management of the Guam Power Authority (GPA) to Proceed with the Extension of the Contract for the Supply of Residual Fuel Oil No.: 6 (GPA-001-10) with Petrobras and 2013-04 (Authorizing the Management of the Guam Power Authority to Petition the Public Utilities Commission to Award the Contract for the Supply of Residual Fuel Oil No. 6

Please be advised, the Guam Power Authority has not issued a final determination with reference to the protest submitted by Jier Shing GT Ohng Company LLC.

A non-refundable fee of \$11.10 (\$.10 for the 1<sup>st</sup>. copy, .02 thereafter, a total of 551 pages) must be paid at our GPA Customer Services Department prior to issuance of documents.

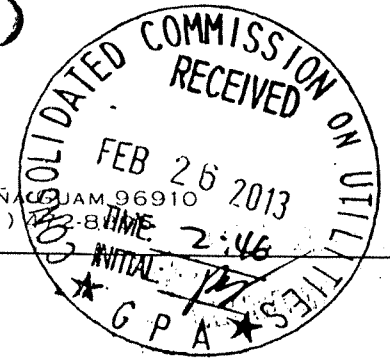
Should you have any questions, you may contact me at (671) 648-3054/55 or fax (671) 648-3165.

Respectfully,

  
JOAQUIN C. FLORES, P.E.  
General Manager

LAW OFFICES OF  
JOHN C. TERLAJE

2ND FLR. SUITE 216 • 194 HERNAN CORTES AVE., HAGATNA, GUAM 96910  
TELEPHONE: (671) 477-8894 / 477-8895 • FAX: (671) 477-8895



February 22, 2013

Guam Power Authority  
P.O. Box 2977  
Hagatna, Guam 96932

Attention: Joaquin C. Flores, General Manager  
Jamie C. Pangelinan, Supply Management Administrator

**Re: Freedom of Information Act Request; Invitation for Bid Number GPA-068-12 FOR THE SUPPLY OF RESIDUAL FUEL OIL NO. 6 TO COMMENCE IN MARCH 2013**

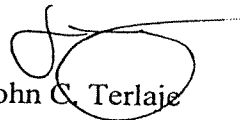
I received your response to my request for documents yesterday. I thank you for your assistance in producing the items you did. Unfortunately many of the items requested were not part of the packet you prepared. I have listed the missing items below that mirror my request of February 12, 2013. I request that these documents be produced immediately, as required, for my review. It is our belief that these records do exist and as you are fully aware withholding said documents is in direct violation of the Act.

1. Any and all correspondence from Petrobras Singapore Private Limited, or its representative(s), indicating Petrobras willingness or unwillingness to accept extension of its contract No. GPA-001-10 beyond expiration of the original term;
2. The Record of Procurement required by Title 5 of the Guam Code, section 5249, to the extent that it relates to any and all considerations or efforts to extend Petrobras' contract No. GPA-001-10 beyond the original expiration date, public inspection of which is provided for by Title 5 of the Guam Code, section 5251;
3. All request by any bidder to correct or withdraw its bid submitted in response to IFB No. GPA-068-12;
4. All protests filed by or any part related to IFB No. GPA-068-12 including but not limited to any protest(s) filed by Petrobras Singapore Private Limited or Jiershing GT Ohng Company LLC;
5. Any determination of necessity to continue with the procurement of made since the 30 November 2012 pursuant to Title 5 of the Guam Code, Section 5425(g), or any other provision of law or regulation;
6. Any Declaration of emergency made since the 30 day of November 2012 pursuant to Title 5 of the Guam Code, section 5215;
7. Any Declaration of Emergency as described in Title 5 of the Guam Code Sections 5215 and/or 5425(g) made since the 30 November 2012;

8. All notices issued by Guam Power authority pursuant to Title 5 of the Guam Code, Section 5425(g), indicated Guam Power Authority's intention or determination to continue with the procurement of Fuel Oil pursuant to IFB No. GPA-06-12;
9. Any determination made sin the 30 November 2012 pursuant to Title 5 of the Guam Code, section 5214 authorizing procurement of Fuel Oil on a sole source basis from Petrobras Singapore Private Limited or Jiercshing GT Ohng Company LLC.

If any of the requested items do not exist please state that in your reply letter.  
Thank you for attention and cooperation in this matter. If you should have any questions regarding this letter please feel free to call me.

Sincerely,

  
John C. Terlaje



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**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF THE APPLICATION ) GPA Docket \_\_\_\_\_-13  
 )  
 OF ) COMPLAINT AND NOTICE OF  
 ) OBJECTION BY VITOL ASIA PRIVATE  
 ) LTD.  
 GUAM POWER AUTHORITY TO APPROVE )  
 THE EXTENSION OF CONTRACT No. GPA- )  
 001-10 FOR RESIDUAL FUEL OIL NO. 6 )  
 \_\_\_\_\_ )

**INTRODUCTION**

1. Vitol Asia Private Limited (Vitol) through its legal counsel Law Office of John C. Terlaje, P.C., hereby submits this protest and objects to the extension of Contract No. GPA-001-10 and requests that the Public Utilities Commission reject Guam Power Authority's request that the extension be ratified and GPA be order to stay execution of the contract and rescind the extension, if already awarded, as an illegal contractual action taken without authority and in violation of Guam law.

