

3 FORM OF CONTRACT

The Contract attached to this solicitation is in draft format. Any inquiries, clarifications or recommendations to the contract should be brought up by Proponents to GPA by formally submitting an inquiry following the guidelines specified under Section 1.0: Instructions to Offerors.

CONTRACT FOR TECHNICAL AND PROFESSIONAL SERVICES

THIS CONTRACT is made and entered into as of the date of the last signature affixed hereto by and between TRC Environmental Corp., hereinafter called the CONTRACTOR, and the Guam Power Authority, hereinafter called GPA.

GPA engages the CONTRACTOR to perform professional services for a project known and described as "**Continuous Emissions Monitoring System & RICE MACT Operations and Maintenance**", GPA-RFP-24-004, hereinafter called the "Project".

RECITALS

WHEREAS, GPA is required to comply with its Title V Air Permit and Federal and Local Regulations at all its Diesel Power Generating Facilities; and

WHEREAS, GPA is required to perform the operations and maintenance of CEMS and RICE MACT to ensure and verify compliance of its Diesel power generating units with its permitted emission limits; and

WHEREAS, GPA has prepared a scope of work and request for proposal to accomplish this; and

WHEREAS, GPA will enter into a contract for Professional and Technical Services for operations and maintenance of CEMS and RICE MACT at all its Diesel Power Generating Facilities based on the established scope of work; and

NOW, THEREFORE, GPA and the CONTRACTOR, for the considerations set forth herein, agree as follows:

SECTION I - TYPE OF CONTRACT

This is a fixed price contract with price adjustment.

SECTION II - SERVICES OF THE CONTRACTOR

The CONTRACTOR shall perform the following professional services in accordance with the degree of care and skill that a registered professional in Guam would exercise under similar conditions:

- A. The CONTRACTOR shall provide services as described in the detailed scope of work provided in GPA-RFP-24-004.
- B. The CONTRACTOR has assigned Matthew Ellis as the Project Manager for this Contract. Prior written approval is required in the event the CONTRACTOR needs to change the Project Manager. The CONTRACTOR shall submit the qualifications of the proposed substituted personnel to GPA for approval.
- C. The CONTRACTOR shall submit all final documents in both hard copy and electronic format. All documents shall be Microsoft Office compatible or in an alternate format approved by GPA. The software version used shall be compatible to current GPA standards.

SECTION III - PERIOD OF SERVICE

GPA and the CONTRACTOR agree this CONTRACT will be effective commencing , 2025 for a base contract period of three (3) years. Upon mutual agreement, the CONTRACT may be extended for two (2) additional one (1) year periods beyond the base contract term (for a maximum contract length of five (5) years), subject to the availability of funds.

SECTION IV - CONTRACTOR'S COMPENSATION

- A. The total compensation to CONTRACTOR for services in this CONTRACT is the lump sum of: One Hundred Thousand Dollars (\$100,000.00 USD), plus approved adjustments.
- B. GPA shall pay the CONTRACTOR using a method mutually agreed upon by the parties.

SECTION V - CONTRACTOR'S STATUS

CONTRACTOR agrees that there shall be no employee benefits occurring from this CONTRACT, such as:

- A. Insurance coverage provided by GPA;
- B. Participation in the Government of Guam retirement system;
- C. Accumulation of vacation or sick leave;

There shall be no withholding of taxes by GPA;

It is expressly understood and agreed that, in the performance of services under this CONTRACT, CONTRACTOR and its employees shall at all times act as independent contractors with respect to GPA, and not as an employee or agent of GPA. Further, it is expressly understood and agreed by the parties that nothing contained in this CONTRACT shall be construed to create a joint venture, partnership, association, or other affiliation or like relationship is and shall remain that of independent parties to a contractual relationship set forth in this CONTRACT.

SECTION VI – GUA^M PO^WER AUTHORITY'S RESPONSIBILITIES

- A. GPA shall designate a Project Manager during the term of this CONTRACT. The Project Manager has the authority to administer this CONTRACT and shall monitor compliance with all terms and conditions stated herein. All requests for information from or a decision by GPA on any aspect of the work shall be directed to the Project Manager.
- B. GPA shall review submittals by the CONTRACTOR and provide prompt responses to questions and rendering of decisions pertaining thereto, to minimize delays in the progress of the CONTRACTOR's work. GPA will keep the CONTRACTOR advised concerning the progress of GPA's review of the work. The CONTRACTOR agrees that GPA's inspection, review, acceptance or approval of CONTRACTOR'S work shall not relieve CONTRACTOR's responsibility for errors or omissions of the CONTRACTOR or its sub-contractor(s).

