

## **CONTRACT FOR ENGINEERING, PROCUREMENT, AND CONSTRUCTION MANAGEMENT (EPCM)**

This CONTRACT is made and entered into on the day of December 1, 2022, by Stanley Consultants, Inc., hereinafter called the CONSULTANT, and the Guam Power Authority, hereinafter called GPA.

GPA engages the CONSULTANT to perform technical services for a project known and described as **ENGINEERING, PROCUREMENT, AND CONSTRUCTION MANAGEMENT (EPCM) CONTRACT, RE-SOLICITATION GPA-RFP-21-010**, hereinafter called the "Project".

### RECITALS

WHEREAS, GPA has entered into an agreement for a Build, Operate and Transfer (BOT) for a 198MW power plant with Guam Ukudu Power, LLC; and

WHEREAS, GPA issued RE-SOLICITATION GPA-RFP-21-010 for Engineering, Procurement and Construction Management (EPCM) services to support the design review, permitting and construction monitoring as GPA's Owners Engineer; and

WHEREAS, the Consolidated Commission on Utilities has authorized GPA to enter into a contract with the CONSULTANT.

NOW, THEREFORE, in consideration of the above premises and the mutual promises set forth herein and the terms and conditions hereinafter set forth and for other good and valuable consideration, receipt of which is hereby acknowledged, GPA and CONSULTANT the Guam Power Authority and the Stanley Consultants, Inc. hereby agree as follows:

### SECTION I - SERVICES OF THE CONSULTANT

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

- A. GPA and the CONSULTANT have entered into a task-based contract wherein, GPA will call upon a task and negotiate price, scope and schedule with the CONSULTANT. The CONSULTANT shall provide services as described in the task list provided in Exhibit A. This list is not all inclusive; GPA can negotiate tasks that are similar in scope.
- B. The CONSULTANT has assigned Chuck Spooner, P.E. 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.

**As GPA intends for CONSULTANT to provide service for design review and construction management of new power plant(s), GPA requires CONSULTANT to have physical presence in Guam for this task and may require this for other tasks.**

- C. The CONSULTANT shall submit all final documents in both hard copy and electronic format. All documents shall be in compatible format of GPA existing programs. The software version used shall be compatible to current GPA standards.

## SECTION II – CONTRACT PERIOD

GPA and the CONSULTANT have agreed that this CONTRACT will be effective December 1, 2022 for a base contract period of **three years**. Upon mutual agreement, the CONTRACT may be extended for two additional two-year periods beyond the base contract term. GPA shall, at its sole discretion, determine task completion.

## SECTION III - CONSULTANT'S COMPENSATION

- A. The method of payment for this CONTRACT is to be negotiated. Payment options are lump sum or not to exceed payment under a time-and-materials or fixed price/level-of-effort pricing arrangement.
- B. GPA shall pay the CONSULTANT installments based upon monthly progress reports and detailed invoices submitted by the CONSULTANT. Such payments shall be made as specified in SECTION VI.

## SECTION IV – CONSULTANT'S STATUS

The CONSULTANT 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;
- D. There shall be no withholding of taxes by GPA;
- E. That it is expressly understood and agreed that, in the performance of services under this CONTRACT, the CONSULTANT and its employees or agents 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 and shall remain that of independent parties to a contractual relationship set forth in this CONTRACT.

## 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 delay 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, the following information or services for this Project:

1. Available GPA data relative to policies, regulations, standards, criteria, studies, etc., relevant to the Project.

#### SECTION VI – 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 CONSULTANT.

#### SECTION VII - TERMINATION

The Procurement Officer may, when the interest of GPA or the Territory so require, terminate this contract in whole or in part, for the Convenience of the Territory. The Procurement Officer shall give written notice of the termination to the CONSULTANT specifying the part of the contract terminated and when termination becomes effective. **[GSA Procurement Regulations 6-101.10.]**

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 then 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 set forth in Exhibit A, and shall be agreed upon mutually by the CONSULTANT and GPA. However, in no event shall the fee exceed that set forth in Section III.

GPA shall make final payment within thirty (30) 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 costs 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 AGREEMENT

The 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 Director 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) 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: Stanley Consultants, Inc.  
Attn: Chuck Spooner  
Sunny Plaza, Suite 204,  
125 Tun Jesus Crisostomo Street  
Tamuning, Guam 96913

COPY: Stanley Consultants, Inc.  
Attn: Legal Department  
225 Iowa Avenue  
Muscatine, IA 52761

FAX: Fax Number

TO: Guam Power Authority  
P.O. Box 2977  
Hagatna, Guam 96932-2977  
ATTN: General Manager  
FAX: (671) 649-6942

#### 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 in the form of the Statement of Work, Exhibit A 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 to the extent arising out the negligent acts, errors or omissions in connection with the services the CONSULTANT provides.

