

BEFORE THE PUBLIC UTILITIES COMMISSION

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| IN RE: PETITION FOR APPROVAL) OF AWARD TO GHD INC.) FOR THE CONSTRUCTION) MANAGEMENT SERVICES) FOR THE REHABILITATION) OF H-WHARF AND HIGHWAY) 11 ROADWAY) RECONSTRUCTION BY) PORT AUTHORITY OF GUAM) _____) | PAG DOCKET 21-02 ALJ REPORT |
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INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC”) pursuant to the January ____, 2021 Petition for review and approval of the contract related to the Construction Management Services for the Rehabilitation of H-Wharf and Highway 11 Roadway Reconstruction (the “Petition”), filed by the Jose D. Leon Guerrero Commercial Port, Port Authority of Guam (“PAG” or the “Port”).

BACKGROUND

Back in 2018, PAG issued revenue bonds in order to secure funding for its modernization projects, which include the restoration of its H-Wharf. On March 6, 2020, PAG issued Request For Proposals No. PAG-020-002 to solicit construction management services (“Construction Manager”) for the Rehabilitation of H-Wharf and Highway 11 Roadway Reconstruction (“RFP”) projects.¹

¹ Petition, p. 1 (____).

Based on the RFP, the construction project for the H-Wharf will involve the demolition of the facilities currently sitting on the wharf and the removal of concrete foundations and pavement.² The project will further include the construction of a new wharf, consisting of a new sheet pile bulkhead retaining wall, sheet pile cap with supporting structures, and a new concrete surface.³ The H-Wharf construction will also include the installation of utilities, as well as the paving of about 2.5 acres of upland to serve as an unloading zone.⁴

The Highway 11 roadway reconstruction project will involve the repaving of approximately 4,200 feet, comprised of two 11-foot lanes and a two-foot unpaved shoulder.⁵ The work will include new pavement striping and signage, utilities under the pavement, and storm water piping, just to name a few.⁶

Seven (7) offerors submitted proposals in response to the RFP, which were evaluated by a PAG Evaluation Committee.⁷ The Evaluation Committee thereafter determined GHD to be the best qualified offeror.⁸

DISCUSSION

1. PAG's Contract Review Protocol

Pursuant to 12 G.C.A. §12105, PAG may not enter into any contractual agreements or obligations which could increase rates and charges without the PUC's

² RFP, p. 19 (Mar. 6, 2020).

³ RFP, p. 19.

⁴ RFP, p. 19.

⁵ RFP, pp. 19-20.

⁶ RFP, pp. 19-20.

⁷ Petition, p. 1.

⁸ Petition, p. 1.

express approval. Accordingly, pursuant to PAG's current Contract Review Protocol, "[a]ll professional services contracts in excess of \$1,000,000" and "[a]ll externally funded loan obligations and other financial obligations, such as lines of credit, bonds, etc., in excess of \$1,000,000," "shall require prior PUC approval" Contract Review Protocol, PAG Docket 09-01, p. 1 (June 20, 2011).

2. Scope of Work and Proposed Contract

a. Scope of Work

Based on the RFP and negotiations between GHD and PAG, the scope of work for the Construction Manager involves the general administration of the construction contract related to the projects, which includes preconstruction conferences, status reports, reviewing payment estimates and change orders, and project close-out services.⁹ Owing to cost negotiations, services related to procurement of the contractor were eventually eliminated from the scope of work.

The Construction Manager will be involved in the preconstruction meetings between PAG, stakeholders, and the contractor.¹⁰ During the construction of the projects, the Construction Manager will hold project meetings and weekly progress meetings, and will prepare reports as required by PAG.¹¹ The Construction Manager will also process payment requests and review change orders, claims, and disputes.¹² It will also review the contractor's project submissions, surveys, and drawings.¹³ The Construction Manager will

⁹ RFP, pp. 21-22.

¹⁰ RFP, pp. 20-21.

¹¹ RFP, pp. 20-21.

¹² RFP, p. 22.

¹³ RFP, pp. 22-24.

further engage in quality control, testing, and inspections.¹⁴ Towards the end of the construction, it will develop a punch list and will perform close-out inspections.¹⁵

In addition, the Construction Manager is required to provide staffing for eighteen (18) months during the construction of the project.¹⁶ During this time, the Construction Manager will provide inspection and engineering support for any civil, structural, electrical, mechanical, pile driving inspection and monitoring, soil engineering, and diving inspections.¹⁷

b. Contract Term

Based on the summary of cost negotiations with GHD contained in PAG's procurement records, the term of the contract shall be for an initial term of two (2) years, with three (3) additional options to renew, but not to exceed five (5) years.¹⁸ This contract will run concurrent with the construction contract.¹⁹ Substantial completion of the construction project itself is scheduled at eighteen (18) months.

c. Cost and Funding

According to the Petition, PAG seeks PUC approval of its construction management contract with GHD at a cost of \$2,249,945.54.²⁰ PAG submits that this

¹⁴ RFP, p. 24.

¹⁵ RFP, pp. 22-24.

¹⁶ RFP, p. 25.

¹⁷ RFP, p. 25.

¹⁸ Memorandum from Contract Management Administrator to General Manager, "Cost Negotiations for the Construction Management Services of the Rehabilitation of H-Wharf and Highway 11 Roadway and Reconstruction ("Cost Negotiations Memo."), p. 1 (Dec. 15, 2020).

¹⁹ Cost Negotiations Memo., p. 2.

²⁰ Petition, p. 2.

contract is necessary in order to ensure “quality control measures are in place in order to meet construction deadlines and to stay within the budgeted amount.”²¹

Based on PAG’s procurement record, PAG and GHD have been engaged in cost negotiations since July 17, 2020.²² PAG and GHD arrived at the final figure above after several meetings and revisions to the proposal and scope of work.²³ According to PAG, this figure saves the Port about \$301,863.65 since the initial offer was for \$2,551,809.19.²⁴

In conversations with PAG, it submits that this contract will be funded by Port Revenue Bond funds. According to PAG, the cost of the contract will be issued in a lump sum, and will be drawn down on a monthly basis for the term of the contract or upon completion of the project, whichever comes first.²⁵

3. GHD

According to its proposal, GHD has a local staff of over twenty employees, which includes eleven engineers with expertise in the fields of civil, marine structural, electrical, mechanical, pile driving, and geotechnical engineering, as well as construction management.²⁶ Part of its representative work includes the PAG’s Port Facility Expansion Project; the P-204 Wharf Improvements NAVFAC Uniform & Tango Wharf Replacement;

²¹ Petition, p. 2.

²² “Letter of Acceptance” from PAG to GHD, p. 1 (Dec. 15, 2020).

²³ “Letter of Acceptance” from PAG to GHD, p. 1.

²⁴ “Letter of Acceptance” from PAG to GHD, p. 1.

²⁵ “Letter of Acceptance” from PAG to GHD, p. 1.

²⁶ GHD Proposal, p. 44 (May 7, 2020).

and projects at Naval Base Guam, including the Repair of Glass Breakwater North Shore, and the Sumay Cove Bulkhead Replacement.²⁷

Further, based on its proposal, GHD's "Maritime and Coastal Group" has experts in its team "providing coastal planning, modeling, engineering design, and constructability reviews for coastal defense systems, seawalls, port facilities, harbors, floating and fixed docks, coastal and marine piles, boat ramps, wharves, fendering systems, dolphin structures, mooring systems, piers, coastal promenades, causeways, [and] ferry terminals," to name a few.²⁸

4. **Board Approval**

Resolution No. 2021-01 indicates that PAG's Board of Directors approved the contract award to GHD during its January 28, 2021 meeting.²⁹ In addition, the Resolution authorizes PAG management to petition the PUC for approval of the award and contract to GHD.³⁰

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²⁷ GHD Proposal, p. 44.

²⁸ GHD Proposal, p. 46.

²⁹ Resolution No. 2021-01, PAG Board of Directors ("Resolution"), p. 1 (Jan. 26, 2021).

³⁰ Resolution, p. 1.