**NAME AND ADDRESS OF COMPLAINANT**

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

All communications regarding this protest and objection should be directed to the Law Office of John C. Terlaje, P.C. whose contact person is Mr. John C. Terlaje. Mr. Terlaje can be reached at (671)477-8894.

**NAME AND ADDRESS OF RESPONDENT**

Petrobras Singapore Private Ltd  
200 Newton Road 7<sup>th</sup> Floor  
Newton 200 Singapore-307983

**COPY**

LAW OFFICES OF  
**JOHN C. TERLAJE**  
2ND FLR, SUITE 216  
194 HERNAN CORTES AVE.,  
HAGÄTNA GUAM 96910  
TELEPHONE: (671) 477-8894 / 477-8895  
FAX: (671) 472-8896

*Ex. C.*

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**BACKGROUND**

2. On Vitol submitted its bid in response to solicitation No. GPA-068-12 to supply GPA with Residual Fuel Oil No. 6, with deliveries to commence in March 2013. There were two other bidders, Jiershin GT OHNG & Company LLC (Jiershin) and Petrobras Singapore Private limited (Petrobras).

3. Upon information and belief, Petrobras submitted the highest price bid; moreover, on information and belief, this bid was rejected as non-responsive because Petrobras failed to submit the required Bid Bond.

4. By letter dated January 15, 2013, GPA notified Vitol that its bid was being considered for award with a proposed purchase order "...for six months (March 01, 2013 thru September 30, 2013) (sic) . . ." and was requested to submit a performance bond.

5. By letter dated January 30, 2013, GPA further notified Vitol that Jiershin had protested the proposed award and that further contractual action had been stayed. By letter dated February 05, 2013 GPA further clarified that the stay covered all awards including any purchase orders and or contracts.

6. However, in that same letter of February 05, 2013, GPA advised that it would proceed to award a six month contract extension to Petrobras to cover the same period of the proposed purchase order to Vitol.

7. The allegations in Paragraph 3 above and in the Paragraphs below are made upon information and belief because despite both Vitol's written and verbal requests to see the contract files for Contract No. GPA-001-10 and for Solicitation No. GPA-068-12, GPA has, as of this date refused to disclose the documents or make them available for inspection even though required to do so pursuant to 5 GCA 5211(d) and 5251.

LAW OFFICES OF  
JOHN C. TERLAJE  
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194 HERNAN CORTES AVE.  
HAGATÑA GUAM 96910  
TELEPHONE (671) 477-8894 / 477-8895  
FAX: (671) 472-8896

1  
2 **FIRST GROUNDS FOR OBJECTION**

3 8. Upon Information and belief, the contractual action between GPA and Petrobras, is  
4 in fact not the extension of the pre-existing contract No. GPA-001-10, but the negotiation of a  
5 totally new contract changing both the term and the price of the original contract extension  
6 provisions. Upon information and belief, GPA negotiated a reduction in the term from one  
7 year to six months and an increase in the price not authorized under the original contract.  
8 Upon information and belief, GPA has thus allowed Petrobras to change its price to an amount  
9 just under Vitol's bid response to solicitation No. GPA-068-12.  
10

11 9. Upon information and belief, GPA took the contractual action described in the  
12 above paragraph on a sole source basis without a determination as required by 5 GCA 5214,  
13 and without any declaration of emergency pursuant to 5 GCA 5215.  
14

15 **SECOND GROUNDS FOR OBJECTION**

16 10. The proposed contractual action is for the same period of deliveries as that GPA  
17 initially discussed with Vitol in its letter of January 15, 2013. See, Paragraph 4, above.  
18 Therefore, this action is stayed pursuant to 5 GCA 5425(g).

19 **THIRD GROUNDS FOR OBJECTION**

20 11. The proposed contractual action is an unethical and inherently unfair  
21 "auctioneering" action that threatens the integrity of the procurement process. GPA has  
22 conducted an IFB process exposing the market price bids of the responders and then allowed  
23 the highest bidder, Petrobras, and Petrobras alone, to essentially change its bid, to undercut  
24 the otherwise successful bidder Vitol. If allowed to stand, such actions threaten the integrity  
25 of the Government of Guam's procurement system.  
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1 **REQUESTED ACTION**

2 12. Vitol requests that the Public Utilities Commission disapprove GPA's request to  
3 proceed with the contractual action with Petrobras and declare the extension null and void.  
4

5 13. Vitol further requests that GPA be to stay any further action except award to Vito  
6 in accordance with the procedures in 5 GCA 5425(g) or until it obtains a declaration of  
7 emergency.

8 14. In the alternative, Vitol requests that the Public Utilities Commission postpone its  
9 decision on GPA's request until after such time as GPA discloses to Vitol the files for Contract  
10 No. GPA-001-10 and Solicitation No. GPA-068-12, and Vitol has had an opportunity to  
11 review the same.