#### SECTION XVI – DISPUTES

All controversies between GPA and the CONSULTANT which arise under, or are 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. GPA requires proof of insurance to be provided prior to commencing any tasks.

#### SECTION XIX – LICENSING

CONSULTANTS are reminded that GPA will not consider for award any offer submitted by a CONSULTANT who has not complied with the Guam Licensing Law. Specific information on licenses may be obtained from the Director of Revenue and Taxation.

#### SECTION XX – COVENANT AGAINST CONTINGENT FEES

The CONSULTANT warrants that he has not employed any person to solicit or secure any resultant contract upon agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Guam Power Authority the right to terminate the CONSULTANT, or in its discretion, to deduct from the Contract price or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commission payable by contractors upon contracts or sales secured or made through, bona fide established commercial or selling agencies maintained by the CONSULTANT for the purpose of securing business.

#### SECTION XXI – 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

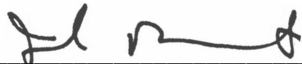
origin. The CONSULTANT will take affirmative action to ensure that applicants are employed and that employees are treated equally during employment without regard to race, creed, color or national origin.

SECTION XXII – AMERICAN DISABILITIES ACT

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

IN WITNESS WHEREOF, the parties hereto have executed this CONTRACT this day \_\_\_\_\_. 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.

By:  December 1, 2022  
Stanley Consultants, Inc. **Lance M. Sulzen, Vice President** DATE  
(Authorized Name/Title)

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

APPROVED AS TO FORM:

D Graham Botha 12/5/2022  
D. GRAHAM BOTHERA, ESQ. DATE  
STAFF ATTORNEY  
GUAM POWER AUTHORITY

## EXHIBIT A

SCOPE	TASK DELIVERABLE DESCRIPTIONS
1. New Generation Contract & Owner's Engineer Support	New Generation Contract Execution
	Owner's Engineer for Construction Phase
	Project Management
	Post-Construction and Commissioning Support
	Regulatory and Stakeholder Outreach Support
2. LNG Pre-Development	Business Model Development
	Industry Outreach
	Preliminary Conceptual Site Selections and LNG Receiving Terminal, LNG Storage, and Regasification Facility Functional Designs
	Environmental, Cultural and Construction Permits Survey
	Project Execution Plan and Work Breakdown Structure Development
	Regulatory Support for PUC
	Regulatory and Stakeholder Outreach Support
3. LNG Storage & Regasification Procurement Development	Procurement Model Development (Procurement Plan)
	Procurement Document Development
	Procurement Execution
	Proponent Outreach
	Procurement Announcement
	Procurement Evaluation Support
	Contract Negotiations Support
	Contract Execution
	Owner's Engineer for Construction Phase
	Project Management
	Post-Construction and Commissioning Support
	Regulatory and Stakeholder Outreach Support
4. LNG/CNG Transshipment Infrastructure	Business Franchise Model Development
	Procurement Model Development (Procurement Plan)
	Procurement Document Development
	Procurement Execution
	Proponent Outreach
	Procurement Announcement
	Procurement Evaluation Support
	Contract Negotiations Support
	Contract Execution
	Regulatory and Stakeholder Outreach Support

## 4 SCOPE OF WORK

### 4.1 INTRODUCTION

The Guam Power Authority (GPA) is soliciting services from a firm or consortium of firms to provide Engineering, Procurement and Construction Management (EPCM) listed in the scopes and deliverables in [Table 4-1](#). In particular, these services must have wide and deep experience in, but not limited to, the following areas:

- Project Program and Portfolio Management
- Power Generation
- Petroleum fuel pipelines and storage infrastructure
- Transmission and substation infrastructure
- Construction Management
- Power Infrastructure Project and Procurement Development
- Power, petroleum storage and distribution, LNG infrastructure (optional/future scope) design, development, planning, permitting, and construction

### 4.2 ENGINEERING, PROCUREMENT AND CONSTRUCTION MANAGEMENT (EPCM) AS REQUIRED BY GPA

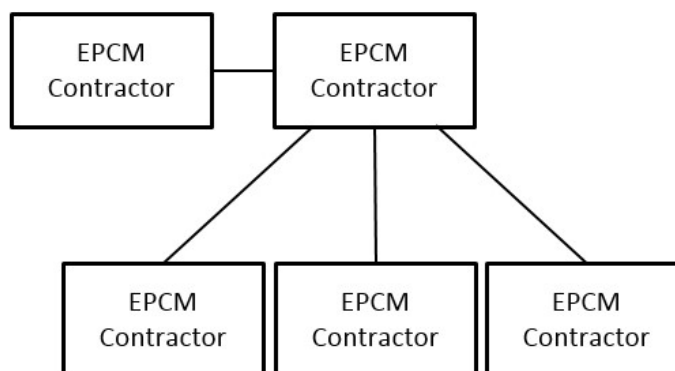
EPCM stands for Engineering, Procurement and Construction Management. An EPCM contract is a professional services contract. Broadly speaking, an EPCM contractor is not contractually obliged to provide GPA with a completed project “on time and on budget”, nor does it take responsibility for the construction or quality of the facility.

