INTRODUCTION

The Chuuk Public Utility Corporation (CPUC) is requesting proposals from qualified companies to furnish all labor, materials, equipment and services for a 20,000 hour overhaul maintenance on one (1) Caterpillar 3516 Serial number 25Z06707, diesel skid mounted engine housed in a 40ft container as described in the scope of work.

BACKGROUND INFORMATION

2.1 General

CPUC operate the utility system on the Island of Weno, Chuuk Lagoon, Federated States of Micronesia, located near Guam. CPUC is a member of the Pacific Power Association.

2.2 Objectives

CPUC’s stated objective of this Proposal is to select a qualified firm to perform a 20,000 hour overhaul on Unit 5, a containerized diesel Caterpillar 3516 engine set including disconnection from associated generator, overhaul, reconnection to associated generator, start up including load and performance testing.

2.3 Contractor Experience.

The selected firm is expected to have completed a minimum of three (3) successful overhaul projects on Caterpillar diesel power generation units within the last five (5) years. Experience on Caterpillar 3516 preferred.

2.4 Contractor Performance.

On successful performance and completion of the proposed overhaul, the contract has the possibility of being extended to perform a similar overhaul on unit 4.

PROPOSED SCOPE OF WORK

3.1 Base Scope

The proposed scope of work is detailed below – photographs of the unit are provided in Annex 1 to this Notice.

The Scope of work should be completed within 3 months of issuance of the Notice To Proceed. If deviation from this schedule is deemed necessary specific reference should be made and reasons given.

The engine overhaul is to be undertaken at the bidder’s premises/factory. The contractor will be responsible for the following activities:

i. carrying out initial inspection and reporting on site;
ii. disconnecting the generator and radiator in the containerized unit;
iii. shipping the engine to factory/overhaul site;
iv. overhaul and factory test of the engine;
v. shipping engine back to CPUC;
vi. reconnecting the engine, generator and radiator in the containerised unit;
vii. load and performance testing of engine;
In carrying out the overhaul the contractor will supply and install new, high quality parts; sourcing of all parts should be clearly identified in the bid; in addition the contractor will supply all tools, equipment and consumables.

The proposal should include a component for training and inspection visits by CPUC during the rebuild process.

The scope of work is split into three distinct sections:

a. Replacement of parts already known to require replacing – parts to be costed in proposal;

b. Inspection and replacement of parts if agreed necessary – parts to be costed in proposal;

c. Inspection and condition reporting on parts not anticipated to require replacement – parts costing not required in proposal;

a. **Replacement parts - mandatory**

- Camshaft Bearings.
- Connecting rod bearings.
- Crankshaft seals.
- Crankshaft thrust washers.
- Gear train bushings.
- Gear train bearings.
- Main Bearings.
- Cam thrust washers
- Connecting, piston, piston rings, Piston pins, liner, and oiler (power Pack)
- Oil cooler core
- Turbocharger core.
- Oil pump
- Fuel pump
- Heads, with spacer, rocker arms, push rods.
- Inlet manifold gaskets and seals
- Full overhaul gasket set.
- Cooling fan bearing

b. **Inspection – Parts Replacement to be Agreed with CPUC**

- Crankshaft vibration damper.
- Exhaust manifold seals
- Exhaust manifold bellows.
- Fuel pressure regulating valve.
c. **Inspection & Condition Reporting - Part Costing Not Required at Bid Stage**

- Camshaft
- Crankshaft
- Driven equipment (alignment)
- Engine cylinder block.
- Engine control module and BE1 protection relay.
- Exhaust bellows shields.
- Flywheel
- Front gear chain.
- Oil suction screen
- Rear gear chain.

In the event that the condition report indicates poor condition CPUC and contractor will agree necessary steps to be taken.

### 3.2 Testing & Commissioning

The following testing and commissioning should be undertaken and reported on:

a. Factory test on completion of overhaul prior to shipping back to CPUC, Weno, Chuuk;
b. Following commissioning of the overhauled unit it should be load tested at 95% of rated capacity for a period of 4 hours against CPUC grid.
c. The bidder should include within its bid the anticipated fuel efficiency as a result of the overhaul in kWh/US gallon at 85 degrees Fahrenheit ambient temperature, plus or minus 5%. Fuel efficiency will be calculated during the load test and compared against the anticipated fuel efficiency.