RECOMMENDATION AND CONCLUSION

Based on the record before the Commission, the ALJ finds that the subject contract properly underwent Guam's competitive bidding process. The procurement record reflects that PAG and GHD have been engaged in cost negotiations since July 17, 2020; and that PAG and GHD arrived at the final figure after several meetings and revisions to the proposal and scope of work.³¹ Accordingly, based on these negotiations, PAG was able to secure \$301,863.65 in savings.³²

Moreover, the record also indicates that GHD is linked to experts who have extensive experience in "providing coastal planning, modeling, engineering design, and constructability reviews for coastal defense systems, seawalls, port facilities, harbors, floating and fixed docks, coastal and marine piles, boat ramps, wharves, fendering systems, dolphin structures, mooring systems, piers, coastal promenades, causeways, [and] ferry terminals," as a few examples.³³

GHD has eleven engineers on staff locally with expertise in the fields of civil, marine structural, electrical, mechanical, pile driving, and geotechnical engineering, as well as construction management.³⁴ Its representative work includes the Port Facility Expansion Project; the P-204 Wharf Improvements NAVFAC Uniform & Tango Wharf Replacement; and projects at Naval Base Guam, including the Repair of Glass Breakwater North Shore and Sumay Cove Bulkhead Replacement.³⁵

³¹ "Letter of Acceptance" from PAG to GHD, p. 1.

³² "Letter of Acceptance" from PAG to GHD, p. 1.

³³ GHD Proposal, p. 46.

³⁴ GHD Proposal, p. 44.

³⁵ GHD Proposal, p. 44.

Accordingly, based on this record, the ALJ recommends that the PUC approve the proposed contract with GHD, at a cost of \$2,249,945.54. A proposed Order is submitted herewith for the Commissioners' consideration.

Respectfully submitted this 26th day of January, 2020.



JOEPHET R. ALCANTARA
Administrative Law Judge

PROFESSIONAL SERVICES AGREEMENT
BETWEEN
JOSE D. LEON GUERRERO COMMERCIAL PORT
(PORT AUTHORITY OF GUAM)
AND
GHD
CONSTRUCTION MANAGEMENT SERVICES
for the Rehabilitation of Hotel (H) Wharf and Highway 11 Roadway Reconstruction

THIS AGREEMENT is entered into by and between the **JOSE D. LEON GUERRERO COMMERCIAL PORT (PORT AUTHORITY OF GUAM)** ("Port"), a public corporation and autonomous instrumentality of the government of Guam, whose address is 1026 Cabras Highway, Suite 201, Piti, Guam 96925 ("Authority") and GHD ("Consultant") authorized and licensed to do business in Guam, whose address is: 865 South Marine Corps Drive, Suite 202 Tamuning, Guam 96913.

WHEREAS, the Port issued a Request for Proposal ("RFP") **RFP No. PAG-020-002** seeking to retain a consultant to perform **Construction Management Services for the Rehabilitation of Hotel (H) Wharf and Highway 11 Roadway Reconstruction**.

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

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, the Port desires to retain the Consultant as an independent contractor on the terms and conditions set forth in this Agreement and Consultant has agreed to accept such retainer;

WITNESSETH, in consideration of the mutual covenants hereinafter set forth, the Parties agree as follows:

I. Statement of Work to be Performed.

A. Scope of Work. The Consultant shall furnish Construction Management Services pursuant to and in accordance with the Scope of Services as identified in the RFP, Consultant's Proposal and Cost Proposal (Amendment No. 4 Ref. No. 11210841) as agreed to by both parties. A copy of the RFP, and Consultant's Proposal and Cost Proposal (Amendment No. 4 Ref. No. 11210841) are attached as Attachment 1 & Exhibit 2 Services Required, incorporated

as part of this Agreement. Consultant shall provide status reports on the services performed and required under this Agreement upon request by the Port.

B. Consultant Provisions of Resources. Consultant agrees to furnish all qualified personnel, materials and transportation to perform the consulting services provided for in this Agreement. Consultant represents that it and its employees possess the professional and technical expertise necessary to perform the services called for in this Agreement in a competent, professional manner, in line with the services of a typical consultant engaged in the same and similar field as Consultant herein. The Port may, in its sole discretion and based upon availability, provide staff assistance to Consultant in furtherance of this Agreement. The Consultant shall insure that its employees engaged in work hereunder are informed of all relevant provisions of this Agreement.

C. Other Work. The Port acknowledges and agrees that Consultant may provide services to other clients, persons or companies apart from the services performed in this Agreement, as long as the performance of such other services does not in any way conflict with or hinder the performance of services herein. In the event the Port discovers or determines that the Consultant is providing services to a third party which conflicts with or hinders the performance of services under this Agreement, Consultant must immediately cease performing those third party services upon being provided written notice by the Port and the Port may invoke any further available remedies under the terms of this Agreement.

D. Location of Services. Consultant may perform the services under this Agreement at any suitable location as approved by the Port.

II. Term of Agreement.

The contract period shall be for an initial two (2) year term, with three (3) additional one-year options for renewal, provided this contract does not exceed the total contract term of five (5) years. The renewal of this agreement after the initial term shall be at the sole discretion of the Port.

III. Compensation.

A. Compensation. In consideration for the Construction Management Services agreed to by both parties and performed under this Agreement, the Port shall pay Consultant the sum of **Two Million Two Hundred Forty-Nine Thousand Nine Hundred Forty-Five Dollars and Fifty-Four Cents (\$2,249,945.54)** fees in accordance with negotiations and agreed to by both parties. The services under this agreement shall be performed and compensated in accordance with the terms herein and agreed upon and authorized by the Parties.

B. Payment Terms. Payment shall be made upon the Payment Terms set forth in the RFP and based on deliverables. Payment shall only become due upon the receipt and certification by the Port of documents and reports described in the RFP and upon satisfactory performance by Consultant of the services in compliance with the terms of this Agreement, and shall be payable within thirty (30) days. Upon written notification by the Port of unsatisfactory performance by Consultant, Consultant shall immediately remedy its performance. Failure to

remedy said unsatisfactory performance may result in the Port taking action in accordance with Section IV of this Agreement.

C. Expenses. Consultant shall be responsible for all expenses incurred in the performance stipulated under this Agreement.

D. No Compensation Prior to Approval of Agreement. The Port shall not be liable to Consultant for any services performed by Consultant prior to full execution of this Agreement by all parties, and all Consultant expressly waives any and all claims for services performed in expectation of this Agreement prior to its full execution.

E. Final Payment. Final payment shall be made upon satisfactory performance of all services required to be performed by Consultant under this Agreement. Prior to the final payment due Consultant, and as a condition precedent thereto, Consultant shall execute and deliver to the Port a release in form approved by the Port of claims against the Port arising under this Agreement. Consultant expressly waives the provision of Section 82602 of Title 18, Guam Code Annotated, which states:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

F. Payment. All rates and prices and payments to the Consultant shall be in the currency of the United States.

IV. Early Termination.

A. By the Port. The Port reserves the right to cancel or terminate this Agreement prior to its completion:

(i) Termination without Cause: The Port may terminate this Agreement, without cause, upon the delivery of written notice to the Consultant at least thirty (30) days prior to the intended date of termination;

(ii) Termination in the Best Interest of the Government of Guam: The Port may terminate this Agreement based upon a determination that such termination is in the best interests of the Government of Guam by delivering a written notice of such termination to the Consultant and the effective date of such termination. Circumstances for termination under this clause include but are not limited to Consultant's successful completion of services under this Agreement to the satisfaction of the Port.

(iii) Termination for Cause/Default: The Port shall notify Consultant in writing of deficiencies or default in the performance of its duties under this Agreement. The Consultant shall have ten (10) days, which period may be extended by the Port (said extension not to be unreasonably denied), to correct the deficiency or cure the default or to request, in writing, a hearing from the Port. The Port shall hear and act upon same within thirty (30) days from receipt of said request and shall notify the Consultant of said action. The action by the

Port shall be either to confirm, in whole or in part, the specified deficiencies or default, or find that there are no deficiencies or default, or such action as deemed necessary in the judgment of the Port. Failure of Consultant to remedy said specified default in notice by the Port within ten (10) days of receipt of such notice of such action, or such time reasonably necessary to correct the deficiency and/or cure the default, shall result in the termination of this Agreement, and the Port may be relieved of any and all responsibilities and liabilities under the terms and provisions of this Agreement.

(iv) **Effects and Responsibilities of Parties for Early Termination by the Port:** In the event of an Early Termination without cause or for the best interests of Guam under paragraphs (i) and (ii) of this section, the Consultant agrees to use all reasonable efforts to mitigate expenses and obligations hereunder with respect to such event. Following an Early Termination under paragraphs (i) and (ii) by the Port, the Port shall pay the Consultant for all satisfactory services rendered up to that point. In the event of an Early Termination by reason of an event described in clause (iii), above, the Port shall not reimburse Consultant for services performed. The Port reserves all rights at law and equity in the event of an early termination, including arising out of a default or for other causes.

