

**BEFORE THE PUBLIC UTILITIES COMMISSION**

<b>IN RE: PETITION REQUESTING )</b> <b>APPROVAL OF THE )</b> <b>PROCUREMENT OF )</b> <b>ENGINEERING SERVICES BY )</b> <b>GUAM POWER AUTHORITY )</b> _____ )	<b>GPA DOCKET 21-13</b>  <b>ORDER</b>
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**INTRODUCTION**

This matter comes before the Guam Public Utilities Commission (the “PUC”) pursuant to the June 10, 2021 Petition for approval of the procurement of an Engineering, Procurement and Construction Management (“EPCM”) contract (the “Petition”), filed by the Guam Power Authority (hereinafter referred to as “GPA”).

On July 26, 2021, the Administrative Law Judge of the PUC (the “ALJ”) assigned to this matter filed an ALJ Report that included his findings and recommendations based on the administrative record before the PUC. The ALJ found the following.

**DETERMINATIONS**

As indicated in GPA Docket 21-01, the PUC has a “history of involvement with the EPCM contract.”<sup>1</sup> Back in GPA Docket 15-05, the PUC authorized GPA to “procure an Engineering, Procurement and Construction Management contractor for a new combined cycle plant, and authorized the expenditure of \$750,000 for such engineering and consulting services . . . .”<sup>2</sup>

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<sup>1</sup> PUC Order, GPA Docket 21-01, p. 6 (Oct. 29, 2020).

<sup>2</sup> PUC Order, GPA Docket 15-05, p. 9 (Oct. 27, 2016).



In GPA Docket 18-09, the PUC approved a request for an increase in the EPCM contract with Stanley Consultants. The PUC highlighted the depth of the contractor's work, which included the preparation of the procurement of the 180MW power plant, assistance with the land acquisition for the new plant, including rezoning efforts.<sup>3</sup> The PUC further recognized that the contractor had been "involved in every aspect of the administration of the IPP Contract."<sup>4</sup> Again in GPA Docket 18-09, the PUC approved the extension of two years on the EPCM contract, to include work related to the "project management" for the new power plant during the term of the construction, plus all regulatory support, which included the preparation of a rate impact study.<sup>5</sup>

In October 2020, the PUC approved another increase in the EPCM contract with Stanley Consultants, noting that "[t]he environmental and construction permitting for the new power plant and pipeline have proven to be more complex than originally anticipated . . . ."<sup>6</sup> The PUC further highlighted that such work "is extremely important to ensure the commissioning of a safe and efficient plant"; and that "shortchanging the funding for such services would be highly risky."<sup>7</sup> In addition, with the current EPCM contract ending in March 2022, the PUC has been aware that GPA will need to solicit a brand new contract in August 2021.<sup>8</sup>

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<sup>3</sup> PUC Order, GPA Docket 18-09, p. 2 (Mar. 29, 2018).

<sup>4</sup> PUC Order, GPA Docket 18-09, p. 2 (Mar. 29, 2018).

<sup>5</sup> PUC Order, GPA Docket 18-09, pp. 5-6 (Nov. 29, 2018).

<sup>6</sup> PUC Order, GPA Docket 21-01, p. 6 (Oct. 29, 2020).

<sup>7</sup> PUC Order, GPA Docket 21-01, p. 6 (Oct. 29, 2020).

<sup>8</sup> PUC Order, GPA Docket 21-01, p. 6 (Oct. 29, 2020).



**1. GPA's Contract Review Protocol**

Pursuant to 12 G.C.A. §12105, GPA may not enter into any contractual agreements or obligations which could increase rates and charges without the PUC's express approval. Accordingly, GPA's Contract Review Protocol requires that "[a]ll professional service procurements in excess of \$1,500,000" require "prior PUC approval . . . which shall be obtained before the procurement process is begun."<sup>9</sup>

**2. Petition**

In its Petition, GPA indicates that it has a "need for assistance with engineering consulting services for implementing the U.S. E.P.A. compliance plan."<sup>10</sup> GPA submits that "[t]his procurement is necessary to assist GPA with consulting services regarding the construction and commissioning of the new power plant, and to develop procurement for the infrastructure required to receive [liquefied natural gas] LNG for the new power plant."<sup>11</sup>