### 3.3 Reporting

Reporting to CPUC is required at key stages of the overhaul

- Preliminary inspection report detailing the condition of all engine components including photographic record;
- Reconstruction report – a full record of all actions taken as part of the overhaul and listing of all parts used.
- Commissioning Report – including load test and key performance data
- Regular Overhaul Progress Reporting – weekly summary of findings, actions and progress against work plan – this may include telephone conference meetings with CPUC.

All reports, including defects should be provided in MS Office 2007 compatible formats to the designated CPUC Project Manager.
3.3 Alternative Proposals

Alternative proposals may be submitted by the contractor as detailed below if they can demonstrate enhanced value to CPUC.

3.3.1 Overhaul at CPUC Site

The contractor may provide alternative proposals for undertaking the work on island in Weno. In this case the proposal should clearly identify all stages of the overhaul process in particular shipping of components to and from Weno, in this case the contractor will have responsibility for identification and management of an overhaul work site.

3.3.2 Efficiency Improvements

The contractor may also include alternative proposal/s to increase the efficiency over and above that of the standard operating arrangement, for example by the introduction of waste heat recovery technology or similar. The extra cost of such improvement and extra benefit to CPUC of such improvement, above that of the requested base overhaul scope should be clearly identified.

4 PROPOSAL PREPARATION

4.1 Documentary Requirements

The proposal Requirements shall be concise, well organized and demonstrate the responders’ qualifications and experience applicable to this overhaul.

The Bid Proposal shall be made by written submission in one original and two hard copies, and shall be in the following format:

Section 1 Identification of Responder

- Legal name and address of the Company.
- Legal form of company (partnership, joint venture, etc)
- Identify any parent companies.
- Name, title, address, email and telephone number of the person to contact concerning the proposal.

Section 2 Experience, Technical Competence and References.

Provision of past listing of past and ongoing overhaul projects on Caterpillar over the past 5 years for which the firm proposed similar services.
Section 3 Qualifications

Provide certification and qualifications of technicians assigned to the work.

Section 4 Work Methodology & Timeline

Submit a full description on how the Contractor intends to approach the scope of work, with respect to work performance – inspection, freight management, unit disassembly, part renovation/Installation, unit assembly, final cleanup,

For work to be carried out on Weno within or outside CPUC site the contractor should submit the company’s safety polices and safety plan as an integral part of the proposal – Note: The contractor proposal may be rejected as incomplete without the safety document.

A detailed timeline of all components of the overhaul project should be provided; Any components considered to be outside the control of the contractor should be clearly indentified; This timeline will be an integral part of the ensuing contract.

Contractor should also include a contract delivery risk analysis that identifies potential risks in the delivery of the contract and specific measures to be taken to mitigate the risks.

The contractor should also outline the commissioning and testing methodology to comply with the testing requirements given in 3.2 above.

Section 5 Financial Proposal

The contractor should provide a detailed breakdown of all costs associated with the overhaul of the unit, freight and insurance costs should be separately identified.

Unit costs for all parts in sections 2a and 2b should be clearly specified. Local taxes will be the responsibility of CPUC against bill of lading; errors in bill of lading will be the contractor’s responsibility;

The proposal/s should be valid for a period of 4 months from the bid submission date.

A six month parts and repair warranty for all parts supplied in the overhaul should be included in the financial proposal; An additional price should be explicitly given to increase the parts and repair warranty to 12 months duration.

Payment Terms and Conditions are included in the attached contract documents.
5 PROPOSAL SUBMISSION & EVALUATION

The proposals must be submitted in three copies in one sealed envelope by noon local time Weno, Chuuk State, FSM, on Friday the 28th September 2012 to Mr Roger Kitchingham. The Sealed Envelope should be addressed as follows:

Mr R. Kitchingham  
Power Operations Manager  
CPUC  
PO Box 910  
Weno  
Chuuk State  
FM 96942  
Federated States of Micronesia

Tel +691 330 2400

The sealed envelope should also include the bidders name and return address.

Please note that delivery by courier to Chuuk can take up to 10 days depending on courier used and country of dispatch.

Questions in relation to the bid may be submitted to Mr Kitchingham at the following email address:

rkitch@cpuc.fm

Bidders questions and CPUC responses will be publicized on CPUC Website – www.CPUC.FM

A CPUC Bid Evaluation Panel consisting of a minimum of 3 persons will evaluate the bids and select the preferred firm based on qualification, references, and price.