B. By Consultant.

(i) **Termination without Cause.** Consultant reserves the right to terminate this Agreement prior to its completion, without cause, upon thirty (30) days written notice to the Port. Upon Consultant's termination of this Agreement without cause, the Consultant shall be entitled to payment for satisfactory services (as determined in the sole discretion of the Port) rendered up to the termination date and the Port shall have no other or further obligations to Consultant. The Consultant shall be obligated to continue performance of services, in accordance with this Agreement, until the termination date and shall have no further obligation to perform services after the termination date.

(ii) **Termination for Cause:** Consultant shall notify the Port in writing of deficiencies or default in the performance of the Port's duties under this Agreement. The Port shall have twenty (20) days to correct the deficiency or cure the default, which period may be extended by Consultant (said extension not to be unreasonably denied). Upon Consultant's termination of this Agreement for cause, the Consultant shall be entitled to payment, in accordance with Section III of this Agreement, for satisfactory services rendered up to the termination date and the Port shall have no obligations to Consultant. The Consultant shall be obligated to continue performance of services, in accordance with this Agreement, until the termination date and shall have no further obligation to perform services after the termination date.

C. Termination/Modification for Lack of Funds. The Port may terminate or modify this Agreement based upon a lack of funding. In such an event, the Port shall promptly provide notice to Consultant and within twenty (20) days of the notice, the Parties shall renegotiate the terms of this Agreement in good faith. If the parties are unable to reach an agreement on the renegotiation, then either Party may terminate this Agreement pursuant to Section IV of this Agreement as applicable.

D. Preservation of Property. Notwithstanding any termination of this Agreement, and subject to any directions from the Port, the Consultant shall take timely, reasonable and necessary action to protect and preserve the property in the possession of Consultant in which the Port has an interest.

E. Additional Provisions. In the event that either party effects an Early Termination, it is expressly provided that the Port may issue a new Request for Proposal with respect to such terminated services. This provision shall not be deemed an admission or waiver of any rights and defenses with respect to rights of either Party under this Agreement, including but not limited to, either Parties' rights to assert damages for breach of Agreement.

V. Contact Person.

The Consultant agrees that, during the term of this Agreement, it shall identify a primary contact person who is familiar with the services being performed hereunder and who shall be responsive to the questions and direction of the Port. The contact person must be identified in writing within thirty (30) days after full execution of this Agreement by all parties. The Port reserves the right to request replacement of the contact person designated by the Consultant under this Agreement.

VI. Confidentiality.

A. Information. The Consultant hereby warrants that it shall not disclose any documents, materials or information, whether verbal, written, recorded magnetic media or otherwise (collectively, the "Information"), made available or acquired for the purpose of carrying out this Agreement. Only authorized persons shall use and have access to the Information, and then only for the period such access is required to perform services under this Agreement. All necessary steps shall be taken by the Consultant to safeguard the confidentiality of the Information in conformance with any applicable United States and Guam laws, statutes and regulations.

The Consultant shall keep copies of the Information and the provisions of this Section shall remain in effect as long as determined by the Port. All of the Information shall be returned promptly after use to the Port and all copies or derivations of the Information shall be physically and/or electronically destroyed. Consultant shall include a letter attesting to the complete return of Information and documenting the destruction of copies and derivations with the returned Information.

The Consultant shall not enter into any Agreements or discussions with a third party concerning such Information without the prior written consent of the Port, and then only if the Consultant requires the third party(ies) to agree to the terms of the confidentiality set forth herein and the Information is provided to such third party(ies) only for purposes of enabling the Consultant to discharge its responsibilities under this Agreement.

It is specifically provided that the limitations contained in this paragraph A shall not apply (i) to the extent required by applicable law, (ii) to the extent that any Information is now or hereafter becomes part of the public domain, but only to the limited extent that such Information, or any portion thereof, is in the public domain not as a result of any breach or violation of this Agreement, or (iii) to the extent that a party is directed otherwise under the terms of a valid and effective order, issued by a court of competent jurisdiction.

B. Liability. Failure to comply with the provisions of Paragraph A shall subject the Consultant to liability, including all damages and injunctive relief.

VII. Conflicts of Interests/Ethics

A. The Consultant warrants and covenants that it has not violated and will not violate Guam's Procurement Law or Regulations pertaining to ethics in public contracting.

B. It is expressly understood that breach of any of the covenants or warranties in this Section on the part of the Consultant is a material breach of this Agreement and shall entitle the Port to immediately terminate this Agreement. Consultant agrees that in the event of a breach or violation of this Section, the Port shall have the right to terminate this or any other Agreement with the Consultant without liability.

C. Notwithstanding the provisions contained in this Agreement with regard to the assignment or subcontracting of any work under this Agreement, Consultant agrees that with respect to any subcontractor it engages to perform any work contemplated by this Agreement, that any Agreements it enters into with such subcontractor(s) will include provisions which parallel this Section VII and shall require any subcontractor to execute a statement of no conflict of interests to the Port.

VIII. Waiver.

No waiver by any party of any right on any occasion shall be construed as a bar to or waiver of any right or remedy on any future occasion.

IX. Severability.

If any provision of this Agreement shall be held or deemed by a court of competent jurisdiction to be invalid, inoperative or unenforceable, the remaining provisions herein contained shall nonetheless continue to be valid, operative and enforceable as though the invalid, inoperative or unenforceable provision had not been included in the Agreement.

X. Survival of Warranties.

All representations, warranties, agreements, covenants and obligations in this Agreement shall be deemed to have been relied upon by the other party, and shall survive the completion of this Agreement and shall not merge in the performance of any obligation by any party hereto.

XI. Fees and Expenses.

Each of the Parties shall bear its own expenses in connection with the negotiation and consummation of the transactions contemplated by this Agreement.

XII. Notices.

All invoices, reports, correspondence, notices, requests, demands and other communications hereunder shall be in the English Language, in writing. All notices required to be given under this Agreement by either party to the other may be affected by personal delivery, or by mail (registered or certified, postage, prepaid with return receipt requested). Notices delivered personally shall be deemed communicated as of actual receipt. Mailed notices shall be deemed communicated as of the day of receipt or the fifth day after mailing, whichever occurs first. Notices shall be addressed and delivered to the parties as follows, provided that each party may change the address by giving the other party written notice in accordance with this section:

TO THE PORT: Mr. RORY J. RESPICIO, General Manager
PORT AUTHORITY OF GUAM
Jose D. Leon Guerrero Commercial Port
1026 Cabras Highway, Suite 201
Piti, Guam 96925

TO CONSULTANT: Mr. BRYAN RYLEY, Construction Manager
GHD
865 South Marine Corps Drive, Suite 202
Tamuning, Guam 96913

XIII. Assignment/Subcontractors.

It is expressly acknowledged that Consultant is solely responsible for the fulfillment of its duties and obligations under this Agreement, regardless of whether or not Consultant utilizes one or more subcontractors for such purpose. The right and interest of Consultant under this Agreement (including, but not limited to, Consultant's right to or interest in any part or all of payments under this Agreement) may not be assigned, transferred or subcontracted to any other person, firm, corporation or other entity, whether by agreement, merger, operation of law or otherwise, without the prior, express written consent of the Port. In the event of a permissive subcontract or assignment of this Agreement by Consultant, Consultant agrees that any subcontractors retained by Consultant or assignees shall be subject to all provisions of this Agreement.

XIV. Successors and Assigns.

This Agreement shall be binding upon, and inure to the benefit of the Parties

hereto and their respective successors, assigns and transferees, except as otherwise provided for under the terms of this Agreement.

XV. Scope of Agreement.

This Agreement, RFP, Proposal, and Cost Proposal collectively: (i) supersede any and all other Agreements, either oral or in writing, between the Parties hereto with respect to the subject matter hereof, and (ii) contain all of the covenants and Agreements between the Parties with respect to such subject matter in any manner whatsoever. The Consultant and the Port each acknowledge that no representations, inducements, promises or agreement, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in the Agreement shall be valid or binding.

In the event of a contradiction between the provisions of any of the documents collectively comprising this Agreement, Request for Proposal, RFP No. PAG-019-007 Construction Management Services, and the Offeror's Cost Proposal, the contradiction shall be resolved by giving precedence in the following order: first, to the provisions of the Agreement (as it may be amended from time to time); second, to the provisions of the RFP (as it may be amended from time to time); and, third, to the provisions of the Proposal and Cost Proposal (as they may be clarified or amended from time to time).

XVI. Captions.

All Section and paragraph titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the content of the Agreement.

XVII. Counterparts.

This Agreement may be executed in counterparts, all of which taken together shall be deemed one original.