Rather, an EPCM contractor:

1. Takes responsibility for the provision of engineering and design services;
2. Procures contracts with suppliers and contractors as GPA’s agent; and
3. Manages the construction phase of the project – that is, manages, supervises and co-ordinates all of the suppliers, construction contractors and other contractors as GPA’s representative (the “CM”).

Figure 4-1 below shows the basic structure for an EPCM delivery model (where the EPCM contractor has in-house engineering capability).



**Figure 4-1. EPCM Delivery Model**

### 4.3 KEY CHARACTERISTICS

Some of the key characteristics of an EPCM contract discussed herein include:

1. Points of responsibility
2. Time
3. Contract price
4. Procurement
5. Quality / Performance guarantees
6. GPA's Involvement
7. Defective Works / Services

#### 4.3.1 Points of Responsibility

The EPCM contract requires the GPA to have multiple points of responsibility for delivery of the facility. While the EPCM contractor is responsible for the design component, it will not be responsible for the construction. Rather, GPA must separately contract with contractors and suppliers, and responsibility for those goods and services lies with the relevant contractor or supplier. The EPCM contractor's responsibility will generally be limited to the managing of those contractors and suppliers on GPA's behalf. That is, the EPCM contractor will not generally assume time, cost and quality risk for the project.

Under the EPCM contract GPA may, if required, seek recourse from a number of contractors and suppliers, depending on the nature of the defect or dispute.

#### 4.3.2 Time

The EPCM contractor will not have to guarantee that the project will be completed within a fixed period; rather, it will generally only commit to using its best efforts to meet GPA's desired schedule.

### **4.3.3 Contract Price**

The EPCM contract will be performed on a schedule of rates or cost-reimbursable basis. As an EPCM contractor, the EPCM is not expected to assume time, cost or quality risk in providing the facilities requested.

### **4.3.4 Procurement**

The EPCM contractor will generally procure contracts with suppliers and contractors as GPA's agent. The contractual relationship is between the supplier/contractor and GPA not the EPCM contractor. GPA may obtain EPCM support in developing procurement documents, proposal reviews and contract negotiations of GPA contracts.

### **4.3.5 Quality / Performance Guarantees**

Because the EPCM contractor will not take construction quality risk and therefore does not provide GPA with performance guarantees similar to those provided by an EPC contractor, the EPCM contractor will only provide warranties relating to the standard to which it will perform its professional services.

### **4.3.6 GPA's Involvement**

GPA will require greater involvement in, and control over, the design and construction of the facility, procurement of equipment and selection of contractors.

### **4.3.7 Defective Works / Services**

The EPCM contractor is liable to re-perform any defective engineering or design services that it has provided. The EPCM contractor's role is limited to assisting GPA in managing the rectification of defects caused by contractors engaged by GPA.

## **4.4 NEW GENERATION CONTRACT & OWNER'S ENGINEER SUPPORT**

GPA has contracted for the construction and operation of a 198MW dual-fired Combined Cycle Combustion Turbine (CCCT) baseload plant and a 41MW diesel generator reserve facility with Guam Ukudu Power, LLC. The baseload plant must use both ultralow sulfur diesel (ULSD) and natural gas as a fuel. The reserve facility will only operate on ULSD. The Ukudu CC CT facility also contains a 25 MW/ 7.5 MWH Battery Energy Storage System (BESS) and interconnects to GPA's Harmon Substation at 115 KV.

The EPCM Contractor shall assist GPA in evaluating and managing contract requirements which includes but not limited to design review for compliance of the new power plants, new supply fuel pipelines and electrical interconnections; project schedule review; construction inspections and monitoring; commissioning support and performance evaluation.

## **4.5 LNG INFRASTRUCTURE**

The EPCM shall assist GPA to develop the business model and procurement specifications for LNG infrastructure to support fuel supply to the new generation facility and for other uses that

GPA determines. GPA will be the sole off take for services and fuel provided by and at these facilities.