CPUC reserve the right to revise the RFP prior to the date proposals are due. Revisions of the RFP shall be emailed to all potential proposers. The CPUC reserve the right to extend the closing date by which the proposals are due.

Any questions or requests for an extension of the bid period must be submitted to rkitch@cpuc.fm in a timely manner.

The RFP does not commit the CPUC to award a contract, to defray any costs incurred in the preparation of the proposal pursuant to this RFP, or to procure or contract for the work.

All submission shall become the property of CPUC.
CPUC reserves the right to cancel, in part or entirety, this RFP including, but not limited to, selection schedule, submission date, and submission requirements. CPUC reserves the rights to request additional information and/or clarifications from any proposers to this RFP.

6  CONTRACT DOCUMENTATION
The Contract Agreement between CPUC and the successful bidder will be made up of the following documents:

a. Form of Agreement;
b. the Purchaser's Notification to the Supplier of Award of Contract;
c. the Bid Proposal including Financial Proposal submitted by the Supplier;
d. the CPUC Special Conditions of Contract;
e. the CPUC General Conditions of Contract; and

Documents a.; d; and e; are attached to this Notice of Bid for bidder’s information.
Agreement

THIS AGREEMENT made the ________ day of ________________________, _____, between
______________________________________ of __________________________ (hereinafter “the Purchaser”),
of the one part, and __________________________________ of ______________________________
(hereinafter “the Supplier”), of the other part:

WHEREAS the Purchaser invited bids for certain Goods and Related Services, viz., the Overhaul of a CPUC 3516 Caterpillar Engine – 20,000 overhaul - and has accepted a Bid by the Supplier for the supply of those Goods and Related Services in the sum of _____________________
(hereinafter “the Contract Price”).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned
to them in the Contract referred to.

2. The following documents shall be deemed to form and be read and construed as part of this
Agreement, viz.:
   (a) the Purchaser’s Notification to the Supplier of Award of Contract;
   (b) the Bid Proposal including Financial Proposal submitted by the Supplier;
   (c) the Special Conditions of Contract;
   (d) the General Conditions of Contract; and
   (e) _________________________________________________________.

   This Contract shall prevail over all other Contract documents. In the event of any discrepancy or
inconsistency within the Contract documents, then the documents shall prevail in the order listed above.

3. In consideration of the payments to be made by the Purchaser to the Supplier as indicated in this
Agreement, the Supplier hereby covenants with the Purchaser to provide the Goods and Related
Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.

4. The Purchaser hereby covenants to pay the Supplier in consideration of the provision of the Goods and
Related Services and the remedying of defects therein, the Contract Price or such other sum as may
become payable under the provisions of the Contract at the times and in the manner prescribed by the
Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of the
Federated States of Micronesia on the day, month and year indicated above.

Signed by ________________________________________________  (for the Purchaser)

Signed by __________________________ __________________________ (for the Supplier)
| CONTRACT PART 2 | PURCHASER’S NOTIFICATION TO THE SUPPLIER OF AWARD OF CONTRACT – to be added on award; |
| CONTRACT PART 3 | BID PROPOSAL INCLUDING FINANCIAL PROPOSAL SUBMITTED BY THE SUPPLIER - to be added on award; |
Part 4. Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