XVIII. Governing Law and Forum Selection.

Except to the extent U.S. federal law is applicable, the laws and regulations of Guam shall govern the interpretation, effect, and validity of this Agreement. Any court action shall be exclusively in Guam.

XIX. Compliance with Laws.

A. In General. The Consultant shall comply with all U.S. and Guam Laws, Statutes, Regulations and Ordinances applicable to this Agreement. The Consultant represents and warrants that it is fully licensed to do business in Guam to render the services to be provided herein.

B. Non-Discrimination in Employment. The Consultant agrees: (i) not to

unlawfully discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap; (ii) to include a provision similar to that contained in subsection (i) above in any subcontract or assignment agreement except a subcontract for standard commercial supplies or raw materials; and (iii) to post and to cause subcontractors and/or assignees to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause

XX. Retention and Access to Records and Other Review.

The Consultant, including subcontractors, if any, shall maintain all books, documents, papers, accounting records and other evidence pertaining to the services performed and costs incurred, and to make such materials available at its respective offices at all reasonable times during the Agreement period and for six (6) years from the date of the final payment under the Agreement, for inspection by the Port. The Port agrees to comply with reasonable requests of Consultant to provide access to all documents and Port property reasonably necessary to the performance of Consultant's services under this Agreement. The conditions of this section shall be placed in any subcontract or assignment arising under this Agreement.

XXI. Liability.

A. Indemnification. Consultant shall indemnify and hold harmless the Port and its officers, agents, Board members and employees from or on account of any claims, losses, expenses, injuries, damages, actions, lawsuits, judgments, or liability resulting or arising from (but only to the extent caused or contributed to by) the negligent or wrongful act or omission of the Consultant or its employees, officers, directors, contractors, agents, representatives, successors, or assigns, in the performance or nonperformance under this Agreement.

B. The Port not Liable. The Port assumes no liability for any accident, loss, claim, judgment, action or injury that may occur to the Consultant and/or the Consultant's officers, directors, agents, servants, subcontractors and/or employees, and/or to the personal property of any such person or entity, arising out of the performance of services under this Agreement except to the extent caused or contributed to by the negligent act or omission of the Port. In addition, no Board member, officer, agent, or employee of the Port shall be liable personally under or by reason of this Agreement or any of its provisions. In addition, the Port assumes no liability for any accident or injury that may occur to Consultant's officers, directors, employees, agents, or dependents while traveling to and from Guam in furtherance of this Agreement.

XXII. Delays, Extensions and Suspensions.

The Port unilaterally may order the Consultant in writing to suspend, delay, or interrupt all or any part of the work for such period of time as it may determine to be appropriate for the convenience of the Port. The Consultant agrees to prosecute the work continuously and diligently apart from those periods of suspension, delay or suspension. Except as otherwise agreed to by the Parties, reasonable time extensions for the performance of Consultant's services will be granted only for excusable delays that arise from causes beyond the control and without

the fault or negligence of the Consultant, including, but not restricted to, acts of God, acts of the public enemy, acts of the Government of Guam or the Government of the United States in either its sovereign or contractual capacity, acts of another contractor in the performance of an agreement with the Government of Guam, fires, floods, typhoons, earthquakes, epidemics, quarantine restrictions, strikes, freight, or embargoes.

XXIII. Modifications including those Due to Public Welfare, Change in Law or Change in Marketing Conditions.

The Port shall have the unilateral power to modify the Agreement at any time subject to the written agreement of Consultant. The Port shall have the power to make changes in the Agreement as a result of changes in law and to impose new rules and regulations on the Consultant under the Agreement relative to the scope and methods of providing services as shall from time-to-time be necessary and desirable for the public welfare. The Port shall give the Consultant notice of any proposed change and an opportunity to be heard concerning those matters. The scope and method of providing services as referenced herein shall be liberally construed to include, but is not limited to, the manner, procedures, operations and obligations, financial or otherwise, of the Consultant. In the event of any future change in federal or Guam laws, the Port materially alters the obligations of the Consultant, or the benefits to the Port, then the Agreement shall be amended consistent therewith. Should these amendments materially alter the obligations for the Consultant, then the Consultant or the Port shall be entitled to an adjustment in the rates and charges established under the Agreement. Consultant shall be entitled to terminate this Agreement rather than accept modified terms. Nothing contained in the Agreement shall require any party to perform any act or function contrary to law. The Port and the Consultant agree to enter into good faith negotiations regarding modifications to the Agreement, which may be required in order to implement changes in the interest of the public welfare or due to change in law. When such modifications are made to the Agreement, the Port and the Consultant shall negotiate in good faith, a reasonable and appropriate adjustment for any changes in services or other obligations required of the Consultant directly and demonstrably due to any modification in the Agreement under this clause.

XXIV. Independent Consultant and its Employees.

A. Status of Consultant. The Consultant and its officers, agents, servants, subcontractors and employees are independent contractors performing professional services for the Port, and are not employees of either the Port or the Government of Guam. The Consultant and its officers, agents, servants and employees shall not accrue vacation or sick leave, participate in the Government of Guam retirement system, insurance coverage, bonding, use of government vehicles or any other benefits accorded to Government of Guam employees as a result of this Agreement. Consultant agrees that Consultant and its aforementioned employees, officers, directors, agents, servants, and subcontractors are not and will not become an employee, officer or Board member of the Port at any time during the duration of this Agreement, and will otherwise comply with the provisions of the Guam Procurement Law regarding ethics in public contracting (Title 5 Guam Code Annotated, Chapter 5, Article 11, and its associated rules and regulations). Nothing in this Agreement or any action taken under this Agreement shall be deemed or construed in any manner or for any purpose to evidence or establish as between

Consultant and the Port a relationship of partnership, agency, association, joint, venture or representative, nor does this Agreement authorize any party to undertake or bind any obligation or responsibility on behalf of the other party. In addition, there shall be no withholding of taxes by the Port for the Consultant.

B. Liability. The Consultant assumes responsibility for its personnel and subcontractors providing services hereunder and will make all deductions and payments for social security and withholding taxes and for contributions to employment compensation funds, or any other payments required by the governments of the U.S. and Guam, if required. Consultant is responsible for paying when due any and all income taxes, gross receipts taxes, or any other taxes or assessments incurred as a result of the services performed by the Consultant and Consultant's employees or agents under this Agreement or the compensation paid to Consultant for services performed under this Agreement. Furthermore, Consultant shall maintain at the Consultant's expense all necessary insurance for its employees including but not limited to Worker's Compensation, Errors and Omissions, and liability insurance for each employee as required under U.S. and Guam Law and the mandates of the underlying RFP to this Agreement. Consultant agrees to hold harmless and indemnify the Port, its officers, directors, employees, agents, representatives, successors and assigns, for any and all claims, demands, costs, losses, fees, penalties, interest, or damages, including attorney's fees, which may be brought or asserted due to (i) any injury, death, or property damage arising from the negligence or other wrongful or tortuous acts of Consultant or Consultant's employees, officers, contractors, directors, agents, representatives, successors, or assigns, or (ii) Consultant's failure to comply with terms of this subparagraph B.

XXV. Disclosure.

The Consultant hereby represents that it has disclosed to the Port all matters regarding Consultant which if not disclosed to the Port would materially affect the Port's decision to enter into this Agreement with Consultant.

XXVI. Disposition of Property and Materials; Intellectual Property Rights.

A. All plans, outlines, briefs, memoranda, studies, reports, analyses and all other work product and materials incidental or otherwise ("Work Product") which are produced by reason of this Agreement shall be and remain the property of the Port, regardless of whether Consultant is in possession of such Work Product, and may be used by the Port without permission from Consultant and without any additional costs to the Port.

B. All Work Products, including any and all intellectual property rights in said Work Product, arising out of the Agreement shall be the sole and exclusive property of the Port. Consultant explicitly acknowledges that the Port possesses exclusive rights to the Work Product arising out of this Agreement. Consultant shall not use or permit others to use in any way or form the Work Product without the express written consent of the Port.

XXVII. Attachments, Exhibits, Schedules, and Entire Agreement.

The Agreement, including its Attachments, Exhibits and Schedules, constitute the entire Agreement and supersedes all prior written or oral understandings. No Agreement, oral or written, expressed or implied, has been made by any party hereto, except as expressly provided herein. All prior Agreements and negotiations are superseded hereby. This Agreement and any duly executed amendments hereto constitute the entire Agreement between the Parties hereto.

