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February 2, 2007

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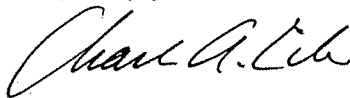
Ms. Elizabeth O'Donnell
Executive Director
Public Service Commission
211 Sower Boulevard
Frankfort, KY 40602

Re: PSC Case No. 2006-00564

Dear Ms. O'Donnell:

Please find enclosed for filing with the Commission in the above-referenced case an original and ten redacted copies of the responses of East Kentucky Power Cooperative, Inc. ("EKPC"), to the Commission Staff Supplemental Data Requests dated January 26, 2007. Also enclosed are an original and ten copies of EKPC's Petition for Confidential Treatment of Information regarding portions of these responses, and one confidential copy of pages containing designated confidential information.

Very truly yours,



Charles A. Lile
Senior Corporate Counsel

Enclosures

Cc: Parties of Record

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of:

AN INVESTIGATION INTO EAST KENTUCKY)
POWER COOPERATIVE, INC.'S CONTINUED) CASE NO.
NEED FOR CERTIFICATED GENERATION) 2006-00564

PETITION FOR CONFIDENTIAL
TREATMENT OF INFORMATION

Comes now the petitioner, East Kentucky Power Cooperative, Inc. ("EKPC") and, as grounds for this Petition for Confidential Treatment of Information (the "Petition"), states to the Public Service Commission (the "Commission") as follows:

1. This Petition is filed in conjunction with the filing of EKPC's response to Data Request No. 1 contained in the Commission Staff's Supplemental Data Request dated January 26, 2007, and relates to confidential information contained in that response that is entitled to protection pursuant to 807 KAR 5:001 Section 7 and KRS §61.878 (1) (c) 1 and related sections.

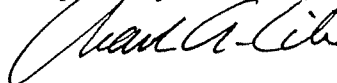
2. The designated confidential information in Response No. 1 is contained in contracts for the construction of Spurlock Station CFB Unit 4 and Smith Station CFB Unit 1. This confidential information includes provisions which were specifically negotiated between EKPC and the various contractors, and may reflect pricing and other commercial terms that would not routinely be offered by such contractors. These contracts include confidentiality obligations on EKPC's part relating to such provisions, and the disclosure of this information could jeopardize the ability of EKPC to negotiate

favorable terms with such contractors in regard to future EKPC generation projects. The number of contractors for critical power plant components is limited, and the inability to negotiate such favorable pricing would raise the capital costs of such future generating projects. Such higher project costs would increase EKPC's overall power production costs, and would lead to an unfair competitive disadvantage for EKPC in its efforts to compete with the power marketers, utilities and other entities that deal in the market for surplus bulk power, and to compete with other utilities in Kentucky, and in other states, for new industrial customers.

3. Along with this Petition, EKPC has enclosed one copy of confidential sections of the subject response, with the confidential information identified by highlighting or other designation, and 10 copies of the responses with the confidential information redacted. The identified confidential information is not known outside of EKPC and is distributed within EKPC only to persons with a need to use it for business purposes. It is entitled to confidential treatment pursuant to 807 KAR 5:001 Section 7 and KRS §61.878(1)(c) 1, for the reasons stated hereinabove, as information which would permit an unfair commercial advantage to competitors of EKPC if disclosed. The subject information is also entitled to protection pursuant to KRS §61.878(1)(c) 2 c, as records generally recognized as confidential or proprietary which are confidentially disclosed to an agency in conjunction with the regulation of a commercial enterprise.

WHEREFORE, EKPC respectfully requests the Public Service Commission to grant confidential treatment to the identified information and deny public disclosure of said information.

Respectfully submitted,



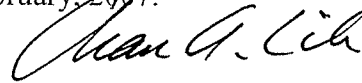
CHARLES A. LILE

P. O. BOX 707
WINCHESTER, KY 40392-0707
(859) 744-4812

ATTORNEY FOR EAST KENTUCKY
POWER COOPERATIVE, INC.

CERTIFICATE OF SERVICE

This is to certify that an original and 10 copies of the foregoing Petition for Confidential Treatment of Information in the above-styled case were delivered to the office of Elizabeth O'Donnell, Executive Director of the Public Service Commission, 211 Sower Boulevard, Frankfort, KY 40601, and copies were mailed to Parties of Record, this 2nd day of February, 2007.



Charles A. Lile

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
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PUBLIC SERVICE
COMMISSION

In the Matter of:

AN INVESTIGATION INTO EAST KENTUCKY)
POWER COOPERATIVE, INC.'S CONTINUED) CASE NO.
NEED FOR CERTIFICATED GENERATION) 2006-00564

COMMISSION STAFF'S SUPPLEMENTAL DATA REQUEST TO
EAST KENTUCKY POWER COOPERATIVE, INC.

East Kentucky Power Cooperative, Inc. ("EKPC") is requested, pursuant to 807 KAR 5:001, to file with the Commission the original and 8 copies of the following information, with a copy to all parties of record. The information requested herein is due on February 2, 2007. Each copy of the data requested should be placed in a bound volume with each item tabbed. When a number of sheets are required for an item, each sheet should be appropriately indexed, for example, Item 1(a), Sheet 2 of 6. Include with each response the name of the person who will be responsible for responding to questions relating to the information provided. Careful attention should be given to copied material to ensure that it is legible. Where information requested herein has been provided, in the format requested herein, reference may be made to the specific location of said information in responding to this information request.

1. Refer to EKPC's January 19, 2007 Response to PSC Request No. 1. Provide a copy of all contracts (either in an electronic or written format) awarded as of the date of your response to this data request for each of the following certificated projects:

- a. Spurlock No. 4 278 MW Circulating Fluidized Bed ("CFB") Unit.
- b. Smith 278 MW CFB Unit.
- c. Smith Combustion Turbines ("CTs") 8-9.

2. The September 19, 2005 Order granting the Certificate of Public Convenience and Necessity ("CPCN") for the Spurlock No. 4 CFB unit stated that "under the terms of the membership agreement, East Kentucky Power is obligated to provide electric service to Warren RECC commencing April 1, 2008, upon the termination of Warren RECC's current supply contract with TVA. Warren RECC will become East Kentucky Power's 17th distribution cooperative." Advise whether this remains true in light of Warren Rural Electric Cooperative Corporation's ("WRECC") decision to terminate its power supply agreement with EKPC. If the statement is no longer true, succinctly state the need for the Spurlock No. 4 CFB unit on a going-forward basis.

3. The August 29, 2006 Order granting the CPCN for the Smith CFB unit stated that the unit "will provide base load capacity needed to meet the growing demand of EKPC's 16-member cooperatives." Advise whether this remains true in light of WRECC's decision to terminate its power supply agreement with EKPC and based upon the assumption (for purposes of this question only), that the Spurlock No. 4 CFB unit proceeds as planned and certificated. If the statement is no longer true, succinctly state the need for the Smith CFB unit on a going-forward basis.

4. The August 29, 2006 Order granting the CPCN for the Smith CTs 8-9 stated that the proposed CTs "will provide peaking capacity and will partially replace a purchase power contract, which expired in 2005, for peaking capacity of 150 MW in the

winter and 75 MW in the summer. Two of the proposed CTs will provide the future peaking requirements, including reserves, for EKPC's newest distribution cooperative member, [WRECC]." Advise whether this remains true in light of WRECC's decision to terminate its power supply agreement with EKPC. If the statement is no longer true, succinctly state the need for the Smith CFB unit on a going-forward basis.

5. Provide a narrative explanation supporting your position that construction of the Smith CFB unit should not be delayed. Provide with your explanation a copy of all data underlying your position, including an analysis of the potential costs or penalties involved in canceling the Smith contracts.

6. Refer to EKPC's January 19, 2007 Response to PSC Request No. 3. Provide a detailed economic analysis, from a ratepayer's perspective, as to why building the EKPC generation system as currently certificated is less expensive than delaying the service date of the Smith CFB unit (and purchasing power when necessary to meet peak loads) until:

- a. August 2012.
- b. August 2015.
- c. August 2018.

7. Refer to EKPC's January 19, 2007 Response to PSC Request No. 6. Indicate whether a delay in the construction of the Smith 278 MW CFB unit will likewise delay the construction of a 345 kV transmission line from the J.K. Smith site to a new substation in Garrard County.

8. Refer to EKPC's January 19, 2007 Response to PSC Request No. 6, wherein EKPC recites that its analysis is based upon "certain assumptions regarding

load levels, dispatch, transmission system topology and transfer scenarios for EKPC and neighboring utilities.” Provide the referenced assumptions and the underlying data supporting the assumptions. In addition, indicate whether any of the assumptions were evaluated using a sensitivity analysis, provide the results of any sensitivity analyses conducted, and indicate whether these assumptions are conservative.

9. Has EKPC performed a recent economic analysis regarding the capacity and retirement of EKPC’s older units? If so, please provide a copy; if not, please explain why not.

10. Identify what year the Dale Station is currently anticipated to be retired or refurbished.

11. Concerning the announcement of the lower level of Lake Cumberland by the U. S. Army Corps of Engineers:

a. Explain the impact, if any, the decision to lower the level of Lake Cumberland will have on any of EKPC's generating units, including the Cooper unit.

b. Identify what steps have been taken to mitigate any adverse impact the lowering of the level of Lake Cumberland may have.

c. Explain the impact, if any, the decision to lower the level of Lake Cumberland will have on EKPC’s access to electric power from the Southeastern Power Administration.

d. If the Cooper unit could not generate electricity while Lake Cumberland is at a lower level, describe the potential impacts to EKPC’s transmission system.

12. Identify any existing utility systems which EKPC or any of its member distribution cooperatives anticipate adding to EKPC's load factor, including but not limited to the city of Monticello, whether through acquisition or via power supply agreements, within the next two years. For each such system, identify the anticipated load of that system.

13. Provide all data underlying EKPC's anticipated load growth.

14. Provide the following supporting information:

a. The studies, analyses, calculations, and workpapers used to develop the "EKPC Winter Peak Load Requirements & Resources (Without Warren)" chart in the response to PSC Request No. 2, page 4 of 4.

b. The studies, analyses, calculations, and workpapers used to develop the "EKPC Winter Peak Load Requirements & Resources: Updated Plan (Without Warren)" chart in the response to PSC Request No. 3, page 2 of 3.

15. Provide power flow analysis results for winter and summer under normal and peak demand load conditions without WRECC's load addition indicating the need for a 345 kV transmission line from a 278 MW CFB generation unit at the J.K. Smith site to a new substation in Garrard County.

16. Provide the percent of EKPC's load growth (actual versus projected load) from 1992-2006 and projected load growth from 2007-2020.

17. Supplement EKPC's responses to the Commission's first set of data requests if any additional information has become available since the date of your responses.



Beth O'Donnell
Executive Director
Public Service Commission
P. O. Box 615
Frankfort, KY 40602

DATED: January 26, 2007

cc: Parties of Record

Case No. 2006-00564

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO EAST KENTUCKY)	CASE NO.
POWER COOPERATIVE, INC.'S CONTINUED)	2006-00564
NEED FOR CERTIFICATED GENERATION)	

EAST KENTUCKY POWER COOPERATIVE, INC.

**PSC CASE 2006-00564
SUPPLEMENTAL DATA REQUEST RESPONSE**

PUBLIC SERVICE COMMISSION'S REQUEST DATED 1/26/07

In response to the Public Service Commission's supplemental data request, East Kentucky Power Cooperative, Inc. ("EKPC") submits its responses to the questions contained therein.

EAST KENTUCKY POWER COOPERATIVE, INC.
PSC CASE NO. 2006-00564
SUPPLEMENTAL INFORMATION REQUEST RESPONSE

PUBLIC SERVICE COMMISSION REQUEST DATED 1/5/07

REQUEST 1

RESPONSIBLE PERSON: Randy Dials

COMPANY: East Kentucky Power Cooperative, Inc.

Request 1. Refer to EKPC's January 19, 2007 Response to PSC Request No.

1. Provide a copy of all contracts (either in an electronic or written format) awarded as of the date of your response to this data request for each of the following certificated projects:

Request 1a. Spurlock No. 4 278 MW Circulating Fluidized Bed ("CFB") Unit.

Response 1a. Contractual terms and conditions for contracts entered to date for the Spurlock 4 unit are enclosed as attachments. Mechanical schedules and exhibits have not been included, due to their volume, but can be provided if required.

Attachment 1	Contract F1	Turbine Generator	GE
Attachment 2	Contract F6	Feedwater Heaters	Yuba
Attachment 3	Contract F8	Deaerator	Ecodyne
Attachment 4	Contract F11	Condenser	TEI
Attachment 5	Contract F16	Circulating Water Pumps	ITT Ind.
Attachment 6	Contract F17	Condensate Pumps	
		Flowserve	
Attachment 7	Contract F21	Boiler Feed Pumps	
		Flowserve	
Attachment 8	Contract F36	Control System	ABB
Attachment 9	Contract F46	Fans & Motors	Howden
Attachment 10	Contract F71	Ash Handling	UCC
Attachment 11	Contract F101	Alloy Piping	BendTec

Attachment 12	Contract F131A Transformers Large	Pauwels
Attachment 13	Contract F131B Transformers Med. Waukesha	
Attachment 14	Contract F146 Switchgear	Pederson
Attachment 15	Contract F201 Boiler Island	Alstom
Attachment 16	Contract F204 Emissions Monitoring	N/A
Attachment 17	Contract F211 Coal Handling	DMW
Attachment 18	Contract F221 Stack/Chimney	Pullman
Attachment 19	Contract F222 Cooling Tower	Marley
Attachment 20	Contract F223 Circulating Water Pipe Reynolds	
Attachment 21	Contract F251 Piling	Richard Goettle
Attachment 22	Contract F261 Substructure	Baker Concrete
Attachment 23	Contract F281 Balance of Plant	Cherne
Attachment 24	Contract F332 Painting	N/A
Attachment 25	Contract F300 Architect Engineer	Stanley

Request 1b. Smith 278 MW CFB Unit.

Response 1b. Contractual terms and conditions for contracts entered to date for the Spurlock 4 unit are enclosed as attachments. Mechanical schedules and exhibits have not been included, due to their volume, but can be provided if required.

Attachment 1

Contract G8 – Deaerator	Has not been awarded
Contract G16 – Circulating Water Pumps	Has not been awarded
Contract G17 - Condensate Pumps	Has not been awarded
Contract G36 - Control System	Has not been awarded
Contract G46 - Fans & Motors	Has not been awarded
Contract G71 - Ash Handling System	Has not been awarded
Contract G131 – Transformers	Has not been awarded
Contract G146 – Switchgear	Has not been awarded
Contract G204 - Emissions Monitoring	Has not been awarded
Contract G211 - Coal Handling	Has not been awarded
Contract G221 – Stack	Has not been awarded
Contract G223 - Circulating Water Pipe	Has not been awarded
Contract G241 - Dam & Water Storage Res.	Has not been awarded
Contract G261 – Substructure	Has not been awarded

Contract G264 - Ash Silos	Has not been awarded
Contract G281 - Balance of Plant	Has not been awarded
Contract G332 – Painting	Has not been awarded
Attachment 2 - Contract G1 – Turbine Generator	General Electric
Attachment 3 - Contract G3 – Site Preparation	Allen Company
Attachment 4 – Contract G6 – Feedwater Heaters	Yuba Heat Transfer
Attachment 5 - Contract G11 Condenser	TEI
Attachment 6 - Contract G21 Boiler Feed Pumps	Flowserve
Attachment 7 - Contract G101 Alloy Piping	BendTec
Attachment 8 - Contract G201 Boiler Island	Alstom Power
Attachment 9 - Contract G222 Cooling Tower	Marley
Attachment 10 - Contract G300 Architect Engineer	Stanley

Request 1c Smith Combustion Turbines (“CTs”) 8-9.

Response 1c. The original Smith Station combustion turbine contract with General Electric was for five LMS100 simple cycle combustion turbines. Engineering and design was performed under that contract, but EKPC could not meet the March 2005 deadline for a full commitment to the manufacturing of the CTs. The original General Electric contract is now terminated. As of the end of 2006, EKPC had made project expenditures totaling \$4,595,374, for design and engineering. A new contract is in the process of being negotiated with General Electric for two LMS100 simple cycle turbines, but no contract has been awarded, to date.

F

Installation

GE Energy Services

EKPC

SPURLOCK

PROPOSAL

REDACTED

TO

EAST KENTUCKY POWER COOPERATIVE, INC.

(hereinafter called the "Owner")

ARTICLE I-GENERAL

Section 1. Offer to Construct. The undersigned (hereinafter called the "Bidder") hereby proposes to receive and install such materials and equipment as may hereinafter be specified to be furnished by the Owner, and to furnish all other materials and equipment, all machinery, tools, labor, transportation and other means required to construct the project in strict accordance with the Plans, Specifications and Construction Drawings for the prices hereinafter stated

- Item: CENTERLINE INSTALLATION OF D-5 TURBINE Price: [REDACTED]
- Item: WELD OF CONDENSER TO STLP Price: [REDACTED]
- Item: WELD OF CONDENSER NECK PIPING Price: [REDACTED]
- Item: _____ Price: _____

Section 2. Purchase of Materials. The Bidder will purchase all materials and equipment (other than Owner Furnished Materials) outright and not subject to any conditional sales agreements, bailment, lease or other agreement reserving unto the seller any right, title or interest therein. All such materials and equipment shall be new and become the property of the Owner when erected in place.

Section 3. Description of Contract. The Notice and Instructions to Bidders, Plans, Specifications, and Construction Drawings, which by this reference are incorporated herein, together with the Proposal and Acceptance constitute the Contract. The Plans, Specifications, and Construction Drawings, including maps, special drawings, and approved modifications in standard specifications are attached hereto and identified as follows.

ERECTION OF ONE GE D-5 STEAM TURBINE GENERATOR
AT SPURLOCK STATION UNIT #4 PER GE11 PROPOSAL
IPS # 101748 / 102132 - CL-A+, SUBMITTED ON
29 APRIL 2004, AND OPTIONS AS LISTED IN
GE11 LETTER OF 7 NOV 2004

Section 4. Due Diligence. The Bidder has made a careful examination of the site of the project to be constructed and of the Plans, Specifications, Construction Drawings, and form of Contractor's Bond attached hereto, and has become informed as to the location and nature of the proposed construction, the transportation facilities, the kind and character of soil and terrain to be encountered, and the kind of facilities required before and during the construction of the project, and has become acquainted with the labor conditions, federal, state, and local laws, rules, and regulations applicable to its performance.

Section 5. License. The Bidder warrants that a Contractor's License is is not required, and if required,

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it possesses Contractor's License No. 1675 for the State of KENTUCKY
in which the project is located and said license expires on 31 DECEMBER, 2005

Section 6. Warranty of Good Faith. The Bidder warrants that this Proposal is made in good faith and without collusion or connection with any person or persons bidding for the same work.

Section 7. Financial Resources.

- a. The Bidder warrants that it has or will obtain the financial resources necessary to ensure completion of the project.
- b. The Bidder agrees that in the event this Proposal is accepted and a Contractor's Bond is required, it will furnish a Contractor's Bond in the form attached hereto, in a penal sum not less than the maximum Contract price, with a surety or sureties listed by the United States Department of Treasury as Acceptable Sureties.

Section 8. Taxes. The prices in this Proposal include provisions for the payment of all monies which will be payable by the Bidder or the Owner in connection with the construction of the project on account of taxes imposed by any taxing authority upon the sale, purchase or use of materials, supplies and equipment, or services or labor of installation thereof, to be incorporated in the project. The Bidder agrees to pay all such taxes, except taxes upon the sale, purchase or use of Owner-Furnished Materials. The Bidder will furnish to the appropriate taxing authorities all required information and reports pertaining to the project, except as to the Owner-Furnished Materials.

SEE GELL APPENDIX A, ATTACHMENT III, ARTICLE G.C. 3)
SEE GELL APPENDIX A, ATTACHMENT III, ARTICLE G.C. 4 - TAXES, SHALL CONTROL

ARTICLE II-CONSTRUCTION

Section 1. Time and Manner of Construction.

- a. The Bidder agrees to commence construction of the project on a date (hereinafter called the "Commencement Date") which shall be determined by the Engineer after notice to the bidder in writing of approval of the contract by the Administrator, if approval of the Administrator is required, and notice in writing from the Bidder that the Bidder has sufficient materials to warrant commencement and continuation of construction, but in no event will the Commencement Date be later than _____ calendar days after date of approval of the contract by the Administrator, if approval of the Administrator is required. The Bidder further agrees to prosecute diligently and to complete construction in strict accordance with the Plans,

Specifications and Construction Drawings within _____ calendar days after Commencement Date. SEE APPENDIX A - ARTICLE 5 - PROVISIONAL ACCEPTANCE AND ATTACHMENT III, ARTICLES G.C. 14 AND G.C. 15

- b. The time for Completion of Construction shall be extended for the period of any reasonable delay which is due exclusively to causes beyond the control and without the fault of the Bidder, including Acts of God, fires, floods, inability to obtain materials and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible. Provided, however that no such extension of time for completion shall be granted the Bidder unless within ten (10) days after the happening of any event relied upon by the Bidder for such an extension of time the Bidder shall have made a request therefore in writing to the Owner, and provided further that no delay in such time of completion or in the progress of the work which results from any of the above causes except acts or omissions of the Owner, shall result in any liability on the part of the Owner. SEE GELL APPENDIX A - ARTICLE G.C. 8 - ATTACHMENT III
- c. The Owner, acting through the Engineer with the approval of the Administrator, if approval of the Administrator is required, may from time to time during the progress of the construction of the project make such changes, additions or subtractions from the Plans, Specifications, Construction Drawings, and sequence of construction as conditions may warrant: Provided, however, that if

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any change in the construction to be done shall require an extension of time, ~~a reasonable~~ **AN** extension will be granted if the Bidder shall make a written request therefore to the Owner within (10) days after any such change is made. And provided further, that if the cost to the Bidder of construction of the project shall be materially increased by any such change or addition, the Owner shall pay the Bidder for the ~~reasonable~~ cost thereof in accordance with a Construction Contract Amendment signed by the Owner and the Bidder and approved by the Administrator, if approval by the Administrator is required, but no claim for additional compensation for any such change or addition will be considered unless the Bidder shall have made a written request therefore to the Owner prior to the commencement of work in connection with such change or addition.

Section 2. **Environmental Protection.** The Bidder shall perform the work in compliance with all applicable Federal, State, and local Environmental Laws. For purposes of this Agreement, the term "Environmental Laws" shall mean all Federal, state, and local laws including statutes, regulations, ordinances, codes, rules, and other governmental restriction and requirements relating to the environment or solid waste, hazardous substances, hazardous waste, toxic or hazardous material, pollutants or contaminants including, but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601, et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251, et seq., and the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, et seq., ~~now or at any time hereafter in effect.~~ **THE CONTRACT PRICE**

DELIVERY, AND PERFORMANCE WILL BE FRUITABLY ADJUSTED TO REFLECT ADDITIONAL COST OR OBLIGATIONS INCURRED BY BIDDER DUE TO CHANGES IN APPLICABLE LAWS.

Section 3. **Tools, Equipment, and Qualified Personnel.** The Bidder agrees that in the event this Proposal is accepted it will make available for use in connection with the proposed construction all necessary tools and equipment and qualified supervisors and workers.

Section 4. **Supervision and Inspection.**

a. The Bidder shall give sufficient supervision to the work, using its best skill and attention. The Bidder will carefully study and compare all drawings, specifications and other instructions and will at once report to the Owner any error, inconsistency or omission which it may discover. The Bidder shall cause the construction work on the project to receive constant supervision by a competent ~~superintendent~~ (hereinafter called the "~~Superintendent~~") who shall be present at all times during working hours where construction is being carried on. The Bidder shall also employ, in connection with the construction of the project, capable, experienced and reliable supervisors and such skilled workers as may be required for the various classes of work to be performed. The Bidder shall be solely responsible for the means and methods of construction and for the supervision of the Bidder's employees. **SUBSTITUTE - SITE MANAGER FOR SUPERINTENDENT**

b. The Owner reserves the right to require the removal from the project of any employee of the Bidder if in the judgment of the Owner such removal shall be necessary in order to protect the interest of the Owner. The Owner shall have the right to require the Bidder to increase the number of its employees and to increase or change the amount or kind of tools and equipment if at any time the progress of the work shall be unsatisfactory to the Owner; but the failure of the Owner to give any such directions shall not relieve the Bidder of its obligations to complete the work within the time and in the manner specified in this Proposal.

c. ~~The construction of the project and all materials and equipment used therein, shall be subject to the inspection, tests, and acceptance by the Owner and the Administrator and the Bidder shall furnish all information required by the Owner or by the Administrator concerning the nature or source of any materials incorporated or to be incorporated in the project. All Bidder procedures and records pertaining to the work shall be made available to the Owner and the Administrator for review prior to such inspections and tests. The Bidder shall provide all reasonable facilities necessary for such inspection and tests and shall maintain an office at the site of the project, with telephone service where obtainable and at least one office employee to whom communications from the Owner may be delivered. Delivery of such communications in writing to the employee of the Bidder at such office shall constitute delivery to the Bidder. The Bidder shall have an authorized agent accompany the Engineer when final inspection is made and, if requested by the Owner, when any other inspection is made. The performance of such inspections or tests by the~~

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Owner or the Administrator shall not relieve the Bidder of its obligations to perform the work in accordance with the requirements of this Contract.

- d. In the event that the Owner, or the Administrator, shall determine that the construction contains or may contain numerous defects, it shall be the duty of the Bidder and the Bidder's Surety or Sureties, if any, to have an inspection made by an engineer approved by the Owner and the Administrator, if approval by the Administrator is required, for the purpose of determining the exact nature, extent and location of such defects.

IN THE EVENT SUCH SUSPECTED DEFECTS ARE PROVEN VALID, THEN THE BIDDER SHALL CORRECT SUCH DEFECTS AND BE RESPONSIBLE FOR THE ENGINEERING INSPECTION COST. HOWEVER, IF THE SUSPECTED DEFECTS ARE PROVEN INVALID, THE OWNER SHALL BE RESPONSIBLE

- e. The Engineer may recommend to the Owner that the Bidder suspend the work wholly or in part for such period or periods as the Engineer may deem necessary due to unsuitable weather or such other conditions as are considered unfavorable for satisfactory prosecution of the work or because of the failure of the Bidder to comply with any of the provisions of the Contract. Provided, however, that the Bidder shall not suspend work pursuant to this provision without written authority from the Owner so to do. The time of completion hereinabove set forth shall be increased by the number of days of any such suspension, except when such suspension is due to the failure of the Bidder to comply with any of the provisions of this Contract. In the event that work is suspended by the Bidder with the consent of the Owner, the Bidder before resuming work shall give the Owner at least twenty-four (24) hours notice thereof in writing.

Section 5. Defective Materials and Workmanship. **SEE G.C. II APPENDIX A - ATTACHMENT III ARTICLE G.C. 25 SUSPENSION AT SITE SHALL CONTROL**

- a. The acceptance of any materials, equipment (except Owner Furnished Materials) or any workmanship by the Owner or the Engineer shall not preclude the subsequent rejection thereof if such materials, equipment, or workmanship shall be found to be defective after delivery or installation, and any such materials, equipment or workmanship found defective before final acceptance of the construction shall be replaced or remedied, as the case may be, by and at the expense of the Bidder. Any such condemned material or equipment shall be immediately removed from the site of the project by the Bidder at the Bidder's expense. The Bidder shall not be entitled to any payment hereunder so long as any defective materials, equipment or workmanship in respect to the project, of which the Bidder shall have had notice, shall not have been replaced or remedied, as the case may be.
- b. Notwithstanding any certificate which may have been given by the Owner or the Engineer, if any materials, equipment (except Owner Furnished Materials) or any workmanship which does not comply with the requirements of this Contract shall be discovered within one (1) year after Completion of Construction of the project, the Bidder shall replace such defective materials or equipment or remedy any such defective workmanship within thirty (30) days after notice in writing of the existence thereof shall have been given by the Owner. If any such defective materials, equipment, or workmanship so replaced or repaired is found to be defective within one year after the completion of the replacement or repair, the Bidder shall replace or remedy such defective materials, equipment, or workmanship. In the event of failure by the Bidder so to do, the Owner may replace such defective materials or equipment or remedy such defective workmanship, as the case may be, and in such event the Bidder shall pay to the Owner the cost and expense thereof. **SEE G.C. II - APPENDIX A - ATTACHMENT III ARTICLE G.C. 9. - WARRANTY**

ARTICLE III--PAYMENTS AND RELEASE OF LIENS

Section 1. Payments to Bidder.

- a. On or before the fifth (5) day of each calendar month, the Bidder will make application for payment, and the Owner, on or before the fifteenth (15) day of such month, shall make partial payment to the Bidder for construction accomplished during the preceding calendar month and certified to by the Bidder, recommended by the Engineer and approved by the Owner solely for the purposes of payment. Provided, however, that such approval shall not be deemed approval of the workmanship or materials. Only ninety percent (90%) of each such estimate approved during the construction of the project shall be paid by the Owner to the Bidder prior to Completion of the

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~~project. Upon completion by the Bidder of the construction of the project, the Engineer will inspect the work performed hereunder. If the Engineer finds the work acceptable and all provisions hereunder fully performed, the Engineer will so certify to the Owner. Upon the approval by the Owner and the Administrator, if the approval of the Administrator is required, of a Certificate of Completion in the form attached hereto, showing the total cost of the construction performed, the Owner shall make payment to the Bidder of all amounts to which the Bidder shall be entitled thereunder which shall not have been paid. Provided, however, that such final payment shall be made not later than ninety (90) days after the date of Completion of Construction of the project, as specified in the Certificate of Completion, unless withheld because of the fault of the Bidder. SEE G.E.I. APPENDIX A - ATTACHMENT III~~

~~ARTICLE G. C. 7, PAYMENTS AND ATTACHMENT I, PAYMENT~~

- ~~SCHEDULE~~
- b. Interest at the rate of FOUR percent' (4%) per annum shall be paid by the Owner to the Bidder on all unpaid balances due on monthly estimates, commencing fifteen (15) days after the due date; provided the delay in payment beyond the due date is not caused by any condition within the control of the Bidder. The due date for purposes of such monthly payment or interest on all unpaid balances shall be the ~~fifteenth (15) day of each calendar month provided (1) the Bidder on or before the fifth (5) day of such month shall have submitted its certification of Construction Units completed during the preceding month and (2) the Owner on or before the fifteenth (15) day of such month shall have approved such certification. If, for reasons not due to the Bidder's fault, such approval shall not have been given on or before the fifteenth (15) day of such month, the due date for purposes of this subsection b shall be the fifteenth (15) day of such month notwithstanding the absence of the approval of the certification. NET 30 DAYS FROM DATE OF INVOICE~~
- c. Interest at the rate of FOUR percent' (4%) per annum shall be paid by the Owner to the Bidder on the final payment for the project, commencing fifteen (15) days after the due date. The due date for purposes of such final payment or interest on all unpaid balances shall be the date of approval by the Owner of all of the documents requiring such approval, as a condition precedent to the making of final payment, or ninety (90) days after the date of Completion of Construction of the project, as specified in the Certificate of Completion, whichever date is earlier.
- d. No payment shall be made to the Bidder for materials or labor involved in correcting errors or omissions on the part of the Bidder which result in construction not in accordance with the Plans and Specifications
- e. No payment shall be due while the Bidder is in default in respect of any of the provisions of this Contract and the Owner may withhold from the Bidder the amount of any claim by a third party against either the Bidder or the Owner based upon an alleged failure of the Bidder to perform the work hereunder in accordance with the provisions of this Contract.
- f. The Owner and the Administrator shall have the right to inspect all payrolls, invoices of materials, ~~and other data and records of the Bidder and of any subcontractor,~~ relevant to the construction of the project.