**3. Scope of Work and Proposed Contract**

**a. Scope of Work**

Based on the proposed Request for Proposal ("RFP"), the scope of work for the EPCM is comprised of three components: work related to the New Generation contract and Owner's Engineer support; LNG infrastructure; and LNG supply. In particular, the contractor would assist GPA in evaluating and managing contract requirements, including design review for compliance of the new power plants, new supply fuel pipelines and

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<sup>9</sup> GPA's Contract Review Protocol ("GPA CRP"), Administrative Docket 00-04, p. 1 (Feb. 15, 2008) (emphasis in original).

<sup>10</sup> Petition, p. 1 (June 10, 2021).

<sup>11</sup> Petition, p. 2.



electrical interconnections; project schedule review; construction inspections and monitoring; commissioning support and performance evaluation.<sup>12</sup> With respect to LNG infrastructure, the contractor would assist GPA in developing a business model and procurement specifications for such LNG infrastructure to support fuel supply to the new generation facility and for other uses that GPA determines.<sup>13</sup> And with regard to LNG supply, the contractor will assist GPA with developing a fuel contract and procurement for such LNG fuel supply.<sup>14</sup>

Accordingly, the EPCM contractor shall be responsible for the provision of engineering and design services; shall procure contracts with suppliers and contractors as GPA's agent; and shall manage the construction phase of the project, serving as GPA's Construction Manager, inasmuch as it shall supervise and coordinate all of the suppliers, construction contractors and other contractors.<sup>15</sup>

Further, as part of its qualifications, the EPCM contractor will be required to demonstrate experience in the design, evaluation, permitting, and construction of combined cycle combustion turbine and diesel generator technologies to support construction of the Ukudu Power Plant and its reserve facility.<sup>16</sup> The EPCM contractor should also demonstrate experience in design, evaluation, permitting, and construction of fuel systems including piping, supply and treatment system and storage.<sup>17</sup>

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<sup>12</sup> Proposed RFP, p. 22.

<sup>13</sup> Proposed RFP, pp. 22-23.

<sup>14</sup> Proposed RFP, p. 23.

<sup>15</sup> Proposed RFP, p. 21.

<sup>16</sup> Proposed RFP, p. 26.

<sup>17</sup> Proposed RFP, p. 26.



According to the proposed RFP, the EPCM would further be required to demonstrate experience in LNG infrastructure and gas piping, fuel sourcing, and feasibility studies; and provide or demonstrate experience with regulatory support such as testimony submittals for Public Utilities Commission or other regulatory bodies.<sup>18</sup> The EPCM contractor would additionally be required to demonstrate experience in training program development and execution; and demonstrate experience in other related areas to support permitting and construction activities and evaluation of plant performance.<sup>19</sup>

**b. Contract Term and Other Provisions**

Based the proposed RFP, GPA submits that this contract shall have a three-year initial term with an option to extend the contract for two additional year-long terms.<sup>20</sup> Further, the proposed contract includes the requirement that the contractor obtain all relevant insurance required during the course of the work.<sup>21</sup> The proposed contract also contains an indemnity provision requiring the contractor to indemnify and hold GPA harmless from any claim, lawsuit, or liability related to its services.<sup>22</sup> The proposed contract also prohibits the assignment of the contract absent GPA's consent.<sup>23</sup>

**c. Funding**

GPA submits that the funding for this contract will be through its revenue funds.

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<sup>18</sup> Proposed RFP, p. 26.

<sup>19</sup> Proposed RFP, p. 26.

<sup>20</sup> Proposed RFP, p. 9.

<sup>21</sup> Proposed RFP, p. 17.

<sup>22</sup> Proposed RFP, p. 9.

<sup>23</sup> Proposed RFP, p. 10.