| GCC 1.1(i) | The Purchaser’s country is: Federated States of Micronesia, Chuuk State |
| GCC 1.1(j) | The Purchaser is: Chuuk Public Utility Corporation |
| GCC 1.1(o) | The Site is: Weno, Chuuk, FM 96942, FSM |
| GCC 4.2(a) | The version of Incoterms shall be: Incoterms 2000 |
| GCC 5.1  | The language shall be: English |
| GCC 6.1  | The individuals or firms in a joint venture, consortium or association are jointly and severally liable. |
| GCC 7.1  | For notices, the Purchaser’s address shall be: Attention: Mr Roger Kitchingham, CPUC Street Address: PO Box 910 City: Weno, Chuuk State ZIP Code: FM 96942 Country: Federated States of Micronesia Telephone: (961) 330-2400 Facsimile number: NA Electronic mail address: “rkitch@mail.fm” |
| GCC 8.1  | The governing law shall be: Federated States of Micronesia |
| GCC 9.2  | The formal mechanism for the resolution of disputes shall be: UNICITRAL rules and regulations |
| GCC 10.1 | The scope of supply shall be defined in: Bid Notice |
| GCC 11.1 | Details of shipping and documents to be furnished by the Supplier shall be: shipping and insurance manifest; |
| GCC 14.2 | The price adjustment shall be: none |
| GCC 15.1 | The terms of payment shall be:  
25% on mobilisation of resources;  
30% on receipt of unit at factory for overhaul commencement  
30% on return shipping of unit after factory testing  
15% on completion of commissioning and testing on site |
| GCC 15.4 | The currencies for payments shall be: bidders currency |
| GCC 21.2 | The packing, marking and documentation within and outside the packages shall be:  
Chuuk Public Utility Corporation; Att. R. Kitchingham;  Tel: +691 930 1991; |
| GCC 23.1 | The insurance coverage shall be in accordance with: CIF, Weno Island, Chuuk State FM 96942. |
| GCC 23.1 | Obligations for transportation of the Goods shall be in accordance with: CIF, Weno Island, Chuuk State FM 96942. |
| GCC 24.2 | Tests and Inspections specified in the Bid Notice shall be carried out at the following times or milestones, and places:  
Factory test on completion of overhaul, prior to shipping to CPUC, Weno;  
Load test on site against CPUC grid at 95% of rated capacity for 4 hours;  
Fuel efficiency assessment during load test to confirm fuel efficiency is in-line with or better than forecast by bidder; |
| GCC 25.1 | The liquidated damage shall be: 1 % per week or part thereof |
| GCC 25.1 | The maximum amount of liquidated damages shall be: 10% |
| GCC 26.3 | The period of validity of the Parts & Repair Warranty shall be 6 months unless extended to 12 months by the Purchaser under the contract price; |
| GCC 26.5 | The Supplier shall correct any defects covered by the Warranty within : 4 weeks of being notified by the Purchaser of the occurrence of such defects |
| GCC 28.1 | The amount of aggregate liability shall be: As per GCC |
Part 5. General Conditions of Contract

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1. Definitions

1.1 The following words and expressions shall have the meanings hereby assigned to them:

(a) “Contract” means the Agreement entered into between the Purchaser and the Supplier, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.

(b) “Contract Documents” means the documents listed in the Agreement, including any amendments thereto.

(c) “Contract Price” means the price payable to the Supplier as specified in the Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.

(d) “Day” means calendar day.

(e) “Delivery” means the transfer of the Goods from the Supplier to the Purchaser in accordance with the terms and conditions set forth in the Contract.

(f) “Completion” means the fulfillment of the Related Services by the
Supplier in accordance with the terms and conditions set forth in the Contract.

(g) “GCC” means the General Conditions of Contract.

(h) “Goods” means all of the commodities, raw material, machinery and equipment, and/or other materials that the Supplier is required to supply to the Purchaser under the Contract.

(i) “Purchaser’s Country” is the country specified in the Special Conditions of Contract (SCC).

(j) “Purchaser” means the entity purchasing the Goods and Related Services, as specified in the SCC.

(k) “Related Services” means the services incidental to the supply of the goods, such as insurance, installation, training and initial maintenance and other similar obligations of the Supplier under the Contract.

(l) “SCC” means the Special Conditions of Contract.

(m) “Subcontractor” means any natural person, private or government entity, or a combination of the above, including its legal successors or permitted assigns, to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Supplier.

(n) “Supplier” means the natural person, private or government entity, or a combination of the above, whose bid to perform the Contract has been accepted by the Purchaser and is named as such in the Agreement, and includes the legal successors or permitted assigns of the Supplier.

(o) “The Site,” where applicable, means the place named in the SCC.

2. Contract Documents

2.1 Subject to the order of precedence set forth in the Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory.

3. Corrupt Practices

3.1 CPUC Anticorruption Policy requires bidders, suppliers, and contractors to observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, CPUC:

(b) defines, for the purposes of this provision, the terms set forth below as follows:

(i) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;

(ii) “fraudulent practice” means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

(iii) “coercive practice” means impairing or harming, or threatening to
impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

(iv) “collusive practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;

(c) will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract; and

(d) will sanction a firm or an individual, at any time, including declaring ineligible, either indefinitely or for a stated period of time, to participate in CPUC financed or administered activities or to benefit from a CPUC financed or administered contract, financially or otherwise, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive or other prohibited practices.