Section 2. Release of Liens and Certificate of Contractor. Upon the completion by the Bidder of the construction of the project but prior to final payment to the Bidder, the Bidder shall deliver to the Owner, in duplicate, releases of all liens and of rights to claim any lien, in the form attached hereto from all manufacturers, material suppliers, and subcontractors furnishing services or materials for the project and a certificate in the form attached hereto to the effect that all labor used on or for the project has been paid and that all such releases have been submitted to the Owner.

Section 3. Payments to Material Suppliers and Subcontractors. The Bidder shall pay each material supplier, if any, within five (5) days after receipt of any payment from the Owner, the amount thereof allowed **IN ACCORDANCE WITH THE TERMS OF PURCHASE**

¹ The Owner shall insert a rate equal to the lowest "Prime Rate" listed in the "Money Rates" section of the Wall Street Journal on the date such invitation to bid is issued
² See Footnote 1.

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the Bidder for and on account of materials furnished or construction performed by each material supplier or each subcontractor.

ARTICLE IV--PARTICULAR UNDERTAKINGS OF THE BIDDER

Section 1. Protection to Persons and Property. *The Bidder shall at all times take all reasonable precautions for the safety of employees on the work and of the public, and shall comply with all applicable provisions of federal, state, and local laws, rules, and regulations and building and construction codes, in addition to the safety rules and procedures of the Owner.*

The following provisions shall not limit the generality of the above requirements:

- a. *The Bidder shall at all times keep the premises free from accumulations of waste materials or rubbish caused by its employees or work, and at the completion of the work the Bidder shall remove all rubbish from and about the Project and all its tools, scaffolding and surplus materials and shall leave the work "broom clean". The Bidder shall dispose of waste material by burying it on the work site or in a manner approved by local authorities, but shall not dispose of any waste materials or rubbish by open burning. The Bidder shall provide chemical sanitary facilities which may be required.*
- b. *The Bidder shall transport and store all material in facilities and vehicles which are designed to protect the material from damage. The Bidder shall ensure that all vehicles, trailers, and other equipment used comply with all applicable licensing, traffic, and highway requirements*
- c. *The Bidder shall provide and maintain all such guard lights and other protection for the public as may be required by applicable statutes, ordinances and regulations or by local conditions.*
- d. *The project, from the commencement of work to completion, or to such earlier date or dates when the Owner may take possession and control in whole or in part as hereinafter provided shall be under the charge and control of the Bidder and during such period of control by the Bidder all risks in connection with the construction of the project and the materials to be used therein shall be borne by the Bidder. The Bidder shall make good and fully repair all injuries and damages to the project or any portion thereof under the control of the Bidder by reason of any act of God or other casualty or cause whether or not the same shall have occurred by reason of the Bidder's negligence*
 - (i) *To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Bidder's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Bidder's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Bidder, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Bidder liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner.*
 - (ii) *To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all liens and claims filed or asserted against Owner, its directors, officers, and employees, or Owner's property or facilities, for services performed or materials or equipment furnished by Bidder, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. Bidder shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Owner promptly when it has done so. If Bidder does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Owner shall have the right (but shall not be obligated) to*

OWNER SHALL BE RESPONSIBLE FOR DISPOSAL OF HAZARDOUS MATERIALS EXISTING AT
SITE PRIOR TO BIDDER MOBILIZATION WHICH REQUIRE REMOVAL TO
BEYOND THE BIDDERS SCOPE OF WORK OBLIGATIONS. RUS FORM 200 (Rev. 2-04)
IN ADDITION TO BIDDER MOVING MATERIALS OR RUBBISH CAUSED BY ITS EMPLOYEES
OR AS A RESULT OF PERFORMING WORK, THE BIDDER WILL BE RESPONSIBLE → CTD.

FOR REMOVAL OF MATERIAL OR RUBBISH THAT IT PRODUCES ON THE JOBSITE. HOWEVER, OWNER AGREES TO PROPERLY DISPOSE OF ALL HAZARDOUS MATERIAL PRODUCED BY BIDDER IN THE COURSE OF THE WORK AT SITE. BIDDER AGREES IN GOOD FAITH, TO MINIMIZE PRODUCTION OF HAZARDOUS WASTE AT SITE.

PSC Request 1a.
Attachment No. 1
PAGE 8

~~pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Bidder.~~

(iii) Bidder shall provide to Owner's satisfaction evidence of Bidder's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company. SEE GEII APPENDIX A - ATTACHMENT III

ARTICLE G.C. 12 - INDEMNIFICATION.

- e. Upon violation by the Bidder of any of the provisions of this section, after written notice of such violation given to the Bidder by the Engineer or the Owner, the Bidder shall immediately correct such violation. Upon failure of the Bidder so to do the Owner may correct such violation at the Bidder's expense. Provided, however, that the Owner may, if it deems it necessary or advisable, correct such violation at the Bidder's expense without such prior notice to the Bidder. SEE GEII APPENDIX A - ATTACHMENT III, ARTICLE G.C. 17 - TERMINATION FOR CAUSE
- f. The Bidder shall submit to the Owner monthly reports in duplicate of all accidents, giving such data as may be prescribed by the Owner.

Section 2. Insurance. The Bidder shall take out and maintain throughout the period of this Agreement the following types and minimum amounts of insurance:

- a. Workers' compensation and employers' liability insurance, as required by law, covering all its employees who perform any of the obligations of the Bidder under the contract. If any employer or employee is not subject to the workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.
- b. Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than \$1 million each occurrence, limits for property damage of not less than \$1 million each occurrence, and \$1 million aggregate for accidents during the policy period. A single limit of \$1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.
- c. Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than \$1 million per person and \$1 million each occurrence, and property damage limits of \$1 million for each occurrence. A single limit of \$1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsection "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

The Owner shall be named as Additional Insured on all policies of insurance required in subsections "b" and "c" of this Section. RUS FORM 200 SUPPLEMENTARY CONTRACT INFORMATION ARTICLES C7, AND SUBARTICLES C7.1, C7.2, C7.3, C7.4, C7.5, C7.6 SHALL CONTROL. The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Bidder shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

Section 3. Delivery of Possession and Control to Owner. Upon written request of the Owner the Bidder shall deliver to the Owner full possession and control of any portion of the project provided the Bidder shall have been paid at least ninety percent (90%) of the cost of construction of such portion. Upon such delivery of the possession and control of any portion of the project to the Owner, the risk and obligations of the Bidder as set forth in Article IV, Section 1.d hereof with respect to such portion of

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MINIMUM REQUIREMENTS SET FORTH IN GEII APPENDIX A. ATTACHMENT III - GE COMPANY MINIMUM BUILDER RISK COVERAGE REQUIREMENTS FOR TURBINE CENTERLINE PRODUCTS

the project so delivered to the Owner shall be terminated; Provided, however, that nothing herein contained shall relieve the Bidder of any liability with respect to defective materials and workmanship as contained in Article II, Section 5 hereof

Section 4. Assignment of Guarantees. All guarantees of materials and workmanship running in favor of the Bidder shall be transferred and assigned to the Owner prior to the time the Bidder receives final payment.

ARTICLE V--REMEDIES

Section 1. Completion on Bidder's Default. ~~If default shall be made by the Bidder or by any subcontractor in the performance of any of the terms of this Proposal, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Bidder and the Surety or Sureties, if any, upon the Contractor's Bond or Bonds a written notice requiring the Bidder to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Bidder such default shall be corrected or arrangements for the correction thereof satisfactory to both the Owner and the Administrator shall be made by the Bidder or its Surety or Sureties, if any, the Owner may take over the construction of the project and prosecute the same to completion by Contract or otherwise for the account and at the expense of the Bidder, and the Bidder and its Surety or Sureties, if any, shall be liable to the Owner for any cost or expense in excess of the Contract price occasioned thereby. In such event the Owner may take possession of and utilize, in completing the construction of the project, any materials, tools, supplies, equipment, appliances, and plant belonging to the Bidder or any of its subcontractors, which may be situated at the site of the project. The Owner in such contingency may exercise any rights, claims or demands which the Bidder may have against third persons in connection with this Contract and for such purpose the Bidder does hereby assign, transfer and set over unto the Owner all such rights, claims and demands~~

SEE 6EII APPENDIX A - ATTACHMENT III - ARTICLE G.C.17, TERMINATION FOR CAUSE

Section 2. Liquidated Damages. ~~The time of the Completion of Construction of the project is of the essence of the Contract. Should the Bidder neglect, refuse or fail to complete the construction within the time herein agreed upon, after giving effect to extensions of time, if any, herein provided, then, in that event and in view of the difficulty of estimating with exactness damages caused by such delay, the Owner shall have the right to deduct from and retain out of such moneys which may be then due, or which~~

~~may become due and payable to the Bidder the sum of _____ dollars (_____) per day for each and every day that such construction is delayed in its completion beyond the specified time, as liquidated damages and not as a penalty, if the amount due and to become due from the Owner to the Bidder is insufficient to pay in full any such liquidated damages, the Bidder shall pay to the Owner the amount necessary to effect such payment in full: Provided, however, that the Owner shall promptly notify the Bidder in writing of the manner in which the amount retained, deducted or claimed as liquidated damages was computed~~

SEE 6EII APPENDIX A - ARTICLE G.C. 8 ATTACHMENT III

Section 3. Cumulative Remedies. Every right or remedy herein conferred upon or reserved to the Owner or the Government or the Administrator shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election: Provided, however, that the provisions of Section 2 of this Article shall be the exclusive measure of damages for failure by the Bidder to complete the construction of the project within the time herein agreed upon.

ARTICLE VI--MISCELLANEOUS

Section 1. Definitions.

a. The term "Administrator" shall mean the Administrator of the Rural Utilities Service of the United States of America and his or her duly authorized representative or any other person in whom or authority in which may be vested the duties and functions which the Administrator is now authorized by law to perform.

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- b. The term "Engineer" shall mean the Engineer employed by the Owner, to provide engineering services for the project and said Engineer's duly authorized assistants and representatives
- c. The term "Completion of Construction" shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof except the Bidder's obligations in respect of Releases of Liens and Certificate of Contractor under Article III, Section 2 hereof and other final documents. The term "Completion of the Project" shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof. The Certificate of Completion, signed by the Engineer and approved in writing by the Owner and the Administrator, if approval by the Administrator is required, shall be the sole and conclusive evidence as to the date of Completion of Construction and as to the fact of Completion of the Project.

Section 2. Materials and Supplies. In the performance of this contract there shall be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States or in any eligible country, and only such manufactured articles, materials, and supplies as have been manufactured in the United States or in any eligible country substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States or in any eligible country; provided that other articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly in writing authorize such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. For the purposes of this section, an "eligible country" is any country that applies with respect to the United States an agreement ensuring reciprocal access for United States products and services and suppliers to the markets of that country, as determined by the United States Trade Representative. The Bidder agrees to submit to the Owner such certificates with respect to compliance with the foregoing provision as the Administrator from time to time may require.

Section 3. Patent Infringement. ~~The Bidder shall hold harmless and indemnify the Owner from any and all claims, suits and proceedings for the infringement of any patent or patents covering any materials or equipment used in construction of the project.~~

SEE GELL APPENDIX A - ATTACHMENT III, ARTICLE G.C. 10 - PATENTS

Section 4. Permits for Explosives. All permits necessary for the handling or use of dynamite or other explosives in connection with the construction of the project shall be obtained by and at the expense of the Bidder.

Section 5. Compliance with Laws. The Bidder shall comply with all federal, state, and local laws, rules, and regulations applicable to its performance under the contract and the construction of the project. The Bidder acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the Anti Kick-Back Act of 1986 (41 U.S.C. 51 et seq), and 18 U.S.C. §§ 286, 287, 641, 661, 874, 1001, and 1366, as amended

The Bidder represents that to the extent required by Executive Orders 12549 (3 CFR, 1985-1988 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), Debarment and Suspension, and 7 CFR part 3017, it has submitted to the Owner a duly executed certification in the form prescribed in 7 CFR part 3017.

The Bidder represents that, to the extent required, it has complied with the requirements of Pub. L. 101-121, Section 319, 103 Stat. 701, 750-765 (31 U.S.C. 1352), entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and any rules and regulations issued pursuant thereto.


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Section 6. Equal Opportunity Provisions.

a. *Bidder's Representations*

The Bidder represents that:

It has , does not have , 100 or more employees, and if it has, that it has , has not , furnished the Equal Employment Opportunity-Employers Information Report EEO-1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 of September 24, 1965, and Title VII of the Civil Rights Act of 1964.

The Bidder agrees that it will obtain, prior to the award of any subcontract for more than \$10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

The Bidder agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this Contract will amount to more than \$10,000, the Bidder will file such report, as required by law, and notify the owner in writing of such filing prior to the Owner's acceptance of this Proposal.

b. *Equal Opportunity Clause. During the performance of this Contract, the Bidder agrees as follows:*

- (1) The Bidder will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Bidder will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotions or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The Bidder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.*
- (2) The Bidder will, in all solicitations or advertisements for employees placed by or on behalf of the Bidder, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.*
- (3) The Bidder will send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Bidder's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.*
- (4) The Bidder will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.*
- (5) The Bidder will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.*
- (6) In the event of the Bidder's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part, and the Bidder may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of*

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September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as provided by law.

(7) The Bidder will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by the rules, regulations, or order of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Bidder will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, that in the event Bidder becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Bidder may request the United States to enter into such litigation to protect the interests of the United States.

- c. *Certificate of Nonsegregated Facilities.* The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

~~Section 7. **Nonassignment of Contract.** The Bidder shall perform directly and without subcontracting not less than twenty-five percent (25%) of the construction of the project, to be calculated on the basis of the total Contract price. The Bidder shall not assign the Contract effected by an acceptance of this Proposal or any interest in any funds that may be due or become due hereunder or enter into any contract with any person, firm or corporation for the performance of the Bidder's obligations hereunder or any part thereof, without the approval in writing of the Owner and of the Surety or Sureties, if any, on any bond furnished by the Bidder for the faithful performance of the Bidder's obligations hereunder. If the Bidder, with the consent of the Owner and any Surety or Sureties on the Contractor's Bond or Bonds, shall enter into a subcontract with any subcontractor for the performance of any part of this Contract, the Bidder shall be as fully responsible to the Owner and the Government for the acts and omissions of such subcontractor and of persons employed by such subcontractor as the Bidder would be for its own acts and omissions and those of persons directly employed by it.~~

~~SEE G.E.J. APPENDIX A - ATTACHMENT III - ASSIGNMENT~~

Section 8. **Successors and Assigns.** Each and all of the covenants and agreements herein contained shall extend to and be binding upon the successors and assigns of the parties hereto. The Owner and Bidder acknowledge that this Contract is assigned to the Government, acting through the Administrator, for security purposes under the Owner's mortgage and security instrument.

Section 9. **Independent Contractor.** The Bidder shall perform the work as an independent contractor, not as a subcontractor, agent, or employee of the Owner. Upon acceptance of this Proposal, the successful Bidder shall be the Contractor and all references in the Proposal to the Bidder shall apply to the Contractor.

Section 10. **Approval by the Administrator:** This contract does X, does not _____, require approval of the Administrator. No acceptance of a Proposal for a contract upon which approval of the Administrator

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ARTICLE VI – MISCELLANEOUS

Additional Section

Section 5. Compliance with Laws.

b. Equal Opportunity Clause

(8) *When this order and contract refer to manufactured goods or to work or services, Seller warrants and agrees that it has complied and will comply with (1) Fair Labor Standards Act; (2) Social Security and Workman's Compensation Laws, if work is done on Purchaser's premises; and (3) all other applicable Federal, State and local labor, laws, codes and regulations. It is the policy of Purchaser to provide equal opportunities in employment without regard to race, color, religion, sex, age, or national origin and to employ and advance qualified disabled veterans, handicapped or disabled persons and Vietnam era veterans. Purchaser complies with the requirements placed on government contractors and subcontractors by Executive Order 11246, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 and Section 503 of the Rehabilitation Act of 1973, and it is agreed that as a Subcontractor, vendor, or supplier, Seller will also comply with the Executive Order, laws, and applicable rules and regulations. Seller agrees to indemnify Purchaser and save Purchaser harmless from any fines or penalties actually incurred by Purchaser from Seller's failure to comply with the foregoing;*

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is required shall become effective until the contract has been approved by the Administrator; provided that no obligation shall arise hereunder unless such approval is given within one-hundred twenty (120) days after the date set for the opening of the proposals. The acceptance of a Proposal for a contract upon which approval of the Administrator is not required shall become effective the date of acceptance by the Owner.

ATTEST:

Leonna Rogers
Secretary

Dated 15 JUN 05

General Electric International
Bidder

[Signature]
President
Acting Manager Centerline Installations
4200 Wildwood Parkway
Address
Atlanta, Georgia 30339

The Proposal must be signed with the full name of the Bidder. If the Bidder is a partnership, the Proposal must be signed in the partnership name by a partner. If the Bidder is a corporation, the Proposal must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS**

INSTRUCTIONS FOR CERTIFICATION

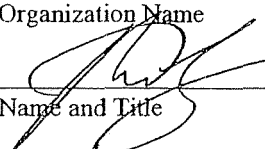
1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in the covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms *covered transaction*, *debarred*, *suspended*, *ineligible*, *lower tier covered transaction*, *participant*, *person*, *primary covered transaction*, *principal*, *proposal*, and *voluntarily excluded*, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

CERTIFICATION

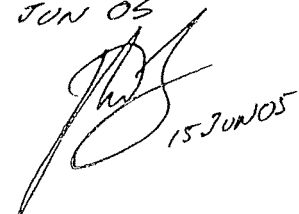
- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

GEII - CENTERLINE INSTALLATIONS (1+FS)
Organization Name PR/Award or Project Name

 PATRIKA CAFFEY - ACTING GENERAL MANAGER
Name and Title

15 JUNE 05
Signature Date

* SEE ATTACHED LETTER DATED 15 JUN 05





GE Energy
Installation & Field Services

David E. Tucker
General Manager
Installation & Field Services

4200 Wildwood Parkway
Atlanta, GA 30339
USA

T 678-844-7611
F 678-844-6697
dove1.tucker@ge.com

15 June 2005

To: Diana Pulliam
EKPC-Spurlock Station
1301 W. 2nd Street
Maysville, KY 41056

Sub: Contract for EKPC Smith Power Station Unit #1 and Spurlock Power Station, Unit #4,
Centerline Installation of Two (2) GE D-5 Steam Turbine Generators,
Certification Regarding Debarment.

With respect to the Certification to which this clarification is attached, the Contractor understands that such Certification is intended to apply to the particular business entity making such Certification, rather than to the General Electric Company ("GE") in its entirety. Other United States governmental agencies permit large, multifaceted companies such as General Electric Company (GE) to certify on a business unit basis. This is necessary because practices differ widely from business to business, information is maintained in a decentralized manner rather than in any central location, and some information is applicable or relevant only to certain businesses within the entire company. For purposes of the Certification, to which this clarification is attached, GE Energy's Installation & Field Services is the business unit for which the Certification is being given and is, therefore, considered the Contractor.

GE is the world's largest diversified services company as well as a provider of high-quality, high-technology industrial and consumer products. It operates directly and through various affiliates, including Contractor and Contractor's affiliates in more than 100 countries around the globe, employs 310,000 people worldwide and generates revenues in excess of \$125 billion per year. GE manufactures and markets products ranging from appliances to aircraft engines and from light bulbs to turbines. Given the scope of its operations, GE, at any time, through its numerous decentralized business operations, including Contractor and Contractor's affiliates, has hundreds, perhaps thousands, of contracts with agencies of the federal government. Neither GE nor Contractor maintains information with respect to contracts with agencies of the federal government at any central location. Neither GE nor Contractor can state with certainty, therefore, either that within a three year period preceding the date of the Certification, GE or its affiliates, including Contractor, has not had one or more contracts terminated for default with any federal agency, or that none of its various business operations are presently debarred suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. However, no such action has been taken by any federal agency with respect to GE Energy's Installation & Field Services business unit.

Sincerely,

A handwritten signature in black ink that reads "David E. Tucker".

David Tucker, General Manager, GE Installation and Field Services

ACCEPTANCE

REDACTED

Subject to the approval of the Administrator, if approval of the Administrator is required, the Owner hereby accepts the foregoing Proposal of the Bidder, General Electric Company, for the construction of the following:

Erection of one GE D-5 steam turbine generator at Spurlock Station per GE Proposal #101748/102132 dated April 29, 2004 with options as listed in GETL letter of November 7, 2004.

for a total contract price of   dollars.)

East Kentucky Power Coop
Owner

By Ray M. Palk
President *hydge*

Della E. Damm, Forandon
Secretary
behalf of the Corporate Secretary

June 15, 2005
Date of Contract

14 June 2005

To: Diana Pulliam
EKPC-Spurlock Station
1301 W. 2nd Street
Maysville, KY 41056

Sub: Centerline Installation of Two (2) GE D-5 Double Flow Reheat Steam Turbine Generators

Dear Diana:

Subsequent to our proposal IPS #101748 / 102132-CL-A+, dated 29th April 2004, to centerline erect two (2) GE D-5 Double Flow Reheat Steam Turbine Generators at the Gilbert Station in Maysville, Kentucky, EKPC requested, and General Electric International agreed, to erect one of the turbines at the Spurlock #4 Project, and the other at the Smith Station #1 project.

It is understood that the above referenced proposal now refers to these above two projects and is based on the following key dates

Project	Shipment	COD
IPS 101748 - Spurlock #4	July 31, 2006	April 1, 2008
IPS 102132 - Smith #1	April 30, 2007	April 1, 2009

All technical details remain unchanged.

Please feel free to contact me if you have any questions.

Very Truly Yours,



Pat Caffrey

Global Centerline Installations
20 Technology Parkway, Suite 110
Norcross, GA 30092

T 770-447-7264
F 770-441-7460
C 678-642-6579
E patrick.caffrey@ge.com





Inc.

GE International,

Table of Contents

- 1 RUS form 200 (Rev. 2-04) and Attachments thereto consisting of:

SUPPLEMENTAL CONTRACT INFORMATION

RUS Form 168b (Rev. 2-04), CONTRACTOR'S BOND

RUS Form 231 (Rev. 2-04), CERTIFICATE OF CONTRACTOR

RUS Form 224 (Rev. 2-04), WAIVER AND RELEASE OF LIEN

RUS Form 213 (Rev. 2-04), CERTIFICATE

CERTIFICATION REGARDING, DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

RUS Form 187 (Rev. 2-04), CERTIFICATE OF COMPLETION CONTRACT CONSTRUCTION

- 2 APPENDIX "A" and Attachments thereto consisting of:

ATTACHMENT I - Payment Schedule

ATTACHMENT II - Technical Proposal IPS# 101228-CL-B+, Revision 2, dated June 2004

ATTACHMENT III - General Terms & Conditions of Sale

ATTACHMENT IV - General Electric Company Minimum Builders Risk Coverage Requirements for Turbine Centerline Projects

- 3 APPENDIX B – Supplemental Terms and Conditions for Domestic Sale of CLE Installation Services

SUPPLEMENTAL CONTRACT INFORMATION

C.1 GENERAL. The supplemental Contract Information supplements RUS Form 200 and does not replace it. Both shall be read and construed together insofar as possible. In the event of a conflict, the terms and conditions of Form 200 shall govern.

C.2 CONTRACT DOCUMENTS. It is understood and agreed that the Contractor's Proposal, Contractor's Bond, Waiver and Release of Lien, Certificate of Contractor, Debarment Certificate, Subcontract Agreement, Buy American Certificate, Lobbying Certificate, Receipt for Final Payment, Supplemental Contract Information, Specifications, Drawings, Addenda, and Contract Amendments issued by the Owner (Engineer), and specifications and engineering data furnished by the Contractor and accepted by the Owner, are each included in this Contract and the work shall be done in accordance therewith.

C.3 DEFINITIONS. The following words, phrases, or other expressions used in these contract documents shall supplement those listed in Article VI, Section 1 of the Contractor's Proposal (RUS Form 200) and shall have meanings as follows:

1. "Contract" or "contract documents" shall include the items enumerated above under CONTRACT DOCUMENTS.
2. "Owner" shall mean East Kentucky Power Cooperative, Inc. and its duly authorized agents. All notices, letters, and other communication directed to the Owner shall be addressed and delivered to:
East Kentucky Power Cooperative, Inc.
4775 Lexington Road 40391
P. O. Box 707 40392-0707
Winchester, KY

Attention: Randy Dials, Vice President, Production Business Unit
3. "Contractor" shall mean the corporation, company, partnership, firm or individual who has entered into this contract for the performance of the work covered thereby, and its, his, or their duly authorized representatives.
4. "Subcontractor" shall mean and refer only to a corporation, partnership, or individual having a direct contract with the Contractor for performing work covered by these contract documents.
5. "Construction Manager" shall mean the person, persons, or firm at the site of the work, designated, appointed, or otherwise employed or delegated by the Owner to be in charge of the project administration and field management of the work under this Contract or their duly authorized agents, such agents acting within the scope of the particular duties entrusted to them in each case.
6. "Day" or "days", unless herein otherwise expressly defined, shall mean a calendar day or days of 24 hours each.
7. "The work", "the construction", "the project", and "the Construction Contract" may be used interchangeably and mean the equipment, supplies, materials, labor, and services to be furnished under the contract and the carrying out of all obligations imposed by the contract documents.
8. "Drawings" or "plans" shall mean all (a) drawings furnished by the Owner as a basis for proposals, (b) supplementary drawings furnished by the Owner to clarify and to define in greater detail the intent of the contract drawings and specifications, (c) drawings

submitted by the successful bidder with his proposal, provided such drawings are acceptable to the Owner, (d) drawings furnished by the Owner to the Contractor during the progress of the work and (e) engineering data and drawings submitted by the Contractor during the progress of the work, provided such drawings are acceptable to the Engineer.

9. When the words "as ordered", "as directed", "as required", "as permitted", "as allowed", etc., are used it shall be understood that the order, direction, requirement, permission of the Owner or Engineer is intended only to the extent of judging compliance with the terms of the contract; none of these terms shall imply that the Owner has any authority or responsibility for supervision of the Contractor's forces or construction operations, such supervision and the sole responsibility therefore being strictly reserved for the Contractor.
10. "Official acceptance" shall mean the Owner's written acceptance of all work performed under this Contract, based on the Owner's final inspection.

C.4 CONVENIENCE TERMINATION. Owner may for any reason terminate this contract for convenience at any time, in whole or in part. Upon such termination, Owner shall pay Bidder in accordance with Appendix A, Article 4 TERMINATION.

Upon receipt of a notice of termination and as directed by Owner, Bidder shall:

- (a) Immediately cancel orders and commitments to subcontracts and suppliers.
- (b) Assign and transfer to Owner all materials, equipment, tools, plant and facilities for which payment has been or will be made under the Contract.
- (c) Notwithstanding anything to the contrary in this agreement, in the event of termination by owner, there shall be no warranty and bidder shall have no liability whatsoever, whether in contract, indemnity, warranty, tort (including negligence), strict liability or otherwise with respect to any partially completed work turned over to or taken over by owner, and owner releases and shall indemnify bidder from any such liability. Bidder's obligation to turn over, deliver, or allow owner to take over shall apply to partially completed goods owned by and in the possession of bidder at the time of termination. Nothing in this agreement, however, shall require bidder to turnover, furnish or deliver to owner any drawings, manufacturing or process information that are not deliverables under this agreement or other proprietary information of bidder or its suppliers.

Bidder shall, as a condition precedent to payment by Owner of termination charges hereunder, execute and deliver all documents and papers required to effectuate the above and to provide proof that no liens or claims exist against Owner or its property.

C.5 CHANGES TO THE CONTRACT. Appendix "A", Attachment III, Article GC.5 shall control.

C.6 HAZARDOUS MATERIAL. As required under Federal Hazardous Communications Standards and certain state and local laws, the contractor shall provide Material Safety Data Sheets (MSDS) covering all hazardous materials furnished under or otherwise associated with the work under this Contract. The Contractor shall provide the Owner and Engineer with either copies of the applicable MSDS or copies of a document certifying that no MSDS are required under any federal, state, or local law, regulation, statute, or ordinance in effect at the jobsite.

C.7 INSURANCE. Except as otherwise stated in this Contract, the Contractor and his subcontractors shall be required at their own expense to maintain in effect at all times during the performance of the work insurance coverage within limits not less than those set forth below with insurers and under forms of policies satisfactory to the Owner. It shall be the responsibility of the Contractor to maintain adequate insurance coverage and to assure that subcontractors are

adequately insured at all times. Failure of the Contractor to maintain adequate coverage shall not relieve him of any contractual responsibility or obligation.

C.7.1 Certificate of Insurance. At the time of execution of this Contract and each subcontract, but in any event prior to commencing work at the jobsite, and as a condition precedent to the Contractor's and his subcontractor's initiation of performance, the Contractor and his subcontractor's shall furnish the Owner with certificates of insurance as evidence that policies providing the required coverage and limits of insurance are in full force and effect. All certificates of insurance shall clearly state that all applicable requirements have been satisfied including certification that the policies are of the "occurrence" type.

C.7.2 NOT USED.

C.7.3 NOT USED.

C.7.4 Workmen's Compensation and Employer's Liability. This insurance shall protect the Contractor against all claims under applicable state workmen's compensation laws.

The liability limits shall not be less than:

Workmen's Compensation And Employer's Liability - Statutory

C.7.5 Comprehensive Automobile Liability. This insurance shall be written in comprehensive form and shall protect the Contractor against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operation on or off the site of all motor vehicles licensed for highway use, whether they are owned, not owned, or hired.

The liability limits shall not be less than:

Bodily injury - \$1,000,000 each person and each occurrence.

Property damage \$1,000,000 each occurrence.

C.7.6. Comprehensive General Liability. This insurance shall be an "occurrence" type policy written in comprehensive form and shall protect the Contractor against all claims arising from bodily injury, sickness, disease, or death of any person or damage to property of the Owner or others arising out of any act or omission of the Contractor of his agents, employees, or subcontractors. This policy shall also include protection against claims insured by usual personal injury liability coverage.

The liability limits shall not be less than:

Personal injury and property damage \$1,000,000 combined single limit each
Occurrence and \$1,000,000 aggregate

The comprehensive general liability coverage shall contain no exclusion relative to blasting, explosion, collapse of structures, or damage to underground property.