SECTION VII - INVOICING AND PAYMENT TERMS & CONDITIONS

All Invoices shall include supporting documents (i.e., timesheets, shipping invoices, consumable listings). All supporting documents must be reviewed and approved by the GPA Project Manager prior to invoice submittal for charges. All invoices will be paid NET 30 Days from date invoice is received at the GPA Accounting Department. Payment shall be made using a method mutually agreed upon by GPA and the CONTRACTOR.

SECTION VIII - TERMINATION FOR CONVENIENCE

(a) Termination. GPA may, when the interests of GPA so require, terminate this CONTRACT in whole or in part, for the convenience of GPA. GPA shall give ten (10) days prior written notice of the termination to the CONTRACTOR specifying the part of the CONTRACT terminated and when termination becomes effective.

(b) Contractor's Obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the CONTRACTOR will stop work to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work and CONTRACTOR will be compensated in accordance with this CONTRACT. The CONTRACTOR must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

(c) Right to Supplies. GPA may require the CONTRACTOR to transfer title and deliver to GPA in the manner and to the extent directed by GPA:

- (1) any completed supplies; and

(2) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this CONTRACT.

The CONTRACTOR shall, upon direction of GPA, protect and preserve property in the possession of the CONTRACTOR in which GPA has an interest. If GPA does not exercise this right, the CONTRACTOR shall use best efforts to sell such supplies and manufacturing materials in accordance with the standards of Uniform Commercial Code of Guam, 13 GCA § 2706 (quoted at the end of 2 GAR § 6101(10)(d)). Utilization of this Section in no way implies that GPA has breached the CONTRACT by exercise of the Termination for Convenience Clause.

(d) Compensation.

(1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data to the extent required by 2 GAR § 3118 (Cost or Pricing Data) of the Guam Procurement Regulations bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, GPA may pay the CONTRACTOR, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.

(2) GPA and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data to the extent required by 2 GAR § 3118 (Cost or Pricing Data) of the Guam Procurement Regulations and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by GPA, the proceeds of any sales of supplies and manufacturing materials under Paragraph (3) of this clause, and the contract price of the work not terminated.

(3) Absent complete agreement under Subparagraph (b) of this Paragraph, GPA shall pay the CONTRACTOR the following amounts, provided payments agreed to under Subparagraph (b) shall not duplicate payments under this Subparagraph:

(i) contract prices for supplies or services accepted under the contract;

(ii) costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted supplies or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire CONTRACT would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(iii) costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph (2) of this clause. These costs must not include costs paid in accordance with Subparagraph (c) (ii) of this Paragraph;

(iv) the reasonable settlement costs of the CONTRACTOR including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the CONTRACT for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this CONTRACT. The total sum to be paid the CONTRACTOR under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph (b) of this Paragraph, and the contract price of work not terminated.

(4) Cost claimed, agreed to, or established under Subparagraph (b) and (c) of this Paragraph shall be in accordance with Chapter 7 (Cost Principles) of the Guam Procurement Regulations.

SECTION IX - CHANGES

(a) Change Order. By a written order, at any time, and without notice to surety, GPA may, subject to all appropriate adjustments, make changes within the general scope of this CONTRACT in any one or more of the following:

(1) Drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the territory in accordance therewith;

- (2) method of shipment or packing; or
- (3) place of delivery.

(b) Adjustments of Price or Time for Performance. If any such change order increases or decreases the CONTRACTOR's cost of, or the time required for performance of any part of the work under this CONTRACT, whether or not changed by the order, an adjustment shall be made and the CONTRACT modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this CONTRACT. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the CONTRACT as changed, provided that the territory promptly and duly make such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

(c) Time Period for Claim. Within 30 days after receipt of a written change order under Paragraph (a) (Change Order) of this clause, unless such period is extended by GPA in writing, the CONTRACTOR shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the CONTRACTOR's claim unless GPA is prejudiced by the delay in notification.

(d) Claims Barred After Final Payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this CONTRACT.

(e) Other Claims Not Barred. In the absence of such a change order, nothing in this clause shall be deemed to restrict the CONTRACTOR's right to pursue a claim arising under the CONTRACT if pursued in accordance with the clause entitled, "Claims Based on GPA's Actions or Omissions, Notice of Claim Clause", or for breach of contract.

SECTION X - CLAIMS BASED ON GPA'S ACTIONS OR OMISSIONS

(a) Notice of Claim. If any action or omission on the part of GPA requiring performance changes within the scope of the CONTRACT constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the CONTRACT in compliance with the directions or orders of GPA, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

(1) the CONTRACTOR shall have given written notice to GPA:

(i) prior to the commencement of the work involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;

(ii) within 30 days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the work; or

(iii) within such further time as may be allowed by GPA in writing.