GPA's initial thoughts are that the party or parties contracted to provide LNG infrastructure and associated services must perform the following items at a minimum:

- Provide complete initial funding for the project
- Fund the acquisition of the property for the facility
- Pay for right-of-way, if necessary
- Construct the required LNG infrastructure facilities
- Agree for GPA to take an equity stake in the project after the initial commissioning of the new facilities
- Transfer the ownership of any fuel storage and distribution facilities to GPA at the end of the contract term.
- Operate and Maintain the facilities
- Deliver natural gas to GPA and other facilities as required by GPA
- Negotiate a franchise fee for the PROPONENT to provide natural gas to non-GPA entities for ship bunkering, natural gas supply, and other potential business using the facility. In no way should these other lines of business interfere with the supply and delivery of natural gas to GPA nor affect the operations requirements for GPA.
- Non-Compete Clause

The EPCM Contractor shall develop, more fully, the business model to be used for this contractual relationship, for GPA review and consideration. GPA will be the sole off taker for all services and fuel supply provided by and at these facilities.

GPA is considering allowance of other uses of the LNG facilities by the LNG Infrastructure Contractor for LNG bunkering, regional LNG or CNG supply, local Guam domestic supply for a negotiated franchise fee. The LNG infrastructure cannot be pledged for any of these non-GPA direct business streams.

GPA is also considering an arrangement where the LNG Infrastructure Contractor provides LNG for the first five (5) to ten (10) years of the contract. The LNG Infrastructure Contractor may be structured as a public-private partnership under a build-operate-transfer arrangement. The contract may be up to 30 years long after the LNG infrastructure commercial online date (COD).

## **4.6 LNG SUPPLY**

The EPCM shall develop the fuel contract and procurement for fuel supply.

Table 4-1 List of Deliverables

<b>SCOPE</b>	<b>TASK DELIVERABLE DESCRIPTIONS</b>
1. New Generation Contract & Owner's Engineer Support	New Generation Contract Execution
	Owner's Engineer for Construction Phase
	Project Management
	Post-Construction and Commissioning Support
	Regulatory and Stakeholder Outreach Support
2. LNG Pre-Development	Business Model Development
	Industry Outreach
	Preliminary Conceptual Site Selections and LNG Receiving Terminal, LNG Storage, and Regasification Facility Functional Designs
	Environmental, Cultural and Construction Permits Survey
	Project Execution Plan and Work Breakdown Structure Development
	Regulatory Support for PUC
	Regulatory and Stakeholder Outreach Support
3. LNG Storage & Regasification Procurement Development	Procurement Model Development (Procurement Plan)
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	Procurement Execution
	Proponent Outreach
	Procurement Announcement
	Procurement Evaluation Support
	Contract Negotiations Support
	Contract Execution
	Regulatory and Stakeholder Outreach Support

#### **4.7 PRICE PROPOSAL**

Upon selection of the most qualified firm, GPA will request an hourly rate schedule for initial negotiations. Task proposals will be requested thereafter.

#### **4.8 CONTRACT TERMS**

GPA intends for this contract to be a minimum of three years with an option for contract extension for two additional two-year periods.

#### **4.9 EXCEPTION PETITION PROCEDURE**

The EPCM Contractor or GPA may at times wish to petition for special exceptions to the standard implementation of the agreed upon compensation structure. Such petitions would generally be made where there is a belief that extraordinary circumstances beyond the control of either party have led to extreme positive or negative variations in actual measured performance.

A procedure will need to be developed to provide for the resolution of such petitions. At a minimum, the process should require the petitioner to perform a root cause analysis, of the alleged extraordinary event, prior to and in support of its petition. If the petition procedure fails to achieve a resolution that is satisfactory to both parties, then the petitioning party may choose to enter into a dispute resolution in accordance with the Dispute Resolution Procedure discussed elsewhere. All face-to-face negotiations shall be conducted on Guam and in accordance with Guam Law.

#### **4.10 PROJECT REFERENCES**

PROPONENT should identify at least three client references for projects in each scope area within the last five years. PROPONENT should provide these references in an organized Table(s) with project name, project manager, project description, client name, client contact information including email, website, telephone, and fax numbers.

#### **4.11 PROJECT TEAM**

Each PROPONENT must identify the project management team that they will assign to each scope area for the duration of its CONTRACT with GPA. GPA will need to agree to any replacements made for the project team. The PROPONENT must provide the curriculum vitae, publications list, and project experience for each team member. The PROPONENT must provide an organizational chart for this project team.

As GPA intends for the selected PROPONENT to provide service for design review and construction management of new power plant(s), PROPONENTS shall incorporate local (Guam) presence for this contract.