

SECTION 3.0-A: FORM OF CONTRACT GUAM POWER AUTHORITY

CONTRACT FOR PROFESSIONAL SERVICES - AMENDMENT I

This CONTRACT is made and entered into on the day of August 1, 2022, by Alan Searle & Associates, hereinafter called the CONSULTANT, and the Guam Power Authority, hereinafter called GPA.

GPA engages the CONSULTANT to perform professional services for a project known as and described as **Maintenance of the GPA Compensation and Classification Plan and Human Resources Outsourcing, Re-Solicitation GPA-RFP- 22-002**, hereinafter called the "Project".

RECITALS

WHEREAS, the Guam Power Authority (GPA) issued a Re-Solicitation Request for Proposal (RFP) GPA-RFP-22-002 seeking to retain a consultant to perform Professional Services for the Maintenance of GPA's Compensation and Classification Plan and Outsourcing of Human Resources services; and

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

WHEREAS, the Consultant responded to the RFP through submitting a proposal to provide services in accordance with the RFP, Firm/Company was selected as the highest most qualified Offeror; and

WHEREAS, in submitting the Proposal, Consultant warrants and represents that it possesses the necessary knowledge, resources and experience to perform the work and services herein described professionally, skillfully and diligently; and

WHEREAS, GPA desires to retain the Consultant as an independent contractor on the terms and conditions set forth in this agreement to accept such retainer;

WHEREAS, the Guam Power Authority will enter into a contract for **Professional Services** based on the established scope of work; and

NOW, THEREFORE, the Guam Power Authority and the Consultant for the considerations set forth, agree as follows:

SECTION I - SERVICES OF THE CONSULTANT

- A. The CONSULTANT shall provide services as described in the scope of services.
- B. The CONSULTANT has assigned Alan Searle as the Project Manager for this Contract. Prior written approval is required in the event the CONSULTANT needs to change the Project Manager. The CONSULTANT shall submit the qualifications of the proposed substituted personnel to GPA for approval.
- C. The CONSULTANT shall submit all final documents in both hard copy and electronic format. All documents shall be Microsoft Office - compatible. The software version used shall be compatible to current GPA standards.

SECTION II – CONTRACT PERIOD

GPA and the CONSULTANT agree this CONTRACT will be effective commencing - August 1, 2022 for a base contract period of one (1) year. Upon mutual agreement, the contract may be extended with the option to renew for four (4) one-year periods beyond the base contract term (for a maximum contract term of five (5) years). GPA shall, at its sole discretion, determine total contract length. Each contract term is subject to the availability of funds.

SECTION III - CONSULTANT'S COMPENSATION

A. In consideration for the Professional Services for the Maintenance of GPA's Compensation and Classification Plan performed under this Agreement, the GPA shall pay the consultant based on the consulting fees below:

a) Base Contract - Year One (1)

Our estimated consultancy fee for the twelve (12) months required to undertake and complete a market review/ update of approximately 255 positions plus ongoing compensation maintenance would be US\$80,000 or US\$6,666 per month.

Please note the above consulting fee does not include disbursements.

In order to give a) feedback to the CCU on the results of the market review/ update and b) refresher training to HR staff we anticipate there being at least two return trips required from New Zealand to Guam. We estimate disbursements relating to travel, accommodation, car rental, stationery, per diem etc. to be US\$5000 per trip.

In summary, our estimated consulting fee for Year One (1) would be US\$90,000 (US\$80,000 Consulting Fee+US\$10,000 for disbursements re: two (2) return trips to Guam from New Zealand)

b) Contract Extension

Subject to the availability of funds we understand the contract may be extended (upon mutual agreement) for a further four (4) years where compensation maintenance would be provided on an "as and when required" basis.

Note: the following consultancy fees are provided as a budgeted "pool amount" for GPA where individual maintenance projects would be estimated, completed and then invoiced from that "pool amount".

c) YearTwo(2)

Our estimated consultancy fee covering Year Two (2) would be US\$40,000 (US\$35,000 Consulting Fee+ US\$5,000 for disbursements re: one (1) return trip to Guam from New Zealand, if required)

d) YearThree(3)

Our estimated consultancy fee covering Year Three (3) would be US\$40,000 (US\$35,000 Consulting Fee + US\$5,000 for disbursements re: one (1) return trip to Guam from New Zealand, if required)

e) Year Four(4)

Our estimated consultancy fee covering Year Four(4) would be US\$40,000 (US\$35,000 Consulting Fee+ US\$5,000 for disbursements re: one (1) return trip to Guam from New Zealand, if required)

f) Year Five(5)

Our estimated consultancy fee covering Year Five (5) would be US\$40,000 (US\$35,000 Consulting Fee+ US\$5,000 for disbursements re: one (1) return trip to Guam from New Zealand, if required)

Our payment terms are Net 30 days from date of invoice.