C.7.7 Umbrella Liability Policy. This insurance shall protect the Contractor against all claims in excess of the limits provided under the employer's liability, comprehensive automobile liability, and comprehensive general liability policies. The liability limits of the umbrella policy shall not be less than \$5,000,000. This policy shall be an "occurrence" type policy.

C.7.8 Installation Floater/Builder's Risk. This insurance shall protect the Contractor and the additional insured from all insurable risks of physical loss or damage to buildings and structures and to materials and equipment while at the site or in transit to the site, while in warehouses or storage areas, during installation, during testing, and after the work is completed. This insurance shall include coverage for flood and earthquake, shall not be less than the insurable value of the work at completion or \$1,000,000 whichever is greater, and shall include the aggregate value of Owner furnished equipment and materials to be erected or installed under this Contract. The requirements of Article C.7.8 shall be satisfied by provision of an All Risk Builder's Risk (ARBR) insurance policy to be provided by owner. The Owner provided builder's risk insurance policy shall satisfy the minimal requirements set forth in Appendix "A", Attachment IV, General Electric Company Minimum Builder's Risk Coverage for Turbine Centerline Projects.

C.8 INDEMNIFICATION. Appendix "A", Attachment III, Article GC.12, Indemnification, shall control.

C.9 RELEASE OF LIABILITY. Acceptance by the Contractor of the last payment shall be a release to the Owner and every officer and agent thereof, from all claims and liability hereunder for payment for all goods and services provided under the contract.

C.10 RETAINAGE ESCROW ACCOUNT. If the Contract is in the amount of \$500,000 or more involving the improvement of real estate, a 10 percent retainage from each payment will be deposited in a separate escrow account with the Chase Manhattan bank authorized to do business in New York.

Such escrow account will be administered by an escrow agent who will invest all of the escrowed principal in obligations at its sole discretion. Costs incurred by the escrow agent will be deducted from the escrow account.

Upon issuance of the receipt for final payment, signed by the engineer and approved in writing by the Owner and the administrator, if necessary, the Contractor shall be entitled to all funds accumulated in the escrow account, together with any interest thereon, minus costs incurred by the escrow agent.

Establishment and administration of the retainage escrow account will be in accordance with the provisions of Kentucky Revised Statutes, KRS 371.160.

C.11 GOVERNING LAW. Appendix "A", Article 6, shall control.

C.12 SAFETY. Contractor agrees to protect its own and its subcontractors' employees and be responsible under all circumstances for their Work until EKPC's acceptance of the entire project and to protect EKPC's facilities, property, employees and third parties from damage or injury. Contractor agrees to abide by and observe all standards of the Occupational Safety and Health Administration (OSHA) which are applicable to the Work being performed as well as all rules and regulations that may be issued by EKPC from time to time. A summary of rules that are relevant are attached. EKPC shall have the right but not the obligation to review Contractor's compliance with safety measures.

The Contractor shall furnish adequate numbers of trained, qualified and experienced personnel and appropriate equipment in good condition to perform the Work. Such personnel shall be skilled and properly trained to perform the Work and recognize all hazards associated with the Work. Contractor shall provide its employees with all necessary safety equipment and gear to perform the Work. Contractor shall accept all equipment, structures, and property of EKPC as found, and will make its own inspection for the purpose of determining the hazards incident to working thereon or thereabout and will adopt suitable precautions and methods for the protection and safety of its employees.

The Contractor shall report any serious* accident immediately or within 30 minutes so that the proper authorities can be notified in the time required. Report accident to:

Spurlock Project
Sam Holloway
Facility Manager
H.L. Spurlock Power Station,
Route 8 P.O. Box 398
Tel (606) 883 3166

Craig Johnson
Project Manager
J. K. Smith Station,
Trapp, Kentucky
Tel (859) 745 4157 x 218

* A serious accident is defined as an accident that results in a fatality, hospitalization, three (3) or more lost work days, exposure to a toxic substance or radiation that requires reporting to any government agency, property damage over \$25,000, or a serious near miss.

C.13 TERM AND EFFECT OF PAYMENT.

C.13.1 Payment Schedule. Payments shall be made NET thirty (30) days unless otherwise agreed in writing by the parties. Appendix "A", Attachment I, "Payment Schedule", shall control.

C.13.2 Invoices. Invoicing for the Work completed by Contractor and approved by EKPC shall be paid NET thirty (30) days from EKPC's receipt date of invoice. Contractor's invoice shall show sales and use taxes paid, if applicable, as separate items on all invoices. All invoices shall be submitted with supporting documentation and in acceptable form and quality to EKPC. Should an invoice be held in dispute by EKPC, EKPC shall notify Contractor immediately upon receipt of invoice. Contractor and EKPC agree to expeditiously negotiate in good faith resolution of the dispute, and payment shall be immediately following the date of dispute resolution, unless still in the thirty (30) day payment window.

C.13.3 Billing of Additional Work. All claims for payments of additions to the Contract Price shall be shown on separate Contractor's invoices and must refer to the specific change order or written authorization issued by EKPC as a condition to being considered for payment.

C.13.4 Effect of Payments. No payments shall be considered as evidence of the performance of or acceptance of the Work, either in whole or in part.

C.13.5 Evidence of Payment to Subcontractors. Contractor shall, if requested by EKPC, furnish EKPC with a certificate showing names of Contractor's suppliers and subcontractors hereunder, and certifying to EKPC that said suppliers and subcontractors have been paid in full, or alternately Contractor agrees to hold harmless Owner from liens filed by Contractor's subcontractors and suppliers from whom releases have not been obtained.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0572-0107. The time required to complete this information collection is estimated to average 1 minute per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

U.S. Department of Agriculture
Rural Utilities Service

CONTRACTOR'S BOND

1. Know all persons that we, _____, as
Principal, and _____, as Surety,
are held and firmly bound unto _____
(hereinafter called the "Owner") and unto the United States of America (hereinafter called the "Government")
and unto all persons, firms and corporations who or which may furnish materials for or perform labor on a
Rural Utilities Service project known as _____
and to their successors and assigns, in the penal sum of _____
dollars (\$ _____), as hereinafter set forth and for the payment of which sum well
and truly to be made we bind ourselves, our executors, administrators, successors and assigns jointly and
severally by these presents. Said project is described in a certain construction contract (hereinafter called the
"Construction Contract") between the Owner and the Principal, dated _____, 20____
pursuant and subject to a certain loan contract (hereinafter called the "Loan Contract") between the Owner
and the Government, acting through the Administrator of the Rural Utilities Service (hereinafter called the
"Administrator").
2. The condition of this obligation is such that if the Principal shall well and truly perform and fulfill all the
undertakings, covenants, terms, conditions and agreements of the Construction Contract and any amendments
thereto, whether such amendments are for additions, decreases, or changes in materials, their quantity, kind or
price, labor costs, mileage, routing or any other purpose whatsoever, and whether such amendments are made
with or without notice to the Surety, and shall fully indemnify and save harmless the Owner and the
Government from all costs and damages which they, or either of them, shall suffer or incur by reason of any
failure so to do, and shall fully reimburse and repay the Owner and the Government for all outlay and expense
which they, or either of them shall incur in making good any such failure of performance on the part of the
Principal, and shall promptly make payment to all persons working on or supplying labor or materials for use
in the construction of the project contemplated in the Construction Contract and any amendments thereto, in
respect of such labor or materials furnished and used therein, to the full extent thereof, and in respect of such
labor or materials furnished but not so used, to the extent of the quantities estimated in the Construction
Contract and any amendments thereto to be required for the construction of the project, and shall well and
truly reimburse the Owner and the Government, as their respective interests may appear, for any excess in cost
of construction of said project over the cost of such construction as provided in the Construction Contract and
any amendments thereto, occasioned by any default of the Principal under the Construction Contract and any
amendments thereto, then this obligation shall be null and void, but otherwise shall remain in full force and
effect.
3. It is expressly agreed that this bond shall be deemed amended automatically and immediately, without formal
and separate amendments hereto, upon any amendment to the Construction Contract, so as to bind the
Principal and the Surety to the full and faithful performance of the Construction Contract as so amended,
provided only that the total amount of all increases in the cost of construction shall not exceed 20 percent of the
amount of the maximum price set forth in the Construction Contract. The term "Amendment," wherever used in
this bond, and whether referring to this bond, the Construction Contract or the Loan Contract shall include any
alteration, addition, extension, modification, amendment, rescission, waiver, release or annulment, of any
character whatsoever.
4. It is expressly agreed that any amendment which may be made by agreement or otherwise between the
Principal and the Owner in the terms, provisions, covenants and conditions of the Construction Contract, or in
the terms, provisions, covenants and conditions of the Loan Contract (including, without limitation, the
granting by the Administrator to the Owner of any extension of time for the performance of the obligations of

the Owner under the Loan Contract or the granting by the Administrator or the Owner to the Principal of any extension of time for the performance of the obligations of the Principal under the Construction Contract, or the failure or refusal of the Administrator or the Owner to take any action, proceeding or step to enforce any remedy or exercise any right under either the Construction Contract or the Loan Contract, or the taking of any action, proceeding or step by the Administrator or the Owner, acting in good faith upon the belief that the same is permitted by the provisions of the Construction Contract or the Loan Contract) shall not in any way release the Principal and the Surety, or either of them or their respective executors, administrators, successors or assigns, from liability hereunder. The Surety hereby acknowledges receipt of notice of any amendment, indulgence or forbearance, made, granted or permitted.

- 5. This bond is made for the benefit of all persons, firms and corporations who or which may furnish any materials or perform any labor for or on account of the construction to be performed under the Construction Contract and any amendments thereto, and they, and each of them, are hereby made obligees hereunder with the same force and effect as if their names were written herein as such, and they and each of them may sue hereon.

In witness whereof, the undersigned have caused this instrument to be executed and their respective corporate seals to be affixed and attested by their duly authorized representatives this

_____ day of _____, 20_____

Principal (Seal)

ATTEST:

By _____

Secretary

Surety (Seal)

ATTEST:

By _____

Secretary

Address of Surety's Home Office

By _____
Resident Agent of Surety

Signatures: The Contractor's Bond must be signed with the full name of the Contractor. If the Contractor is a partnership the Contractor's Bond must be signed in the partnership name by a partner. If the Contractor is a corporation the Contractor's Bond must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the corporation. A typewritten copy of all such names and signatures shall be appended.

Power of Attorney: The Contractor's Bond must be accompanied by a power of attorney authorizing execution on behalf of the Surety and, in jurisdictions so requiring should be countersigned by a duly authorized resident agent of the Surety.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0572-0107. The time required to complete this information collection is estimated to average 1 minute per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

U.S. Department of Agriculture
Rural Utilities Service

CERTIFICATE OF CONTRACTOR

_____ certifies that he or she is the

_____ of _____,
TITLE NAME OF CONTRACTOR

the Contractor, in a Construction Contract No. _____

dated _____, 20____, entered into between the Contractor and

_____, RUS designation _____,
NAME OF RUS BORROWER

the Owner, and that he or she is authorized to and does make this certification on behalf of said Contractor in order to induce the Owner to make payment to the Contractor, in accordance with the provisions of said Construction Contract.

Undersigned further says that all persons who have furnished labor in connection with said construction have been paid in full, that the names of manufacturers, material suppliers, and subcontractors that furnished material or services or both in connection with such construction and the kind or kinds of material or services or both so furnished are:

NAME	KIND OF MATERIAL OR SERVICES
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

and that the releases of liens executed by all such manufacturers, material suppliers, and subcontractors have been furnished the Owner. **OR ALTERNATIVELY, CONTRACTOR AGREES TO HOLD HARMLESS LIENS FILED BY SUB CONTRACTORS + MATERIAL MEN FROM WHOM RELEASES HAVE NOT BEEN OBTAINED**

_____ Date By _____ President

This Certificate must be signed with the full name of the Contractor. If the Contractor is a partnership, this Certificate must be signed in the partnership name by a partner. If the Contractor is a corporation, this Certificate must be signed in the corporate name by a duly authorized officer.

U.S. Department of Agriculture
Rural Utilities Service

PSC Request 1a.
Attachment No. 1
PAGE 29

WAIVER AND RELEASE OF LIEN

WHEREAS the undersigned, _____
NAME OF MANUFACTURER, MATERIAL SUPPLIER, OR SUBCONTRACTOR

has furnished to _____ the following:
NAME OF CONTRACTOR

_____ for
KIND OF MATERIAL AND SERVICES FURNISHED

use in the construction of a project belonging to _____
NAME OF BORROWER

and designated by the Rural Utilities Service as _____
RUS DESIGNATION

NOW, THEREFORE, the undersigned, _____
NAME OF MANUFACTURER, MATERIAL SUPPLIER, OR SUBCONTRACTOR

for and in consideration of \$ _____ and other good and valuable consideration, the receipt whereof is hereby acknowledged, do(es) hereby waive and release any and all liens, or right to or claim of lien, on the above described project and premises, under any law, common or statutory, on account of labor or materials, or both, heretofore or hereafter furnished by the undersigned to or for the account of

said _____ for said project.
NAME OF CONTRACTOR

Given under my(our) hand(s) and seal(s) this _____ day of _____, 20_____.

Name of Manufacturer, Material Supplier, or Subcontractor

By _____
President

This Waiver and Release of Lien must be signed with the full name of the Manufacturer, Material Supplier, or Subcontractor. If the Manufacturer, Material Supplier, or Subcontractor is a partnership, this Waiver and Release of Lien must be signed in the partnership name by a partner. If the Manufacturer, Material Supplier, or Subcontractor is a corporation, this Waiver and Release of Lien must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

According to the Paperwork Reduction Project (7502-0107), this information may not collect or require a person to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0550-0107. The time required to complete this information collection is estimated to average 1 minute per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

U S Department of Agriculture
Rural Utilities Service

CERTIFICATE

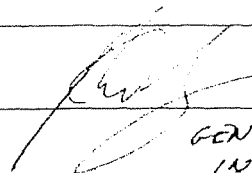
With respect to compliance with the second paragraph of the Rural Electrification Act of 1938, being Title IV of the Work Relief and Public Works Appropriation Act of 1938 (Public Resolution No. 122, 75th Congress, approved June 21, 1938).

Rural Utilities Service Project SPURLOCK UNIT # 4 + SMITH UNIT # 1

The undersigned, being, the CONTRACTOR

* in a certain contract No _____ dated _____, between the undersigned and EAST KENTUCKY POWER COOPERATIVE

does hereby certify that in the performance of the said contract there have been used or furnished no unmanufactured articles, materials or supplies which have not been mined or produced in the United States³ or in any eligible country and no manufactured articles, materials or supplies which have not been manufactured in the United States or in any eligible country substantially all from articles, materials or supplies mined, produced or manufactured, as the case may be, in the United States or in any eligible country, except to the extent that compliance with the second paragraph of the Rural Electrification Act of 1938, being Title IV of the Work Relief and Public Works Appropriation Act of 1938 (Public Resolution No. 122, 75th Congress, approved June 21, 1938) has been waived by the Administrator of the Rural Utilities Service. For purposes of this certificate, an "eligible country" is any country that applies with respect to the United States an agreement ensuring reciprocal access for United States products and services and suppliers to the markets of that country, as determined by the United States Trade Representative.⁴

By  PATRICIA CAFFREY
GENERAL ELECTRIC
INTL, INC.

Date 14 JUN, 2005

* CONTRACT NOT AWARDED AT THE TIME OF SUBMITTAL


14 JUN 05

¹ Insert "Contractor," "Subcontractor," "Seller," Or "Material Supplier," as the case may be.
² Insert the name of the RUS Borrower.
³ United States means United States, its territories and possessions.
⁴ A current list of eligible countries may be obtained by contacting RUS.

Consolidating with Department of Agriculture, Rural Utilities Service, the agency may not conduct or sponsor, and you may not disseminate, information that is required to be collected by this form. The OMB number for this collection of information is 0710-0187. The time required to complete this form will vary depending on the complexity of the project. Instructions for this form are located in the OMB Circular 59, "Burden Reduction Initiatives," and in the OMB Circular 62, "Improving the Quality of Government Information." For more information, please contact the Office of Management and Budget, Paperwork Reduction Project (0710-0187), Washington, DC 20503.

U.S. Department of Agriculture
Rural Utilities Service

CERTIFICATE OF COMPLETION - CONTRACT CONSTRUCTION

I, the undersigned Architect or Engineer of the following Rural Utilities Service project, do hereby certify that:

1. The construction provided for pursuant to Construction Contract No. _____,
dated _____, 20____, including all approved amendments, between
_____, RUS designation _____ ("Owner")
and _____ ("Contractor")
has been completed as of _____, 20____, and is in compliance with the
provisions of the Construction Contract, including all plans, specifications, maps, and drawings and all
modifications thereof.

2. Payment in full has been made to all persons who have furnished labor for the project

3. The Contractor has obtained valid releases of lien from all manufacturers, material suppliers, and
subcontractors furnishing services or materials which were employed by the Contractor in the performance of
the Construction Contract, and that such releases have been delivered by the Contractor to the Owner, **OR ALTERNATIVELY**

**CONTRACTOR AGREES TO HOLD HARMLESS THE OWNER FROM ANY LIENS BY ITS SUB CONTRACTORS
OR MATERIAL MEN FROM WHOM RELEASES HAVE NOT BEEN OBTAINED.**

4. If applicable, the Final Inventory attached hereto and made a part hereof is a complete and accurate summary
of all units of construction in the project and of all work performed in accordance with the Construction
Contract.

5. If applicable, the staking sheets and tabulation of staking sheets upon which the Final Inventory is based show
the accurate location, number, and kind of all units of construction of the project and show all work performed
in accordance with the Construction Contract.

6. All defects in workmanship and materials reported during the period of construction of the project have been
corrected.

7. The total cost of the project as completed is _____ dollars
(\$ _____).

Dated this _____ day of _____, 20____.

Name of Architect or Engineer

By _____

Date

Title

**CERTIFICATE OF COMPLETION
CONTRACT CONSTRUCTION**

(continued)

We, the undersigned Owner and Contractor, do hereby certify that

- 1 The project has been completed in accordance with the provisions of the Construction Contract, dated _____, 20____, provided, however, that acceptance of the project by the Owner shall not be deemed to relieve the Contractor of its obligations contained in the Construction Contract with respect to defective workmanship or, materials discovered within one year after the date of completion.
- 2 If applicable, the Final Inventory attached hereto and made a part hereof is a complete and accurate summary of all units of construction in the project and of work performed in accordance with the Construction Contract.

_____	_____
<i>Date</i>	<i>Owner</i>
_____	By _____
	<i>President</i>

	<i>Name of Contractor</i>
_____	By _____
<i>Date</i>	_____
	<i>Title</i>

**APPENDIX A
ATTACHMENT I**

Payment Month	Event	Payment	
		Monthly % of Contract	Cumulative % of Contract
Jun-05	Signed Agreement	10%	10%
TBD	Submittal of Detailed Schedule	10%	20%
TBD	Site Mobilization	15%	35%
TBD	Equipment Set of Foundations	15%	50%
TBD	Final Alignment of Equipment	15%	65%
TBD	Power-up of MKVI Control Panel	10%	75%
TBD	Completion of Lube Oil Flushing	10%	85%
TBD	Unit on Turning Gear	10%	95%
TBD	Provisional Acceptance of Unit	5%	100%

1. First Payment if due within 15 days of signed agreement
2. All other Payments are due Net 30 days after the receipt of invoice
3. It is understood that Payment Months are approximate and that each invoice will be issued when each milestone is reached, and due in 30 days.

ATTACHMENT III

GENERAL TERMS & CONDITIONS OF SALE

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ARTICLE GC.1 DEFINITIONS

- A. "Affiliate" shall mean any entity that controls, is controlled by, or is under common control with, either Party.
- B. "Change Order" shall mean a written change order describing the Change, identifying the writing as a Change Order, and setting out adjustments, if any, in the Contract Price, and any other provision of this Agreement which is affected, shall be entered into by the Parties in order for the Change to be effective.
- C. "Contract Documents" shall mean the Agreement consisting of RUS Form 200 (Rev. 2-95) and all Attachments [Ref. Appendix "A", Article 1./(a)] thereto, and Appendix "A" and Attachments I-IV thereto.
- D. "Contract Price" shall be the total firm price as stated in the Agreement for the Work to be performed in accordance with the terms of the Contract Documents.
- E. "Contractor" shall mean the General Electric International Inc., Delaware Corporation acting through its Energy Service Business having a primary place of business at 4200 Wildwood Parkway, Atlanta, Georgia 30339.
- F. "Day" or "Days" shall mean a calendar day or days of twenty-four (24) hours each.
- G. "Delay Liquidated Damages" shall mean the Purchaser's sole remedy and Contractor's sole obligation for Contractor's failure to achieve Provisional Acceptance within the Time for Completion.
- H. "Delivery Date" shall mean the date the last Major Component (turbine or generator) is delivered to the Delivery Point.
- I. "Delivery Point" shall mean the delivery free on board carrier ("FOB") to the nearest accessible rail siding to the Project Site for all rail shipments and free on board carrier to the nearest accessible common carrier point at the Project Site for all truck shipments.
- J. "Equipment" or "Unit" shall mean the Gas Turbine Generator equipment described in the Equipment Contract.
- K. "Equipment Contract" shall mean the contract number F1A for the Spurlock #4

project, and the contract number G1A for the Smith Station #1 project, between Purchaser and General Electric Company for the D5 Steam Turbine Generators.

- L. "Facility" shall mean either the H. L. Spurlock Power Station in Maysville, Kentucky, or the J. K. Smith Station, Trapp, Kentucky.
- M. "Final Completion" shall have the meaning as set forth in Article GC. 15.
- N. "Major Components" shall have the meaning of the turbine and generator excluding all material shipped direct ("MSD") to the Site
- O. "Order Definition Meeting" shall mean the project kick-off meeting between the Contractor's project execution team and Purchaser's project representatives.
- P. The term "Parties" shall mean the Purchaser and Contractor, collectively, and "Party" shall mean the Purchaser or Contractor, individually.
- Q. "Project Schedule" shall mean that as set forth in Appendix "A", Attachment II Technical Proposal GE IPS #101748/102132—CL-A+, Project Schedule.
- R. "Provisional Acceptance" shall mean that as set forth in Article GC. 14.
- S. "Provisional Acceptance Date" shall mean the date when the Unit achieves Provisional Acceptance.
- T. "Purchaser" shall mean East Kentucky Power Cooperative (EKPC), a cooperative and having a primary place of business at 4775 Lexington Road 40391, P.O. Box 707, Winchester, Kentucky 403 92-0707.
- U. "Ready for First Fire" shall mean that the Contractor has completed his work to the point where the Equipment is ready for first fire
- V. "Technical Proposal" shall mean Contractor's Technical Proposal GE IPS #101748/102132—CL-A+-, Rev 1, dated April 2004, Tab 17 and subsequent revisions thereto.
- W. "Services" or "Work" shall mean the services to be furnished by Contractor under the Agreement.
- X. "Site" or "Project Site" shall mean either the East Kentucky Power Cooperative, H. L. Spurlock Power Station in Maysville, Kentucky, or the East Kentucky Power Cooperative, J. K. Smith Station, Trapp, Kentucky.
- Y. "Subcontractor(s)" or "Supplier(s)" shall mean any corporation, partnership, or

individual having a contract with Contractor to supply material, equipment, labor, goods, or services to Contractor in connection with its obligations under this Agreement.

ARTICLE GC.2 PAYMENTS

Payments shall be made in accordance with the Payment Schedule referenced in and incorporated into the Agreement (Appendix "A" —Attachment I-Payment Schedule). Payment Terms are net thirty (30) days from receipt of invoice remitted via wire transfer. Wire transfer instructions shall be provided on each Invoice. Late payments shall be subject to an interest charge as noted in RUS Form 200, Article III-Payments and Release of Liens, Section 11(b).

All payments made on or after the Site mobilization payment milestone shall be subject to a 10% retainage in accordance with Section C. 10 of the Supplemental Contract Information. The retainage will be deposited in a separate escrow account with the Chase Manhattan Bank authorized to do business in the State of New York. Upon achievement of Provisional Acceptance of the Unit, Contractor shall be entitled to 90% of the funds accumulated in the escrow account, together with any interest thereon, minus cost incurred by the escrow agent. Upon achievement of Final Acceptance of the Unit, Contractor shall be entitled to the remaining 10% of the retainage funds accumulated in the escrow account, together with any interest thereon, minus cost incurred by the escrow agent.

If a change in the Work results in a change in the Contract Price, all future installments shall be adjusted accordingly. However, if the change results in a decrease in the Contract Price, then the payments previously made shall be retained by Contractor and applied to subsequent payment as they become due.

For those payments which are tied to milestones, it is understood and agreed that: (i) If Contractor completes the milestone in advance of what is indicated on the Payment Schedule, in no event shall the Purchaser be required to make payment for such milestone prior to ninety (90) days from the milestone date identified on the Payment schedule; and (ii) Purchaser shall be required to pay for no more than one (1) milestone per month.

ARTICLE GC.3 SECURITY

Upon mobilization of the Site, Contractor will provide a Performance Bond in the amount equal 100% of the Contract Price. Upon achievement of the Unit on turning gear, the amount of the Performance Bond shall be reduced to 15% of the Contract Price. The Performance Bond shall expire upon achievement of Provisional Acceptance of the Unit.

ARTICLE GC.4 TAXES

The Contract Price includes all applicable corporate and individual taxes that are measured by net income or profit imposed by any governmental authority of any country on Contractor, its employees or Subcontractors due to the execution of the Work. The Contract Price also includes all taxes, import duties, and fees required by any governmental authority of any country necessary to import and to deliver the foreign manufactured Equipment to the Project Site. Notwithstanding the foregoing, the Contract Price does not include any sales, use, excise, value added, gross receipts, consumption, franchise, property, or similar taxes imposed by any federal, state, or local government in the United States of America. Purchaser shall pay all such taxes.

ARTICLE GC.5 CHANGES

Purchaser shall have the right to request that Contractor consider changes to the Work at the Site within the general scope thereof, whether such Change request be modifications, alterations or additions. Contractor shall prepare a written description of the proposed Change for the Purchaser's review and approval. All changes under this contract shall be subject to mutual has been reached.

In the event Purchaser contemplates making a Change, Purchaser shall so advise Contractor. Within ten (10) days (unless otherwise extended by mutual agreement) following written receipt of such advice, Contractor shall advise Purchaser of the possibility of performing the requested Change, and shall submit to Purchaser a lump sum firm estimate relating to the proposed Change, including:

- (a) a technical description of the proposed Change in such detail as the Purchaser may reasonably require,
- (b) a lump sum estimate of the cost adjustment (increase or decrease) in the Contract Price, if any caused by the proposed Change,
- (c) all potential effect(s), if any, such Change has on the project schedule, or any other schedule or dates for performance by Contractor hereunder, and
- (d) all potential effect(s), if any, such Change on Contractor's ability to comply with any of its obligations hereunder, including Contractor's warranties.

Purchaser shall have ten (10) days from the date of receipt of such information to either approve or disapprove, in writing, the proposed Change, or to request additional time to consider the proposed Change. Purchaser shall have the right to approve such Change and direct Contractor, in writing, to perform the Change. If Purchaser approves the Change, then Purchaser shall execute a Change Order, which shall operate as an amendment this Contract. Upon the execution of the Change Order, Contractor shall immediately proceed to perform as set forth in the Change Order.

For Contractor initiated changes, the Contractor shall submit to the Purchaser a written description of the proposed Change and follow the same procedure as set forth above for Purchaser initiated changes.

ARTICLE GC.6 INSPECTION

Upon Purchaser's request, Purchaser's inspectors shall be provided access to the Contractor's work at Site for purposes of observing and inspecting such work in progress, provided such activity and inspections do not reasonably interfere with such work. In no event shall the work at Site be delayed to accommodate Purchaser's inspectors.

Purchaser's inspection of the Work or its failure to inspect does not relieve Contractor of its obligation to fulfill the requirements of this Agreement, nor is it to be construed as acceptance by the Purchaser.

ARTICLE GC.7 TITLE TRANSFER, RISK OF LOSS

Title to materials supplied under this Contract to be shipped from the United States shall pass to Purchaser when made available for shipment from the manufacturer's factory. Title to materials supplied under this Contract to be shipped from a country other than the United States shall pass to Purchaser at the port of export immediately after the materials have been cleared for export.' Title to other work in progress, including the Services performed on Site, will pass to the Purchaser as the Services are performed. Notwithstanding passage of title, Contractor shall remain responsible for risk of loss or damage to the materials supplied under this Contract until Provisional Acceptance of the Unit.

ARTICLE GC.8 EXCUSABLE DELAYS

Contractor shall not have any liability or be considered to be in breach or default of its obligations under this Contract to the extent that performance of such obligations is delayed or prevented, directly or indirectly, due to: (i) causes beyond its reasonable control; or (ii) acts of God, act (or failures to act) of governmental authorities, fires, severe weather conditions, earthquakes, strikes or other labor disturbances, floods, war (declared or undeclared), epidemics, civil unrest, riot, delays in transportation, or car shortages; or (iii) acts (or Omissions) of Purchaser including failure to promptly: (a) provide Contractor with information and approvals necessary to permit Contractor to proceed with work immediately and without interruption, or (b) comply with the terms of payment, or (iv) shipment to storage under Article GC.7.

Contractor shall notify Purchaser of any such delay. The Time for Completion shall be extended for a period of time necessary to overcome the effect of such excusable delay.

If Contractor is delayed by acts of omissions of Purchaser, or by the prerequisite work of Purchaser's other contractors or suppliers, Contractor shall also be entitled to an equitable price adjustment.

If such excusable delay extends for more than one hundred and eighty (180) days and the Parties have not agreed upon a revised basis for continuing the Work at the end of the delay, including adjustment of the price, then either Party (except where delays is caused by Purchaser, in which event only Contractor), upon thirty (30) days written notice, may terminate the Contract with respect to the portion of Work to which title has not yet passed, whereupon Purchaser shall promptly pay Contractor termination charges as set forth in Appendix A, Article 4.

ARTICLE GC.9 WARRANTY

Contractor warrants to Purchaser that services shall be performed in a competent, diligent manner in accordance with any mutually agreed specifications. Except for compliance with the foregoing warranty, risk of loss of, or damage to the Purchaser's Equipment or other equipment being worked upon shall remain with the Purchaser, regardless of where the Services take place.

The foregoing warranty for the services shall apply to defects which appear during the Warranty Period which shall expire upon the first to occur of the following: (a) 12 months from Provisional Acceptance of the Unit or (b) 30 months following the Delivery Date of the Unit.

If the Services performed hereunder do not meet the above warranties during the Warranty Period, Purchaser shall promptly notify Contractor in writing and make the Equipment available promptly for correction. Contractor shall thereupon promptly correct any defect by reperforming the defective Services.

