

2020-P00111A
COMMONWEALTH OF PUERTO RICO
PUERTO RICO ELECTRIC POWER AUTHORITY

FIRST AMENDMENT
CONTRACT 86919 (REQ. 241209), 2020-P00111
PROFESSIONAL SERVICES CONTRACT

APPEAR

AS FIRST PARTY: The Puerto Rico Electric Power Authority (PREPA), a public corporation and government instrumentality of the Commonwealth of Puerto Rico, created by Act of May 2, 1941, No. 83, as amended, represented in this act by its Acting Chief Executive Officer/Executive Director, Efran Paredes Maisonet, of legal age, married, engineer, and resident of Bayamón, Puerto Rico.-----

AS SECOND PARTY: HGE, P.S.C., (Consultant), a corporation organized and existing under the laws of Puerto Rico, and registered to do business in Puerto Rico, represented in this act by its President, Alan Heinsen, of legal age, married, licensed engineer with license number 17362 and resident in San Juan, Puerto Rico, authorized by virtue of Corporate Resolution dated May 21, 2020. -----


WITNESSETH

In consideration of the mutual covenants hereinafter stated, the Parties agree themselves, their personal representatives, and successors as follows:-----

STATE

WHEREAS: The appearing Parties executed the Contract 2020-P00111 on June 10, 2020, to provide his services as an engineer expert, in matters of the damages occurred on Costa Sur Plant (Costa Sur) because of the earthquakes occurred during this year. Also, the Consultant will support during the insurance's claims on the engineering part of the work performed on the Costa Sur tanks that were severely damage during the January 2020 earthquakes. The Consultant services include meetings, conference calls, depositions,

report explanations, sketches, engineering design, and general consulting engineering services regarding services rendered to PREPA. The Consultant shall provide the required analysis and design of the tanks in the site and their foundations. The Consultant, as requested by PREPA, shall provide the retrofit design of the pile caps or the tank its selves for earthquake and hurricane loads and any other services related to Costa Sur repair works. Also, in matters of Costa Sur, the Consultant shall provide PREPA for the engineering services, which will include, but it is not limited to: Structural Engineering consultation, construction materials engineering, NDE Evaluations, materials testing services, specification review, construction and facilities inspection, and any other service related to Costa Sur works. The Contract amount is effective until June 30, 2021, with an amount of two hundred ten thousand dollars (\$210,000) (Contract Amount). -----



WHEREAS: On July 18, 2020 Earth Engineers, Inc (EEI), another PREPA's contractor that conducts geotechnical studies at the Costa Sur Power Plant, presented the preliminary Site Response Analysis report. This report develops a particular Elastic Design Spectrum for the thermoelectric plant to be used in the seismic rehabilitation of existing structures and for the earthquake-resistant design of any new structure that is considered to be designed and built in the near future. This report presents a design elastic response spectrum greater than those expressed in the tables of the Puerto Rico Building Code. This information is extremely valuable and critical in making decisions about how to proceed with repairs to various tanks at the Plant. . -----

WHEAREAS: Also, on July 9, 2020, the Consultant presented the results of an integrity and load capacity study of the pile foundations in various water and fuel tanks at the Plant. The

report is a valuable and essential tool to know the conditions of the piles after the earthquake occurred and which will provide the appropriate information for necessary decisions to develop the design and repair strategies for these tanks .-----

WHEREAS: After evaluating both reports and discussing with the representatives of EEI and HGE the possible effects caused by the Earthquake, PREPA concluded that rehabilitation works and construction of new foundations must be carried out in the following Costa Sur Plant tanks:-----

1. Condensate Tank 6 - proceed with an expansion design of the concrete head in order to have the capacity to support the live, dead and seismic loads of the new tank to be built.-----

2. Demineralized Water Service Tanks 5 and 6 - a new head construction design must be proceeded with, along with a new foundation system to complement the existing piles of both. These tanks are located on the fault line that received the greatest impact from soil liquefaction. The concrete headers to be built must have the ability to support the live, dead and seismic loads of both tanks.-----

3. Raw Water Tanks 1 and 2 - A concrete head expansion design must be followed in order to have the ability to sustain live, dead, and seismic loads from the tanks.-----

4. Diesel Service Tank in the Hydro Power Plant - an expansion design of the concrete head must be carried out in order to have the capacity to support the live, dead and seismic loads of the tank .-----