- B. GPA shall pay the CONSULTANT (monthly installments based upon progression of projects and deliverables, and detailed invoices submitted by the CONSULTANT. Such payments shall be made to the CONSULTANT within - NET 30 days after receipt of the progress report and detailed invoice)
- C. Any services performed by the CONSULTANT under this RFP for GWA shall be billed separately and through a GWA purchase order.

SECTION IV - CONSULTANT'S STATUS

- A. CONSULTANT agrees that there shall be no employee benefits occurring from this Agreement, such as:
 - 1. Insurance coverage provided by GPA;
 - 2. Participant in the Government of Guam retirement system;
 - 3. Accumulation of vacation or sick leave;
 - 4. There shall be no withholding of taxes by GPA;
 - 5. It is expressly understood and agreed that, in the performance of services under this Agreement, CONSULTANT 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 Agreement shall be construed to create a joint venture, partnership, association, or other affiliation or like relationship and shall remain that of independent parties to a contractual relationship set forth in this Contract.

B. Responsibility of CONSULTANT

CONSULTANT shall perform the services utilizing the standard of care normally exercised by professional consulting firms in performing comparable services under similar conditions. GPA's review, approval, acceptance of, and payment of fees for services required under this agreement shall not be construed to operate as a waiver of any rights under this agreement and the CONSULTANT shall be and remain liable to GPA for all costs of any kind which may be incurred by GPA as a result of CONSULTANT'S negligent performance of any of the services performed under this agreement. CONSULTANT makes no other guarantees or warranties unless specifically identified herein, all warranties, expressed or implied or otherwise waived. The rights and remedies of GPA provided for under this contract are in addition to any other rights and remedies provided by law. If the CONSULTANT is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

SECTION V – GUAM POWER 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 CONSULTANT and provide prompt response to questions and rendering of decisions pertaining thereto, to minimize delays in the progress of the CONSULTANT'S work. GPA will keep the CONSULTANT advised concerning the progress of GPA's review of the work. The CONSULTANT agrees that GPA's inspection, review, acceptance or approval of CONSULTANT'S work shall not relieve CONSULTANT'S responsibility for errors or omissions of the CONSULTANT or its sub-consultant(s).
- C. Unless included in the CONSULTANT'S Services as identified in Section I, GPA shall furnish the CONSULTANT gratis available GPA data relative to policies, regulations, standards, criteria, studies, etc., relevant to the Project.

SECTION VI - INVOICING AND PAYMENT TERMS & CONDITIONS

- A. All Invoices, electronic or hardcopy, shall include supporting documents (i.e., -project work hours summary, shipping invoices, consumable listings). All supporting documents must be reviewed and approved by GPA Project Manager prior to invoice submittal for charges. All invoices will be paid within NET 30 Days after the Authority's receipt of the progress report and detailed invoice. Payment shall be made based upon progression of projects and deliverables. Payment shall be made using a method mutually agreed upon by the Guam Power Authority and the CONSULTANT.
- B. Any services performed by the CONSULTANT under the RFP for GWA shall be billed separately and through a GWA purchase order.

SECTION VII - TERMINATION

The Procurement Officer may, when the interest of GPA so requires, terminate this CONTRACT for convenience or abandon any portion of the Project for which services have not been performed by the CONSULTANT, upon fourteen (14) days written notice delivered to CONSULTANT personally or by certified mail at the address provided.

Immediately after receiving such notice, the CONSULTANT shall discontinue advancing the services under this CONTRACT and proceed to close said operations under this CONTRACT. The CONSULTANT shall appraise the services it has completed and submit an appraisal to GPA for evaluation. GPA shall have the right to inspect the CONSULTANT'S work to appraise the services completed.