Any re-performed service furnished under this warranty shall carry warranties on the same terms as set forth above, except that the warranty period shall be for a period of one year from the date of such re-performance. In any event the warranty period and Contractor's responsibilities set forth herein for such re-performed service shall expire upon the first to occur of the following: (a) 24 months from Provisional Acceptance of the applicable Unit or (b) 36 months following the Delivery Date of the Unit.

The warranties and remedies set forth herein are further conditioned upon (i) the proper storage, installation, operation, and maintenance of the Equipment and conformance with the operation instruction manuals (including revisions thereto) provided by Contractor and/or its subcontractors, as applicable and (ii) repair or modification pursuant to Contractor's instructions or approval. Purchaser shall keep proper records of operation and maintenance during the Warranty Period. These records shall be kept

in the form of log sheets and copies shall be submitted to Contractor upon its request.

The preceding paragraphs of this Article set forth the exclusive remedies for all claims based on failure of or defect in the Services provided under this Contract, whether the failure or defect arises before or during the Warranty Period and whether a claim, however instituted, is based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise. The foregoing warranties are exclusive and are in lieu of all other warranties and guarantees whether written, oral, implied or statutory. NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.

ARTICLE GC.10 PATENTS

N/A

ARTICLE GC.11 INSURANCE

The Contractor and each of its Subcontractors shall furnish and maintain Comprehensive General Liability insurance with limits of not less than \$1,000,000 per occurrence for bodily injury or death, and \$1,000,000 per occurrence property damage plus Contractual Liability coverage.

The Contractor and each of its Subcontractors shall furnish and maintain automobile liability insurance with limits of not less than \$1,000,000 for each person, \$1,000,000 for each occurrence and \$1,000,000 for property damages.

The Contractor and each Subcontractor shall furnish to the Purchaser certificates evidencing compliance with all federal and state workers compensation or similar laws, which might impose any charge or liability on the Purchaser in connection with the Work under this Contract.

Before the Contractor or its Subcontractors shall do any work under this Contract, they shall furnish the Purchaser with the aforementioned certificates and certificates of insurance evidencing that insurance has been provided to meet the above requirements. Such certificates shall state that no material change or cancellation can be effected without thirty (30) days prior written notice to the Purchaser.

Purchaser will furnish and maintain a Builder's Risk Insurance Policy covering the workscope for its full Contract Price from the time Contractor mobilizes the Project Site until the Unit achieves Provisional Acceptance. The Contractor and all Subcontractors will be additional insured parties.

ARTICLE GC.12 INDEMNIFICATION

Subject to the provisions of Article GC.13, Contractor agrees to indemnify and hold harmless Purchaser from any physical damage to the property of third parties or injury to persons, including death, to the extent resulting directly from the negligence of Contractor or its officers, servants, agents, employees, and/or assigns while engaged in activities under this Contract. Subject to Article GC.13, Purchaser shall likewise indemnify and hold harmless Contractor from any physical damage to property of third parties or injury to persons, including death, to the extent resulting directly from the negligence of Purchaser, its officers, servants, agents, employees, and/or assigns, while engaged in activities relating to this Contract. In the event such damage or injury is caused by the joint or concurrent negligence of Contractor and Purchaser, the loss shall be borne by each Party in proportion to its negligence.

ARTICLE GC.13 LIMITATION OF LIABILITY

The total liability of Contractor, on all claims of any kind, whether in contract, warranty, indemnity, tort (including negligence), strict liability, or otherwise, arising out of the performance or breach of the Contract or use of any Equipment shall not exceed the Contract Price. All liability under this Contract shall terminate upon expiration of the warranty period.

In no event, whether as a result of breach of contract, warranty, indemnity, tort (including negligence), Strict liability, or otherwise, shall Contractor or its Subcontractors or Suppliers be liable for loss of profit or revenues, loss of use of the Equipment or any associated equipment, cost of capital, cost of substitute equipment, facilities, services or replacement power, downtime, costs, claims of Purchaser's customers for such damages, or for any special, consequential, incidental, indirect or exemplary damages and Purchaser shall indemnify Contractor against such claims of Purchaser's customers.

Purchaser covenants and agrees that it shall obtain from the Owner or in the event it seeks to transfer or assign the Equipment and Services to any other third party that it shall, as a condition to such transfer or assignment, cause Owner or such third party to acknowledge and accept the restrictions and limitations afforded under this Contract for the benefit of Contractor and its Subcontractors, including the provisions of this Article GC.13.

If Purchaser cannot obtain for Contractor from any subsequent purchasers the protections specified in this Article GC.13, Purchaser shall indemnify, defend and hold Contractor harmless from and against any and all claims made by any subsequent purchasers of the Equipment or Services against Contractor for loss or damage arising out of the performance or non-performance of the Equipment or Services provided under this Contract.

If Contractor furnishes Purchaser with advice or assistance concerning any products, systems or work which is not required pursuant to the Contract Documents, the furnishing of such advice or assistance will not subject Contractor to any liability,

whether in contract, warranty, indemnity, tort (including negligence), strict liability or otherwise.

In no event shall Contractor be liable for any loss or damage whatsoever arising from its failure to discover or repair latent defects or defects inherent in the design of goods serviced (unless such discovery or repair is normally discoverable by tests expressly specified in the scope of work under the Contract) or caused by the use of goods by the Purchaser against the advice of the Contractor

For the purposes of this Article GC.13, the term "Contractor" shall mean Contractor, its affiliates, Subcontractors and Suppliers of any tier, and their respective agents and employees, whether individually or collectively.

The provisions of this Article GC.13 shall prevail over any conflicting or inconsistent provisions contained any of the documents comprising this Contract, except to the extent that such provisions further restrict Contractor's liability.

ARTICLE GC.14 PROVISIONAL ACCEPTANCE

"Provisional Acceptance" for each of the Contractor's Units shall be achieved and deemed to have occurred upon the first to occur of the following:

- A. the Unit is Ready For First Fire
- B. Provisional Acceptance has not occurred for reasons not attributable to Contractor or its subcontractors (and not excused elsewhere in the Contract), ninety (90) days after the Scheduled Provisional Acceptance Date, or
- C. Purchaser elects to take possession and control of the Unit.

In any event upon Contractor achieving Provisional Acceptance, Purchaser will agree to take care, custody, and control of such Unit.

ARTICLE GC.15 FINAL COMPLETION

Final Completion shall occur once (a) the Unit has achieved Provisional Acceptance, and (b) completion of the mutually agreed upon punch list.

ARTICLE GC.16 PERFORMANCE GUARANTEES

N/A

ARTICLE GC.17 TERMINATION FOR CAUSE

Purchaser shall have the right to terminate this Contract for cause in the event of the following:

(a) Contractor becomes insolvent, Contractor makes an assignment for the benefit of creditors, or a receiver or trustee is appointed for the benefit of Contractor's creditors, or Contractor makes a filing for protection from creditors under any bankruptcy or insolvency laws;

(b) Contractor substantially breaches and fails to comply or perform its material obligations hereunder (for which this Contract does not provide exclusive remedies);

(c) Failure of the Units to achieve the Provisional Acceptance within 180 days after the Scheduled Provisional Acceptance Date.

Prior to termination for breach, Purchaser shall provide Contractor with written notice of the nature of such breach and Purchaser's intention to terminate for Contractor's default subject to reasonable opportunity for Contractor to cure such breach. If Contractor fails: (1) to commence and diligently to pursue cure of such failure within thirty (30) days after receipt of such notice (excluding item c above which is 180 cure period) or within such extended period as is considered reasonable by the Parties, or (2) to provide reasonable evidence that such default does not in fact exist, Purchaser may terminate the Contract.

If Purchaser terminates this Contract as provided above, Purchaser will be entitled to complete the Work, with the excess cost above the Contract Price at the expense of the Contractor. Contractor will not be entitled to any further payments until the cost of completing the Work has been ascertained. If the total of such sums, when added to the total amounts already paid to Contractor, exceeds what would otherwise have been paid to Contractor, Contractor will pay the excess to Purchaser.

If Purchaser fails to fulfill any payment conditions as Set forth in the Contract, Contractor shall have the right to suspend the Work after twenty (20) days of non-payment of undisputed amounts and any cost incurred by Contractor in accordance with such suspension (including storage costs) shall be payable by Purchaser upon submission of Contractor's invoices. Performance of Contractor's obligations shall be extended for a period of time to overcome the effects of such suspension. If Purchaser does not correct such failure within sixty (60) days, Contractor shall have the right to terminate this Contract for cause in respect to the portion of Work which title has not passed.

If Contractor terminates this Contract as provided above, Contractor's termination charges shall be paid by Purchaser, as set forth in Appendix "A", Article 4. Termination.

ARTICLE GC.17A TERMINATION FOR CONVENIENCE

The Purchaser shall have the right to terminate this Contract at any time for its convenience by giving written notice thereof to Contractor and payment of the termination charges in accordance with Appendix A, Article 4. - Termination

ARTICLE GC.18 CONTRACTOR'S PROPRIETARY INFORMATION

At the time of furnishing confidential or proprietary information, Contractor will expressly designate by label, stamp, or other written communication that the information or documentation furnished is confidential. Purchaser agrees (i) to treat such information as confidential, (ii) to restrict the use of such information to matters relating to Contractor's performance of the Contract, and (iii) to restrict access to such information to employees of Purchaser and its agents whose access is necessary in the implementation of the Contract. Confidential information will not be reproduced without Contractor's prior written consent, and all copies of written information will be returned to Contractor upon request except to the extent that such information is to be retained by Purchaser pursuant to the Contract.

The foregoing restrictions do not apply to information which: (i) is contained in a printed publication which was released to the public by Contractor prior to the date of the Contract; (ii) is, or becomes, publicly known otherwise than through a wrongful act of Purchaser, its employees, or agents; (iii) is in possession of Purchaser, its employees, or agents prior to receipt from Contractor, provided that the person or persons providing the same have not had access to the information from Contractor; (iv) is furnished to others by Contractor without restrictions similar to those herein on the right of the receiving party to use or disclose; or (v) is approved in writing by Contractor for disclosure by Purchaser, its agents or employees to a third party.

ARTICLE GC.19 GLOBAL SOURCING

Subject to the Buy American Form (RUS Form 213), Contractor reserves the right in its discretion to obtain, source, subcontract, manufacture, fabricate and assemble the Equipment and any of its components and systems outside the United States or from non-domestic concerns, or both; it being understood that the quality standards and warranties of the Contractor under the Contract shall be adhered to in all cases irrespective of source and all sourcing shall be consistent with all applicable laws and regulations.

ARTICLE GC.20 ASSIGNMENT

The Parties shall not delegate or assign any or all of their duties or rights under this Contract without prior written consent from the other Party; such consent shall not be unreasonably withheld. Notwithstanding the terms of this provision, the Parties may delegate or assign their duties or rights to any Affiliate or subsidiary, provided that, with respect to Purchaser's delegate or assignee, such delegate or assignee shall own or operate the Units for the purposes of generating electric power for revenue to the

Purchaser's electrical power generation grid. Such assignment shall in no way relieve the assigning Party of its obligations under this Contract.

ARTICLE GC.21 COMPLIANCE WITH LAWS, CODES & STANDARDS

The Contract Price is based on Contractor's performance of the Services pursuant to (I) its design criteria, manufacturing processes and procedures and quality assurance program, (ii) those portions of industry specifications, codes and standards in effect as of the date of the Contractor's proposal to Purchaser, which Contractor has deemed applicable to the Equipment and the Services, and (iii) the United States Federal, State and local laws and rules in effect on the date of Contractor's proposal to Purchaser.

The Contract Price will be will be equitably adjusted to reflect additional costs incurred by Contractor resulting from (I) a change in standards and regulations described in items (ii) or (iii) above after the date of Contractor's proposal to Purchaser which affect the Equipment and Services and (ii) changes required to comply with regulatory or industrial requirements in the location where the Equipment will be installed and the Services performed. Purchaser shall advise Contractor of requirements affecting the Equipment or Services performed by Contractor resulting from the applicability of any laws, rules or regulations in the location where the Equipment will be installed and the Services performed. Reasonable adjustments will be made to the project schedule as may be appropriate to comply with the foregoing. If Contractor determines that a change is not possible, Contractor will so notify Purchaser and Purchaser may terminate this Contract in accordance with Appendix "A", Attachment II-Termination Schedule, or direct completion without change and assume responsibility for obtaining any necessary waivers.

Notwithstanding the foregoing paragraphs, no modification in price will be made as a result of any general change in the manufacturing facilities of Contractor resulting from the imposition of any requirements by any Federal, State or local governmental entity.

ARTICLE GC.22 SITE CONDITIONS

The Purchaser shall provide: (1) free and clear access to the Site in a clean and clear condition no later than 31 July 2006 for the Spurlock #4 project, and 30 April 2007 for the Smith Station #1 project, (2) adequate space at the Site for assembly work and storage; (3) all fuels, water, utilities, system electrical loads and consumables as and when required for construction, start-up, testing and operation of the Facility; and (4) operating and maintenance personnel for start-up and testing of the Facility.

Further, it is understood that the Contractor's performance and pricing of the Work under this Contract has been based upon the conditions and criteria as set forth in the Contract Documents. Contractor shall be entitled to assume that any Project Site data furnished by Owner is accurate and complete. Contractor shall promptly notify Purchaser of (1) any condition or criteria which is different from that set forth in the

Contract Documents or from those indicated in the information furnished by Purchaser, (2) any previously unknown physical conditions at the Project Site of an unusual nature, not revealed by previous investigations and differing from those ordinarily encountered in the type of Work provided for in this Contract, and (3) the presence of any pre-existing toxic substances, hazardous substances or hazardous waste or archaeological remains. If such conditions cause an increase in Contractor's price or schedule of any part of the Work, Contractor shall be entitled to an equitable adjustment in the Contract Price or an extension in the Contract Schedule, or both.

In the event Contractor encounters toxic substances, hazardous substances, or hazardous wastes (as such terms may be defined in any statute or ordinance or regulations promulgated by any federal, state or local governmental authority of the United States) (collectively, the "Hazardous Materials") at the Project Site, which require special handling and/or disposal, it shall immediately notify Purchaser thereof and Purchaser shall be responsible for the proper elimination of such hazardous conditions and shall properly handle, remove, transport, and dispose of such substances or wastes so that the Work under the Contract may safely proceed. Contractor shall not be obligated to commence or continue Work until Purchaser causes such hazardous substances to be removed. Contractor shall be entitled to an appropriate equitable adjustment to the Contract Price, an extension of Contract Schedule or both; to the extent Contractor's performance is adversely impacted by Purchaser's handling removal, transport, or disposal of such hazardous conditions. Purchaser agrees to properly dispose of all Hazardous Materials produced or generated in the course of Contractor's work at the Project Site.

Purchaser shall indemnify Contractor, its officers, servants, employees, agents, and/or assigns, or subcontractors for any and all claims, damages, losses, causes of action, demands, judgments, and expenses, including without limitation attorney's fees and expenses, arising out of or relating to the presence of any toxic substances, hazardous substances, or hazardous wastes which are: (1) present on the project Site prior to the commencement of Contractor's Work; or (2) improperly handled, transported, or disposed of by Purchaser; or (3) brought to the Project Site or produced thereon by parties other than Contractor, its officers, servants, employees, agents, and/or assigns or Subcontractors.

ARTICLE GC.23 PERMITS AND LICENSES

Purchaser shall be responsible for obtaining all environmental and use permits, all other licenses, exemptions, permits and approvals, local building and construction permits, and easements necessary for the construction and operation of the Facility, and shall be responsible for any additional costs arising from any delay or failure to obtain such permits.

ARTICLE GC.24 NOTICE PROCEED

N/A

ARTICLE GC.25 SUSPENSION AT SITE

Purchaser may, at any time, suspend or stop Contractor's performance of all or any portion of the Contractor's work at Site under the Contract. Such suspension and stoppage shall not, however, relieve or release Contractor from its obligation otherwise to install the Equipment in accordance with the Contract. Purchaser shall notify Contractor in writing reasonably in advance of the first day of suspension (but in no event less than 10 days unless emergency conditions justify a shorter time), indicating the scope of the suspension. Contractor shall advise Buyer of the price adjustment resulting from the planned suspension of the work, which shall be based on the actual period of suspension and Contractor's ability to reasonably reallocate manpower, material and equipment during the suspension period. If any suspension or combination of suspensions exceeds a total of 90 days, Contractor may request authorization to resume work. If written authorization is not granted within 20 days, Contractor may treat the suspended work as abandoned by Buyer, in which case Buyer will pay Contractor's, termination charges in accordance with Appendix A, Article 4. Termination.

ARTICLE GC.26 DISPUTE RESOLUTION

Any controversy, dispute or difference between the Parties to this Contract, if not amicably settled by the Parties within thirty (30) days following notice of dispute, shall be referred to senior management of the Parties for resolution. In the event the dispute has not been resolved within forty five (45) days following referral to senior management, or such longer period as the Parties may mutually agree, then either Party may then pursue their legal remedies.

ARTICLE GC.27 MISCELLANEOUS PROVISIONS

Except as provided in the Article entitled "limitation of Liability", these provisions are for the benefit of the Parties hereto and not for any other third party. Waiver by either Party of any right under this Agreement shall not be deemed a waiver by such Party of any other right hereunder.

This Contract represents the entire agreement between the Parties and supersedes in its entirety all prior agreements concerning the subject matter hereof, and no modification, amendment, revision, waiver, or other change shall be binding on either Party unless consented to in writing by the Party's authorized representative. Any oral or written representation, warranty, course of dealing, or trade usage not contained or referenced herein shall not be binding on either Party. Each Party agrees that it has not relied on, or been induced by, any representations of the other Party not contained in this Contract.

The invalidity in whole or in part of any part of this Contract shall not affect the validity of the remainder of the Contract.

The following Articles shall survive termination of this Contract: Article (Taxes); Articles (Compliance With Laws, Codes, & Standards); Article (Warranty), Article (Patents), Article (Limitation of Liability), Article (Contractor's Proprietary Information), Article (Indemnification), and Article (Miscellaneous Clauses).

ATTACHMENT IV
GENERAL ELECTRIC COMPANY
MINIMUM BUILDERS RISK COVERAGE REQUIREMENTS
FOR TURBINE CENTERLINE PROJECTS

GENERAL

Insured parties:

Include GE and all subsidiary, associated and affiliated companies, joint ventures, subcontractors {regardless of tier}, loss payees {as their interest may appear} and other entities required to be insured. Also, GEII or OBPS should be specifically named to the extent that they are a party signing the contract.

Policy limits:

Full contract price, and no sub-limits on perils.

Period:

From commencement of site activity until taking over/acceptance of plant by owner

Coverage:

All risk of physical loss/damage of equipment/materials and construction works, subject to common exclusions.

MAJOR COVERAGES

Deductibles:

- \$ 100,000 per occurrence during erection phase
- \$ 500,000 per occurrence due to hot testing/commissioning/maintenance

APPENDIX B

SUPPLEMENTAL TERMS AND CONDITIONS FOR DOMESTIC SALE OF CLE INSTALLATION SERVICES

1. Definitions

"Buyer's Obligations" shall mean those obligations set forth in Article 3 below.

"Hazardous Materials" shall mean those materials described in Section 4.2 below.

"CLE Installation Services" or "Work" as used in the Contract Documents shall mean the work scope set forth in Appendix D."

"Site" shall mean the place to be provided by the Buyer where the Work is to be performed.

"Substantial Completion" shall have the definition as stated in the Contract Agreement Form.

"Provisional Acceptance" shall have the definition as stated in the Contract Agreement Form.

All other capitalized terms shall have the meanings given to them in the Contract Agreement or in Appendix A thereto.

2. Services Price Basis

In addition to the terms in the other Contract Documents, the Services Price set forth in the Contract Agreement is based on the following conditions:

(a) These Supplemental Terms and Conditions for CLE Installation Services (b) The workscope set forth in Appendix D.

3. Buyer's Obligations

Buyer's balance of plant systems are required to be fully functional no later than December 20, 2004 in order to support start of unit operational checkouts by Seller. In addition to those responsibilities set forth in the Technical Specification, Buyer shall provide: (a) free and clear access to the Site in a clean, clear and level condition no later than a date to be mutually agreed to between the Parties; (b) adequate space at the Site for assembly work and storage; (c) all fuels, water, utilities, system electrical loads and consumables as and when required for construction, start-up, testing and operation of the Equipment; and (d) operating and maintenance personnel for start-up and testing of the balance of plant and Facility operations. In addition, Buyer shall be responsible for the lawful handling and disposal of any and all hazardous substances on the Site including those produced by Seller.

4. Site Conditions

4.1 Site Conditions. Seller shall be entitled to assume that any Site data furnished by Buyer is accurate and complete. Seller shall promptly notify Buyer of (a) any conditions at the Site which materially differ from those indicated in the information furnished by Buyer, (b) any previously unknown physical

conditions at the Site of an unusual nature, not revealed by previous investigations and differing from those ordinarily encountered in the type of Work provided for in this Contract, and (c) the presence of any toxic substances, hazardous substances or hazardous wastes (as such terms may be defined in any statute or ordinance or regulations issued thereunder) or archaeological remains. If such conditions cause an increase in Seller's cost or Time for Completion of any part of the Work, Seller shall be entitled to an equitable adjustment in the Contract Price and an extension in the Time for Completion and the Contract shall be modified by change order in writing.

4.2 Hazardous Materials. If, at the Site, Seller encounters toxic substances, hazardous substances or hazardous wastes (as such terms may be defined in any statute or ordinance or regulations promulgated by any federal, state or local governmental authority) (collectively, the "Hazardous Materials") which require special handling and/or disposal, Buyer shall immediately take whatever precautions are required to legally eliminate such hazardous conditions so that the Work under the Contract may safely proceed. If any such Hazardous Materials cause an increase in Seller's cost of or the time required for performance of any part of the Work, an equitable adjustment shall be made in the price and schedule by written change order. Buyer agrees to properly dispose of all Hazardous Materials produced or generated in the course of Seller's Work at the Site. Buyer shall indemnify Seller for any and all claims, damages, losses, causes of action, demands, judgments and expenses arising out of or relating to (i) the presence of any Hazardous Materials which are present on the Site prior to the commencement of Seller's Work or (ii) improperly handled or disposed of by Buyer or (iii) brought on to the Site or produced thereon by parties other than Seller.

5. Suspension of Work

5.1 Work at Site. If Buyer elects to suspend or delay all, or part of, the Work at the Site, Buyer shall notify Seller in writing reasonably in advance of the first day of suspension (but in no event less than 10 days unless emergency conditions justify a shorter time), indicating the scope, anticipated period and reasons for the suspension. Seller shall advise Buyer of the price adjustment resulting from the planned suspension of the Work, which shall be based on the actual period of suspension. Any additional cost incurred by Seller in complying with such notice shall be added to the Contract Price. If any suspension or combination of suspensions exceeds a total of 90 days, Seller may request authorization to resume Work. If written authorization is not granted within 20 days, Seller may treat the suspended Work as abandoned by Buyer, in which case Buyer will pay Seller's termination charges determined in accordance with Seller's standard accounting practices upon submission of Seller's invoice(s) therefore.

5.2 Work at Equipment Manufacturing Facility. No right of suspension or delay is given to Buyer with respect to Equipment at Seller or Seller Suppliers manufacturing facility.

6. Start-Up, Provisional Acceptance and Commercial Operation

6.1 Start-Up. Seller shall give Buyer no less than thirty (30) days prior notice of the anticipated date of Substantial Completion of the Equipment furnished under this contract. Buyer shall assume all responsibility for providing and achieving a state of readiness for all BOP equipment and systems necessary for operation of the Equipment. Buyer's personnel will operate the Equipment and the BOP facility systems during startup and will remain available to Seller's direction until Provisional Acceptance has been achieved.

6.2 Provisional Acceptance If the Equipment fails to achieve Provisional Acceptance when first tested, Seller shall be afforded an opportunity to take corrective actions and to re-test the Equipment as needed. Substantial Completion will be deemed to have occurred on the date upon which the Equipment first meets the criteria for Provisional Acceptance

6.3 Buyer's Use of Equipment. In the event Buyer operates or directs the operation of the Equipment, or any portion thereof, for commercial purposes prior to Provisional Acceptance, then Provisional Acceptance will be deemed to have occurred on the date of the first such use.

7. Permits, Licenses and Legal Requirements

Buyer shall be responsible for obtaining all environmental and use permits, all other licenses, exemptions, permits and approvals, local building and construction permits, and easements necessary for the construction and operation of the Facility and installation of the Equipment at the Facility, and shall be responsible for any additional costs arising from any delay or failure to obtain such permits.

8. Termination - Default

8.1 Buyer may terminate this Contract if Seller is in default of any of its material obligations hereunder, or if Seller becomes insolvent, or files a petition for reorganization, composition or compromise with its creditors under any applicable United States Federal or state law. Upon the occurrence of any of the foregoing, Buyer shall notify Seller in writing of the nature of the default and of Buyer's intention to terminate this Contract for default. If Seller fails: (1) to commence and diligently to pursue cure of such default within thirty (30) days from receipt of such notification, or (2) to provide reasonable evidence that such default does not in fact exist, Buyer may terminate Seller's right to proceed with the Work. In such event, Buyer shall pay Seller for any Equipment delivered and any Services performed up to the date of termination in accordance with the Termination Schedule.

8.2. If the Work is delayed for a period of one hundred twenty (120) days or more under an order of any court or any other public authority having jurisdiction, or as the result of an act of government or an act or omission of Buyer or Buyer's officers, agents, employees, assigns, subcontractors and or suppliers, or for any cause not the fault of Seller, its officers, agents, employees, assigns, subcontractors and/or suppliers, or because Buyer has not made payments as provided herein, then Seller may, upon ten (10) days written notice to Buyer, terminate this Contract. In addition, Seller may recover from Buyer payment of any and all costs incurred and losses sustained by Seller (including reasonable overhead and profit) by reason of any such termination.

9. Indemnity

Seller hereby agrees to indemnify and hold harmless Buyer from any physical damage to property of third parties or injury to persons, including death, to the extent proximately caused by the negligence of Seller or its officers, servants, agents, employees, and/or assigns while engaged in activities under this Contract. To the extent legally permitted, Buyer shall likewise indemnify and hold harmless Seller from any physical damage to property of third parties or injury to persons, including death, to the extent proximately caused by the negligence of Buyer, its officers, servants, agents, employees, and or assigns, while engaged in activities relating to this Contract. In the event such damage or injury is caused by the joint or concurrent negligence of Seller and Buyer, the loss shall be borne by each party to the extent legally permitted in proportion to its negligence. Seller's indemnity obligations shall be subject to the provisions of Article 10, Limitations of Liability contained in Appendix A.

10. Insurance

10.1 Buyer's Insurance. Without limiting any other obligations or liabilities of Buyer under this Contract, Buyer shall carry at all times and maintain or cause to be carried and maintain at its own expense such insurance as is customarily maintained by constructors, owners and operators of electric generating facilities and in all events shall carry and maintain at least the minimum coverage required. Owner shall provide and maintain All Risk Builder's Risk Insurance which shall include Seller and its subcontractors and permitted assigns as named insureds, covering all risks of physical loss or damage to the Work from any external cause to the fully completed value of the Facility, from the start of on-site activity until the date of commercial operation. Such insurance shall be in a form acceptable to Seller, and deductibles shall be for the account of Seller only if and to the extent the loss is caused through the fault of Seller. Prior to commencement of Work at the Site, a copy of the policy shall be submitted to Seller for review and approval. Any subsequent substantive changes to the policy shall be reviewed and approved by Seller.

10.2 Seller's Insurance. Seller shall procure and maintain in full force and effect at its expense prior to the termination of this Contract the following insurance coverage:

- a) Commercial General Liability Insurance, including products/completed operations, blanket contractual, product liability, broad form property damage and personal injury with a combined single limit of not less than \$2,500,000 for each occurrence which shall include Buyer as an additional named insured.
- b) Comprehensive automobile liability insurance, with a combined single limit of not less than \$2,500,000 for each person, which shall include Buyer as an additional named insured.
- c) Worker's Compensation insurance or self certified insurance in accordance with statutory requirements and employer's liability insurance with limits or not less than \$2,500,000 for each occurrence. Seller shall provide Buyer with a waiver of subrogation for this insurance.
- d) Umbrella Liability insurance covering general liability, product/completed operations, auto and employers liability with a single combined limit of not less than \$20,000,000 per occurrence in the aggregate which shall include Buyer as an additional named insured.

11. Miscellaneous

Any information, suggestions or ideas transmitted by Buyer to Seller in connection with performance hereunder are not to be regarded as secret or submitted in confidence except as may be otherwise provided in a writing signed by Seller's duly authorized representative.



FI

PSC Request 1a.
Attachment No. 1
PAGE 55

GE Energy

East Kentucky Power Cooperative, Inc.

Spurlock Station Unit #4

One (1) D5 Steam Turbine-Generator

U.S. Department of Agriculture
Rural Utilities Service

PSC Request 1a.
Attachment No. 1
PAGE 56

EQUIPMENT CONTRACT

NOTICE AND INSTRUCTIONS TO BIDDERS

- 1. Sealed proposals for the furnishing and delivering f.o.b. plant site near Maysville, KY, one turbine generator for Spurlock 4 as per G.E. Proposal #IPS-101748 dated April 2004 with amended pages dated June 2005 – Attachment 5 for equipment for the rural electric project of Spurlock Unit 4.**

RUS designation Kentucky 59 Fayette, (hereinafter called the "Owner") will be received by the Owner on or before n/a o'clock n/a _____ M., n/a _____, 20____, at its office at n/a at which time and place the proposals will be

_____ n/a _____ publicly opened and read.

_____ n/a _____ privately opened. The Owner, subsequent to the bid opening, may elect to conduct clarifying discussions with the bidder to resolve any questions related to the substance of the bidder's proposal and to arrive at a final price for a responsive bid.

Any proposals received subsequent to the time specified will be promptly returned to the Bidder unopened.

- 1. Obtaining Documents.** *The Plans, Specifications, and Construction Drawings, together with all necessary forms and other documents for bidders may be obtained from the Owner, or from the Engineer at the latter's office at n/a upon the payment of \$ n/a, which payment will not be subject to refund. The Plans, Specifications, and Construction Drawings may be examined at the office of the Owner or at the office of the Engineer.*
- 2. Manner of Submitting Proposals.** *Proposals and all supporting instruments must be submitted on the forms furnished by the Owner and must be delivered in a sealed envelope addressed to the Owner. The name and address of the Bidder and the date and hour of the opening of bids must appear on the envelope in which the Proposal is submitted. Proposals must be completed in ink or typewritten. No alterations or interlineations will be permitted, unless made before submission, and initialed and dated. The successful Bidder will be required to execute two additional counterparts of the Proposal.*
- 3. Due Diligence.** *Prior to the submission of the Proposal, the Bidder shall make and shall be deemed to have made a careful examination of the Plans, Specifications, Construction Drawings, and form of Proposal, and shall review the location and nature of the proposed construction, the transportation facilities, the kind and character of soil and terrain to be encountered, the kind of facilities required before and during the construction of the project, general local conditions, environmental and historic preservation considerations, and all other matters that may affect the cost and time of completion of the work. Bidder will be required to comply with all federal, state, and local laws, rules, and regulations applicable to its performance, including those pertaining to the licensing of contractors, and the Anti Kick-Back Act of 1986 (41 u.s. C. 51 et seq).*
- 4. Proposals will be accepted only from those prequalified bidders invited by the Owner to submit a proposal.**
- 5. The Time for Delivery of the Equipment is of the essence of the Contract and shall be as specified by the Engineer in the Proposal.**

6. **Evaluation Factors.** *In estimating the lowest cost to the Owner as one of the factors in deciding the award of the Contract, the Owner will consider, in addition to the price quoted in the Proposals, the following:*

7. **Debarment Certification.** *The Bidder must provide to the Owner a suspension and debarment certificate in the form attached hereto.*

8. **Contract is Entire Agreement.** The Contract to be effected by the acceptance of the Proposal shall be deemed to include the entire agreement between the parties thereto, and the Bidder shall not claim any modifications thereof resulting from any representation or promise made at any time by any officer, agent or employee of the Owner or by any other person.