XXVIII. Computation of Time.

Whenever this Agreement provides for a time period of ten (10) days or less days, weekends and Government of Guam holidays are not included in the computation. When this Agreement provides for a time period of over ten (10) days, weekends and Government of Guam holidays are to be included in the computation.

XXIX. Partial Invalidity.

If any provision of this Agreement shall be deemed by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue to be in full force and effect.

XXX. Amendments/Modifications.

Any amendment or modification to this Agreement will be effective only if it is in writing and signed by both parties.

***** Signature Approvals appear on next page *****

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year appearing opposite their respective signatures.

CONSULTANT: GHD

Port Authority of Guam
JOSE D. LEON GUERRERO
COMMERCIAL PORT

BRYAN RYLEY
Construction Manager

RORY J. RESPICIO
General Manager

Date: _____

Date: _____

**LEGAL COUNSEL FOR
PORT AUTHORITY**

**CERTIFICATION OF AVAILABILITY
OF FUNDS:**

THOMAS KEELER
Assitant Attorney General

JOSE B. GUEVARA III,
Financial Affairs Officer, Controller

Date: _____

Date: _____



PORT OF GUAM
ATURIDATI / PUEYTON GUAHAN
Jose D. Leon Guerrero Commercial Port
1026 Cabras Highway, Suite 201, Piti, Guam 96925
Telephone: 671-477-5931/35 Facsimile: 671-477-2689/4445
Website: www.portguam.com



Lourdes A. Leon Guerrero
Governor of Guam
Joshua F. Tenorio
Lieutenant Governor

December 15, 2020

Mr. Bryan Ryley
Project Manager
GHD
865 S. Marine Corps Drive, Suite 202B
Tamuning, Guam 96913
bryan.ryley@ghd.com
T. 472-6792 F. 477-6229

COPY

Subject: Letter of Acceptance of the Cost and Fees for the Construction Management Services for the Rehabilitation of H-Wharf and Highway 11 Roadway Reconstruction RFP 020-002.

Hafa Adai Mr. Ryley,

The Port Authority of Guam (Port) would like to thank you for your patience and understanding while working with the Port's cost negotiation team as we adjusted and adapted to the Governor's COVID-19 restrictions and guidelines during this pandemic. The following is a summary of our cost negotiation efforts since your original proposal on July 17, 2020.

The Port received GHD's initial proposal on July 17, 2020 with a proposed cost/fees of \$2,551,809.19. Upon our review of your proposal, the Port and GHD engaged in many meetings with GHD resulting in four (4) amendments to your original cost proposal. The Port reviewed your initial proposal and focused on the required professional engineering disciplines for this project, as well as the hourly rates and the hours projected for each phase of the construction and rehabilitation of H Wharf.

At our last meeting on December 2, 2020, GHD presented amendment no. 4, with a proposed cost of \$2,249,945.54. As a result of your cost proposal amendment no. 4 as compared to your July 17th, 2020 initial proposal, amendment no. 4 saves the Port approximately \$301,863.65. Our Port cost negotiation team finds your cost proposal amendment no. 4 to be **"fair and reasonable"**. Furthermore, the Port finds that the agreed upon scope of services to be provided (in amendment no. 4) by GHD is adequate and sufficient to manage the construction and rehabilitation of H-Wharf minimizing any unwarranted time delays or additional cost.

The terms of this contract are as follows:

The agreed amount of \$2,249,945.54 will be issued in a lump sum and will be drawn down on a monthly basis for the term of contract or the completion of the construction whichever comes first. The term of this contract will be for an initial term of two (2) years, with three (3) additional options to renew this contract for additional one-year (1) periods, provided this contract does not exceed a total of five (5) years. This contract will run concurrent and in line with the selected contractor for the construction of the above subject project.

The PAG hopes you find our "Letter of Acceptance" favorable and acceptable. Upon your complete and favorable review of this document, we ask that you affix your signature below and please return to our office via courier or email as provided. These terms and conditions will be formulated into a final agreement by our legal counsel. Upon approval by our legal counsel, we will seek the Port Board of Directors approval and issuance of a resolution in order to request PUC approval in accordance with PUC contract protocol. Upon completion of the draft approved agreement, a copy will be provided to you for your review and signature.


Should you have any questions, please feel free to contact Mr. Steven P. Muna, Contract Management Administrator, at 477-5931 extension 269 or email: spmuna01@portofguam.com


Respectfully,


RORY J. RESPICIO
General Manager

Attachments: Amendment No. 4
Cc: procurement file

Approval and Concurrence:


BRYAN RYLEY
Project Manager/Construction Manager


BRYAN RYLEY
12/21/20
@ 10:57 AM
RECEIVED



December 01, 2020 (Amendment #04)
November 18, 2020 (Amendment #03)
October 02, 2020 (Amendment #02)
August 19, 2020 (Amendment #01)
July 17, 2020 (Initial Proposal)

Reference No. 11210841

Mr. Steven Muna, Contract Management Administrator
Port of Guam
1026 Cabras Highway, Suite 201
Piti, Guam 96925

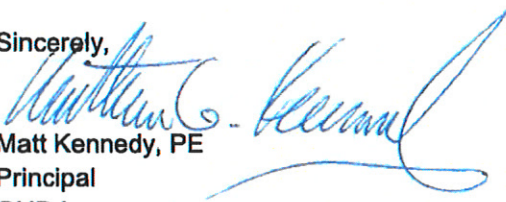
**SUBJECT: FORMAL SUBMITTAL OF SCOPE OF WORK AND FEE PROPOSAL
FOR CONSTRUCTION MANAGEMENT SERVICES FOR THE REHABILITATION OF
H-WHARF AND HIGHWAY 11 ROADWAY RECONSTRUCTION
RFP-PAG-020-002**

Dear Mr. Muna:

GHD is pleased to submit our amended Scope of Work and Fee Proposal for the above referenced project. We have revised the scope of work and fee proposal based on the comments provided via your email of November 27, 2020. Specifically we have modified Task D1.1.3 to read as requested.

We look forward to our upcoming meeting with GHD and PAG this Wednesday, December 02, 2020 at 2:30 pm. If you require additional information or would like to discuss further, please feel free to contact Bryan J. Ryley directly at (671) 797-3336. We look forward to working with the Port of Guam on this critical project and are prepared to begin working immediately.

Sincerely,


Matt Kennedy, PE
Principal
GHD Inc.

Encl. Scope of Work & Fee Proposal

cc: Bryan Ryley, Sr. Construction Manager
Ted Whiton, PE, General Manager, U.S. West Region



**Port Authority of Guam (PAG)
Construction Management Services Scope of Work & Fees
H-Wharf & Highway 11 Roadway Rehabilitation
GHD No. 11210841
12/01/20 Amendment #04
11/18/20 Amendment #03
10/02/20 Amendment #02
08/19/20 Amendment #01
07/17/20 Initial Proposal**

I. GENERAL

GHD, as the Construction Manager (CM) will provide services relating to the daily field observation, inspection, testing, management, coordination, and compliance monitoring for the Rehabilitation of H-Wharf & Highway 11 Roadway Project. Our scope of services have been amended to incorporate revisions and comments received during previous scoping meetings with the Port Authority of Guam (PAG), and in reply to PAG's email received November 13, 2020 with the "bottom line number." All services removed from our scope of work have been notated as "Descoped" and struck.

The project generally consists of two major components: (1) Replacement of H-Wharf structure and adjacent upland facilities, and (2) Reconstruction of the access roadway, Highway 11. Components of each include:

Replacement of H-Wharf with a new bulkhead with a modern mooring and fendering system, utilities, and pavement.

- **Demolition** - Project demolition components include the removal of surface facilities (sheds and trailers) and dilapidated structures including fencing, cleats, rubber fenders, and mooring bollards. It also includes the removal of asphalt and concrete foundations and concrete pavement, and the partial demolition of existing bulkheads and concrete caps.
- **Wharf Construction** - New wharf construction consists of a new sheet pile bulkhead retaining wall and sheet pile cap with supporting structures and a new concrete surface. The new sheet pile bulkhead retaining wall will be approximately 3-ft outside of the existing sheet pile bulkhead wall and is approximately 500 feet along the pier head line with approximately 100-foot returns on each side. This would increase the wharf footprint within the water by approximately 2100 S.F. Wharf structural components will include new sheet pile retaining wall bulkheads, sheet pile "deadman" walls, batter piles, and tie-rods. Additional structural components include mooring bollards on the wharf, two mooring bollards with concrete foundations supported by piles along the edge of the access roadway east and west of the wharf, and concrete decking/pavement for the first 100 feet adjacent to the pier head line in the ship-unloading zone. Structural fill will be placed in the area between the existing and new bulkheads. The concrete pavement within the ship unloading zone will be designed for 750 psf. Surface runoff will outfall to Apra Harbor after treatment by oil water separator and filtration systems.
- **Utilities** - Utilities within the wharf area will include electrical for power and lighting, potable water with capped stub outs to support future construction, fire main with supporting tank and pump station, storm

water with oil-water separator(s), sanitary lines with holding tank and manholes to support future construction, and empty data communications conduit terminating in manholes to support future construction. Electrical lines from the load center will feed low mast perimeter wharf security lighting and site power requirements. Conduit and manholes will be positioned to support future construction at both the northwest and northeast corners of the wharf adjacent to the access road.