3.2 The Supplier shall permit CPUC to inspect the Supplier’s accounts and records relating to the performance of the Supplier and to have them audited by auditors appointed by the CPUC, if so required by CPUC.

4. Interpretation

4.1 If the context so requires it, singular means plural and vice versa.

4.2 Incoterms

(a) The meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms.

(b) EXW, CIF, CIP, and other similar terms, shall be governed by the rules prescribed in the current edition of Incoterms, published by the International Chamber of Commerce at the date of the Invitation for Bids or as specified in the SCC.

4.3 Entire Agreement

The Contract constitutes the entire agreement between the Purchaser and the Supplier and supersedes all communications, negotiations and agreements (whether written or oral) of parties with respect thereto made prior to the date of Contract.

4.4 Amendment

No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party thereto.
4.5 Nonwaiver

(a) Subject to GCC Sub-Clause 4.5(b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

(b) Any waiver of a party’s rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

4.6 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

5. Language

5.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Supplier and the Purchaser, shall be written in the language specified in the SCC. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the SCC, in which case, for purposes of interpretation of the Contract, this translation shall govern.

5.2 The Supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation.

6. Joint Venture, Consortium or Association

6.1 Unless otherwise specified in the SCC, if the Supplier is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Purchaser for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Purchaser.

7. Notices

7.1 Any Notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the SCC. The term “in writing” means communicated in written form with proof of receipt.

7.2 A Notice shall be effective when delivered or on the Notice’s effective date, whichever is later.
8. **Governing Law**

8.1 The Contract shall be governed by and interpreted in accordance with the laws of the Purchaser’s country, unless otherwise specified in the SCC.

9. **Settlement of Disputes**

9.1 The Purchaser and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.

9.2 If the parties fail to resolve such a dispute or difference by mutual consultation within twenty-eight (28) days from the commencement of such consultation, either party may require that the dispute be referred for resolution to the formal mechanisms specified in the SCC.

10. **Scope of Supply**

10.1 Subject to the SCC, the Goods and Related Services to be supplied shall be as specified in the Bid Notice.

10.2 Unless otherwise stipulated in the Contract, the Scope of Supply shall include all such items not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Delivery and Completion of the Goods and Related Services as if such items were expressly mentioned in the Contract.

11. **Delivery**

11.1 Subject to GCC Sub-Clause 32.1, the Delivery of the Goods and Completion of the Related Services shall be in accordance with the Bid Notice. The details of shipping and other documents to be furnished by the Supplier are specified in the SCC.

12. **Supplier’s Responsibilities**

12.1 The Supplier shall supply all the Goods and Related Services included in the Scope of Supply in accordance with the Bid Notice.

13. **Purchaser’s Responsibilities**

13.1 Whenever the supply of Goods and Related Services requires that the Supplier obtain permits, approvals, and import and other licenses from local public authorities, the Purchaser shall, if so required by the Supplier, make its best effort to assist the Supplier in complying with such requirements in a timely and expeditious manner.

13.2 The Purchaser shall pay all costs involved in the performance of its responsibilities, in accordance with GCC Sub-Clause 14.1.

14. **Contract Price**

14.1 The Contract Price shall be as specified in the Agreement subject to any additions and adjustments thereto, or deductions therefrom, as may be made pursuant to the Contract.

14.2 Prices charged by the Supplier for the Goods delivered and the Related Services performed under the Contract shall not vary from the prices quoted by the Supplier in its bid, with the exception of any price adjustments authorized in the SCC.

15. **Terms of Payment**

15.1 The Contract Price shall be paid as specified in the SCC.
15.2 The Supplier's request for payment shall be made to the Purchaser in writing, accompanied by invoices describing, as appropriate, the Goods delivered and Related Services performed, and by the documents submitted pursuant to GCC Clause 11 and upon fulfillment of all the obligations stipulated in the Contract.

15.3 Payments shall be made promptly by the Purchaser, no later than thirty (30) days after submission of an invoice or request for payment by the Supplier, and the Purchaser has accepted it.

15.4 The currency or currencies in which payments shall be made to the Supplier under this Contract shall be specified in the SCC.

16. Taxes and Duties

16.1 For goods supplied from outside the Purchaser’s country, the Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the Purchaser’s country.