9. **Minor Irregularities.** The Owner reserves the right to waive minor irregularities or minor errors in any Proposal, if it appears to the Owner that such irregularities or errors were made through inadvertence. Any such irregularities or errors so waived must be corrected on the Proposal in which they occur prior to the acceptance thereof by the Owner.

10. **Bid Rejection.** The Owner reserves the right to reject any or all Proposals.

11. **Definition of Terms.** The terms "Administrator" and "Engineer" as used throughout this Contract shall be as defined in Article VI, Section 1, of the Proposal.

East Kentucky Power Cooperative, Inc.

Owner

By Randy Nials/ldp
Vice President - Prod.

Title

June 13, 2005
Date

PROPOSAL Equipment Contract


TO: East Kentucky Power Cooperative,

REDACTED

(hereinafter called the "Owner").

ARTICLE I--GENERAL

Section 1. Offer to Furnish and Deliver. *The undersigned (hereinafter called the "Bidder") hereby proposes to furnish and deliver the equipment (hereinafter called the "Equipment") described in the Plans, Specifications, and Construction Drawings Contract for the following prices:*

Item: Spurlock Unit #4 - STG Price: 

Item: _____ Price: _____

The prices of Equipment set forth herein shall include the cost of delivery to:

The nearest accessible rail siding to Spurlock Power Station, Maysville, KY.

The prices set forth herein do not include any sums which are or may be payable by the Bidder on account of taxes imposed by any taxing authority upon the sale, purchase or use of the Equipment. If any such tax is applicable to the sale, purchase or use of the Equipment hereunder, the amount thereof shall be added to the purchase price and paid by the Owner.

Section 2. Materials and Equipment. *The Bidder-Seller agrees to furnish and use in the ~~construction manufacture~~ of the ~~project~~ Equipment under this Proposal Contract, in the event the Proposal is ~~accepted~~, only such ~~fully accepted,~~ "conditionally accepted," and "technically accepted" materials and equipment which have been accepted by RUS as indicated in the current RUS Informational Publication 202-1, "List of Materials Acceptable for Use on Systems of RUS Electrification Borrowers," including revisions adopted prior to the Bid Opening. Within the requirements of the preceding sentence, Seller will be permitted to procure Materials and Equipment per Article GC.16, Global Sourcing. The use of "conditionally accepted" or "technically accepted" materials and equipment requires prior consent by the Owner or Engineer.*

The Bidder will purchase all materials and equipment outright and not subject to any conditional sales agreements, bailment, lease or other agreement reserving unto the seller any right, title or interest therein. All such materials and equipment shall be new.

Section 3. Description of Contract. ~~The Notice and Instructions to Bidders, Plans, Specifications, and Construction Drawings, which by this reference are incorporated herein, together with the Proposal and Acceptance constitute the Contract. The Plans, Specifications, and Construction Drawings, including maps, special drawings, and approved modifications in standard specifications are attached hereto and identified as follows~~ The Contract includes the following documents:

RUS Contract Form 198 (Rev. 2-04) and Attachments-

Project Commercial Documents – Attachment #1

Payment Schedule – Attachment #2

Termination Schedule – Attachment #3

General Terms & Conditions of Sale - Attachment #4

Seller's Technical Description (IPS-101748 dated April 2004, with amended pages dated June 2005)- Attachment #5

Section 4. Due Diligence. ~~The Bidder has made a careful examination of the Plans, Specifications, and Construction Drawings attached hereto, and has become informed as to the location and nature of the proposed construction, the transportation facilities, the kind and character of soil and terrain to be encountered, and the kind of facilities required before and during the construction of the project, and has become acquainted with the labor conditions, federal, state, and local laws, rules, and regulations applicable to its performance.~~ Not Used

Section 5. Warranty of Good Faith. ~~The Bidder warrants that this Proposal contract is made in good faith and without collusion or connection with any person or persons bidding for the same work.~~

ARTICLE II--DELIVERY AND WARRANTY

Section 1. Delivery. ~~The Bidder shall deliver~~ Ship the Equipment:

 within days after receipt of the written order or orders of the Owner.

 not later than July 31, 2006 .

~~The time for delivery shall be extended for the period of any reasonable delay due exclusively to causes beyond the control and without the fault of the Bidder, including, but not limited to, acts of God, fires, strikes, and floods.~~ Excusable Delays are defined in Article GC.7.

Section 2. Defective Materials and Workmanship.

- a. ~~All Equipment furnished hereunder shall be subject to the inspection, tests, and approval of the Owner and the Engineer, and the Bidder shall furnish all information required~~

~~concerning the nature or source of any Equipment and provide adequate facilities for testing and inspecting the Equipment at the plant of the Bidder and testing as defined in Article GC.5. attached.~~

- b. ~~The Equipment furnished hereunder shall become the property of the Owner upon delivery, provided, however, that the Owner or the Engineer, within one year after initial operation of the Equipment, or within the period for which the Equipment is guaranteed, whichever is longer, may reject any Equipment which does not comply with the Specifications attached hereto and made a part hereof or with the guarantees, if any, of the Bidder and the manufacturer. Upon any such rejection, the Bidder shall repair or replace such defective Equipment within a reasonable time after notice in writing from the Owner. If any such defective materials, equipment, or workmanship so replaced or repaired is found to be defective within one year after the completion of the replacement or repair, the Bidder shall replace or remedy such defective materials, equipment, or workmanship. In the event of failure by the Bidder so to do, the Owner may make such replacement and the cost and expense thereof shall be paid by and recoverable from the Bidder.~~
- c. ~~All manufacturers' guarantees of Equipment, if any, shall be transferred and assigned to the Owner upon delivery of any Equipment and before final payment is made for such Equipment. Such guarantees shall be in addition to those required of the Bidder by other provisions of this Contract. See Article GC.8. Warranty, Attachment #4~~

ARTICLE III--PAYMENT

Section 1. Payments to Bidder.

a. (Per Attachment #1)

~~Upon the shipment of any Equipment hereunder, the Bidder shall submit to the Owner a detailed statement of the Equipment shipped. The Owner shall, upon receipt of the Equipment, pay the Bidder ninety percent (90%) of the contract price of the Equipment. When the Equipment has been installed, placed in satisfactory operation, tested and accepted by the Owner, the Owner shall make final payments therefor to the Bidder; provided, however, such final payment shall be made not later _____ than days after delivery of the Equipment, unless such acceptance by the Owner shall be withheld because of the fault of the Bidder.~~

b. ~~No payment shall be due while the Bidder is in default in respect of any of the provisions of this Contract and the Owner may withhold from the Bidder the amount of any claim by a third party against either the Bidder or the Owner based upon an alleged failure of the Bidder to perform the work hereunder in accordance with the provisions of this Contract.~~

ARTICLE IV--PARTICULAR UNDERTAKINGS OF THE BIDDER

The provisions of this Article IV apply to any work performed by the Bidder at the project site.

Section 1. Protection to Persons and Property. *The Bidder-Seller and Owner shall at all times take all reasonable precautions for the safety of employees on the project and of the public, and shall comply with all applicable provisions of federal, state, and local laws, rules, and regulations and building and construction codes, in addition to the safety rules and procedures of the Owner.*

The following provisions shall not limit the generality of the above requirements:

- a. ~~The Bidder-Seller shall at no time and under no circumstances cause or permit any employee of the Bidder-Seller to perform any work upon energized lines, or upon poles carrying energized lines, unless otherwise specified in the Notice and Instructions to Bidders.~~
- b. ~~The Bidder-Seller shall transport and store all material in facilities and vehicles which are designed to protect the material from damage in accordance with customary industry practice. The Bidder-Seller shall ensure that all vehicles, trailers, and other equipment used comply with all applicable licensing, traffic, and highway requirements.~~
- c. ~~The Bidder-Seller shall conduct its operations to cause the least possible obstruction of public highways.~~
- d. ~~The Bidder shall make good and fully repair all injuries and damages to the project or any portion thereof under the control of the Bidder by reason of any act of God or other casualty or cause whether or not the same shall have occurred by reason of the Bidder's negligence.~~
 - (i) ~~To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Bidder's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Bidder's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Bidder, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Bidder liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner.~~
 - (ii) ~~To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all liens and claims filed or asserted against Owner, its directors, officers, and employees, or Owner's property or facilities, for services performed or materials or equipment furnished by Bidder, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. Bidder shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Owner promptly when it has done so. If Bidder does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Owner shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Bidder.~~
 - (iii) ~~Bidder shall provide to Owner's satisfaction evidence of Bidder's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company. See Article GC.11 INDEMNIFICATION~~

- e. ~~Upon violation by the Bidder of any of the provisions of this section, Article GC.14 TERMINATION FOR CAUSE shall control. after written notice of such violation given to the Bidder by the Engineer or the Owner, the Bidder shall immediately correct such violation. Upon failure of the Bidder so to do the Owner may correct such violation at the Bidder's expense: Provided, however, that the Owner may, if it deems it necessary or advisable, correct such violation at the Bidder's expense without such prior notice to the Bidder.~~

Section 2. Insurance. *The Bidder shall take out and maintain throughout the period of its operations at the project site the following types and minimum amounts of insurance:*

- ~~a. Workers' compensation and employers' liability insurance, as required by law, covering all its employees who perform any of the obligations of the Bidder under the contract. If any employer or employee is not subject to the workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.~~
- a.
- b. *Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than \$1 million each occurrence, limits for property damage of not less than \$1 million each occurrence, and \$1 million aggregate for accidents during the policy period. A single limit of \$1 million per occurrence and in the aggregate annually for bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.*
- c. *Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than \$1 million per person and \$1 million each occurrence, and property damage limits of \$1 million for each occurrence. A single limit of \$1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.*

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsection "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

The Owner shall be ~~named~~ included as Additional Insured on all policies of insurance required in subsections "b" and "c" of this Section: with respect to work performed by Seller/Bidder but only to the extent of liability resulting from the negligent acts or omissions of the Seller/Bidder and only to the extent that the additional insured is held liable for the negligence or other culpability of Seller/Bidder and in accordance with the indemnity provisions of this Contract. However, no coverage is provided for liability arising out of the Owner's own negligence.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Bidder shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days (except 10 days for non-payment of premium) prior written notice to the Owner of any cancellation or material change in the insurance.

Owner shall maintain All Risks Builder's Risk coverage on equipment and shall include Seller/Bidder as Additional Insured on such policy. Such policy shall include a waiver of subrogation in favor of Seller/Bidder.

ARTICLE V—REMEDIES

Section 1. Liquidated Damages. As defined per Contract Documents - Attachment #1 ~~The time of the delivery of the Equipment is of the essence of the Contract. Should the Bidder neglect, refuse or fail to deliver the Equipment within the time herein agreed upon, after giving effect to extensions of time, if any, herein provided, then, in that event and in view of the difficulty of estimating with exactness damages caused by such delay, the Owner shall have the right to deduct from and retain out of such moneys which may be then due, or which may become due and payable to the Bidder the sum of _____ dollars (_____) per day for each and every day that such delivery is delayed beyond the specified time, as liquidated damages and not as a penalty; if the amount due and to become due from the Owner to the Bidder is insufficient to pay in full any such liquidated damages, the Bidder shall pay to the Owner the amount necessary to effect such payment in full: Provided, however, that the Owner shall promptly notify the Bidder in writing of the manner in which the amount retained, deducted or claimed as liquidated damages was computed.~~

Section 2. Cumulative Remedies. ~~Every right or remedy herein conferred upon or reserved to the Owner or the Government or the Administrator shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election: Provided, however, that the provisions of Section 1 of this Article shall be the exclusive measure of damages for failure by the Bidder to deliver the Equipment within the time herein agreed upon.~~

ARTICLE VI—MISCELLANEOUS

Section 1. Definitions.

- a. The term "Administrator" shall mean the Administrator of the Rural Utilities Service of the United States of America and his or her duly authorized representative or any other person in whom or authority in which may be vested the duties and functions which the Administrator is now authorized by law to perform.
- b. The term "Engineer" shall mean the Engineer employed by the Owner, to provide engineering services for the project and said Engineer's duly authorized assistants and representatives.

Section 2. Materials and Supplies. ~~In the performance of this contract there shall be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States or in any eligible country, and only such manufactured articles, materials, and supplies as have been manufactured in the United States or in any eligible country substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States or in any eligible country; provided that other articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly in writing authorize such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. For the purposes of this section, an "eligible country" is any country that applies with respect to the United States an agreement ensuring reciprocal access for United States products and services and suppliers to the markets of that country, as determined by the United States Trade Representative. The Bidder agrees to submit to the Owner such certificates with respect to compliance with the foregoing provision as the Administrator from time to time may require.~~

Section 3. Patent Infringement. ~~The Bidder shall hold harmless and indemnify the Owner from any and all claims, suits and proceedings for the infringement of any patent or patents covering Equipment purchased hereunder. Per Article GC.9 Patents.~~

Section 4. Compliance with Laws. *The Bidder-Seller shall comply with all federal, state, and local laws, rules, and regulations applicable to its performance under the ~~contract~~ Contract and the ~~construction of the project~~. The Bidder acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the Anti Kick-Back Act of 1986 (41 U.S.C. 51 et seq), and 18 U.S.C. §§ 286, 287, 641, 661, 874, 1001, and 1366, as amended.*

The Bidder represents that to the extent required by Executive Orders 12549 (3 CFR, 1985-1988 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), Debarment and Suspension, and 7 CFR part 3017, it has submitted to the Owner a duly executed certification in the form prescribed in 7 CFR part 3017.

The Bidder represents that, to the extent required, it has complied with the requirements of Pub. L. 101-121, Section 319, 103 Stat. 701, 750-765 (31 U.S.C. 1352), entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and any rules and regulations issued pursuant thereto.

Section 5. Equal Opportunity Provisions.

a. *Bidder's Representations.*

The Bidder represents that:

It has —X, does not have —, 100 or more employees, and if it has, that it has —X, has not —, furnished the Equal Employment Opportunity-Employers Information Report EEO-1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 of September 24, 1965, and Title VII of the Civil Rights Act of 1964.

The Bidder agrees that it will obtain, prior to the award of any subcontract for more than \$10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

The Bidder agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this Contract will amount to more than \$10,000, the Bidder will file such report, as required by law, and notify the Owner in writing of such filing prior to the Owner's acceptance of this Proposal.

b. *Equal Opportunity Clause. During the performance of this Contract, the Bidder agrees as follows:*

(1) The Bidder will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Bidder will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotions or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and

selection of training, including apprenticeship. The Bidder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.

- (2) The Bidder will, in all solicitations or advertisements for employees placed by or on behalf of the Bidder, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.*
- (3) The Bidder will send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Bidder's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.*
- (4) The Bidder will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.*
- (5) The Bidder will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.*
- (6) In the event of the Bidder's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part, and the Bidder may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as provided by law.*
- (7) The Bidder will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by the rules, regulations, or order of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Bidder will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, that in the event Bidder becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Bidder may request the United States to enter into such litigation to protect the interests of the United States.*
- (8) When this order and contract refer to manufactured goods or to work or services, Seller warrants and agrees that it has complied and will comply with (1) Fair Labor Standards Act; (2) Social Security and Workman's Compensation Laws, if work is done on Purchaser's premises; and (3) all other applicable Federal, State and local labor laws, codes and regulations. It is the policy of Purchaser to provide equal opportunities in employment without regard to race, color, religion, sex, age, or*

national origin and to employ and advance qualified disabled veterans, handicapped or disabled persons and Vietnam era veterans. Purchaser complies with the requirements placed on government contractors and subcontractors by Executive Order 11246, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 and Section 503 of the Rehabilitation Act of 1973, and it is agreed that as a Subcontractor, vendor, or supplier, Seller will also comply with the Executive Order, laws, and applicable rules and regulations. Seller agrees to indemnify Purchaser and save Purchaser harmless from any fines or penalties actually incurred by Purchaser from Seller's failure to comply with the foregoing. ~~if Seller fails to comply with the foregoing, and in the event of such failure Purchaser may, in addition, cancel this order and contract. Seller invoices for work or materials covered hereby shall state that Seller has complied with the requirements of the Fair Labor Standards Act of 1938 as amended.~~

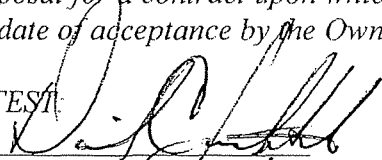
Certificate of Nonsegregated Facilities. The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any

location, under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

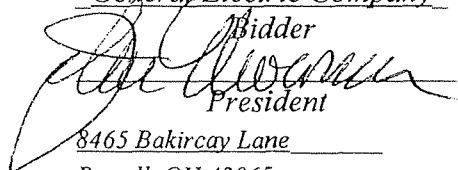
Section 6. Successors and Assigns. Each and all of the covenants and agreements herein contained shall extend to and be binding upon the successors and assigns of the parties hereto. The Owner and Bidder acknowledge that this Contract is assigned to the Government, acting through the Administrator, for security purposes under the Owner's mortgage and security instrument.

Section 7. Independent Contractor. The Bidder shall perform the work as an independent contractor, not as a subcontractor, agent, or employee of the Owner. Upon acceptance of this Proposal, the successful Bidder shall be the Contractor and all references in the Proposal to the Bidder shall apply to the Contractor.

Section 8. Approval by the Administrator: This contract does X , does not , require approval of the Administrator. No acceptance of a Proposal for a contract upon which approval of the Administrator is required shall become effective until the contract has been approved by the Administrator; provided that no obligation shall arise hereunder unless such approval is given within one-hundred twenty (120) days after the date set for the opening of the proposals. The acceptance of a Proposal for a contract upon which approval of the Administrator is not required shall become effective the date of acceptance by the Owner.

ATTEST: 
Secretary

Dated 6-17-05

General Electric Company
 Bidder

President
 8465 Bakircay Lane
 Powell, OH 43065
Address

The Proposal must be signed with the full name of the Bidder. If the Bidder is a partnership, the Proposal must be signed in the partnership name by a partner. If the Bidder is a corporation, the Proposal must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

REDACTED

Subject to the approval of the Administrator, if approval of the Administrator is required, the Owner hereby accepts the foregoing Proposal of the Bidder, General Electric Company for the following Equipment:

one turbine generator for Spurlock 4 as per G. E. Proposal # IPS -101748
dated April 2004 with amended pages dated June 2005 - attachment 5.

for a total contract price of \$ [REDACTED] dollars.)

East Ky Power Cooperative, Inc

Owner

By [Signature]
President

Della E. Dameron, Founder
Secretary
behalf of the Corporate Secretary

November, 30, 2004

Date of Contract

Project Commercial Documents - ATTACHMENT 1

1. CONTRACT DOCUMENTS

The following documents shall comprise the Contract, and shall together be referred to as the "Agreement" or the "Contract Documents":

REDACTED

- (a) RUS Contract Form 198 and Attachments
- (b) General Terms & Conditions of Sale ("GC")
- (c) Seller's Technical Proposal- IPS-101748 dated April 2004, with amended pages dated June 2005.

In the event of any conflict between the terms of the Contract Documents, the provisions of the document first listed above shall prevail.

All capitalized terms not otherwise defined herein shall have the meanings given to them in the General Conditions of the Contract.

2. SCOPE OF SUPPLY

The Seller shall design, manufacture, and deliver the Equipment and Services as set forth in Seller's Technical Proposal IPS 101748, April 2004, with revision pages dated June 2005, (the "Proposal"), subject to the terms and conditions as set forth in the Contract Documents.

3. CONTRACT PRICE

In consideration of the supply of the Equipment and Services, the Purchaser agrees to pay Seller [REDACTED] for such amount as may be subsequently established through changes to the Scope of Supply.

4. SCHEDULED SHIPMENT DATE

Seller shall make shipment of the Major Components (defined in GC 1, item I) of the Unit no later than July 31, 2006 ("Scheduled Shipment Date"). The Scheduled Shipment Date will be based on ex-factory shipments for U.S. sourced equipment and arrival at port of import in North America for non-U.S. sourced equipment.

In the event any of the Major Components of the Unit are shipped after the Scheduled Shipment Date for reasons attributable to Seller and not excused elsewhere in this Agreement, the Seller shall pay as liquidated damages ("Delay Liquidated Damages") and not as a penalty, a sum calculated in accordance with the table below until all Major Components of the Unit are shipped.

DAYS	Liquidated Damages
1-15	\$0 per day
16-30	\$5,000 per day
Over 30	\$10,000 per day

The Seller's aggregate liability hereunder for Delay Liquidated Damages shall not exceed ten percent (10%) of the Contact Price of the Unit. The Delay Liquidated Damages to be paid by and the corrective action to be taken by Seller for delays in Shipment shall be Purchaser's exclusive remedy and Seller's sole obligation for such delay.

Notwithstanding the foregoing, Seller shall have no liability to Purchaser for the foregoing Delay Liquidated Damages for delay in shipment of the Major Components of the Unit if Purchaser is not impacted by such delay.

5. PERFORMANCE GUARANTEES

The Seller guarantees the output and heat rate of the Unit ("Performance Guarantees") as set forth in Seller's Technical Proposal. If the Unit fails to achieve the Performance Guarantees, the Seller shall pay to the Purchaser as liquidated damages ("Performance Liquidated Damages"), and not as a penalty, a sum calculated in accordance with the table below:

Criterion	Performance Liquidated Damages
Output	\$400 for each kW below the applicable Performance Guarantee
Gross Heat Rate	\$17,500 for each Btu/kWh above the applicable Performance Guarantee

The Seller's aggregate liability hereunder for Performance Liquidated Damages shall not exceed ten percent (10%) of the Contract Price of the Unit. Subject to Attachment 4 Article GC.13, the Performance Liquidated Damages to be paid by and the corrective action to be taken by Seller for deficiencies in performance shall be Purchaser's exclusive remedy and Seller's sole obligation for such deficiencies.

In the event the output and heat rate of the Unit exceeds the Performance Guarantees set forth in Seller's Technical Proposal, then the Buyer shall pay Seller as a bonus calculated in accordance with the table below:

Criterion	Bonus Payments
Output	\$400 for each kW below the applicable Performance Guarantee
Gross Heat Rate	\$17,500 for each Btu/kWh above the applicable Performance Guarantee

6. GOVERNING LAW

This Agreement shall be construed and interpreted in accordance with the laws of the State of New York, USA, provided that any provision of such law invalidating any provision of this Agreement or modifying the intent of the Parties as expressed in the terms of this Agreement shall not apply.

7. ENTIRE AGREEMENT

This Agreement represents the entire agreement between the Parties and supersedes in its entirety all prior agreements concerning the subject matter hereof, and no modification, amendment, revision, waiver, or other change shall be binding on either Party unless consented to in writing by the Party's authorized representative. Any oral or written representation, warranty, course of dealing, or trade usage not contained or referenced herein shall not be binding on either Party. Each Party agrees that it has not relied on, or been induced by, any representations of the other Party not contained in this Agreement.

**ATTACHMENT 2
PAYMENT SCHEDULE**

Month	Event	ST 101748	Cumulative
Nov-04	LOI Effective Date	2.00%	2.00%
Dec-04	LOI#2 Effective Date	0.00%	2.00%
Jan-05		0.00%	2.00%
Feb-05		0.00%	2.00%
Mar-05		0.00%	2.00%
Apr-05		0.00%	2.00%
May-05		0.00%	2.00%
Jun-05	Contract	14.00%	16.00%
Jul-05	Calendar Payment	2.00%	18.00%
Aug-05	"	3.00%	21.00%
Sep-05	"	3.00%	24.00%
Oct-05	"	4.00%	28.00%
Nov-05	"	4.00%	32.00%
Dec-05	"	6.00%	38.00%
Jan-06	"	10.00%	48.00%
Feb-06	"	12.00%	60.00%
Mar-06	"	12.00%	72.00%
Apr-06	"	3.00%	75.00%
May-06	"	0.00%	75.00%
Jun-06	"	0.00%	75.00%
Jul-06	ST1 RTS	20.00%	95.00%
Aug-06	ST1 Final Payment	5.00%	100.00%
TOTAL		100.00%	100.00%

Payment Schedule Notes:

Progress Payments are Due on the 25th of the Indicated Month and will be invoiced 30 days in advance.

Milestone Payments will be invoiced 30 days prior to the planned milestone and are due net 30 days.

Final payment will be invoiced at shipment and is due net 30 days.

Remit payments via Wire Transfer, instructions provided on each invoice.

The payment due June 25, 2005 can be invoiced 10 days in advance of the June 25th, 2005 due date.

ATTACHMENT 3

TERMINATION SCHEDULE

<u>Month</u>	<u>Event</u>	<u>ST 101748</u>
Nov-04	Signed Agreement	2.00%
Dec-04	Eng. Release ST1	2.00%
Jan-05	ODM-ST1	2.00%
Feb-05		2.00%
Mar-05		2.00%
Apr-05		12.00%
May-05		14.00%
Jun-05		16.00%
Jul-05		18.00%
Aug-05		21.00%
Sep-05		24.00%
Oct-05		28.00%
Nov-05		32.00%
Dec-05		38.00%
Jan-06		48.00%
Feb-06		60.00%
Mar-06		72.00%
Apr-06		75.00%
May-06		84.00%
Jun-06		98.00%
Jul-06	ST1 RTS	100.00%
Aug-06		100.00%
TOTAL		100.00%

Termination Schedule

Termination for convenience shall occur upon written notification and payment of the charges per the termination schedule.

Termination ramps the first day of each indicated month unless indicated differently on the termination schedule.

Termination ramps referenced to events occur upon achievement of the event, independent of the calendar date

Upon the earlier of shipment or title transfer of an any subset of a Unit, the termination amount for that Unit's subset

Cumulative termination amounts listed reflect the minimum termination value, which may be increased by title passage of any subset of a Unit

Title to terminated steam turbine-generator equipment passes to Buyer upon payment of termination charges.

ATTACHMENT 4

GENERAL TERMS & CONDITIONS OF SALE

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ARTICLE GC.1 DEFINITIONS

- A. "Affiliate" shall mean any entity that controls, is controlled by, or is under common control with, either Party.
- B. "Change Order" shall mean a written change order describing the Change, identifying the writing as a Change Order, and setting out adjustments, if any, in the Contract Price, and any other provision of this Agreement which is affected, shall be entered into by the Parties in order for the Change to be effective.
- C. "Contract Documents" shall mean the Agreement (RUS Form 198), Attachment 1 Agreement Form, Attachment 2 Payment Schedule, Attachment 3 Termination Schedule, Attachment 4 General Terms and Conditions of Sale, and Attachment 5 Seller's Technical Proposal.
- D. "Contract Price" shall be the total firm price as stated in the Agreement for the Equipment and Services to be provided in accordance with the terms of the Contract Documents
- E. "Day" or "Days," shall mean a calendar day or days of twenty four (24) hours each.
- F. "Delay Liquidated Damages" shall mean the Purchaser's sole remedy and Seller's sole obligation for Seller's failure to deliver the Major Components of the Unit by the Scheduled Shipment Date.
- G. "Delivery Point" shall mean the delivery free on board carrier ("FOB") to the nearest accessible rail siding to the Project Site for all rail shipments and free on board carrier to the nearest accessible common carrier point at the Project Site for all truck shipments, or Storage Facility should Owner not be ready to accept delivery at the Site."
- H. "Equipment" or "Unit" shall mean the steam turbine generator and associated accessories as set forth in Seller's Technical Proposal.
- I. "Major Components" shall have the meaning of the turbine and generator excluding all material shipped direct ("MSD") to the Site.
- J. The term "Parties" shall mean the Purchaser and Seller, collectively, and "Party" shall mean the Purchaser or Seller, individually.
- K. "Performance Guarantees" shall mean the Seller's output and heat rate guarantees for the Unit as set forth in Seller's Technical Proposal.
- L. "Performance Liquidated Damages" shall mean the Purchaser's sole remedy and Seller's sole obligation for Seller's failure to achieve the Performance Guarantees.
- M. "Proposal" shall mean Seller's Technical Proposal 101748, , dated April 2004, with amended pages dated June 2005..

N. "Purchaser" shall mean East Kentucky Power Cooperative, a Kentucky corporation and having a primary place of business at 4775 Lexington Road, Winchester, KY.

O. "Scheduled Shipment Date" shall mean the date upon which the Seller plans to ship the last of the Major Components from the Seller's factory to the Delivery Point or to storage as set forth in Article GC.6.

P. "Seller" shall mean the General Electric Company, a New York corporation having a primary place of business at One River Road, Schenectady, New York 12345.

Q. "Services" shall mean the training and installation support to be furnished by Seller under this Agreement in accordance with Tab 15 of the Proposal.

R. "Site" or "Project Site" shall mean the Spurlock Plant Addition.

S. "Subcontractor(s)" or "Supplier(s)" shall mean any corporation, partnership, or individual having a contract with Seller to supply material, equipment, labor, goods, or services to Seller in connection with its obligations under this Agreement.

ARTICLE GC.2 PAYMENTS

Payments shall be made in accordance with the Payment Schedule referenced in and incorporated into the Agreement (Attachment 2). Payment Terms are net thirty (30) days from receipt of invoice, remitted via wire transfer. Wire transfer instructions shall be provided on each invoice. Late payments shall be subject to an interest charge equal to two percent in excess of the prime rate as published in the Wall Street Journal, at that time.

If a change in the Unit results in a change in the Contract Price, all future installments shall be adjusted accordingly. However, if the change results in a decrease in the Contract Price, then the payments previously made shall be retained by Seller and applied to subsequent payments as they become due.

For those payments which are tied to milestones, it is understood and agreed if Seller completes the milestone in advance of what is indicated on the Payment Schedule, in no event shall the Purchaser be required to make payment for such milestone prior to ninety (90) days from the milestone date identified on the Payment Schedule.

ARTICLE GC.3 TAXES

The Contract Price includes all applicable corporate and individual taxes that are measured by net income or profit imposed by any governmental authority of any country on Seller, its employees or Subcontractors due to the execution of this Contract. The Contract Price also includes all taxes, import duties, and fees required by any governmental authority of any country necessary to import and to

deliver the foreign manufactured Equipment to the Project Site.