#### **4. Board Approval**

In Resolution No. 2021-14, the Consolidated Commission on Utilities (the “CCU”) found that “GPA still requires consulting support for the new power plant contract for Owner’s Engineer support and other technical assistance for the construction and commissioning of the new power plant targeted for completion by end of 2023 and no later than April 2024,” which is beyond the expiration of the current contractor’s term.<sup>24</sup> In addition, the CCU further found that GPA also “requires services to assist in developing and supporting the procurement for the infrastructure required to receive Liquefied Natural Gas to Guam and to supply natural gas to the new power plant.”<sup>25</sup> Accordingly, the CCU authorized GPA to petition the PUC for approval of the procurement for engineering and technical consulting services related to the commissioning of the Ukudu Power Plant and its use of liquefied natural gas.<sup>26</sup>

Based on the record before the Commission, the ALJ found that the subject procurement is reasonable, prudent, and necessary. Based on the history outlined above, the EPCM seems vital to GPA’s successful commissioning of the new power plant. Indeed, this Commission has previously determined that the work of an experienced EPCM “is extremely important to ensure the commissioning of a safe and efficient plant”; and that “shortchanging the funding for such services would be highly risky.”<sup>27</sup>

Further, the record reflects that “GPA still requires consulting support for the new power plant contract for Owner’s Engineer support and other technical assistance

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<sup>24</sup> Resolution No. 2021-14, Consolidated Commission on Utilities, pp. 1-2 (May 25, 2021).

<sup>25</sup> Resolution No. 2021-14, p. 2.

<sup>26</sup> Resolution No. 2021-14, p. 2.

<sup>27</sup> PUC Order, GPA Docket 21-01, p. 6 (Oct. 29, 2020).



for the construction and commissioning of the new power plant targeted for completion by end of 2023 and no later than April 2024,” which is beyond the expiration of the current contractor’s term.<sup>28</sup> In addition, the CCU further found that GPA also “requires services to assist in developing and supporting the procurement for the infrastructure required to receive Liquefied Natural Gas to Guam and to supply natural gas to the new power plant.”<sup>29</sup>

Accordingly, based on this record, the ALJ recommended that the PUC approve the Petition and, accordingly, authorize GPA to procure an Engineering Procurement and Construction Management contractor for engineering and technical consulting services related to the commissioning of the Ukudu Power Plant and its use of liquefied natural gas. However, with regard to any provision in the scope of work related to PUC regulatory support, the ALJ recommended the elimination of such work as GPA is able to perform such work itself.

The Commission hereby adopts the findings in the July 26, 2021 ALJ Report and therefore issued the following.

### **ORDERING PROVISIONS**

Upon careful consideration of the record herein, and for good cause shown, on motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby ORDERS the following:

1. That the instant Petition is hereby APPROVED.

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<sup>28</sup> Resolution No. 2021-14, Consolidated Commission on Utilities, pp. 1-2 (May 25, 2021).

<sup>29</sup> Resolution No. 2021-14, p. 2.



2. That GPA is authorized to procure an Engineering Procurement and Construction Management contractor for engineering and technical consulting services related to the commissioning of the Ukudu Power Plant and its use of liquefied natural gas.

3. GPA is ordered to pay the PUC's regulatory fees and expenses, including and without limitation, consulting and counsel fees, and the fees and expenses associated with this matter. Assessment of the PUC's regulatory fees and expenses is authorized pursuant to 12 G.C.A. §§ 12103(b) and 12125(b), and Rule 40 of the Rules of Practice and Procedure before the PUC.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

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**SO ORDERED** this 29<sup>th</sup> day of July, 2021.



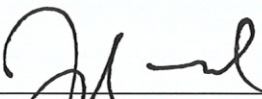
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**JEFFREY C. JOHNSON**  
Chairman



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**ROWENA E. PEREZ-CAMACHO**  
Commissioner



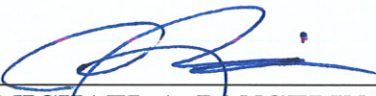
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**JOSEPH M. MCDONALD**  
Commissioner



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**PEDRO GUERRERO**  
Commissioner

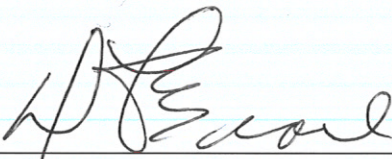


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**MICHAEL A. PANGELINAN**  
Commissioner

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**PETER MONTINOLA**  
Commissioner



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**DORIS FLORES BROOKS**  
Commissioner

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