16.2 For goods supplied from within the Purchaser’s country, the Supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Goods to the Purchaser.

16.3 If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in the Purchaser’s Country, the Purchaser shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.

17. Copyright

17.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Purchaser by the Supplier herein shall remain vested in the Supplier, or, if they are furnished to the Purchaser directly or through the Supplier by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.

18. Confidential Information

18.1 The Purchaser and the Supplier shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Supplier may furnish to its Subcontractor such documents, data, and other information it receives from the Purchaser to the extent required for the Subcontractor to perform its work under the Contract, in which event the Supplier shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Supplier under GCC Clause 18.

18.2 The Purchaser shall not use such documents, data, and other information received from the Supplier for any purposes unrelated to the Contract. Similarly, the Supplier shall not use such documents, data, and other information received from the Purchaser for any purpose other than the design, procurement, or other work and services required for the performance of the Contract.
18.3 The obligation of a party under GCC Sub-Clauses 18.1 and 18.2 above, however, shall not apply to information that:

(a) the Purchaser or Supplier need to share with institutions participating in the financing of the Contract;

(b) now or hereafter enters the public domain through no fault of that party;

(c) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or

(d) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

18.4 The above provisions of GCC Clause 18 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Supply or any part thereof.

18.5 The provisions of GCC Clause 18 shall survive completion or termination, for whatever reason, of the Contract.

19. Subcontracting

19.1 The Supplier shall notify the Purchaser in writing of all subcontracts awarded under the Contract if not already specified in the Bid. Subcontracting shall in no event relieve the Supplier from any of its obligations, duties, responsibilities, or liability under the Contract.

19.2 Subcontracts shall comply with the provisions of GCC Clauses 3 and 7.

20. Specifications and Standards

20.1 Technical Specifications and Drawings

(a) The Supplier shall ensure that the Goods and Related Services comply with the technical specifications and other provisions of the Contract.

(b) The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Purchaser, by giving a notice of such disclaimer to the Purchaser.

(c) The Goods and Related Services supplied under this Contract shall conform to the standards mentioned in the Bid Notice, and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the country of origin of the Goods.

20.2 Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Bid Notice. During Contract execution, any changes in any such codes and
standards shall be applied only after approval by the Purchaser and shall be treated in accordance with GCC Clause 31.

21. Packing and Documents

21.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the final destination of the Goods and the absence of heavy handling facilities at all points in transit.

21.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in the SCC, and in any other instructions ordered by the Purchaser.

22. Insurance

22.1 Unless otherwise specified in the SCC, the Goods supplied under the Contract shall be fully insured, in a freely convertible currency from an eligible country, against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterms or in the manner specified in the SCC.

23. Transportation

23.1 Unless otherwise specified in the SCC, obligations for transportation of the Goods shall be in accordance with the Incoterms specified in the SCC.

24. Inspections and Tests

24.1 The Supplier shall at its own expense and at no cost to the Purchaser carry out all such tests and/or inspections of the Goods and Related Services as are specified in the Bid Notice.

24.2 The inspections and tests may be conducted on the premises of the Supplier or its Subcontractor, at point of delivery, and/or at the final destination of the Goods, or in another place in the Purchaser’s country as specified in the SCC. Subject to GCC Sub-Clause 2.3, if conducted on the premises of the Supplier or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Purchaser.

24.3 The Purchaser or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Sub-Clause 24.2, provided that the Purchaser bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.

24.4 Whenever the Supplier is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Purchaser. The Supplier shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Purchaser or its designated representative to attend the test and/or inspection.
24.5 The Purchaser may require the Supplier to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications, codes and standards under the Contract, provided that the Supplier’s reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Supplier’s performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.

24.6 The Supplier shall provide the Purchaser with a report of the results of any such test and/or inspection.

24.7 The Purchaser may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Purchaser, and shall repeat the test and/or inspection, at no cost to the Purchaser, upon giving a notice pursuant to GCC Sub-Clause 24.4.

24.8 The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Purchaser or its representative, nor the issue of any report pursuant to GCC Sub-Clause 24.6, shall release the Supplier from any warranties or other obligations under the Contract.