Notwithstanding the foregoing, the Contract Price does not include any sales, use, excise, value added, gross receipts, consumption, franchise, property, or similar taxes imposed by any federal, state, or local government in the United States of America. Purchaser shall pay all such taxes.

ARTICLE GC.4 CHANGES

Purchaser shall have the right to request that Seller consider changes to the Unit, whether such Change request be modifications, alterations or additions. Seller shall prepare a written description of the proposed Change for the Purchaser's review and approval. All changes under this contract shall be subject to mutual agreement. Seller shall not be obliged to proceed with any Change until mutual agreement has been reached.

In the event Purchaser contemplates making a Change, Purchaser shall so advise Seller. Within ten (10) days (unless otherwise extended by mutual agreement) following written receipt of such advice, Seller shall advise Purchaser of the possibility of performing the requested Change, and shall submit to Purchaser a lump sum firm estimate relating to the proposed Change, including:

- (i) a technical description of the proposed Change in such detail as the Purchaser may reasonably require,
- (ii) a lump sum estimate of the adjustment (increase or decrease) in the Contract Price, if any, caused by the proposed Change,
- (iii) all potential effect(s), if any, such Change has on the project schedule, or any other schedule or dates for performance by Seller hereunder, and
- (iv) all potential effect(s), if any, such Change on Seller's ability to comply with any of its obligations hereunder, including Seller's warranties and performance guarantees.

Purchaser shall have ten (10) days from the date of receipt of such information to either approve or disapprove, in writing, the proposed Change, or to request additional time to consider the proposed Change. Purchaser shall have the right to approve such Change and direct Seller, in writing, to perform the Change. If Purchaser approves the Change, then Purchaser shall execute a Change Order which shall operate as an amendment to this Contract. Upon the execution of the Change Order, Seller shall immediately proceed to perform as set forth in the Change Order.

For Seller initiated changes, the Seller shall submit to the Purchaser a written description of the proposed Change and follow the same procedure as set forth above for Purchaser initiated changes.

ARTICLE GC.5 INSPECTION AND FACTORY TESTS

Upon Purchaser's request and Seller's prior written consent, Purchaser's inspector shall be provided access to Seller's facilities to obtain information on production progress and make inspections. Such access will be limited to areas concerned with the Unit and shall not include restricted areas where work of a proprietary nature is being conducted. Notwithstanding anything to the contrary, the Seller shall, at its sole discretion, determine the extent of Purchaser access to Seller's facilities and the extent of factory testing to be conducted on the Equipment.

Subject to the conditions set forth in this Article GC.5, the Seller will make reasonable efforts to obtain for Purchaser's inspector access to Subcontractors' facilities for the purposes described above.

Purchaser's inspection of the Unit or its failure to inspect does not relieve Seller of its obligation to fulfill the requirements of this Agreement, nor is it to be construed as acceptance by the Purchaser.

ARTICLE GC.6 TITLE TRANSFER, RISK OF LOSS, SHIPMENT TO STORAGE

Title to the Equipment or materials to be shipped from within the United States shall pass to Purchaser when made available for shipment from the manufacturer's factory. Title to the Equipment or materials to be shipped from a country other than the United States shall pass to Purchaser at the port of export immediately after the Equipment or materials have been cleared for export. Title to Services shall pass to Purchaser as performed. Notwithstanding passage of title, Seller shall remain responsible for risk of loss or damage to the Equipment and materials incorporated therein until delivered to the agreed upon Delivery Point or delivery to storage should Purchaser not be ready to accept the Equipment when scheduled per this Contract..

If any part of the Equipment cannot be shipped to Purchaser when ready due to any cause not attributable to Seller, Seller may ship such Equipment to storage. If such Equipment is placed in storage, including storage at the facility where manufactured, the following conditions shall apply: (i) title and all risk of loss shall thereupon pass to Purchaser if it had not already passed; (ii) any amounts otherwise payable to Seller upon delivery or shipment shall be payable upon presentation of Seller's invoice(s) and certification of cause for storage; (iii) all expenses incurred by Seller, such as for preparation for and placement into storage, handling, inspection, preservation, insurance, storage, removal charges and any taxes shall be payable by Purchaser upon submission of Seller's invoice(s); and (iv) when conditions permit and upon payment of all amounts due hereunder, Seller shall resume delivery of the Equipment to the Delivery Point.

ARTICLE GC.7 EXCUSABLE DELAYS

Seller shall not have any liability or be considered to be in breach or default of its obligations under this Contract to the extent that performance of such obligations is delayed or prevented, directly or indirectly, due to: (i) causes beyond its reasonable control; or (ii) acts of God, acts (or failures to act) of governmental authorities, fires, severe weather conditions, earthquakes, strikes or other labor

disturbances, floods, war (declared or undeclared), epidemics, civil unrest, riots, delays in transportation, or car shortages; or (iii) acts (or omissions) of Purchaser including failure to promptly: (a) provide Seller with information and approvals necessary to permit Seller to proceed with work immediately and without interruption, or (b) comply with the terms of payment; or (iv) shipment to storage under Article GC.6; or (v) inability on account of causes beyond the reasonable control of Seller to obtain necessary materials, necessary components or services. Seller shall notify Purchaser of any such delay. The date of delivery or of performance shall be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of such excusable delay. Seller shall notify Purchaser, as soon as practicable, of the revised Scheduled Shipment Date. If Seller is delayed by acts or omissions of Purchaser, or by the prerequisite work of Purchaser's other contractors or suppliers, Seller shall also be entitled to an equitable price adjustment.

If such excusable delay extends for more than one hundred eighty (180) days and the Parties have not agreed upon a revised basis for continuing the work at the end of the delay, including adjustment of the price, then either Party (except where delay is caused by Purchaser, in which event only Seller), upon thirty (30) days written notice, may terminate the Contract with respect to the portion of Equipment to which title has not yet passed, whereupon Purchaser shall promptly pay Seller termination charges as set forth in attachment 3 of the Agreement.

ARTICLE GC.8 WARRANTY

Seller warrants to Purchaser that (i) the Equipment to be delivered hereunder shall be designed and fit for the purpose of generating electric power when operated in accordance with Seller's specific operation instructions and, in the absence thereof, in accordance with generally accepted operation practices of the electric power producing industry and shall be free from defects in material, workmanship and title; and (ii) Services shall be performed in a competent, diligent manner in accordance with any mutually agreed specifications.

The foregoing warranties (except as to title) for the Equipment shall apply to defects which appear during the Warranty Period which shall expire upon the first to occur of the following: (a) 12 months from initial operation of the Unit or (b) 30 months following the delivery of the last Major Component of the Unit to the Delivery Point.

If the Equipment delivered or Services performed hereunder do not meet the above warranties during the Warranty Period, Purchaser shall promptly notify Seller in writing and make the Equipment available promptly for correction. Seller shall thereupon correct any defect by, at its option, (i) reperforming the defective Services, (ii) repairing the defective part of the Equipment or (iii) by making available necessary replacement parts F.O.B. factory, freight prepaid to the Project Site. Seller shall provide Technical Advisory Services reasonably necessary for any such repair of the Equipment, but Seller shall not be responsible for removal or replacement of structures or other parts of the facility. If a defect in the Equipment or part thereof cannot be corrected by Seller's reasonable efforts, the Parties will negotiate an equitable adjustment in price with respect to such Equipment or part thereof. The condition of any tests shall be mutually agreed upon and Seller shall be notified of, and may be represented at, all tests that

may be made.

Any reperfomed service or repaired or replacement part furnished under this warranty shall carry warranties on the same terms as set forth above, except that the warranty period shall be for a period of one year from the date of such reperformance, repair or replacement. In any event the warranty period and Seller's responsibilities set forth herein for such repaired or replacement part shall expire upon the first to occur of the following: (a) 24 months from Initial Operation of the Unit or (b) 36 months following the Scheduled Shipment Date of the Unit.

Seller does not warrant the Equipment or any repaired or replacement parts against normal wear and tear, including that due to environment or operation, including steam quality which does not conform to Seller's specifications for steam purity, frequent starting, or erosion, corrosion or material deposits from fluids for which the Unit is not designed. The warranties and remedies set forth herein are further conditioned upon (i) the proper storage, installation, operation, and maintenance of the Equipment and conformance with the operation instruction manuals (including revisions thereto) provided by Seller and/or its subcontractors, as applicable and (ii) repair or modification pursuant to Seller's instructions or approval. Purchaser shall keep proper records of operation and maintenance during the Warranty Period. These records shall be kept in the form of logsheets and copies shall be submitted to Seller upon its request. Seller does not warrant any equipment or services of others designated by Purchaser where such equipment or services are not normally supplied by Seller.

The preceding paragraphs of this Article set forth the exclusive remedies for all claims based on failure of or defect in the Equipment and Services provided under this Contract, whether the failure or defect arises before or during the Warranty Period and whether a claim, however instituted, is based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise. The foregoing warranties are exclusive and are in lieu of all other warranties and guarantees whether written, oral, implied or statutory. NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.

ARTICLE GC.9 PATENTS

Seller agrees to indemnify and hold harmless Purchaser from any claim of any third party that any Equipment manufactured by Seller and furnished hereunder infringes any registered patent, copyrights, and trademarks. If Purchaser notifies Seller promptly of the receipt of any such claim, does not take any position adverse to Seller regarding such claim and gives Seller information, assistance and exclusive authority to settle and defend the claim, Seller shall, at its own expense and option, either (i) settle or defend the claim or any suit or proceeding and pay all damages and costs awarded in it against Purchaser, or (ii) procure for Purchaser the right to continue using the Equipment, or (iii) modify the Equipment so that it becomes non-infringing, or (iv) replace the Equipment with non-infringing Equipment; or (v) remove the infringing Product and refund the price. If, in any suit arising from such a claim, the continued use of the Equipment for the purpose intended is forbidden by any court of competent jurisdiction, Seller shall at its option take one or more of the actions under (ii), (iii); (iv) or (v) above. The foregoing states the entire liability of Seller for patent infringement of any Equipment.

The above paragraph shall not apply to (i) any Equipment which is manufactured to Purchaser's design or (ii) the use of any equipment furnished under this Contract in conjunction with any other apparatus or material. As to any Equipment or use described in the preceding sentence, Seller assumes no liability whosoever for patent infringement.

ARTICLE GC.10 INSURANCE

PER modified RUS 198 Form

ARTICLE GC.11 INDEMNIFICATION

Subject to the provisions of Article GC.12, Seller agrees to indemnify and hold harmless Purchaser from any physical damage to the property of third parties or injury to persons, including death, to the extent resulting directly from the willful misconduct or negligence of Seller or its officers, servants, agents, employees, and/or assigns while engaged in activities under this Contract. Purchaser shall likewise indemnify and hold harmless Seller from any physical damage to property of third parties or injury to persons, including death, to the extent resulting directly from the negligence of Purchaser, its officers, servants, agents, employees, and/or assigns, while engaged in activities relating to this Contract. In the event such damage or injury is caused by the joint or concurrent negligence of Seller and Purchaser, the loss shall be borne by each Party in proportion to its negligence.

ARTICLE GC.12 LIMITATION OF LIABILITY

The total liability of Seller, on all claims of any kind, whether in contract, warranty, indemnity, tort (including negligence), strict liability, or otherwise, arising out of the performance or breach of the Contract or use of any Equipment shall not exceed the Contract Price. All liability under this Contract shall terminate four (4) years after the shipment of the last Major Component of the Unit.

In no event, whether as a result of breach of contract, warranty, indemnity, tort (including negligence), strict liability, or otherwise, shall Seller or its Subcontractors or Suppliers be liable for loss of profit or revenues, loss of use of the Equipment or any associated equipment, cost of capital, cost of substitute equipment, facilities, services or replacement power, downtime costs, claims of Purchaser's customers for such damages, or for any special, consequential, incidental, indirect or exemplary damages and Purchaser shall indemnify Seller against such claims of Purchaser's customers.

Purchaser covenants and agrees that it shall obtain from the Owner or in the event it seeks to transfer or assign the Equipment and Services to any other third party that it shall, as a condition to such transfer or assignment, cause Owner or such third party to acknowledge and accept the restrictions and limitations afforded under this Contract for the benefit of Seller and its Subcontractors, including the provisions of this Article GC.12.

If Purchaser cannot obtain for Seller from any subsequent purchasers the protections specified in this Article GC.12, Purchaser shall indemnify, defend and hold Seller harmless from and against any and all claims made by any subsequent purchasers of the Equipment or Services against Seller for loss or damage arising out of the performance or non-performance of the Equipment or Services provided under this Contract.

If Seller furnishes Purchaser with advice or assistance concerning any products, systems or work which is not required pursuant to the Contract Documents, the furnishing of such advice or assistance will not subject Seller to any liability, whether in contract, warranty, indemnity, tort (including negligence), strict liability or otherwise.

For the purposes of this Article GC.12, the term "Seller" shall mean Seller, its affiliates, Subcontractors and Suppliers of any tier, and their respective agents and employees, whether individually or collectively.

The provisions of this Article GC.12 shall prevail over any conflicting or inconsistent provisions contained in any of the documents comprising this Contract, except to the extent that such provisions further restrict Seller's liability.

ARTICLE GC.13 PERFORMANCE GUARANTEES

Seller guarantees the performance of the Unit as set forth in the Contract Documents. A performance test shall be run to demonstrate that Seller's Performance Guarantees have been achieved. This test shall be performed using the Seller's testing protocol (ASME PTC 6S) and shall be conducted immediately following the start-up period after Seller has conducted final check-out of the Unit. If Seller's Performance Guarantees have not been achieved, Seller shall pay Performance Liquidated Damages as indicated in the Agreement. However, Seller will be allowed a cure period of 180 days immediately following the initial performance test during which Performance Liquidated Damages will be deferred, and Seller shall make all repairs, replacements, or other corrections as required for the Unit to meet the Performance Guarantees. During the cure period, Purchaser shall make the Unit available to Seller for such corrective action. At the end of the cure period, if the Unit does not meet Seller's Performance Guarantees, Seller shall then pay Purchaser the appropriate Performance Liquidated Damages. Seller may at any time during the cure period, at its option, pay Purchaser the appropriate Performance Liquidated Damages.

The initial performance test shall be performed by Purchaser at its cost. The Seller shall be notified of, and shall be represented at all such tests. If a re-test is required and to the extent Seller was the cause of such re-test, the actual cost of the retest will be borne by the Seller. The actual cost of the re-test shall mean (i) cost of special test personnel or special operating personnel provided by the Purchaser, (ii) cost of special instrumentation and equipment (including rental cost) and including required calibration of the instrumentation, and (iii) Seller's personnel cost, but in no event whatsoever will Seller be responsible for the cost of fuel, normal operating personnel, or any other such cost associated with the conducting of such re-test unless specifically noted above.

In conducting the initial performance test or re-tests, the performance of the Unit shall not be adjusted for degradation until such Unit has operated in excess of one hundred (100) hours. The Seller's degradation curve shall be used to determine the adjustment for Unit output and Unit heat rate.

The Seller shall be allowed ninety (90) days from first roll of the Unit to complete Unit checkouts, including adjustments or corrections to make the Unit ready for testing prior to the initial performance test.

In the event Seller is liable to Purchaser for liquidated damages in accordance with the provisions herein for the failure to meet the guaranteed Unit output or guaranteed Unit heat rate, the calculation of such liquidated damages shall include a credit when the actual equipment output or heat rate of the Unit is demonstrated to have been better than the guarantee values. Any credit shall be calculated using the same per kW and/or per BTU/kWh dollar values by which the liquidated damages are calculated. Seller's credit or liability shall be the net calculation.

ARTICLE GC.14 TERMINATION FOR CAUSE

Purchaser shall have the right to terminate this Contract for cause in the event of the following:

(i) Seller becomes insolvent, Seller makes an assignment for the benefit of creditors, or a receiver or trustee is appointed for the benefit of Seller's creditors, or Seller makes a filing for protection from creditors under any bankruptcy or insolvency laws;

(ii) Seller substantially breaches and fails to comply or perform its material obligations hereunder (for which this Contract does not provide exclusive remedies);

Prior to termination for breach, Purchaser shall provide Seller with written notice of the nature of such breach and Purchaser's intention to terminate for Seller's default subject to reasonable opportunity for Seller to cure such breach. If Seller fails: (i) to commence and diligently to pursue cure of such failure within thirty (30) days after receipt of such notice or within such extended period as is considered reasonable by the Parties, or (ii) to provide reasonable evidence that such default does not in fact exist, Purchaser may terminate the Contract.

If Purchaser terminates this Contract as provided above, Purchaser will be entitled to complete the work as set forth in the Contract Documents, with the excess cost above the Contract Price at the expense of the Seller. Seller will not be entitled to any further payments until the cost of completing such work has been ascertained. If the total of such sums, when added to the total amounts already paid to Seller, exceeds what would otherwise have been paid to Seller, Seller will pay the excess to Purchaser.

If Purchaser fails to fulfill any payment conditions as set forth in the Contract, Seller shall have the right to suspend all work on the Unit after twenty (20) days of non-payment of undisputed amounts and any cost incurred by Seller in accordance with such suspension (including storage costs) shall be payable by Purchaser upon submission of Seller's invoice(s). Performance of Seller's obligations shall be extended for a period of time to overcome the effects of such suspension. If Purchaser does not correct such failure within sixty (60) days, Seller shall have the right to terminate this Contract for cause in respect to the portion of the Unit which title has not passed.

If Seller terminates this Contract as provided above, Seller's termination charges shall be paid by Purchaser as set forth in Appendix B of the Agreement.

ARTICLE GC.14A TERMINATION FOR CONVENIENCE

The Purchaser shall have the right to terminate this Agreement at any time for its convenience by giving written notice thereof to Seller and prompt payment of termination charges in accordance with the Termination Schedule attached to this Agreement in Appendix B.

ARTICLE GC.15 SELLER'S PROPRIETARY INFORMATION

At the time of furnishing confidential or proprietary information, Seller will expressly designate by label, stamp, or other written communication that the information or documentation furnished is confidential. Purchaser agrees (i) to treat such information as confidential, (ii) to restrict the use of such information to matters relating to Seller's performance of the Contract, and (iii) to restrict access to such information to employees of Purchaser and its agents whose access is necessary in the implementation of the Contract. Confidential information will not be reproduced without Seller's prior written consent, and all copies of written information will be returned to Seller upon request except to the extent that such information is to be retained by Purchaser pursuant to the Contract.

The foregoing restrictions do not apply to information which: (i) is contained in a printed publication which was released to the public by Seller prior to the date of the Contract; (ii) is, or becomes, publicly known otherwise than through a wrongful act of Purchaser, its employees, or agents; (iii) is in possession of Purchaser, its employees, or agents prior to receipt from Seller, provided that the person or persons providing the same have not had access to the information from Seller; (iv) is furnished to others by Seller without restrictions similar to those herein on the right of the receiving party to use or disclose; or (v) is approved in writing by Seller for disclosure by Purchaser, its agents or employees to a third party.

ARTICLE GC.16 GLOBAL SOURCING

Seller reserves the right in its discretion to obtain, source, subcontract, manufacture, fabricate and assemble the Equipment and any of its components and systems outside the United States or from nondomestic concerns, or both; it being understood that the quality standards and warranties of the Seller under the Contract shall be adhered to in all cases irrespective of source and all sourcing shall be consistent with all applicable laws and regulations.

ARTICLE GC.17 ASSIGNMENT

The Parties shall not delegate or assign any or all of their duties or rights under this Contract without prior written consent from the other Party; such consent shall not be unreasonably withheld. Notwithstanding the terms of this provision, the Parties may delegate or assign their duties or rights to any Affiliate or subsidiary, provided that, with respect to Purchaser's delegate or assignee, such delegate or assignee shall own or operate the Units for the purposes of generating electric power for revenue to the Purchaser's electrical power generation grid. Such assignment shall in no way relieve the assigning Party of its obligations under this Contract.

ARTICLE GC.18 COMPLIANCE WITH LAWS, CODES AND STANDARDS

The Contract Price is based on Seller's design, manufacture and delivery of the Equipment and performance of the Services pursuant to (i) its design criteria, manufacturing processes and procedures and quality assurance program, (ii) those portions of industry specifications, codes and standards in effect as of the date of Seller's Proposal to Purchaser, which Seller has deemed applicable to the Equipment and the Services, and (iii) the United States Federal, State and local laws and rules in effect on the date of Seller's Proposal to Purchaser.

The Contract Price will be equitably adjusted to reflect additional costs incurred by Seller resulting from (i) a change in standards and regulations described in items (ii) or (iii) above after the date of Seller's Proposal to Purchaser which affect the Equipment and Services and (ii) changes required to comply with regulatory or industrial requirements in the location where the Equipment will be installed and the Services performed. Purchaser shall advise Seller of requirements affecting the Equipment or Services performed by Seller resulting from the applicability of any laws, rules or regulations in the location where the Equipment will be installed and the Services performed. Reasonable adjustments will be made to the project schedule as may be appropriate to comply with the foregoing. If Seller determines that a change is not possible, Seller will so notify Purchaser and Purchaser may terminate this Contract in accordance with Article GC.14 or direct completion without change and assume responsibility for obtaining any necessary waivers.

Notwithstanding the foregoing paragraphs, no modification in price will be made as a result of any general change in the manufacturing facilities of Seller resulting from the imposition of any requirements by any Federal, State or local governmental entity.

Purchaser agrees not to re-export US origin goods supplied by Seller, other than in and to the ultimate country of destination specified in Buyer's order and/or declared as the country of ultimate destination on Seller's invoice, except as may be permitted by the US export laws and regulations, as may be amended. Purchaser agrees that it will not re-export to the countries designated in Export Administration Regulations Section 779.4(f), any technical data or software (nor the direct product thereof) provided to Buyer by Seller in connection with this Contract, unless prior written authorization is obtained from the US Export Administration.

The Equipment and Services sold hereunder are not intended for application (and shall not be used) within or directly connected to a nuclear facility, whether for starting or backup power or otherwise, and Purchaser warrants that it shall not use the Equipment or Services for such purposes, or permit others to use the Equipment or Services for any such purposes. If, in breach of the foregoing, any such use occurs, Seller shall have no liability for any nuclear or other damage, injury or contamination, and Purchaser shall indemnify Seller, its affiliates and suppliers of every type and tier against any such liability, whether arising as a result of breach of contract, warranty, indemnity, tort (including negligence), strict liability or otherwise.

Seller shall comply with all applicable state and federal laws, including but not limited to, the Fair Labor

Standards Act of 1938, as amended, the Occupational Safety and Health Act of 1970 (OSHA), laws related to non-segregated facilities and equal employment opportunity (including the seven paragraphs appearing in Sec. 202 of Executive Order 11246, as amended), and all standards, rules, regulations, and orders issued pursuant to such state and federal laws.

ARTICLE GC.19 SUSPENSION

It is expressly understood by the Parties that the Purchaser shall have no right of suspension under this Agreement.

ARTICLE GC.20 DISPUTE RESOLUTION

Any controversy, dispute or difference between the Parties to this Contract, if not amicably settled by the Parties with thirty (30) days following notice of dispute, shall be referred to senior management of the Parties for resolution. In the event the dispute has not been resolved within forty five (45) days following referral to senior management, or such longer period as the Parties may mutually agree, then either Party may then pursue their legal remedies.

ARTICLE GC.21 MISCELLANEOUS PROVISIONS

Except as provided in the Article entitled "Limitation of Liability", these provisions are for the benefit of the Parties hereto and not for any other third party. Waiver by either Party of any right under this Agreement shall not be deemed a waiver by such Party of any other right hereunder.

This Contract represents the entire agreement between the Parties and supersedes in its entirety all prior agreements concerning the subject matter hereof, and no modification, amendment, revision, waiver, or other change shall be binding on either Party unless consented to in writing by the Party's authorized representative. Any oral or written representation, warranty, course of dealing, or trade usage not contained or referenced herein shall not be binding on either Party. Each Party agrees that it has not relied on, or been induced by, any representations of the other Party not contained in this Contract.

The invalidity in whole or in part of any part of this Contract shall not affect the validity of the remainder of the Contract.

The following Articles shall survive termination of this Contract: Article GC.3 (Taxes), Article GC.8 (Warranty), Article GC.9 (Patents), Article GC.11 (Indemnification), Article GC.12 (Limitation of Liability), Article GC.15 (Seller's Proprietary Information), Article CG.18 (Compliance With Laws, Codes, & Standards), and Article GC.21 (Miscellaneous Provisions).

Conformed Contract

for

**Contract F6 – Feedwater Heaters
Spurlock Station - Unit 4
Maysville, Kentucky**

Between

**East Kentucky Power Cooperative
Winchester, Kentucky**

And

**Yuba Heat Transfer
Tulsa, Oklahoma**

September 2005



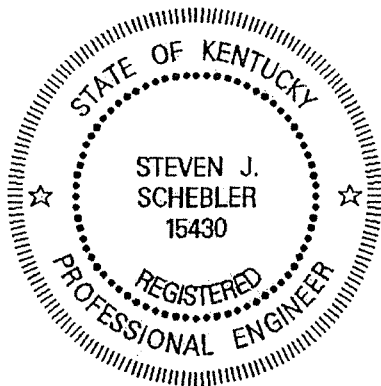
Stanley Consultants INC.

Project Manual

for

**Contract F6 – Feedwater Heaters
Spurlock Station - Unit 4
Maysville, Kentucky**

**East Kentucky Power Cooperative
Winchester, Kentucky**



Steven J. Schebler

January 17, 2005



A Stanley Group Company
Engineering, Environmental and Construction Services - Worldwide

CONTRACT F6 – FEEDWATER HEATERS
SPURLOCK STATION - UNIT 4
MAYSVILLE, KENTUCKY


PSC Request 1a.
Attachment No. 2
PAGE 3

EAST KENTUCKY POWER COOPERATIVE
WINCHESTER, KENTUCKY

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DRAWING 17500-X14 - CYCLE FLOW DIAGRAM, REV. 0	Bound Herein

REDACTED

Development of Contract Price

- A. Lump Sum Base Bid Price and Total Contract Price 
- B. Unit Adjustment Prices in accordance with Section 00410, Article 4, paragraph 4.1.2:
1. Site Services of Service Engineer.
 2. Transportation, travel time, and out-of-pocket expenses for travel of Service Engineer to Site.

See attached Yuba Heat Transfer Field Engineer Rates.

Yuba

Rev. 02/11/2004

YUBA HEAT TRANSFER A DIVISION OF CONNELL LIMITED PARTNERSHIP

DOMESTIC TRAVEL FIELD ENGINEER RATES

1. Field Engineer charges are a fixed fee based on a normal 8-hour working day.
2. Overtime charges:
 - a. All daily time over 8 hours during the normal workweek (Monday through Friday) shall be considered overtime.
 - b. All time on Saturday shall be considered overtime.
 - c. All time on Sundays and Yuba holidays shall be considered premium time.

LONG TERM – RATE SCHEDULE

<u>Year</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
Fixed Fees/8 Hr. Day	\$1,265.00	\$1,370.00	\$1,430.00	\$1,495.00
Overtime/Hr.	\$218.00	\$235.00	\$245.00	\$260.00
Premium Time/Hr.	\$273.00	\$294.00	\$307.00	\$325.00

Notes:

- a. Travel time will be billed as straight time.
- b. Travel and living expenses will be invoiced at cost, plus 5%.
- c. Timesheets will be provided daily for approval by the customer's representative.
- d. In no event shall either party be liable to the other for consequential, special or incidental damages arising in any way out of the performance of this contract.

U.S. Department of Agriculture
Rural Utilities Service

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EQUIPMENT CONTRACT

NOTICE AND INSTRUCTIONS TO BIDDERS

1. Sealed proposals for the furnishing and delivering f.o.b. plant site near Maysville, Kentucky

known as Spurlock Unit 4
of equipment for the rural electric project of East Kentucky Power Cooperative,
RUS designation Kentucky 59 Fayette, (hereinafter called the "Owner") will be received by the Owner on or
before 4:00 o'clock P.M., February 4, 2005, at its office
at P.O. Box 0707, 4775 Lexington Rd, Winchester, KY 40392-0707 at which time and place the proposals will be
publicly opened and read.

X privately opened. The Owner, subsequent to the bid opening, may elect to conduct clarifying discussions
with the bidder to resolve any questions related to the substance of the bidder's proposal and to arrive at a final
price for a responsive bid.

Any proposals received subsequent to the time specified will be promptly returned to the Bidder unopened.
2. **Obtaining Documents.** The Plans, Specifications, and Construction Drawings, together with all necessary
forms and other documents for bidders may be obtained from the Owner, or from the Engineer _____
_____ at the latter's office at P.O. Box 0707, 4775 Lexington Rd, Winchester, KY 40392-0707
upon the payment of \$0.00, which payment will not be subject to refund. The Plans,
Specifications, and Construction Drawings may be examined at the office of the Owner or at the office of the
Engineer.
3. **Manner of Submitting Proposals.** ~~Proposals and all supporting instruments must be submitted on the forms
furnished by the Owner and must be delivered in a sealed envelope addressed to the Owner. The name and
address of the Bidder and the date and hour of the opening of bids must appear on the envelope in which the
Proposal is submitted. Proposals must be completed in ink or typewritten. No alterations or interlineations will
be permitted, unless made before submission, and initialed and dated. The successful Bidder will be required to
execute two additional counterparts of the Proposal. See Section 00210-Supplementary Instructions to Bidders.~~
4. **Due Diligence.** Prior to the submission of the Proposal, the Bidder shall make and shall be deemed to have
made a careful examination of the Plans, Specifications, Construction Drawings, and form of Proposal, and
shall review the location and nature of the proposed construction, the transportation facilities, the kind and
character of soil and terrain to be encountered, the kind of facilities required before and during the construction
of the project, general local conditions, environmental and historic preservation considerations and all other
matters that may affect the cost and time of completion of the work. Bidder will be required to comply with all
federal, state, and local laws, rules, and regulations applicable to its performance, including those pertaining to
the licensing of contractors, and the Anti Kick-Back Act of 1986 (41 U.S.C. 51 et seq).
5. Proposals will be accepted only from those prequalified bidders invited by the Owner to submit a proposal.
6. **The Time for Delivery of the Equipment** is of the essence of the Contract and shall be as specified by the
Engineer in the Proposal.

7. **Evaluation Factors.** In estimating the lowest cost to the Owner as one of the factors in deciding the award of the Contract, the Owner will consider, in addition to the price quoted in the Proposals, the following:

None

8. **Debarment Certification.** The Bidder must provide to the Owner a suspension and debarment certificate in the form attached hereto.

9. **Contract is Entire Agreement.** The Contract to be effected by the acceptance of the Proposal shall be deemed to include the entire agreement between the parties thereto, and the Bidder shall not claim any modifications thereof resulting from any representation or promise made at any time by any officer, agent or employee of the Owner or by any other person.

10. **Minor Irregularities.** The Owner reserves the right to waive minor irregularities or minor errors in any Proposal, if it appears to the Owner that such irregularities or errors were made through inadvertence. Any such irregularities or errors so waived must be corrected on the Proposal in which they occur prior to the acceptance thereof by the Owner.