- Upland Pavement - The upland surface will be impervious with the area inboard of the 100-foot ship unloading zone consisting of asphalt pavement with a design load of 1500 psf. The area of asphalt pavement is approximately 2.5 acres.

Highway 11 Roadway Reconstruction

- Roadway Reconstruction - The roadway utilized to access the wharf will be reconstructed for approximately 4200 feet, and paved with slight adjustments to the typical section, alignment, profile, ditches, and drainage structures. The roadway section will consist of two 11-foot lanes and one 2-foot unpaved shoulder section. Work includes new pavement striping and signage. Utilities under the roadway will include water line replacement, storm water piping, and empty data transmission conduit. Surface runoff from the new access roadway will be collected in bio-swales for natural filtration prior to out-falling in Apra Harbor. New roadway lighting is not required.

II. PROJECT OVERVIEW

GHD will administer the construction contract as the authorized representative for PAG. Our construction management team will:

- Verify that all work is accomplished in accord with approved drawings, plans, specifications, and the contract documents.
- Confirm the quality of materials used on the project are in accordance with approved contract documents.
- Comply with the U.S. Department of Transportation Maritime Administration (MARAD) Transportation Investment Generating Economic Recovery (TIGER) Discretionary Grant Agreement.

III. TASK AND CM SERVICE REQUIREMENTS

The following tasks are included as part of the CM services for this project:

A. PRE-BID PHASE SERVICES:

~~Task A1.0 - Review the Contractor's pre-qualification packages (Descoped)~~

~~Task A2.0 - Constructability Review of the Plans and Specifications (Descoped)~~

~~Task A3.0 - Review of the Bid Package (Descoped)~~

~~Task A4.0 - DPW Building Permit (Descoped)~~

B. BID PHASE SERVICES:

~~Task B1.0 - Contract Bidding (Descoped)~~

~~Task B2.0 - Bid Review (Descoped)~~

C. PRE-CONSTRUCTION PHASE SERVICES:

Task C1.0 - Project Records & Document Control

The CM will provide services and tools to verify that the project is efficiently managed and constructed according to the terms of the Contract. The primary function will be the collection and organization of construction documents, gathering data regarding project progresses, producing progress reports, and monitoring time, cost, and quality.

The CM will use ProjectWise (PW) for the Project Management Information System (PMIS) to track communication, construction, and contract documents. We will initiate and begin to setup and populate the PMIS during the beginning of the preconstruction phase.

- Communication Documents: Correspondence, memos, daily inspector logs for both Contractor and CM, meeting minutes, and all other relevant documentation.
- Construction Documents: RFI's, submittals, testing results, photo logs, special inspection, change orders, corrective actions, punch list, various construction logs, payment applications, and all other relevant documentation.
- Contract Documents: Specifications, drawings, permits, bid documents, contract documents, and all other relevant documentation.

Task C2.0 - Kick-off Meeting

We will chair an internal kick-off meeting with PAG staff, Port Police, USCG, and other appropriate stakeholders to review and understand port security guidelines and clearance requirements. Obtain TWIC identifications credentials for all CM project staff.

Task C3.0 - Pre-Construction Submittals

The Contractor, where required in the specification, is to submit many pre-construction submittals in advance of mobilization such as the environmental protection plan, performance & payment bonds, schedule of values, construction schedule, Contractor safety plan & QC Program for compliance with the contract documents. We will track the requirements and timing of pre-construction submittals, and provide timely review and comment.

Task C4.0 - Pre-Construction Conference

The CM will prepare meeting agenda, chair, and provide meeting minutes for the pre-construction conference, to be held with the PAG, Contractor, and other appropriate stakeholders. We will present and explain contract requirements dealing with mobilization, prosecution of work, safety, environmental protection and historic preservation, payment processing, review and approval of submittals,

preparation and updating of the progress schedule, material and equipment testing procedures, inspections, and the role as well as the duties, responsibilities, and chain of communication for the CM, PAG, and Contractor.

D. CONSTRUCTION PHASE SERVICES:

Task D1.0 - Contract Administration

Task D1.1 - Project Meetings: The CM will schedule, chair, arrange, and conduct conferences and meetings as required to maintain clear communication of the Contract requirements and adherence to project schedules.

Task D1.1.1 - Weekly Progress Meetings: The CM will schedule, chair, arrange, and conduct a weekly progress meeting with the PAG and the Contractor to discuss progress of work, contract requirements, and other issues related to the administration and prosecution of work. The CM will provide an agenda, prepare meeting minutes for all progress meetings with Contractor, Subcontractors, PAG, and other appropriate stakeholders. The meeting minutes will include tracking of action items from week to week until the task has been completed.

Task D1.1.2 - Special/Stakeholder Coordination Meetings: The CM will schedule, chair, and arrange meetings between PAG, the Contractor, and other parties such as GEPA, DPW, GPA, etc. and other stakeholders as necessary to address project issues that require decisions that cannot be made exclusively by the CM or to resolve regulatory concerns.

Task D1.1.3 - Quarterly PAG/Tiger Grant Meetings and Monthly Construction Status Reports: The CM will prepare monthly construction status reports using a format acceptable to PAG and attend Quarterly PAG/Tiger Grant Meetings

- The CM will support development or QA review of eight (8) USDOT Quarterly Project Progress Reports as prepared by PAG on the format and content described in the FY2016 Transportation Investment Generating Economic Recovery (TIGER) Grant No. DTMA91G1600007.
- The CM will schedule, chair, arrange and conduct meetings to include providing an agenda, and preparing meeting minutes.
- The CM will participate in meetings between MARAD and other stakeholders as necessary to address grant related issues.

Task D1.1.4 - QA/QC and Pre-Installation Meetings: The CM will arrange meetings between the Contractor and CM team and other parties specific to the topic of discussion. These are typically conducted weekly or as needed to provide clear communication, and discuss upcoming construction questions and concerns.

Task D1.2 - Project Correspondence: Prepare project correspondence, reports and other documents as required for the proper management of the construction of the project.

Task D1.3 - Progress Photo Log: The CM will prepare and retain copies of construction progress photos organized by year, month, and day. The photos will capture the different phases of the project,

pre-construction, construction, and post-construction. The photos will be digital, and electronic copies will be provided to PAG at the end of the project. This may also include videos as may be appropriate.

Task D1.4 - Monthly Status Reports: The CM will provide QA review of the PAG prepared MARAD monthly construction status reports.

Task D2.0 - Preparation and Processing of Payment Estimates

Task D2.1 - Payment Request: The CM will receive and process payment requests from the Contractor. Payment request will be based on an approved schedule of values and actual work completed. The CM will also review the Contractor's monthly progress schedule and as-builts. Payment requests will be reviewed for compliance with the contract documents, TIGER Grant, and actual work completed. Upon completion of the review, the CM will make necessary adjustments, verifications, and forward the request to PAG for processing of payment. The CM will submit their review, recommendation, acceptance, or rejection within five working days of receipt from the Contractor as practicable. Although not indicated in the specification, we assume the payment application will be a standard AIA or EJCDC that can be generated by PW.

Task D3.0 - Processing Construction Change Orders

Task D3.1 - Contract Deficiencies: The CM will discuss with the Contractor on an ongoing basis potential conflicts or deficiencies. We will notify PAG of any apparent deficiencies in the contract documents or problems raised by the Contractor in the prosecution of work that may lead to material changes in the construction cost, design, or duration of the project. We will formulate and provide a recommendation on how to deal with the potential conflicts.

Task D3.2 - Change Order Review: We will review and evaluate change requests by the Contractor and provide recommendations regarding the manner and method of executing the changes, and provide coordination as required with PAG. Change orders will not be made when the Contractor has assumed such risk in the bid. We will prepare and submit change orders and supporting documents for PAG approval after the Contractor has submitted their proposal.