- This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. GPA, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of GPA.

(2) the notice required by Subparagraph (1) of this Section describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and

(3) the CONTRACTOR maintains and, upon request, makes available to GPA within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

(b) Limitations of Clause. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules of law precluding any government of Guam officers and any contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the CONTRACT.

(c) Adjustments of Price. Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this CONTRACT.

SECTION XI - PRICE ADJUSTMENT

(a) Price Adjustment Methods. Any adjustment in contract price pursuant to a clause in this CONTRACT shall be made in one or more of the following ways:

- (1) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- (2) by unit prices specified in the CONTRACT or subsequently agreed upon;
- (3) by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the CONTRACT or subsequently agreed upon;
- (4) in such other manner as the parties may mutually agree; or
- (5) in the absence of agreement between the parties, by a unilateral determination by GPA of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by GPA in accordance with generally accepted accounting principles and applicable sections of the regulations promulgated under Chapter 7 (Cost Principles), subject to the provisions of Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations.

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

SECTION XII- ASSIGNMENT OF AGREEMENT

Contractor shall not sell, transfer, pledge, encumber or assign this CONTRACT or any of the rights, interests or obligations hereunder without the prior written consent of GPA, which consent shall not be unreasonably withheld, conditioned or delayed, except that GPA shall have the right to withhold its consent if, in GPA's reasonable determination, such sale, transfer, pledge, encumbrance or assignment will have a materially adverse effect on the timely execution of the CONTRACT or the economic interests of GPA. Any assignment of this CONTRACT in violation of the foregoing shall be, at the option of GPA, void.

SECTION XIII - FORCE MAJEURE

Neither party shall be liable for any delay in meeting or failure to meet its obligations under this CONTRACT due to a force majeure.

SECTION XIV -TAXES

OFFEROR shall be liable for Guam Gross Receipt Taxes and all other applicable taxes and duties. GPA shall have no tax liability under this CONTRACT. Specific information on taxes may be obtained from the Director of the Guam Department of Revenue and Taxation.

GPA is a government agency exempted from ALL government taxes as stipulated in the Guam Code Annotated.

SECTION XV – NOTICES

Any notice, demand or other document required or permitted to be delivered hereunder shall be in writing and may be delivered personally (not to include facsimile transmission) or shall be deemed to be delivered when received postage prepaid, registered or certified mail, return receipt requested, addressed to the parties at their respective address as specified herein:

TO: _____ CONTRACTOR Name and Address

COPY: _____ If applicable, Name and address

FAX: _____ Fax number

Guam Power Authority
P.O. Box 2977
Hagatna, Guam 96932-2977
ATTN: General Manager
FAX: (671) 648-3165

SECTION XVI – GOVERNING LAW

The validity of this CONTRACT and any of its terms or provisions, as well as the rights and duties of the parties to this CONTRACT, shall be governed by the laws of Guam.

SECTION XVII - SUPPLEMENTAL CONTRACT PROVISIONS

RESERVED.

SECTION XVIII – INDEMNIFICATION

Contractor agrees to save and hold harmless GPA, its board members, officers, and other governmental agencies from any and all suits or actions of every nature and kind, which may be brought for or on account of any injury, death, or damage to the extent arising out of the negligent acts or omissions of the CONTRACTOR, CONTRACTOR's officers, agents (including subcontractors), servants or employees in the performance of its Services under this CONTRACT. To the extent permitted by law, GPA and Contractor waive any and all claims against each other for incidental, consequential, special, multiple, and punitive damages arising out of or relating to this agreement.

GPA agrees to cooperate, to the extent allowed by law, in the submission of claims pursuant to the Government Claims Act against GPA for personal injuries or property damage resulting from the negligent or wrongful act or omission of any GPA employee while acting within the scope of his or her employment, arising out of this Contract.

SECTION XIX – DISPUTES

GPA and the CONTRACTOR agree to attempt resolution of all controversies which arise under, or are by virtue of, this CONTRACT through mutual agreement. If the controversy is not resolved by mutual agreement, then the controversy shall be decided by GPA in writing within sixty (60) days after the CONTRACTOR shall request GPA in writing to issue a final decision. If GPA does not issue a written decision within sixty (60) days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the CONTRACTOR may proceed as though GPA had issued a decision adverse to the CONTRACTOR.

GPA shall immediately furnish a copy of the decision to the CONTRACTOR, by certified mail with a return receipt requested, or by any other method that provides evidence of receipt.