25. Liquidated Damages

25.1 Except as provided under GCC Clause 30, if the Supplier fails to deliver any or all of the Goods or perform the Related Services within the period specified in the Contract, the Purchaser may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the SCC of the Contract Price for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in the SCC. Once the maximum is reached, the Purchaser may terminate the Contract pursuant to GCC Clause 33.

26. Warranty

26.1 The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.

26.2 Subject to GCC Sub-Clause 20.1, the Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.

26.3 Unless otherwise specified in the SCC, the warranty shall remain valid for [to be added prior to signing] months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the SCC.
26.4 The Purchaser shall give Notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Purchaser shall afford all reasonable opportunity for the Supplier to inspect such defects.

26.5 Upon receipt of such Notice, the Supplier shall, within the period specified in the SCC, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Purchaser.

26.6 If having been notified, the Supplier fails to remedy the defect within the period specified in the SCC, the Purchaser may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier’s risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.

27. Patent Indemnity

27.1 The Supplier shall, subject to the Purchaser’s compliance with GCC Sub-Clause 27.2, indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney’s fees and expenses, which the Purchaser may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:

(a) the installation of the Goods by the Supplier or the use of the Goods in the country where the Site is located; and

(b) the sale in any country of the products produced by the Goods.

Such indemnity shall not cover any use of the Goods or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Supplier, pursuant to the Contract.

27.2 If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to in GCC Sub-Clause 27.1, the Purchaser shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the Purchaser’s name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

27.3 If the Supplier fails to notify the Purchaser within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf.
27.4 The Purchaser shall, at the Supplier’s request, afford all available assistance to the Supplier in conducting such proceedings or claim, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.

27.5 The Purchaser shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney’s fees and expenses, which the Supplier may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Purchaser.

28. Limitation of Liability

28.1 Except in cases of gross negligence or willful misconduct:

(a) neither party shall be liable to the other party for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Purchaser; and

(b) the aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort, or otherwise, shall not exceed the amount specified in the SCC, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Supplier to indemnify the Purchaser with respect to patent infringement.

29. Change in Laws and Regulations

29.1 Unless otherwise specified in the Contract, if after the date of the Invitation for Bids, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in the place of the Purchaser’s country where the Site is located (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GCC Clause 14.

30. Force Majeure

30.1 The Supplier shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
30.2 For purposes of this Clause, “Force Majeure” means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

30.3 If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

31. Change Orders and Contract Amendments

31.1 The Purchaser may at any time order the Supplier through Notice in accordance GCC Clause 7, to make changes within the general scope of the Contract in any one or more of the following:

(a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;

(b) the method of shipment or packing;

(c) the place of delivery; and

(d) the Related Services to be provided by the Supplier.

31.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier’s performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery and Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Supplier’s receipt of the Purchaser’s change order.

31.3 Prices to be charged by the Supplier for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services.

32. Extensions of Time

32.1 If at any time during performance of the Contract, the Supplier or its Subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GCC Clause 11, the Supplier shall promptly notify the Purchaser in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Supplier’s notice, the Purchaser shall evaluate the situation and may at its discretion extend the Supplier’s time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.

32.2 Except in case of Force Majeure, as provided under GCC Clause 30, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated
33. Termination

33.1 Termination for Default

(a) The Purchaser, without prejudice to any other remedy for breach of Contract, by Notice of default sent to the Supplier, may terminate the Contract in whole or in part:

(i) if the Supplier fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Purchaser pursuant to GCC Clause 32; or

(ii) if the Supplier fails to perform any other obligation under the Contract.

(b) In the event the Purchaser terminates the Contract in whole or in part, pursuant to GCC Clause 33.1(a), the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the Purchaser for any additional costs for such similar Goods or Related Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

(c) if the Supplier, in the judgment of the Purchaser has engaged in corrupt, fraudulent, collusive, or coercive practices, as defined in GCC Clause 3, in competing for or in executing the Contract.

33.2 Termination for Insolvency

The Purchaser may at any time terminate the Contract by giving Notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Purchaser.

33.3 Termination for Convenience

(a) The Purchaser, by Notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The Notice of termination shall specify that termination is for the Purchaser’s convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.

(b) The Goods that are complete and ready for shipment within twenty-eight (28) days after the Supplier’s receipt of the Notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:
(i) To have any portion completed and delivered at the Contract terms and prices; and/or

(ii) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Supplier.

34. Assignment

34.1 Neither the Purchaser nor the Supplier shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.