WHEREAS: Given the magnitude of the structural analysis, design and technical supervision work required to carry out the necessary repairs so that the tanks can enter service under the

codes and standards that ensure their safe and continuous operation, the Generation Directorate requested a proposal from the Consultant for the services and costs required. On July 29, 2020 the Consultant presented Proposal titled General Consulting based on Design Spectrums, which the Generation Directorate evaluated the Consultant's proposal and understands it is reasonable on costs and scope, which is necessary to achieve the repair of these tanks.-----


WHEREAS: As of today, seventy two thousand three hundred fifty dollars (\$72,350) of the Contract Amount have been expended, which represents a balance of one hundred thirty seven thousand six hundred fifty dollars (\$137,650). The Generation Directorate recommends an increase to the Contract Amount of two hundred fifty thousand dollars (\$250,000) in case it is necessary to attend any type of contingency that may arise during the execution of the services.-----

THEREFORE, in consideration of the mutual covenants hereinafter stated, the Parties hereby agree to amend the Contract as follows: -----

TERMS AND CONDITIONS

FIRST: The Article 6, Payment, is amended to read as follows:-----

Article 6. Payment




6.1 In accordance with the terms and conditions contained herein, PREPA agrees and Consultant accepts that the total amount to be paid under the Contract shall not exceed a cumulative amount of four hundred sixty thousand dollars (\$460,000), including reimbursable expenses (the "Contract Amount"). All payments to be made under this Contract will be charged to account 01-1748-17568-555-354. PREPA will only pay for

Services already rendered before the submitted invoice date. PREPA will not be required to make advance payments for any future service to be rendered by Consultant under the Contract. -----

6.2 Nothing herein shall preclude the Parties from agreeing to increase said amount in writing and signed by both Parties. -----

6.3 PREPA will pay for the Services rendered by Consultant according to the following hourly rates:

- 
- Licensed Professional Engineer/Architect \$150/hr
 - Professional Surveyor \$125/hr
 - Assistant Engineer \$100/hr
 - REVIT Designer \$70/hr
 - CAD Draftmen \$50/hr
 - Administrative \$30/hr

6.4 For depositions, a preparation fee of six hundred dollars (\$600) will be charged, plus a minimum 4 man hours deposition time will be charged. Court appearances will be charged a rate of two hundred dollars (\$200) per hour, minimum 4 hours plus a preparation fee of one thousand dollars (\$1,000).-----

6.5 Should the Consultant assign another person to attend to PREPA's matters pursuant to this Contract, the Consultant shall promptly send PREPA an amended schedule to include such person's name, position and rate, as well as request approval from PREPA.-----

6.6 The Consultant shall immediately notify PREPA when the billing under the Contract amounts seventy-five percent (75%) of the Contract Amount. Once this notification has been issued, the Consultant, in coordination with PREPA, will ensure that no services will be rendered in excess of the Contract Amount, except that a written amendment is agreed upon by both Parties. In addition, the Consultant shall present an itemized list of the remaining billable Services under the Contract.-----

SECOND: The Parties acknowledge that PREPA is undergoing a transformation process, and therefore, both Parties agree that in the eventuality of the execution of a Partnership Contract, Sale Contract or any other PREPA Transaction (as these terms are defined in Act 120-2018), PREPA may sell, assign, convey, transfer, pledge, mortgage, sublease, delegate, hypothecate, or otherwise dispose (each, a "Transfer") any of its rights, title, or interest in this Contract as permitted by applicable law and at any time, and without Consultant's consent or cost, expense or incremental liability to PREPA, to any future operator of Puerto Rico's electric power transmission and distribution system or any of its affiliates, or to any governmental agency, body, public corporation or municipality of Puerto Rico; provided, that PREPA shall notify Consultant no later than thirty (30) days before the effective date of any such Transfer.-----

The Consultant acknowledges that all his responsibilities and obligations under the Contract, such as work to be performed and services to be provided, etc., will continue in full force and effect until the expiration of the thirty (30) day period. -----

THIRD: The Consultant shall provide, before the execution of this First Amendment, the following documents and certifications: -----