CONSULTANT shall deliver to GPA all drawings, special provisions, field survey notes, reports, estimates and any and all other documents or work product generated by the CONSULTANT under the CONTRACT, entirely or partially completed, together with all unused materials supplied by GPA.

In the event of such termination or abandonment, the CONSULTANT shall be paid for services performed

prior to receipt of said notice of termination including reimbursable expenses incurred.

If the remuneration scheduled hereunder is based upon a fixed fee or definitely ascertainable sum, the portion of such sum payable shall be proportionate to the percentage of services completed by the CONSULTANT based upon the scope of work, and shall be agreed upon mutually by the CONSULTANT and GPA. However, in no event shall the fee exceed that set forth in this CONTRACT.

GPA shall make final payment within twenty (20) days after the CONSULTANT has delivered the last of the partially completed items and the final fee has been agreed upon.

In the event this CONTRACT is terminated, GPA shall have the option of completing the work, or entering into a CONTRACT with another party for the completion of the work according to the provisions and agreements herein.

SECTION VIII - CHANGES

GPA may at any time, by written order, make any changes or deletions in the services to be performed hereunder. If such changes or deletions cause an increase or decrease in the cost of doing work under this Contract, or in the time required for this performance, an equitable adjustment shall be made as agreed to by the parties and the Contract shall be modified in writing accordingly.

SECTION IX - ASSIGNMENT OF CONTRACT

Consultant may not assign this Contract, or any sum becoming due to under the provisions of this Contract, without the prior written consent of GPA.

SECTION X - 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 XI - TAXES

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

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

SECTION XII – 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), via e-mail or other electronic means, 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:	Alan Searle & Associates
Address:	P.O. Box 133 Russell 0242 NEW ZEALAND
Phone:	64-9-4037957
Email:	alan.searle@xtra.co.nz

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

SECTION XIII – 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 XIV - SUPPLEMENTAL CONTRACT PROVISIONS

The supplemental contract provisions to this CONTRACT are attached hereto and incorporated herein by reference as if fully set forth.

SECTION XV – INDEMNIFICATION

The CONSULTANT shall indemnify and hold GPA harmless from any claim, liability or product liability, loss, damage, demand, cause of action or suit, expense or reasonable fee of legal counsel arising out of or in connection with the goods or services the CONSULTANT provides.

SECTION XVI – DISPUTES

All controversies between GPA and the CONSULTANT which arise under or by virtue of this CONTRACT and which are not resolved by mutual agreement shall be resolved under Guam Procurement Law and the Government Claims Act, and pursuant to the laws of Guam.

SECTION XVII – RELEASE OF INFORMATION

The CONSULTANT 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 XVIII – INSURANCE

The CONSULTANT 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 CONSULTANT shall maintain all insurance required during the course of the work.

SECTION XIX – EQUAL EMPLOYMENT OPPORTUNITY

Section 3.01 of the Executive Order 10935 dated March 07, 1965 requires the CONSULTANT not to discriminate against an employee or applicant for employment because of race, creed, color or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed and that employees are treated equally during employment without regard to race, creed, color or national origin.

SECTION XX – AMERICAN DISABILITIES ACT

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

SECTION XXI – PROHIBITION AGAINST GRATUITIES, KICKBACKS, AND FAVORS

GCA 5 section 5630 (c) prohibits against gratuities, kickbacks, and favors to the Territory.

SECTION XXIII - RESTRICTION AGAINST CONVICTED SEX OFFENDERS

GCA 5 §5253 (b) restricts the CONSULTANT against employing convicted sex offenders from working at Government of Guam venues. It states:

(b) All contracts for services to agencies listed herein shall include the following provisions: (1) warranties that no person providing services on behalf of the contractor has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry; and (2) that if any person providing services on behalf of the contractor is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry, that such person will be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of conviction.


IN WITNESS, WHEREOF, the parties hereto have executed this CONTRACT this 1st day of August, 2022. The CONSULTANT warrants that the person who is signing this CONTRACT on behalf of the CONSULTANT is authorized to do so and to execute all other documents necessary to carry out the terms of this CONTRACT.



Alan Searle
Director
Alan Searle & Associates

7/28/22

DATE



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

07/29/2022

DATE

APPROVED AS TO FORM:

D Graham Botha

D. GRAHAM BOTHA, ESQ.
GENERAL COUNSEL
GUAM POWER AUTHORITY

7/28/22

DATE