Task D3.3 - Change Order Negotiations with Contractor: The CM will review the estimated costs and negotiate change orders on behalf of PAG together with PAG representative. Final acceptance of negotiated change orders can only be provided by the PAG General Manager.

Task D3.4 - Change Order Documentation and Administration: We will monitor work, keep detailed documentation of approved change orders, and verify that subsequent payment estimates reflect current change orders. Copies of approved change orders will be maintained on PW (originals to be provided to PAG) and we will verify that subsequent pay requests accurately represent these change orders. Approved change orders will be administered by the CM along with other work elements according to the provisions of the contract documents.

Task D4.0 - Processing Claims and Disputes

Task D4.1 - Claims and Disputes: The CM will notify PAG of apparent deficiencies in the contract documents as may be raised by the Contractor, which may lead to claims by or a dispute with the Contractor. The CM will assist PAG with the resolution of claims and disputes.

Task D4.2 - Claim Records: We will maintain accurate and adequate records of information associated with claims or disputes.

Task D4.3 - Claim Review & Interpretation: The CM will review claims by and/or disputes with the Contractor. PAG will be provided with an interpretation of contract drawings and/or specifications to include written recommendation for resolution of claim and/or dispute.

Task D4.4 - Claim Resolution: We will assist PAG in settling claims or disputes with the Contractor or with other parties, including preparation of related reports, negotiating claim settlements, or testifying at hearings if necessary. Any such services performed outside of the timeframes for this proposal will be considered as additional services.

Task D5.0 - Phasing Plan Review

Task D5.1 - Phasing Plan: The Contractor's phasing plan will be reviewed and approved prior to the start of construction as part of the preconstruction submittal requirements. The phasing plan will be reviewed in a manner so as to minimize impact to PAG daily operations.

Task D6.0 - Continued Review of Contract Documents

Task D6.1 - Continued Review: On an ongoing basis, we will review the contract documents to detect possible deficiencies which may lead to changes or to possible claims by or disputes with the Contractor, or to identify changes which could be made to save time, money, or both for PAG without altering or jeopardizing the intent and function of the project.

Task D6.2 - Design Clarification: We prepare and submit requests for design clarifications to the Engineer of Record for (EOR) for any areas of the contract documents that are the subject of inquiries by the CM, Contractor, or PAG. We typically achieve this by issuance a Design Clarification Memorandum (DCM) to provide formal documentation, discussion, and tracking, allowing the discussion and recommendations independent of the Contractor.

Task D6.3 - Administer Changes in the Contract Documents: We administer/assist with changes/revisions to the plans, specifications or contract documents as provided by the EOR, and implement such changes. GHD typically helps to closely track and maintain revision numbers, uploading revised documents to PW, and providing hard copies to the Contractor.

Task D7.0 - Submittal Review and Approval

Task D7.1 - Submittal Review: GHD reviews Contractor's submittals for completeness and coordinates review with the CM team or by the EOR. All submittals and shop drawings specific to the design will be forwarded to the EOR for processing. The responsibilities for review of submittals is

discussed and assigned early on in the project. The CM team will track submittal requirements for the project and monitor the EOR's and Contractor's timely response.

Task D7.2 - Substitution Requests: Substitution requests are evaluated and recommendations are provided for the Contractor's requests for material or equipment substitutions. All substitutions or design changes that have a material effect to the design will be forwarded to the EOR for processing. The CM will be authorized to approve such requests upon approval by the EOR and/or PAG.

Task D8.0 - Requests for Information

Task B8.1 - Request for Information: The CM will track Requests for Information (RFI's) and maintain an RFI log, coordinate receipt of answers from other sources such as the EOR, and provide RFI responses with the EOR and PAG input as may be appropriate regarding any aspect of the contract documents, which include the plans and technical specifications.

Task D9.0 - Review and Analysis of the Project Schedule

Task D9.1 - Schedule Evaluation: GHD will initially evaluate the Contractor's work schedule for accuracy and for efficient sequencing. We provide a detailed review of the schedule and advise the Contractor to make changes, if required, to verify that the schedule is accurate, realistic, and shows an efficient sequence of construction work. The schedule will be accepted for the project and will be monitored monthly for adherence to baseline schedule and identification of potential problems with maintaining the approved work schedule.

Task D9.2 - Schedule Compliance: The Contractor's compliance with the approved work (baseline and progress) schedule will be monitored. Any delays will be documented and notification provided to PAG and the Contractor when the actual progress is behind.

Task D9.3 - Schedule Recommendations: GHD provides a monthly schedule review and written recommendations to the Contractor to make changes deemed necessary and coordinate approval of a revised (recovery) schedule with PAG.

Task D10.0 - Construction Check Surveying Services

Task D10.1 - Construction QA Survey: GHD reviews the Contractor's survey and arranges for QA construction check survey services, if deemed necessary, to verify that items of construction conform to contract requirements. Changes to the horizontal and vertical alignments and elevations will only be made with the approval of the EOR.

Such QA survey may include checking of the horizontal and vertical layout or alignment of the various components of the project, checking benchmarks, elevation of pipelines, valves, and other items or work as follows:

- Pipeline Alignments and Location of Structures: Spot check Contractor's construction staking to verify the pipeline alignments and structure locations are as called for on the plan and specifications and in order to verify that the work is in a location within lawful and approved Rights-of-Way and easements.

- **Elevations:** Spot check of the Contractor's elevations for foundations, pads, pipeline inverts, backfill thickness, manholes, and other structures for which vertical elevations are critical to the design element.

Task D11.0 - Record Drawing Preparation

Task D11.1 - Contractor Record Drawings: On a monthly basis, the CM will require and review the Contractor's record drawing information to verify that they are current and capture deviations from the original plan set. We require this as monthly attachment to the progress payment application.

Task D11.2 - Maintain Red-Line Drawings: The CM will maintain a separate set of red-line drawings on site. The drawings will be available for PAG reference at all times. Monthly Contractor record drawing documents will be uploaded by the Contractor to PW. In addition to the above stated, GHD maintains records of all changes to the construction drawings made through the RFI process. We maintain a log of all RFI responses received, notes that indicate whether they impact the drawings, markups on the sheets impacted, and notations on the drawings or specifications impacted as may be appropriate.

Task D11.3 - Record Drawings: At conclusion of the project, the CM will review the official record drawings prepared by the Contractor and coordinate with the EOR for their review, their incorporation into the final drawing files, and certification.

Task D12.0 - General Construction Inspection

Task D12.1 - General Compliance Monitoring: The CM team administers provisions of the contract documents dealing with the prosecution of the work. We provide ongoing observation of the construction of the project to verify that the work is accomplished in accordance with the contract documents.

The Contractor's operation will be monitored and changes recommended if needed to comply with local laws, permit requirements, or applicable Government of Guam regulations such as those dealing with environmental protection or to protect the safety of the public.

Task D13.0 - Construction Quality Control and Testing

Task D13.1 - General Compliance Monitoring: GHD administers provisions of the contract documents dealing with the quality of workmanship. Support information includes witnessing of Contractor testing for acceptance or rejection and subsequent retesting, as specified, of tests required to be performed by the Contractor.

We coordinate and monitor any compliance testing required to be performed by PAG as specified in the contract documents, assigned as Owner responsibilities.

Task D13.2 - Acceptance: The CM will promptly reject orally, or in writing, any construction work that does not comply with Contract documents. Within 24 hours of notification to the Contractor that work elements have been rejected, the CM will provide a written description of the deficiency to the EOR for their concurrence. When concurrence has been obtained, the Contractor will be directed to correct the

work. The CM will promptly advise the PAG if the Contractor fails to correct or remove the defective work. This will be documented, tracked, and managed in PW by formal issuance of a Correction Required Notice (CRN).

Task D13.3 - Construction Quality Assurance (CQA) Testing: The CM will provide the following CQA testing to monitor the Contractor's independent testing firm as required by the Contract Documents or as deemed necessary by the CM:

- Concrete Compressive Testing
- Backfill Compaction Testing
- Soil and Aggregate Analysis

Task D14.00 - Sub-consultant Inspections and Engineering Support

Additional Subconsultant inspection, engineering, and quality monitoring support is included to support the CM team during the construction. The following disciplines are included:

- Part time Project Scheduler for Primavera P6
- Part time Environmental Inspector
- Part time Geotechnical Engineering Support
- Part time Diving Inspections
- Part time TIGER Grant Support
- Part time QA Soil, Aggregate, and Concrete Testing Support
- Part time QA Survey Support

Task D15.00 - Expenses

Expenses are included associated with reports & reproduction, mileage, live video fee from site camera with ongoing website subscription for access & maintenance, on-site weather station, and Project Management Information System (ProjectWise) subscription to track communication, construction, and contract documents.