12 We look forward to your expeditious response.  
13

14 Sincerely,

15 LAW OFFICE OF JOHN C. TERLAJE P.C.  
16

17   
18 **JOHN C. TERLAJE**  
19 Counsel for Vitol Asia Pte Ltd  
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LAW OFFICES OF  
JOHN C. TERLAJE  
2ND FLR, SUITE 216  
194 HERNAN CORTES AVE.,  
HAGATNA GUAM 96910  
TELEPHONE: (671) 477-8894 / 477-8895  
FAX: (671) 472-8896

Subject **Re: Vitol Complaint, GPA Docket 12-09**  
From Frederick J. Horecky <horeckylaw@teleguam.net>  
To <john@terlaje.net>  
Cc Lou Palomo <lpalomo@guampuc.com>  
Date 2013-05-07 17:30



- puc20130502143836.pdf (82 KB)

Dear John:

Please excuse my delay in getting the enclosed PUC Decision to you in the above referenced Docket. I understand that GPA is rebidding its Fuel Oil Contract. Please let me know if you have any questions in this regard. Thank you.

Sincerely,  
Fred Horecky  
PUC Counsel  
Horecky & Associates  
643 Chalan San Antonio, Ste. 102B  
Tamuning, Guam 96913  
(w)646-8274/5  
(f) 646-8403  
horeckylaw@teleguam.net

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Ex. "D"



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF: )

GPA DOCKET 12-09 )

THE APPLICATION OF THE GUAM )  
POWER AUTHORITY TO APPROVE )  
THE CONTRACT EXTENSION WITH )  
PETROBRAS FOR SUPPLY OF )  
RESIDUAL FUEL OIL NO. 6 TO GPA )

ORDER

INTRODUCTION

1. On January 11, 2013, the Guam Power Authority filed a Petition for Review and Approval of the Contract for Supply of Residual Fuel Oil No. 6 with Vitol Asia Pte., Ltd ["Vitol"]. However, at the PUC Regular Meeting conducted on January 29, 2013, GPA requested that PUC not act on the approval of the Fuel Supply Contract with Vitol Asia Pte., Ltd., as a bid protest had been filed regarding the award of the Contract to Vitol.
2. On February 4, 2013, GPA requested that PUC approve a six month contract extension with its present supplier of RFO No. 6, Petrobras. On February 11, 2013, the PUC, acting through its Chairman pursuant to 12 GCA §12004, approved GPA's Petition authorizing a six month extension of the Fuel Supply Contract with Petrobras.
3. At the regular PUC meeting conducted on February 26, 2013, this matter came before the PUC Commissioners for ratification of the Order executed by the Chairman. PUC Counsel explained the background of the matter and then indicated that on February 19, 2013, Vitol Asia Pte., Ltd. had filed a complaint requesting that PUC reject ratification of the contract and order GPA to stay execution of the contract and rescind the extension.<sup>1</sup>
4. At the February 26, 2013, meeting, Vitol Attorney John Terlaje was given an opportunity to present argument on the Vitol Complaint. He contended that the contract extension was illegal and violated provisions of the procurement law. GPA, through its Counsel, Graham Botha, argued in favor of ratification of the contract extension.

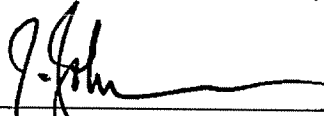
<sup>1</sup> Complaint and Notice of Objection by Vitol Asia Private Lte., filed February 19, 2013.

**ORDERING PROVISIONS**

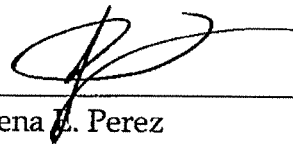
The Guam Public Utilities Commission, having heard the report of its Counsel, and the arguments of Counsel for Vitol Asia Pte., Ltd. and GPA, upon motion duly made, seconded, and unanimously approved, **HEREBY ORDERS**, that:

1. The Order of the Chairman of the PUC, dated February 11, 2013, which approved GPA's six month contract extension for fuel oil supply with Petrobras Singapore Private, Ltd., is hereby ratified and affirmed.
2. The Complaint of Vitol Asia Pte., Ltd., is denied. The arguments raised by Vitol concerning the alleged illegality of the contract extension and alleged violations of the procurement law should be addressed by the appropriate bodies for resolution of such complaints, the Office of Public Accountability and/or the Courts of Guam.

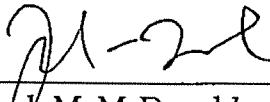
SO ORDERED this 26<sup>th</sup> day of February, 2013.



Jeffrey C. Johnson  
Chairman



Rowena L. Perez  
Commissioner

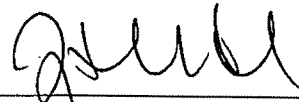


Joseph M. McDonald  
Commissioner

Michael A. Pangelinan  
Commissioner



Filomena M. Cantoria  
Commissioner



Peter Montinola  
Commissioner