11. **Bid Rejection.** The Owner reserves the right to reject any or all Proposals.

12. **Definition of Terms.** The terms "Administrator" and "Engineer" as used throughout this Contract shall be as defined in Article VI, Section 1, of the Proposal.

East Kentucky Power Cooperative

Owner

By Randy J. J. J.

Vice President, Production

Title

January 17, 2005

Date

PROPOSAL

TO:

East Kentucky Power Cooperative, Winchester, Kentucky

(hereinafter called the "Owner").

ARTICLE I--GENERAL

Section 1. Offer to Furnish and Deliver. *The undersigned (hereinafter called the "Bidder") hereby proposes to furnish and deliver the equipment (hereinafter called the "Equipment") described in the Plans, Specifications, and Construction Drawings for the following prices: shown on attached Section 00410-Proposal Form.*

Item: Contract F6 – Feedwater Heaters Price: _____

Item: _____ Price: _____

The prices of Equipment set forth herein shall include the cost of delivery to:

plant site near Maysville, Kentucky

The prices set forth herein do not include any sums which are or may be payable by the Bidder on account of taxes imposed by any taxing authority upon the sale, purchase or use of the Equipment. If any such tax is applicable to the sale, purchase or use of the Equipment hereunder, the amount thereof shall be added to the purchase price and paid by the Owner.

Section 2. Materials and Equipment. *The Bidder agrees to furnish and use in the construction of the project under this Proposal, in the event the Proposal is accepted, only such "fully accepted," "conditionally accepted," and "technically accepted" materials and equipment which have been accepted by RUS as indicated in the current RUS Informational Publication 202-1, "List of Materials Acceptable for Use on Systems of RUS Electrification Borrowers," including revisions adopted prior to the Bid Opening. The use of "conditionally accepted" or "technically accepted" materials and equipment requires prior consent by the Owner or Engineer.*

The Bidder will purchase all materials and equipment outright and not subject to any conditional sales agreements, bailment, lease or other agreement reserving unto the seller any right, title or interest therein. All such materials and equipment shall be new.

Section 3. Description of Contract. *The Notice and Instructions to Bidders, Plans, Specifications, and Construction Drawings, which by this reference are incorporated herein, together with the Proposal and Acceptance constitute the Contract. The Plans, Specifications, and Construction Drawings, including maps, special drawings, and approved modifications in standard specifications are attached hereto and identified as follows:*

Project Manual for Contract 6 – Feedwater Heaters

Section 4. Due Diligence. *The Bidder has made a careful examination of the Plans, Specifications, and Construction Drawings attached hereto, and has become informed as to the location and nature of the proposed construction, the transportation facilities, the kind and character of soil and terrain to be*

- b. *No payment shall be due while the Bidder is in default in respect of any of the provisions of this Contract and the Owner may withhold from the Bidder the amount of any claim by a third party against either the Bidder or the Owner based upon an alleged failure of the Bidder to perform the work hereunder in accordance with the provisions of this Contract.*

ARTICLE IV--PARTICULAR UNDERTAKINGS OF THE BIDDER

The provisions of this Article IV apply to any work performed by the Bidder at the project site.

Section 1. Protection to Persons and Property. *The Bidder shall at all times take all reasonable precautions for the safety of employees on the project and of the public, and shall comply with all applicable provisions of federal, state, and local laws, rules, and regulations and building and construction codes, in addition to the safety rules and procedures of the Owner.*

The following provisions shall not limit the generality of the above requirements:

- a. *The Bidder shall at no time and under no circumstances cause or permit any employee of the Bidder to perform any work upon energized lines, or upon poles carrying energized lines, unless otherwise specified in the Notice and Instructions to Bidders.*
- b. *The Bidder shall transport and store all material in facilities and vehicles which are designed to protect the material from damage. The Bidder shall ensure that all vehicles, trailers, and other equipment used comply with all applicable licensing, traffic, and highway requirements.*
- c. *The Bidder shall conduct its operations to cause the least possible obstruction of public highways.*
- d. *The Bidder shall make good and fully repair all injuries and damages to the project or any portion thereof under the control of the Bidder by reason of any act of God or other casualty or cause whether or not the same shall have occurred by reason of the Bidder's negligence.*
- (i) *To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Bidder's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Bidder's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Bidder, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Bidder liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner.*
- (ii) *To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all liens and claims filed or asserted against Owner, its directors, officers, and employees, or Owner's property or facilities, for services performed or materials or equipment furnished by Bidder, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. Bidder shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Owner promptly when it has done so. If Bidder does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Owner shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Bidder.*
- (iii) *Bidder shall provide to Owner's satisfaction evidence of Bidder's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company.*

- e. Upon violation by the Bidder of any of the provisions of this section, after written notice of such violation given to the Bidder by the Engineer or the Owner, the Bidder shall immediately correct such violation. Upon failure of the Bidder so to do the Owner may correct such violation at the Bidder's expense. Provided, however, that the Owner may, if it deems it necessary or advisable, correct such violation at the Bidder's expense without such prior notice to the Bidder.

Section 2. Insurance. The Bidder shall take out and maintain throughout the period of its operations at the project site the following types and minimum amounts of insurance:

- a. Workers' compensation and employers' liability insurance, as required by law, covering all its employees who perform any of the obligations of the Bidder under the contract. If any employer or employee is not subject to the workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.
- b. Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than \$1 million each occurrence, limits for property damage of not less than \$1 million each occurrence, and \$1 million aggregate for accidents during the policy period. A single limit of \$1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.
- c. Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than \$1 million per person and \$1 million each occurrence, and property damage limits of \$1 million for each occurrence. A single limit of \$1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsection "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

The Owner shall be named as Additional Insured on all policies of insurance required in subsections "b" and "c" of this Section.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Bidder shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

ARTICLE V--REMEDIES

Section 1. Liquidated Damages. The time of the delivery of the Equipment is of the essence of the Contract. Should the Bidder neglect, refuse or fail to deliver the Equipment within the time herein agreed upon, after giving effect to extensions of time, if any, herein provided, then, in that event and in view of the difficulty of estimating with exactness damages caused by such delay, the Owner shall have the right to deduct from and retain out of such moneys which may be then due, or which may become due and payable to the Bidder the sum of five thousand dollars (\$5000.00) per day for each and every day that such delivery is delayed beyond the specified time, as liquidated damages and not as a penalty; if the amount due and to become due from the Owner to the Bidder is insufficient to pay in full any such liquidated damages, the Bidder shall pay to the Owner the amount necessary to effect such payment in full: Provided, however, that the Owner shall promptly notify the Bidder in writing of the manner in which the amount retained, deducted or claimed as liquidated damages was computed **up to a maximum of ~~140,000~~ 10% of the Contract Price.**

Section 2. Cumulative Remedies. *Every right or remedy herein conferred upon or reserved to the Owner or the Government or the Administrator shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election: Provided, however, that the provisions of Section 1 of this Article shall be the exclusive measure of damages for failure by the Bidder to deliver the Equipment within the time herein agreed upon.*

ARTICLE VI--MISCELLANEOUS

Section 1. Definitions.

- a. *The term "Administrator" shall mean the Administrator of the Rural Utilities Service of the United States of America and his or her duly authorized representative or any other person in whom or authority in which may be vested the duties and functions which the Administrator is now authorized by law to perform.*
- b. *The term "Engineer" shall mean the Engineer employed by the Owner, to provide engineering services for the project and said Engineer's duly authorized assistants and representatives.*

Section 2. Materials and Supplies. *In the performance of this contract there shall be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States or in any eligible country, and only such manufactured articles, materials, and supplies as have been manufactured in the United States or in any eligible country substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States or in any eligible country; provided that other articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly in writing authorize such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. For the purposes of this section, an "eligible country" is any country that applies with respect to the United States an agreement ensuring reciprocal access for United States products and services and suppliers to the markets of that country, as determined by the United States Trade Representative. The Bidder agrees to submit to the Owner such certificates with respect to compliance with the foregoing provision as the Administrator from time to time may require.*

Section 3. Patent Infringement. *The Bidder shall hold harmless and indemnify the Owner ^{and Engineer} from any and all claims, suits and proceedings for the infringement of any patent or patents covering Equipment purchased hereunder.*

Section 4. Compliance with Laws. *The Bidder shall comply with all federal, state, and local laws, rules, and regulations applicable to its performance under the contract and the construction of the project. The Bidder acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the Anti Kick-Back Act of 1986 (41 U.S.C. 51 et seq), and 18 U.S.C. §§ 286, 287, 641, 661, 874, 1001, and 1366, as amended.*

The Bidder represents that to the extent required by Executive Orders 12549 (3 CFR, 1985-1988 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), Debarment and Suspension, and 7 CFR part 3017, it has submitted to the Owner a duly executed certification in the form prescribed in 7 CFR part 3017.

The Bidder represents that, to the extent required, it has complied with the requirements of Pub. L. 101-121, Section 319, 103 Stat. 701, 750-765 (31 U.S.C. 1352), entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and any rules and regulations issued pursuant thereto.

Section 5. Equal Opportunity Provisions.

a Bidder's Representations.

The Bidder represents that:

It has X, does not have , 100 or more employees, and if it has, that it has X, has not , furnished the Equal Employment Opportunity-Employers Information Report EEO-1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 of September 24, 1965, and Title VII of the Civil Rights Act of 1964.

The Bidder agrees that it will obtain, prior to the award of any subcontract for more than \$10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

The Bidder agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this Contract will amount to more than \$10,000, the Bidder will file such report, as required by law, and notify the owner in writing of such filing prior to the Owner's acceptance of this Proposal.

b. Equal Opportunity Clause. During the performance of this Contract, the Bidder agrees as follows:

- (1) The Bidder will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Bidder will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotions or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The Bidder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.*
- (2) The Bidder will, in all solicitations or advertisements for employees placed by or on behalf of the Bidder, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.*
- (3) The Bidder will send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Bidder's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.*
- (4) The Bidder will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.*
- (5) The Bidder will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.*
- (6) In the event of the Bidder's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part, and the Bidder may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965,*

and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as provided by law.

(7) *The Bidder will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by the rules, regulations, or order of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Bidder will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, that in the event Bidder becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Bidder may request the United States to enter into such litigation to protect the interests of the United States.*

c. *Certificate of Nonsegregated Facilities. The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.*

Section 9. Successors and Assigns. *Each and all of the covenants and agreements herein contained shall extend to and be binding upon the successors and assigns of the parties hereto. The Owner and Bidder acknowledge that this Contract is assigned to the Government, acting through the Administrator, for security purposes under the Owner's mortgage and security instrument.*

Section 10. Independent Contractor. *The Bidder shall perform the work as an independent contractor, not as a subcontractor, agent, or employee of the Owner. Upon acceptance of this Proposal, the successful Bidder shall be the Contractor and all references in the Proposal to the Bidder shall apply to the Contractor.*

Section 11. Approval by the Administrator: This contract does X, does not X, require approval of the Administrator. No acceptance of a Proposal for a contract upon which approval of the Administrator is required shall become effective until the contract has been approved by the Administrator; provided that no obligation shall arise hereunder unless such approval is given within one-hundred twenty (120) days after the date set for the opening of the proposals. The acceptance of a Proposal for a contract upon which approval of the Administrator is not required shall become effective the date of acceptance by the Owner.

ATTEST:

Susan Campbell
Secretary

Dated 2-16-05

Yuba Heat Transfer
Bidder
Armin R. Haisel
Vice President

2121 N. 16th E Ave, Tulsa
Address OK 74116

The Proposal must be signed with the full name of the Bidder. If the Bidder is a partnership, the Proposal must be signed in the partnership name by a partner. If the Bidder is a corporation, the Proposal must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

REDACTED

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ACCEPTANCE

Subject to the approval of the Administrator, if approval of the Administrator is required, the Owner hereby accepts the foregoing Proposal of the Bidder, yuba Heat Transfer

for the following Equipment:

Feedwater Heaters as per Contract F6

for a total contract price of   (dollars.)

East Kentucky Power Cooperative, Inc
Owner

By Roy M. Galk
President

Della E. Dawson, Forandon
Secretary
behalf of the Corporate Secretary

March 8, 2005
Date of Contract

U.S. Department of Agriculture
Rural Utilities Service

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**BUY AMERICAN
CERTIFICATE**

With respect to compliance with the second paragraph of the Rural Electrification Act of 1938, being Title IV of the Work Relief and Public Works Appropriation Act of 1938 (Public Resolution No. 122, 75th Congress, approved June 21, 1938).

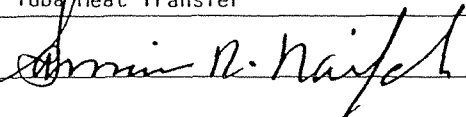
Rural Utilities Service Project Spurlock Station – Unit 4

The undersigned, being, the Contractor

in a certain contract No. F6- Feedwater Heaters dated _____, _____, between the undersigned² and East Kentucky Power Cooperative, Inc.

does hereby certify that in the performance of the said contract there have been used or furnished no unmanufactured articles, materials or supplies which have not been mined or produced in the United States³ or in any eligible country and no manufactured articles, materials or supplies which have not been manufactured in the United States or in any eligible country substantially all from articles, materials or supplies mined, produced or manufactured, as the case may be, in the United States or in any eligible country, except to the extent that compliance with the second paragraph of the Rural Electrification Act of 1938, being Title IV of the Work Relief and Public Works Appropriation Act of 1938 (Public Resolution No. 122, 75th Congress, approved June 21, 1938) has been waived by the Administrator of the Rural Utilities Service. For purposes of this certificate, an "eligible country" is any country that applies with respect to the United States an agreement ensuring reciprocal access for United States products and services and suppliers to the markets of that country, as determined by the United States Trade Representative.⁴

Yuba Heat Transfer

By 

Date February 3, _____, 20 05

¹ Insert "Contractor," "Subcontractor," "Seller," Or "Material Supplier," as the case may be

² Insert the name of the RUS Borrower.

³ United States means United States, its territories and possessions.

⁴ A current list of eligible countries may be obtained by contacting RUS.

1.01 EXAMINATION OF BIDDING DOCUMENTS AND POINT OF DESTINATION

- A. Upon request, Owner will provide Bidder access to the Point of Destination to conduct such investigations, examinations, tests and studies as Bidder deems necessary for submission of a Bid.
- B. It is the responsibility of each Bidder before submitting a Proposal to:
 - 1. Examine and carefully study the Bidding Documents, including any Addenda and the related data identified in the Bidding Documents.
 - 2. If specified, or if, in Bidder's judgment, any local condition may affect cost, progress or the furnishing of Equipment and Special Services, visit the Point of Destination to become familiar with the local conditions.
 - 3. Become familiar with and satisfy Bidder as to all federal, state, and local Laws and Regulations that may affect cost, progress, or the furnishing of Equipment and Special Services.
 - 4. Carefully study and correlate the information known to Bidder, and information and observations obtained from Bidder's visits, if any, to the Point of Destination, with the Bidding Documents.
 - 5. Promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder; and
 - 6. Determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for furnishing Equipment and Special Services.
- C. Submission of a Proposal will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, that without exception the Proposal is premised upon furnishing Equipment and Special Services required by the Bidding Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities and discrepancies that Bidder has discovered in the Bidding Documents and the written resolutions thereof by Engineer are acceptable to Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for furnishing Equipment and Special Services.

1.02 INTERPRETATIONS

- A. Questions about the meaning or intent of the Bidding Documents shall be submitted to Engineer in writing.
- B. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by Engineer as having received the Bidding Documents.
- C. Questions received less than 5 days prior to the date for opening of Proposals will not be answered. Only answers in the Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- D. Addenda may be issued to clarify, correct, or change the Bidding Documents as deemed advisable by Owner or Engineer.
- E. Owner will not consider requests for time extensions of the bidding period.

1.03 "OR-EQUAL" ITEMS

- A. The Contract, if awarded, will be on the basis of material and equipment specified or described in the Bidding Documents without consideration of possible "or-equal" items. Whenever it is specified or described in the Bidding Documents that an "or-equal" item of material or equipment may be furnished or used by Contractor if acceptable to Engineer, application for such acceptance will not be considered by Engineer until after the Effective Date of the Agreement. The procedure for submittal of any such application by Contractor and consideration by Engineer is set forth in the General Conditions and may be supplemented in the General Requirements.

1.04 SUBMITTAL OF PROPOSALS

- A. Each prospective Bidder is furnished one copy of the Bidding Documents. Proposal Form is to be completed and submitted with Section 00434 – Bidder Data and Information.
- B. Original Proposal signed in blue ink, one copy of Proposal, and all supporting instruments must be submitted on the forms furnished by the Owner and must be delivered in a sealed envelope addressed to the Owner at the following address:

East Kentucky Power Cooperative
Attention: Mr. Jim Shipp-Craig Johnson
4775 Lexington Road
P. O. Box 707
Winchester, KY 40392-0707
Telephone: 606.883. 3367 859-744.4812
Fax: 859-744-6008606.883.3438
E-mail: shipp@ekpc.comcraig.johnson@ekpc.coop

- C. Two duplicate copies of the Proposals and all supporting instruments must be submitted on the forms furnished by the Owner and must be delivered in a sealed envelope addressed to the Engineer at the following address:

Stanley Consultants, Inc.
Attention: Mr. Larry Shell
225 Iowa Avenue
Muscatine, IA 52761
Telephone: 563.264.6455
Fax: 563.264.6658
E-mail: shelllarry@stanleygroup.com

- D. The name and address of the Bidder and the date and hour of the opening of bids must appear on the envelope in which the Proposal is submitted. Proposals must be filled in in ink or typewriter. No alterations or interlineations will be permitted, unless made before submission and initialed and dated
- E. Proposal shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Proposal Form.
- F. Facsimile copies of Proposals will not be accepted.

1.05 BASIS OF BID; COMPARISON OF BIDS

~~A. Single Lump Sum:~~

- ~~1. Bidder shall submit a Proposal on a lump sum basis as set forth in the Proposal Form.~~
- ~~2. For determination of the apparent low Bidder, Proposals will be compared on the basis of the lump sum.~~
- ~~3. Discrepancies between words and figures will be resolved in favor of words.~~

A. Base Bid with Alternates:

- 1. "Base Bid" is the sum stated in the Bid for which the Bidder offers to furnish the Goods and Special Services described in the Bidding Documents.
- 2. Bidder shall submit a Bid for the lump sum Base Bid, and include a separate Alternate Bid for each alternate described in the Bidding Documents as set forth in the Bid Form.
- 3. Discrepancies between words and figures will be resolved in favor of the words.

B. Unit prices:

1. For each unit price item on the Proposal Form, Bidder shall enter the unit price Bid, and shall enter the computation of the respective quantity times the Bidder's unit price for that item. Bidder shall compute and enter in the space provided on the Proposal Form, the total of the products of quantity and unit price Proposal for each unit price item.
2. For determination of the apparent low Bidder, Proposals will be compared on the basis of the total of the products of the estimated quantity of each item and unit price Proposal for that item.
3. Discrepancies between the indicated result of the multiplication of the units of an item and the unit price for that item will be resolved in favor of the arithmetically correct result. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the arithmetically correct sum. Discrepancies between words and figures will be resolved in favor of the words.

1.06 MODIFICATION OR WITHDRAWAL OF BID

- A. Proposal may be modified or withdrawn by a document executed in the manner that a Proposal must be executed, and delivered to the place where Proposals are to be submitted prior to the date and time for the opening of Proposals.
- B. If, within 24 hours after Proposals are opened, any Bidder files a signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, it may withdraw its Bid, and its Proposal security will be returned. Thereafter, if the Equipment and Special Services are rebid, that Bidder will be disqualified from further bidding on the Equipment and Special Services to be furnished under the Contract Documents.

END OF SECTION 00210

PROJECT AND CONTRACT IDENTIFICATION

This Proposal pertains to Contract EF6 – Feedwater Heaters for the ~~E. A. Gilbert Unit 3~~ Spurlock Unit 4 Project, for East Kentucky Power Cooperative.

Article 1. BID RECIPIENT

1.1 This Proposal is submitted to: East Kentucky Power Cooperative
Attn: Mr. ~~Jim Shipp~~ Craig Johnson
P. O. Box 0707
4775 Lexington Road
Winchester, KY 40392-0707

1.2 The undersigned Bidder proposes and agrees, if this Proposal is accepted, to enter into a Contract with Owner in the form included in the Bidding Documents to furnish the Equipment and Special Services as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Proposal and in accordance with the other terms and conditions of the Bidding Documents.

Article 2. BIDDER'S ACKNOWLEDGMENTS

2.1 Bidder accepts all of the terms and conditions of the Notice and Instructions to Bidders, including without limitation those dealing with the disposition of Proposal security. The Proposal will remain subject to acceptance for 90 days after the Proposal opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

2.2 Bidder accepts the provisions of the Equipment Contract as to liquidated damages in the event of its failure to furnish the Equipment and Special Services in accordance with the schedule set forth in the Equipment Contract.

Article 3. BIDDER'S REPRESENTATIONS

3.1 In submitting this Bid, Bidder represents, as set forth in the Agreement, that:

3.1.1 Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of all which is hereby acknowledged.

Addendum No.	Addendum Date
<u>NONE</u>	_____
_____	_____
_____	_____

3.1.2 If specified, or if in Bidder's judgment, any local condition may affect cost, progress or the furnishing of Equipment and Special Services, Bidder has visited the Point of Destination and become familiar with and is satisfied as to the local conditions that may affect cost, progress, or the furnishing of Equipment and Special Services.

3.1.3 Bidder is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress and the furnishing of Equipment and Special Services.

3.1.4 Bidder has carefully studied and correlated the information known to Bidder, and information and observations obtained from Bidder's visits, if any, to the Point of Destination with the Bidding Documents

REDACTED

- 3.1.5 Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
- 3.1.6 Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for furnishing Equipment and Special Services for which this Proposal is submitted.
- 3.1.7 Bidder further represents that this Proposal is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any individual or entity to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.

Article 4. BASIS OF BID

4.1 Bidder will furnish the Equipment and Special Services in accordance with the Contract Documents for the following price(s):

4.1.1 Lump Sum Base Bid Proposal Price:


(words)

_____ )
(figures)

Base Bid Price includes services of Service Engineer for 4 working days and 1 round trips to site.

4.1.2 Unit Adjustment Prices: Required Base Proposal quantities of the items listed below are set forth in the Specifications. If increases or decreases in these quantities occur, the Contract Price is to be adjusted by Change Order on the basis of the following. Adjustment prices are subject to acceptance by Owner, and rejection of one or more adjustment prices will not invalidate acceptance of this Bid.

Item	Unit Adjustment Price	Price
Site services of Service Engineer	per day	Please see attached Field Service Rates Sheet
Transportation, travel time, and out-of-pocket expenses for travel of Service Engineer to Site	Per round trip	Please see attached Field Service Rates Sheet

Article 5. TIME OF COMPLETION

5.1 Bidder agrees that the furnishing of Equipment and Special Services will conform to the schedule set forth in Equipment Contract.

5.1 Equipment is scheduled for operation during the month of ~~November 2004~~ April 2008.

Article 6. ATTACHMENTS TO THIS BID

- 6.1 The following documents are attached to and made a condition of this Bid:
- 6.1.1 Exceptions and Clarifications: Attach a separate sealed envelope labeled "Exceptions and Clarifications" to outside of sealed Bid, containing listing on Bidder's letterhead of all exceptions and clarifications to Contract Documents, referencing page number and paragraph of Contract Documents involved. If there are no exceptions or clarifications, include statement to such effect in Proposal envelope. Excessive exceptions or clarifications may render Proposal unresponsive. Bidder agrees to all provisions contained in Contract Documents unless specifically listed as an exception or clarification. If Bidder submits drawings, printed forms, standard statements, or other revisions which conflict with Contract Documents, the Contract Documents will prevail.
 - 6.1.2 Section 00434 – Bidder Data and Information.
 - 6.1.3 Data requested in Section 01335, Document Submittal Schedule.
 - 6.1.4 Completed Feedwater Heater Specification Sheets.

END OF SECTION 00410

ARTICLE 1- DEFINITIONS AND TERMINOLOGY1.01 *Defined Terms*

A. Whenever used in the Bidding Requirements or Equipment Contract and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to the singular or plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Equipment Contract include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*—Those written or graphic instruments issued prior to the opening of Proposals in accordance with the Bidding Requirements which clarify or change the Bidding Requirements or the proposed Equipment Contract.

2. *Application for Payment*—The form acceptable to Owner which is used by Contractor in requesting progress and final payments and which is accompanied by such supporting documentation as is required by the Contract Documents.

3. *Bidder*—A person who submits a Proposal directly to Owner.

4. *Bidding Documents*—The Bidding Requirements and the proposed Equipment Contract (including all Addenda).

5. *Bidding Requirements*—The Notice and Instructions to Bidders, Form of Proposal security, if any, and Proposal Form with any supplements.

6. *Change Order*—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision to the Equipment Contract or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Contract.

7. *Claim*—A written demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract.

8. *Contract*—The entire and integrated written agreement between Owner and Contractor concerning the Equipment and Special Services. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

9. *Contract Documents*—The Contract Documents establish the rights and obligations of the parties and include the Equipment Contract, RUS Form 198, Rev. 2-04, Addenda (which pertain to the Contract Documents), Contractor's Proposal (including documentation accompanying the Proposal and any post Proposal documentation submitted prior to the Notice of Award), the Notice to Proceed, the Bonds, these General Conditions, the Specifications and the Drawings as the same are more specifically identified in the Contract Documents, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and Engineer's written interpretations and clarifications issued on or after the Effective Date of the Contract. Only printed or hard copies of the items listed in the Contract are part of the Contract Documents. Files in electronic media format of text, data, graphics, and the like are not part of the Contract Documents, and may not be relied on by Contractor. Approved Shop Drawings and other Contractor's submittals are not part of the Contract Documents.

10. *Contract Price*—The moneys payable by Owner to Contractor for furnishing the Equipment and Special Services in accordance with the Equipment Contract as stated in the Contract.

11. *Contract Times*—The times stated in the Contract by which the Equipment must be delivered and Special Services must be furnished.

12. *Contractor*—The person furnishing the Equipment and Special Services.

13. *Drawings*—That part of the Equipment Contract prepared or approved by Engineer, which graphically shows the scope, intent, and character of the Equipment and Special Services to be furnished by Contractor.

14. *Effective Date of the Contract*—The date indicated in the Contract on which it becomes effective, but if no such date is indicated, it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.

15. *Engineer*—Stanley Consultants, Inc.

16. *Equipment*—The tangible and movable personal property that is described in the Equipment Contract, regardless of whether the property is to be later attached to realty.

17. *Field Order*—A written order issued by Engineer which requires minor changes in the Equipment or Special Services but which does not involve a change in the Contract Price or Contract Times.

18. *General Requirements*—Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

19. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

20. *Milestone*—A principal event specified in the Equipment Contract relating to an intermediate completion date or time prior to the Contract Times.

21. *Notice of Award*—The written notice by Owner to the apparent Successful Bidder stating that upon timely compliance by the apparent Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Contract.

22. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times commence to run and on which Contractor shall start to perform under the Contract.

23. *Owner*—The person or public entity purchasing the Equipment and Special Services.

24. *Point of Destination*—The specific address of the location where delivery of the Equipment shall be made as stated in the Contract.

25. *Project*—The total undertaking of which the Equipment and Special Services to be provided under the Contract are a part.

26. *Project Manual*—The bound documentary information prepared, for bidding and furnishing the Equipment and Special Services. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

27. *Proposal*—An offer or bid submitted on the prescribed form setting forth the prices for the Equipment and Special Services to be provided.

28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Equipment and which establish the standards by which such portion of the Equipment or Special Services will be judged.

29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Equipment or Special Services.

30. *Special Services*—Services associated with the Equipment to be furnished by Contractor as required by the Equipment Contract.

31. *Specifications*—That part of the Equipment Contract consisting of written technical descriptions of materials, equipment, systems, standards and workmanship as applied to the furnishing of the Equipment and Special Services, and certain administrative details applicable thereto.

32. *Successful Bidder*—The lowest responsible Bidder submitting a responsive Bid, to whom Owner makes an award.

33. *Written Amendment*—A written statement modifying the Equipment Contract, signed by Owner and Contractor on or after the Effective Date, of the Contract and normally dealing with the administrative aspects of the Equipment Contract.

34. *Unit Price Work or Special Services*—Work or Special Services to be paid for on the basis of unit prices.

1.02 *Terminology*A. *Intent of Certain Terms or Adjectives*

1. The Equipment Contract includes the terms "as allowed," "as approved," "as ordered," "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer as to, the Equipment, or Special Services. It is intended that such exercise of professional judgment, action or determination will be solely to evaluate, in general, the Equipment or Special Services for compliance with the requirements of and information in the Equipment Contract and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Equipment Contract (unless there is a specific statement indicating otherwise). The use of any such term or adjective, shall not be effective to assign to Engineer any duty or authority to supervise or direct the furnishing of Equipment or Special Services or any duty or authority to undertake responsibility contrary to any other, provision, of the Equipment Contract.

2. Unless stated otherwise in the Equipment Contract, words or phrases which have a well-known technical or construction industry or

trade meaning are used in the Equipment Contract in accordance with such recognized meaning.

3. The word "non-conforming" when modifying the words "Equipment" or "Special Services", refers to Equipment or Special Services that fail to conform to the Equipment Contract.

4. The word "receipt" when referring to the Equipment, shall mean the physical taking and possession by the Owner under the conditions specified in Paragraph 8.01.B.3.

B. Day

1. The word "day" shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 2 - PRELIMINARY MATTERS

2.01 Delivery of Bonds - Not used.

2.02 Copies of Documents

A. Owner shall furnish Contractor up to five copies of the Equipment Contract. Additional copies will be furnished upon request at the cost of reproduction.

2.03 Commencement of Contract Times; Notice to Proceed

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the ninetieth day after the day of Proposal opening or the thirtieth day after the Effective Date of the Contract, whichever date is earlier.

2.04 Designated Representatives

A. Owner and Contractor shall each designate its representative at the time the Contract is signed. Each representative shall have full authority to act on behalf of and make binding decisions in any matter arising out of or relating to the Contract.

2.05 Before Starting Fabrication/Assembly of Equipment

A. Contractor's Review of Equipment Contract: Before commencing performance of the Contract, Contractor shall carefully study and compare the Equipment Contract and check and verify pertinent requirements therein and, if specified, all applicable field measurements. Contractor shall promptly report in writing to Owner and Engineer any conflict, error, ambiguity or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from Engineer before proceeding with any work affected thereby.

2.06 Progress Schedule

A. Contractor will provide a standard manufacturing milestone schedule for Owner's record within 30 days after receipt of the Contract. The schedule will be updated further at the request of Owner.