- A. Certification issued by the Treasury Department of Puerto Rico which indicates that the Consultant does not owe taxes to the Commonwealth of Puerto Rico, or is paying such taxes by an installment plan in full compliance with its terms. -----
- B. An Income Tax Return Filing Certificate, issued by the Treasury Department of Puerto Rico assuring that the Consultant has filed his Income Tax Return for the last five (5) tax years. -----
- C. A Puerto Rico Sales and Use Tax Filing Certificate, issued by the Treasury Department of Puerto Rico assuring that the Consultant has filed its Puerto Rico Sales and Use Tax for the last sixty (60) contributory periods. -----
- D. Certification issued by the Municipal Revenues Collection Center (MRCC), assuring that the Consultant does not owe any tax accruing during the last five (5) years to such governmental agency. -----
- E. A Personal Property Tax Filing Certification, issued by the MRCC which indicates that the Consultant has filed its Personal Property Tax Return for the last five (5) contributory terms. -----
- F. Certification, issued by the Child Support Administration, assuring that the Consultant is in compliance with the withholdings required by law as an employer. -----
- G. Certificate, issued by the Department of Labor and Human Resources of Puerto Rico, assuring that the Consultant has paid to the Department of Labor and Human Resources of Puerto Rico its employees' contributions accruing during the last five (5) years, in accordance with the Puerto Rico Employment Security Act (unemployment,

temporary disability or sickness or social security for drivers/chauffeurs); or is paying such contributions by an installment plan in full compliance with its terms. -----

H. Certificate of Merchant's Registration issued by the Treasury Department of Puerto Rico. -----

I. Good Standing Certificate issued by the Department of State of Puerto Rico. -----

J. Certification of Incorporation, or Certificate of Authorization to do business in Puerto Rico issued by the Department of State of Puerto Rico. If any of the previously required Certifications shows a debt, and the Consultant has requested a review or adjustment of this debt, the Consultant will certify that it has made such request at the time of the Contract execution. If the requested review or adjustment is denied and such determination is final, the Consultant will provide, immediately, to PREPA a proof of payment of this debt; otherwise, the Consultant accepts that the owed amount be offset by PREPA and retained at the origin, deducted from the corresponding payments. -----

FOURTH: The Consultant shall furnish a sworn statement to the effect that neither the Consultant nor any president, vice president, executive director or any member of a board of officials or board of directors, or any person performing equivalent functions for the Consultant has been convicted of or has pled guilty to any of the crimes listed in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico or any of the crimes included in Act 2-2018.----
The Consultant hereby certifies that it has not been convicted in Puerto Rico or United States Federal court for under Articles 4.2, 4.3 or 5.7 of Act 1-2012, as amended, known as the

Organic Act of the Office of Government Ethics of Puerto Rico, any of the crimes listed in Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes typified in Act 2-2018, as amended, known as the Anti -Corruption Code for a New Puerto Rico or any other felony that involves misuse of public funds or property, including but not limited to the crimes mentioned in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico. -----

PREPA shall have the right to terminate the Contract in the event the Consultant is convicted in Puerto Rico or United States Federal court for under Articles 4.2, 4.547 or 5.7 of Act 1-2012, as amended, known as the Organic Act of the Office of Government Ethics of Puerto Rico, any of the crimes listed in Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes typified in Act 2-2018, as amended, known as the Anti -Corruption Code for a New Puerto Rico or any other felony that involves misuse of public funds or property, including but not limited to the crimes mentioned in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico. -----

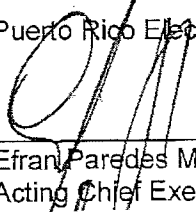
The Consultant expressly agrees that the conditions outlined throughout this Article are essential requirements of this Contract. Consequently, should any one of these representations, warranties or certifications be incorrect, inaccurate or misleading, in whole or in part, there shall be sufficient cause for the PREPA to render this Contract null and void, and the Consultant shall reimburse the PREPA all moneys received under this Contract. ----

FIFTH: The Parties agree that all other terms and conditions, established in the Contract shall remain unaltered and fully enforceable. _____

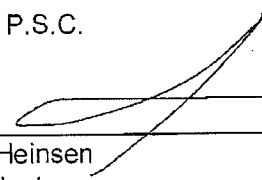
In WITNESS WHEREOF, the Parties hereto have agreed to execute this First Amendment in San Juan, Puerto Rico, on this 18 day of August, 2020. _____

Puerto Rico Electric Power Authority

HGE, P.S.C.



Efran Paredes Maisonet
Acting Chief Executive Officer



Alan Heinsen
President

U