- ProjectWise will be used for maintaining all project related documents. PW subscription costs assume a maximum of 15 users for a period of 23 concurrent month as follows:
 - Client - three (3)
 - Construction Manager - five (5)
 - Contractor - five (5)
 - Spare - three (3)
- Additional users can be provided if requested, and a fee will be negotiated with PAG.
- A site camera will be provided and installed onsite with ongoing web service for backup documentation of project. This service will include a time-lapse video that can be provided to PAG at the conclusion of the project.

- A weather station will be provided and installed onsite to collect site specific weather data as needed to document the hourly rainfall and verify any Contractor's claim for adverse weather day.

E. CLOSEOUT PHASE SERVICES:

Task E1.0 - Punch List Development: Throughout the construction of the project, the CM will prepare and maintain a list of defects and deficiencies in the work which must be corrected by the Contractor prior to final acceptance of work. The list will be provided to all members of the initial, pre-final and final inspection teams. The list will be revised after inspections to reflect additional items identified during the inspection. Coordinate with the Contractor to verify that punch list items have been addressed to the satisfaction of PAG. When all items have been completed, the CM will inform PAG in writing recommending that the work be accepted.

Task E2.0 - Project Closeout Inspections: CM will schedule, arrange, and conduct interim, initial, pre-final, and final inspections of work with Contractor, PAG, GEPA, DPW, and other stakeholders for this project.

- Initial Inspection: Initial inspections will be arranged as necessary for specific work elements that require the certification and approval of other agencies.
- Pre-Final Inspection: A pre-final inspection will be conducted after substantial completion of the work.
- Final Inspection: The final inspection will be conducted after correction of pre-final inspection punch list items.

Task E3.0 - Warranty Package: The CM will maintain a copy of the warranties and compile associated Manufacturer and Contractor warranty documents. Warranty information will be included in the final project closeout documents. All original warranty documents will be provided to PAG along with Lien Release information from the Contractor.

F. POST-CONSTRUCTION SERVICES:

Task F1.0 - Final Project Documentation: Upon completion of the project, the CM will arrange and inventory all project files and records compiled on PW. The documentation will be assembled after written acceptance of the work by PAG. The documentation will be provided to PAG on an electronic SSD.

- All communication documentation
- All design documentation
- All construction documentation
- Warranties
- Operation and maintenance information

Task F2.0 - Record Drawings: At the conclusion of the project, the CM will review the official record drawings prepared by the Contractor and coordinate with the EOR for their review and certification. We anticipate that record drawings will be generated from the original digital design documents by the Contractor incorporating all mark-ups of the as-built drawings.

IV. CLARIFICATIONS AND ASSUMPTIONS:

1. **GHD Staffing** - For this project, GHD is proposing to provide the staff resources necessary to provide the services detailed above in Section III, for the time periods (durations) as set forth in the TIGER Grant Modification 0001 approved May 18, 2020 by the Department of Transportation. The following staffing and durations are included in this Scope of Services:
 - **Construction Manager:** Full time Construction Management services will be provided for a period of 18 months commencing from construction start (NTP to Contractor) to substantial completion, 2 months from substantial completion to the Contractor's performance end, and part time services for 3 months from the Contractor's performance end through project closeout for a total of 23 concurrent months. This will be a shared position between the CM and Assistant CM.
 - **Site Clerical:** Full time Site Clerical services will be provided for a period of 18 months commencing from construction start (NTP to Contractor) to substantial completion, 2 months from substantial completion to the Contractor's performance end, and 3 months from the Contractor's performance end through project closeout for a total of 23 concurrent months.
 - **Subcontractors:** GHD's team includes part time support from subcontractors including a project scheduler, TIGER Grant specialist, environmental, surveyor, materials testing, and professional divers.
 - **GHD's team also includes limited:** marine, civil, mechanical, mechanical, environmental, and electrical engineers that can provide discipline specific support.
 - **As indicated in the RFP,** GHD assumes that the EOR provides RFI/submittal/shop drawing clarification for technical and/or design elements that may differ from or not clearly delineated in contract documents. GHD's services exclude design services or modifications to the contract documents.
2. **Contract Schedule** - The most recent construction schedule is set forth in the TIGER Grant Modification 0001 as approved May 18, 2020. We have used these milestones to determine the duration of GHD's contracted services. It is our understanding through conversations with PAG that we will be providing CM construction phase services from the beginning of construction as initiated by the award of NTP to the Contractor, through project closeout. We have allocated our staff to provide CM services for the following milestones:

| | |
|----------------------------------|--------------------------------|
| • Begin GHD's CM Services | Contractor's NTP issued |
| • Substantial Completion | 18 months |
| • Performance End Date | 2 months |
| • Project Closeout Date | 3 months |
3. **Invoicing** - As this is a lump sum fee, GHD will invoice monthly per the "Cumulative Invoice Schedule" provided as an attachment to this document.

4. **Fee Schedule** - Our lump sum fee assumes all CM services as discussed in Section IV (3) above are provided for consecutive calendar days from NTP to the Contractor through Project Closeout. Our fee also assumes the GHD will provide staffing as indicated in Section IV (1) above.

We would like to note that staffing and utilization projections were used to determine our lump sum fee. This means that the CM is responsible for the proper execution of our services and will provide its own means and methods to complete and manage the work in compliance with the agreed SOW and fee for the agreed to performance period.

Additional project management, accounting, tracking and reporting required for alternate delivery methods was not considered. It has been our experience that such effort distracts from the quality and continuity of our construction management services

GHD agrees to negotiate with PAG for change orders for additional construction management services due to changes in the CM responsibilities from significant addendums or change orders to the construction contract documents, construction delays, time extensions, additional work, adverse weather delays, or any other reason that increase the scope or duration of our services until final acceptance of the project is achieved. If required, additional services can be provided at our current US Standard West Rates.

5. **Job Site Safety** - Site Safety is the sole responsibility of the Contractor. The CM assumes the Contractor will perform all work in accordance with the requirements of the Contract Documents, applicable federal and local regulations, compliance with regulations of public agencies having jurisdiction, including safety and health requirements of the Territory of Guam and the Occupational Safety and Health Administration of the US Department of Labor (OSHA) as may be required.

In the event that the GHD believes that the Contractor is not conducting their work in compliance with OSHA requirements, we may request PAG bring in an independent third party safety expert to determine the extent of the Contractor's compliance and potential mitigation for non-compliance.

6. **Stop Work Orders** - It is understood that the Construction Manager will be authorized to issue stop work orders for a portion of the project or for the entire project in accordance with the following:
- Without prior notice to PAG when actions by the Contractor threaten the health and safety of the Contractor's personnel, inspectors, or the public.
 - With prior notice to PAG when actions by the Contractor are in violation of the contract documents, or local or federal laws.
7. **Temporary Facilities** - The Contractor is responsible for providing temporary facilities for the CM team and Owner. This facility needs to provide adequate provisions for safety in this time of health concerns. Some of these items include adequate workspace for social distancing, proper air exchange, weekly cleaning and trash removal. In addition, we assume the Contractor will provide all utilities, furniture, copy machine, shelves and other work items required for daily activities.

8. Archeological Survey - Others are providing:

- Archeological Survey
- Section 106 Historic Preservation
- biological resource monitoring
- Section 7 Endangered Species Act
- Environmental Permit Monitoring

9. Work Hours - GHD is providing appropriate staff to work during the Contractor's normal work hours as defined in the Speciation as Monday through Friday, 7:30 am to 5:00 pm. If the Contractor requests work outside of these hours, GHD will be reimbursed by PAG for the costs of any job site inspection and testing provided outside of these normal work hours, specifically between the hours of 5:00 pm and 7:30 am Monday through Friday, or anytime Saturday or Sunday, and legal holidays. Payment for referenced additional services will be provided to the CM by PAG by deducting charges from Contractors progress payment applications on a monthly basis. Fee for staff will be based on overtime rates and a minimum ½ day (4 hours) of services.

10. Warranty Services - Warranty follow-up beyond the contract period is not included in the scope. If requested, a fee can be negotiated with PAG.

V. FEE SCHEDULE

| Task Description | Amount |
|-----------------------------|-----------------------|
| GHD CM Team Services | \$2,137,460.02 |
| GRT @ 5.263% | \$112,494.52 |
| TOTAL LUMP SUM FEE | \$2,249,954.54 |

We are looking forward to working with PAG on this project and being part of this successful construction project.