GPA's decision shall be final and conclusive, unless fraudulent or unless the CONTRACTOR appeals the decision as follows:

- (a) For disputes involving money owed by or to GPA under this CONTRACT, the CONTRACTOR files appeal of the decision in accordance with the Government Claims Act by filing a government claim with GPA no later than eighteen months after the decision is rendered by GPA or from the date when a decision should have been rendered.
- (b) For all other disputes arising under this CONTRACT, the CONTRACTOR files an appeal with the Office of the Public Accountability pursuant to 5 GCA §§ 5706(a) and 5427(e) within sixty days of GPA's decision or from the date the decision should have been made.

The CONTRACTOR shall exhaust all administrative remedies before filing an action in the Superior Court of Guam in accordance with applicable laws.

The CONTRACTOR shall comply with GPA's decision and proceed diligently with performance of this CONTRACT pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, this CONTRACT, except where the CONTRACTOR claims a material breach of this CONTRACT by GPA. However, if GPA determines in writing that continuation of

services under this CONTRACT is essential to the public's health or safety, then the CONTRACTOR shall proceed diligently with performance of the CONTRACT notwithstanding any claim of material breach by GPA.

SECTION XX – RELEASE OF INFORMATION

The CONTRACTOR shall not release any information, including the contract price, concerning this project or any part thereof in any form, including advertising, news releases, or professional articles, without written permission from GPA.

SECTION XXI – INSURANCE

The CONTRACTOR shall not commence work under this CONTRACT until he has obtained reasonable insurance for Auto Liability and Worker's Compensation and Employer's Liability up to the statutory limits. The CONTRACTOR shall maintain all insurance required during the course of the work.

SECTION XXII – LICENSING

CONTRACTOR shall maintain all necessary licenses and shall comply with Guam licensing laws. Specific information on licenses may be obtained from the Director of Revenue and Taxation.

SECTION XXIII – REPRESENTATION REGARDING CONTINGENT FEES

The CONTRACTOR represents that it has not retained a person to solicit or secure a government of Guam contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Breach of this representation shall give GPA the right to terminate the CONTRACTOR, or in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fees.

SECTION XXIV – AMERICAN DISABILITIES ACT

If requested, the CONTRACTOR must meet all ADA regulations and requirements.

SECTION XXV – STATEMENT CONCERNING ETHICAL STANDARDS

In accordance with 2 GAR, Div. 4 § 11103(b), Contractor represents that it has not knowingly influenced and promises that it will not knowingly influence a government employee to breach any of the ethical standards set forth in 5 GCA Chapter 5 Article 11 (Ethics in Public Contracting) of the Guam Procurement Act and in Chapter 11 of the Guam Procurement Regulations.

SECTION XXVI – PROHIBITION AGAINST GRATUITIES, KICKBACKS, AND FAVORS

(a) Gratuities. It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract; or to any solicitation or proposal therefor.

(b) Kickbacks. It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

SECTION XXVII – RESTRICTION AGAINST CONTRACTORS EMPLOYING CONVICTED SEX OFFENDERS AT GOVERNMENT OF GUAM VENUES

The CONTRACTOR represents that no person providing services on behalf of the CONTRACTOR or in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated, or convicted of an offense defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated regardless of the jurisdiction in which the conviction was obtained, shall provide services on behalf of the CONTRACTOR relative to this CONTRACT. If any person

employed by the CONTRACTOR and providing services under this CONTRACT is convicted subsequent to the date of this CONTRACT, then the CONTRACTOR represents that it will notify GPA of the conviction within twenty-four hours of being made aware of the conviction, and will immediately remove such convicted person from providing services under this CONTRACT. If the CONTRACTOR is found to be in violation of any of the provisions of this paragraph, then GPA shall give Notice to the CONTRACTOR to take corrective action. The CONTRACTOR shall take corrective action within twenty-four hours of Notice from GPA, and the CONTRACTOR shall notify GPA when action has been taken. If the CONTRACTOR fails to take corrective steps within twenty-four hours of Notice from GPA, then GPA in its sole discretion may suspend this CONTRACT temporarily upon prior written Notice to the CONTRACTOR until the individual in question is removed from service to GPA.

IN WITNESS WHEREOF, the parties have executed this CONTRACT as of the date indicated by each signature. The CONTRACTOR represents that the person who is signing this CONTRACT on behalf of the CONTRACTOR is authorized to do so and to execute all other documents necessary to carry out the terms of this CONTRACT.



JON HOWARD
EMISSION TESTING MANAGER
TRC ENVIRONMENTAL CORP.

June 30, 2025

DATE



JOHN M. BENAVENTE, P.E.
GENERAL MANAGER
GUAM POWER AUTHORITY

7/8/2025

DATE

APPROVED AS TO FORM:



MARIANNE WOŁOSCHUK
GPA LEGAL COUNSEL

7/7/2025

DATE