B. The progress schedule will be acceptable to Owner and Engineer if it provides an orderly progression of the submittals, tests, and deliveries to completion within the specified Milestones and the Contract Times. Such acceptance will not impose on Owner or Engineer responsibility for the progress schedule, for sequencing, scheduling, or progress of the work nor interfere with or relieve Contractor from Contractor's full responsibility therefor. Such acceptance shall not be deemed to acknowledge the reasonableness and attainability of the schedule.

2.07 Preliminary Conference

A. Within 20 days after the Contract Times start to run, a conference attended by Contractor, Owner, Engineer and others as appropriate will be held to establish a working understanding among the parties as to the Equipment and Special Services and to discuss the schedule referred to in Paragraph 2.06.A., procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

ARTICLE 3 -EQUIPMENT CONTRACT DOCUMENTS: INTENT AND AMENDING

PSC Request 1a.

Attachment No. 2

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3.01 Intent

A. The Equipment Contract Documents are complementary, what is called for by one is as binding as if called for by all.

B. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Equipment Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided, whether or not specifically called for, at no additional cost to Owner.

C. Clarifications and interpretations of, or notifications of minor variations and deviations in, the Equipment Contract Documents, will be issued by Engineer as provided in Article 9.

3.02 Laws and Regulations, Standards, Specifications and Codes

A. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws and Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws and Regulations in effect at the time of opening of Proposals (or on the Effective Date of the Contract, if there were no Proposals), except as may be otherwise specifically stated in the Equipment Contract.

B. No provision of any such standard, specification, manual or code, or any instruction of a supplier shall be effective to change the duties or responsibilities of Owner or Engineer, or any of their subcontractors, consultants, agents, or employees from those set forth in the Equipment Contract, nor shall any such provision or instruction be effective to assign to Owner or Engineer, or any of their consultants, agents, or employees any duty or authority to supervise or direct the performance of Contractor's obligations or any duty or authority to undertake responsibility inconsistent with the provisions of the Equipment Contract.

3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies: If, during the performance of the Contract, Contractor discovers any conflict, error, ambiguity; or discrepancy within the Equipment Contract or between the Equipment Contract and any provision of any Law or Regulation applicable to the performance of the Contract or of any standard, specification, manual or code, or of any instruction of any supplier, Contractor shall promptly report it to Owner in writing for Engineer's review. Contractor shall not proceed with the furnishing of the Equipment or Special Services affected thereby until an amendment to or clarification of the Equipment Contract has been issued. Contractor shall not be liable to Owner or Engineer for failure to report any such conflict, error, ambiguity, or discrepancy unless Contractor knew or reasonably should have known thereof.

B. Resolving Discrepancies: Except as may be otherwise specifically stated in the Equipment Contract, the provisions of the Equipment Contract shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Equipment Contract and:

1. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Equipment Contract); or

2. the provisions of any Laws or Regulations applicable to the furnishing of the Equipment and Special Services (unless such an interpretation of the provisions of the Equipment Contract would result in violation of such Law or Regulation).

3.04 Amending and Clarifying Equipment Contract

A. The Equipment Contract may be amended to provide for additions, deletions, and revisions to the Equipment or Special Services or to modify the terms and conditions thereof by a Written Amendment or a Change Order.

B. The requirements of the Equipment Contract may be supplemented, and minor variations and deviations in the Equipment or Special Services not affecting Contract Price or Contract Times may be

authorized, by one or more of the following ways: 1) a Field Order; 2) Engineer's approval of a Shop Drawing pursuant to Paragraph 5.06.D.2; or 3) Engineer's written interpretation or clarification.

ARTICLE 4 - BONDS AND INSURANCE

4.01 *Bonds - Not used.*

4.02 *Insurance See RUS Form 198, Article IV, Section 2.*

A. Owner, Engineer, and their agents will be included as a certificate holder or additional insured if Contractor is required to enter the Point of Destination to provide service.

ARTICLE 5 - CONTRACTOR'S RESPONSIBILITIES

5.01 *Supervision and Superintendence*

A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures used in performing its obligations. Contractor shall be responsible to see that the completed Equipment and Special Services conform to the Equipment Contract.

5.02 *Labor, Materials and Equipment*

A. Contractor shall provide competent, qualified and trained personnel in all aspects of its performance of the Contract.

B. All equipment, products and material incorporated into the Equipment shall be as specified, or if not specified, shall be new, of good quality and protected, assembled, used, connected, applied, cleaned and conditioned in accordance with the original manufacturer's instructions, except as otherwise may be provided in the Equipment Contract.

5.03 *Compliance with Laws and Regulations, Standards, Specifications and Codes*

A. Contractor shall comply with all Laws and Regulations applicable to the furnishing of the Equipment and Special Services.

5.04 *Or Equals*

A. Refer to Section 01600 -- Product Requirements.

B. Engineer's Evaluation: Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made. Engineer will be the sole judge of acceptability. No "or-equal" will be ordered, manufactured or utilized until Engineer's review is complete, which will be evidenced by an approved Shop Drawing. Engineer will advise Owner and Contractor in writing of any negative determination. Notwithstanding Engineer's approval of an "or-equal" item, Contractor shall remain obligated to comply with the requirements of the Equipment Contract.

C. Special Guarantee: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any such proposed "or-equal."

D. Data: Contractor shall provide all data in support of any such proposed "or-equal" at Contractor's expense.

5.05 *Taxes*

A. Do not include any sums which are or may be payable by the Contractor on account of taxes imposed by any taxing authority upon the sale, purchase or use of the Equipment. If any such tax is applicable to the sale, purchase or use of the Equipment hereunder, the amount thereof shall be added to the purchase price and paid by the Owner.

5.06 *Shop Drawings and Samples*

A. Contractor shall submit Shop Drawings and Samples to Owner for Engineer's review in accordance with the schedule required in Paragraph 2.06.A. All submittals will be identified as required and furnished in the number of copies specified in the Equipment Contract. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria,

materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide.

B. Where a Shop Drawing or Sample is required by the Equipment Contract, any related work performed prior to Engineer's review of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Submittal Procedures*

1. Before submitting each Shop Drawing or Sample, Contractor shall have determined and verified:

a. all field measurements (if required), quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto; and

b. that all materials are suitable with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the furnishing of Equipment and Special Services.

2. Contractor shall also have reviewed and coordinated each Shop Drawing or Sample with the Equipment Contract.

3. Each submittal shall include a written certification from Contractor that Contractor has reviewed the subject submittal and confirmed that it is in compliance with the requirements of the Equipment Contract. Both Owner and Engineer shall be entitled to rely on such certification from Contractor.

4. With each submittal, Contractor shall give Owner and Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Equipment Contract. This notice shall be both in a written communication separate from the submittal and by specific notation on each Shop Drawing or Sample.

D. *Engineer's Review*

1. Engineer will provide timely review of Shop Drawings and Samples.

2. Engineer's review of Shop Drawings or Samples will be subject to the standard of Paragraph 1.02.A.1. Engineer's review will not relieve Contractor from responsibility for any variation from the requirements of the Equipment Contract unless Contractor has in writing called Engineer's attention to each such variation at the time of each submittal as required by Paragraph 5.06.C.1. and Engineer has given written notification of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample review.

E. *Resubmittal Procedures:* Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review. Contractor shall direct specific attention in writing to any revisions other than the corrections called for by Engineer on previous submittals.

5.07 *Continuing Performance*

A. Contractor shall adhere to the progress schedule established in accordance with Paragraph 2.06.A., and the Equipment shall be delivered and the Special Services furnished within the Contract Times specified in the Contract.

B. Contractor shall carry on the work and adhere to the progress schedule during all disputes or disagreements with Owner. No work shall be delayed or postponed pending resolution of any disputes or disagreements.

5.08 *Contractor's Warranties and Guarantees*

A. Contractor warrants and guarantees to Owner that the title to the Equipment conveyed shall be proper, its transfer rightful, and free from any security interest, lien, or other encumbrance.

B. Contractor warrants and guarantees to Owner that all Equipment and Special Services will conform to the Equipment Contract, including any Samples approved by Engineer, and the Equipment will be of merchantable quality. Engineer shall be entitled to rely on representation of Contractor's warranty and guarantee.

C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, improper modification or improper maintenance or operation by persons other than Contractor, or
2. normal wear and tear under normal usage.

D. Contractor's obligation to furnish the Equipment and Special Services in accordance with the Equipment Contract shall be absolute. None of the following will constitute an acceptance of Equipment or Special Services that are non-conforming, or a release of Contractor's obligation to furnish the Equipment and Special Services in accordance with the Equipment Contract:

1. observations by Owner or Engineer;
2. recommendation by Engineer or payment by Owner of any progress or final payment;
3. use of the Equipment by Owner;
4. any acceptance by Owner (subject to the provisions of Paragraph 8.02.D.1) or any failure to do so;
5. the issuance of a notice of acceptance by Owner pursuant to the provisions of Article 8;
6. any inspection, test or approval by others; or
7. any correction of non-conforming Equipment or Special Services by Owner.

E. Owner shall within a reasonable time notify Contractor of any breach of Contractor's warranties or guarantees. If Owner receives notice of a suit or claim as a result of such breach, Owner also may give Contractor notice in writing to defend such suit or claim. If Contractor fails to defend such suit or claim, Contractor will be bound in any subsequent suit or claim against Contractor by Owner by any factual determination in the prior suit.

F. Contractor shall have no warranty liability when defects or nonperformance are caused by corrosion, stress corrosion, erosion or fouling, whether due to incorrect water chemistry, (including chlorides) or improper operation, installation or maintenance or otherwise

G. This warranty is expressly in lieu of any other warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose.

5.09 *Indemnification See RUS Form 198, Article IV, Section 1.*

ARTICLE 6 - SHIPPING AND DELIVERY

6.01 *Shipping*

A. Contractor shall select the carrier and bear all costs of packaging, transportation, insurance, special handling and any other costs associated with shipment and delivery.

6.02 *Delivery*

A. Contractor shall deliver the Equipment F.O.B. the Point of Destination in accordance with the Contract Times set forth in the Equipment Contract, or other date agreed to by Owner and Contractor.

B. Contractor shall provide written notice to Owner at least 15 days before shipment of the manner of shipment and the anticipated delivery date. The notice shall also include any instructions concerning special equipment or services required at the Point of Destination to unload and care for the Equipment. Contractor shall also require the carrier to give Owner at least 48 hours notice by telephone prior to the anticipated hour of delivery.

C. Owner will be responsible and bear all costs for unloading the Equipment from carrier.

D. Owner will assure that adequate facilities are available to receive delivery of the Equipment during the Contract Times set forth in the Contract, or another date agreed by Owner and Contractor.

E. No partial deliveries shall be allowed, unless permitted or required by the Equipment Contract or agreed to in writing by Owner.

6.03 *Risk of Loss*

A. Risk of loss and insurable interests transfer from Contractor to Owner upon Owner's receipt of the Equipment.

B. Notwithstanding the provisions of Paragraph 6.03.A, if Owner rejects the Equipment as non-conforming, the risk of loss on such Equipment shall remain with Contractor until Contractor corrects the non-conformity or Owner accepts the Equipment. PSC Request 1a.

ARTICLE 7 - CHANGES: SCHEDULE AND DELAY Attachment No. 2 PAGE 27

7.01 *Changes in the Equipment and Special Services*

A. Owner may at any time, without notice to any surety, make changes in the Equipment Contract within the general scope of the Contract.

B. If any such change or action by Owner affects the Contract Price or Contract Times, Contractor shall notify Owner within 15 days after the occurrence of the event giving rise thereto, and written supporting data will be submitted to Owner within 45 days after such occurrence. If Contractor fails to do so, Contractor waives any Claim for such adjustment.

C. Contractor shall not suspend performance while Owner and Contractor are in the process of making such changes and any related adjustments.

7.02 *Changes in Laws and Regulations*

A. Changes in Laws or Regulations not known at the time of opening of Proposals (or, on the Effective Date of the Contract if there were no Proposals) having an effect on the cost or time of furnishing the Equipment and Special Services shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 9.06 A.

7.03 *Changing Contract Price or Contract Times*

A. The Contract Price or Contract Times may only be changed by:

1. a Change Order;
2. a Written Amendment; or
3. a written unilateral order of Owner, in which case Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times for any reasonable and necessary costs or delays incurred by Contractor to accommodate such a change.

B. If Contractor is prevented from delivering the Equipment or performing the Special Services within the Contract Times for any unforeseen reason beyond its control and not attributable to its actions or inactions, then Contractor shall be entitled to an adjustment of the Contract Times to the extent attributable to such reason. Such reasons include fire, floods, epidemics, abnormal weather conditions, acts of God, acts of war, directions by government authority, and other like matters. If such an event occurs and delays Contractor's performance, Contractor shall notify Owner in writing within 15 days of the beginning of the event causing the delay, stating the reason therefor.

C. Contract Times will not be modified for delays within the control of Contractor, including labor strife, transportation shortages or delays at Contractor's facilities. Delays attributable to and within the control of Contractor's subcontractors or suppliers shall be deemed to be delays within the control of Contractor.

D. If Contractor is prevented from delivering the Equipment or furnishing the Special Services within the Contract Times due to the actions or inactions of Owner, Contractor shall be entitled to any reasonable and necessary additional costs arising out of such delay to the extent directly attributable to Owner.

E. Neither Owner nor Contractor shall be entitled to any damages arising from delays which are beyond the control of both Owner and Contractor, including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, acts of war, direction by government authority, and other like matters.

8.01 *Inspections and Testing*A. *General.*

1. Owner shall have the right to perform, or cause to be performed, reasonable inspections and require reasonable tests of the Equipment at Contractor's facility, and at the Point of Destination. Contractor shall allow Owner a reasonable time to perform such inspections or tests.

2. Contractor shall bear all expenses, except for travel, lodging and subsistence expenses of Owner's representatives, for inspections and tests at Contractor's facility, but Owner shall be entitled to reimbursement from Contractor of travel, lodging and subsistence expenses of Owner's representatives if the Equipment are nonconforming. In no event will Contractor be liable for any expenses of Owner's inspection while Equipment is in the process of manufacture.

3. Owner shall bear all expenses, except for travel, lodging and subsistence expenses of Contractor's representatives, for inspections and tests at the Point of Destination, but Owner shall be entitled to reimbursement from Contractor for Owner's expenses for reinspection or retesting if, on the basis of an initial inspection or testing, Equipment is determined to be nonconforming.

4. Contractor shall provide Owner 10 days written notice of the readiness of the Equipment for all inspections, tests, or approvals which the Equipment Contract specify are to be observed by Owner prior to shipment.

5. Owner will give Contractor timely notice of all specified tests, inspections and approvals of the Equipment which are to be conducted at the Point of Destination.

6. If, on the basis of any inspections or testing, the Equipment appear to be conforming, Owner will give Contractor prompt notice thereof. If on the basis of said inspections or testing, the Equipment appear to be non-conforming, Owner will give Contractor prompt notice thereof and will advise Contractor of the remedy Owner elects under the provisions of paragraph 8.02.

7. Neither payments made by Owner to Contractor prior to any tests or inspections, nor any tests or inspections shall constitute acceptance of non-conforming Equipment, or prejudice Owner's rights under the Contract.

B. *Inspection on Delivery:*

1. Owner or Engineer will inspect the Equipment upon delivery solely for purposes of identifying the Equipment and general verification of quantities and observation of apparent condition in order to provide a basis for a progress payment. Such inspection will not be construed as final or as receipt of any Equipment and Special Services that, as a result of subsequent inspections and tests, are determined to be non-conforming.

2. Within ten days of such inspection, Owner shall provide Contractor with written notice of Owner's determination regarding conformity of the Equipment. In the event Owner does not provide such notice, it will be presumed that the Equipment appear to be conforming.

3. If, on the basis of the inspection specified in Paragraph 8.01.13.1, the Equipment appear to be conforming, Owner's notice thereof to Contractor will acknowledge receipt of the Equipment.

C. *Final Inspection:*

1. After all of the Equipment have been incorporated into the Project, tested in accordance with such testing requirements as are specified, and are functioning as intended, Owner or Engineer will make a final inspection.

2. If, on the basis of the final inspection, the Equipment are conforming, Owner's notice thereof will constitute Owner's acceptance of the Equipment.

3. If, on the basis of the final inspection, the Equipment are non-conforming, Owner will identify the nonconformity in writing.

8.02 *Non-Conforming Equipment or Special Services*

A. If, on the basis of inspections and testing prior to delivery, the Equipment appear to be non-conforming, or if at any time after Owner has acknowledged receipt of delivery and before the expiration of the correction period described in Paragraph 8.03, Owner determines that the Equipment are nonconforming, Contractor shall promptly, without cost to Owner and in response to written instructions from Owner, either

correct such non-conforming Equipment, or, if rejected by Owner, remove and replace the non-conforming Equipment with conforming Equipment, including all work required for reinstallation.

B. *Owner's Rejection of Non-Conforming Equipment*

1. If Owner elects to reject the Equipment in whole or in part, Owner's notice to Contractor will describe in sufficient detail the non-conforming aspect of the Equipment. If Equipment has been delivered to Owner, Contractor shall promptly, and within the Contract Times, remove and replace the rejected Equipment.

2. Contractor shall bear all costs, losses and damages attributable to the removal and replacement of the nonconforming Equipment as provided in Paragraph 8.02.E.

3. Upon rejection of the Equipment, Owner retains a security interest in the Equipment or to the extent of any payments made and expenses incurred in their testing and inspection

C. *Remedying Non-Conforming Equipment or Special Services*

1. If Owner elects to permit the Contractor to modify the Equipment to remove the non-conformance, Contractor shall promptly provide a schedule for such modifications and shall make the Equipment conforming within a reasonable time.

2. If Owner notifies Contractor in writing that any of the Special Services are non-conforming, Contractor shall promptly provide conforming services acceptable to Owner. If Contractor fails to do so, Owner may delete the Special Services and reduce the Contract Price a commensurate amount.

D. *Owner's Acceptance of Non-Conforming Equipment*

1. Instead of requiring correction or removal and replacement of non-conforming Equipment discovered either before or after final payment, Owner may accept the nonconforming Equipment. Contractor shall bear all costs, losses, and damages attributable to Owner's evaluation of and determination to accept such non-conforming Equipment as provided in Paragraph 8.02.E.

E. Contractor shall pay all claims, costs, losses, and damages, including but not limited to all fees and charges for reinspection, retesting and for any engineers, architects, attorneys and other professionals, and all court or arbitration or other dispute resolution costs arising out of or relating to the nonconforming Equipment or Special Services; including the correction or removal and replacement of the nonconforming Equipment and the replacement of property of Owner and others destroyed by the correction or removal and replacement of the nonconforming Equipment, or the obtaining of conforming Special Services from others.

8.03 *Correction Period*

A. The Equipment furnished hereunder shall become the property of the Owner upon deliver, provided, however, that the Owner or the Administrator, within one year after the initial date of synchronization of the turbine-generator unit with the transmissions system external to the plant, but not later than December 31, 2008, whichever may occur first, or within the period for which the Equipment is guaranteed, whichever is longer, may reject any Equipment which does not comply with the Specifications attached hereto and made a part hereof or with the guarantees, if any, of the Contractor and the manufacturer. Upon any such rejection, the Contractor shall repair or replace such defective Equipment within a reasonable time after notice in writing from the Owner and in the event of failure by the Contractor so to do, the Owner may make such replacement and the cost and expense thereof shall be paid by and recoverable from the Contractor.

ARTICLE 9 - ROLE OF ENGINEER9.01 *Duties and Responsibilities*

A. The duties and responsibilities and the limitations of authority of Engineer are set forth in the Equipment Contract.

9.02 *Clarifications and Interpretations*

A. Engineer will issue with reasonable promptness such written clarifications or interpretations of the Equipment Contract as Engineer may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Equipment Contract. Such written clarifications and interpretations will be binding on Owner and Contractor. If either Owner or Contractor believes that a written

clarification or interpretation justifies an adjustment in the Contract Price or Contract Times, either may make a Claim therefor.

9.03 *Authorized Variations*

A. Engineer may authorize minor deviations or variations in the Equipment Contract by: 1) issuance of approved Shop Drawings when such change or deviation was duly noted by Contractor as required in Paragraph 5.06. C.4, or 2) a Field Order.

9.04 *Rejecting Non-Conforming Equipment and Special Services*

A. Engineer will have the authority to disapprove or reject Equipment or Special Services which Engineer believes to be non-conforming.

9.05 *Decisions on Requirements of Equipment Contract*

A. Engineer will be the initial interpreter of the Equipment Contract and judge of the acceptability of the Equipment and Special Services. Claims, disputes and other matters relating to the acceptability of the Equipment and Special Services or the interpretation of the requirements of the Equipment Contract pertaining to Contractor's performance will be referred initially to Engineer in writing with a request for a formal decision in accordance with this paragraph.

B. When functioning as interpreter and judge under this Paragraph 9.05, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by Engineer pursuant to this Paragraph 9.05 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in Paragraph 10.07) will be a condition precedent to any exercise by Owner or Contractor of such rights or remedies as either may otherwise have under the Equipment Contract or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

9.06 *Claims and Disputes*

A. *Notice:* Written notice of each Claim, dispute or other matter relating to the acceptability of the Equipment and Special Services or the interpretation of the requirements of the Equipment Contract pertaining to Contractor's performance shall be delivered by the claimant to Engineer and the other party to the Contract within 15 days after the occurrence of the event giving rise thereto, and written supporting data will be submitted to Engineer and the other party within 45 days after such occurrence unless Engineer allows an additional period of time to ascertain more accurate data.

B. *Engineer's Decision:* Engineer will render a decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. Engineer's written decision on such Claim, or dispute, or other matter will be final and binding upon Owner and Contractor unless:

1. an appeal from Engineer's decision is made within the time limits and in accordance with the dispute resolution procedures set forth in Article 13; or

2. if no such dispute resolution procedures have been set forth, a written notice of intention to appeal is delivered by Owner or Contractor to the other and to Engineer within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision (unless otherwise agreed to in writing by Owner and Contractor), to exercise such rights or remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.

C. If Engineer does not render a formal decision in writing within the time stated in Paragraph 9.06.B., a decision denying the Claim in its entirety shall be deemed to have been issued 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.

ARTICLE 10 - PAYMENT

THE FOLLOWING SUPERSEDES SECTION 3 - "PAYMENT" ON PAGE 4 OF THE EQUIPMENT CONTRACT

10.01 *Payment.* The Owner shall pay the Contractor a percentage of the Contract Price of the Equipment: 10 percent upon initial submittal of setting plan drawings for approval, net 30 days; 40 percent upon receipt of major materials, defined as tubes, Tubesheet and nozzle forgings, shell and channel plate, as well as shell heads, net 30 days; 5 percent upon submittal of final instruction manuals, net 30 days; 45 percent upon shipment or notification of readiness to ship, net 30 days. When the Equipment has been installed, placed in satisfactory operation and tested, the Owner shall certify such fact to the Administrator. Upon such certification by the Administrator, the Owner shall make final payment therefore to the Contractor, provided, however, such final payment shall be made not later than December 31, 2008. In lieu of retention, Contractor shall offer a standby letter of credit, from a bank acceptable to Owner, in the amount of 10 percent of the Contract value through December 31, 2008.

ARTICLE 11 - CANCELLATION, SUSPENSION, AND TERMINATION

11.01 *Cancellation*

A. Owner has the right to cancel the Contract, without cause, at any time prior to delivery of the Equipment by written notice. Cancellation pursuant to the terms of this paragraph shall not constitute a breach of contract by Owner. Upon cancellation:

1. In the event of termination for the convenience of Owner, Contractor will be entitled to all costs expended to the date of termination. This will include direct and indirect cost, overhead, and a reasonable profit.

2. For Equipment which are not specially manufactured for the Project, Contractor shall be entitled to a restocking charge of 10 percent of the unpaid Contract Price of such Equipment.

11.02 *Suspension of Performance by Owner*

A. Owner suspends or delays this Contract for the convenience of Owner, Contractor shall have the approval to continue manufacturing all items in our manufacturing "pull system" at the time of receipt of written notification by Owner of the suspension or delay for convenience. This approval will allow Contractor to complete items to a point appropriate for storage. Owner further agrees to provide inspection throughout completion of the items. Contractor will provide Owner a list of the items to be completed at the time of notification. The actual costs, overhead, and a reasonable profit incurred at the receipt of notification to suspend or delay will be invoiced at the time of notification and will be payable within thirty (30) days. All additional costs for a suspension or delay will be invoiced at the time of notification to resume work or after thirty (30) days of suspension or delay and be payable within thirty (30) days. At no time will any suspension or delay extend beyond sixty (60) days. All storage costs will be for the account of Owner.

11.03 *Suspension of Performance by Contractor*

A. Subject to the provisions of Paragraph 5.07.B, Contractor may suspend the furnishing of the Equipment and Special Services only under the following circumstance:

1. Contractor has reasonable grounds to conclude that Owner will not perform its future payment obligations under the Contract. ("Reasonable grounds" shall not include a pending dispute or disagreement with Owner) and,

2. Contractor has requested in writing assurances from Owner that future payments will be made in accordance with the Contract, and Owner has failed to provide such assurances within ten days of Contractor's written request.

11.04 *Breach and Termination*

A. *Owner's Breach:*

1. Owner shall be deemed in breach of the Contract if it fails to comply with any material provision of the Equipment Contract, including but not limited to:

a. wrongful rejection or revocation of Owner's acceptance of the Equipment,

- b. failure to make payments in accordance with the Equipment Contract, or
- c. wrongful repudiation of the Contract.

2. Contractor shall have the right to terminate the Contract for cause by declaring a breach should Owner fail to comply with any material provisions of the Contract. Upon termination, Contractor shall be entitled to all remedies provided by Laws and Regulations.

- a. In the event Contractor believes Owner is in breach of its obligations under the Contract, Contractor shall provide Owner with reasonably prompt written notice setting forth in sufficient detail the reasons for declaring that it believes a breach has occurred. Owner shall have seven days from receipt of the written notice declaring the breach (or such longer period of time as Contractor may grant in writing) within which to cure the alleged breach.

B. Contractor's Breach:

1. Contractor shall be deemed in breach of the Contract if it fails to comply with any material provision of the Equipment Contract, including, but not limited to:

- a. failure to deliver the Equipment or perform the Special Services in accordance with the Equipment Contract,
- b. wrongful repudiation of the Contract; or
- c. delivery or furnishing of non-conforming Equipment or Special Services

2. Owner may terminate Contractor's right to perform the Contract for cause by declaring a breach should Contractor fail to comply with any material provision of the Equipment Contract. Upon termination, Owner shall be entitled to all remedies provided by Laws and Regulations.

- a. In the event Owner believes Contractor is in breach of its obligations under the Contract, and except as provided in Paragraph 11.04.B.2.b, Owner shall provide Contractor with reasonably prompt written notice setting forth in sufficient detail the reasons for declaring that it believes a breach has occurred. Contractor shall have seven days from receipt of the written notice declaring the breach (or such longer period of time as Owner may grant in writing) within which to cure the alleged breach.

- b. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 4.01, the notice and cure procedures of that bond, if any, shall supersede the notice and cure procedures of Paragraph 11.04.B.2.a

ARTICLE 12 - LICENSES AND FEES

12.01 Intellectual Property and License Fees

A. Unless specifically stated elsewhere in the Equipment Contract, Contractor is not transferring any intellectual property rights, patent rights, or licenses for the Equipment delivered: However, in the event the Contractor is manufacturing to Owner's design, Owner retains all intellectual property rights in such design.

B. Contractor shall pay all license fees and royalties and assume all costs incident to the use or the furnishing of the Equipment, unless specified otherwise by the Equipment Contract.

12.02 Contractor's Infringement

A. Subject to Paragraph 12.01.A, Contractor shall indemnify and hold harmless Owner, Engineer and their officers, directors, partners, employees, agents, consultants, contractors, and subcontractors from and against all claims, costs, losses, damages, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement or alleged infringement of any United States or foreign patent or copyright by any of the Equipment delivered hereunder.

B. In the event of suit or threat of suit for intellectual property infringement, Owner will notify Contractor within a reasonable time of receiving notice thereof.

C. Upon written demand from Owner, Contractor shall be given the opportunity to defend the claim or suit, including negotiating a settlement. Contractor shall have control over such claim or suit, provided that Contractor agrees to bear all expenses and to satisfy any adverse judgment thereof.

1. If Contractor fails to defend such suit or claim after written demand by Owner, Contractor will be bound in any subsequent suit or claim against Contractor by Owner by any factual determination in the prior suit or claim.

2. If Owner fails to provide Contractor the opportunity to defend such suit or claim after written demand by Contractor, Owner shall be barred from any remedy against Contractor for such suit or claim.

D. If a determination is made that Contractor has infringed upon intellectual property rights of another, Contractor may obtain the necessary licenses for Owner's benefit, or replace, the Equipment and provide related design and construction as necessary to avoid the infringement at Contractor's own expense.

12.03 Owner's Infringement

A. Owner shall indemnify and hold harmless Contractor, and its officers, directors, partners, employees, agents, consultants, contractors, and subcontractors from and against all claims, costs, losses; damages, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of alleged infringement of any United States or foreign patent or copyright caused by Contractor's compliance with Owner's design of the Equipment or Owner's use of the Equipment in combination with other materials or equipment in any process (unless intent of such use was known to Contractor and Contractor had reason to know such infringement would result).

B. In the event of suit or threat of suit for intellectual property infringement, Contractor must within a reasonable time after receiving notice thereof notify Owner.

C. Upon written demand from Contractor, Owner shall be given the opportunity to defend the claim or suit, including negotiating a settlement. Owner shall have control over such claim or suit, provided that Owner agrees to bear all expenses and to satisfy any adverse judgment thereof.

1. If Owner fails to defend such suit or claim after written demand by Contractor, Owner will be bound in any subsequent suit or claim against Owner by Contractor by any factual determination in the prior suit or claim.

2. If Contractor fails to provide Owner the opportunity to defend such suit or claim after written demand by Owner, Contractor shall be barred from any remedy against Owner for such suit or claim.

12.04 Reuse of Documents

A. Neither Contractor nor any other person furnishing any of the Equipment or Special Services under a direct or indirect contract with Contractor shall: (1) acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions; or (2) reuse any of such Drawings, Specifications, other documents, or copies thereof on any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer. This prohibition will survive termination or completion of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Equipment Contract for record purposes.

ARTICLE 13 - MISCELLANEOUS

13.01 Giving Notice

A. Whenever any provision of the Equipment Contract requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

13.02 Controlling Law

A. This Contract is to be governed by the law of the state in which the Point of Destination is located.

A. When any period of time is referred to in the Equipment Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day shall be omitted from the computation.

13.04 *Cumulative Remedies*

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Equipment Contract, and the provisions of this paragraph will be as effective as if repeated specifically in the Equipment Contract in connection with each particular duty, obligation, right, and remedy to which they apply.

13.05 *Survival of Obligations*

A. All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with the Equipment Contract, as well as all continuing obligations indicated in the Equipment Contract, will survive final payment, completion and acceptance of the Equipment or Special Services and termination or completion of the Contract.

13.05 *Liquidated Damages*

A-See RUS Form 198, Article V, Section 1

13.06 *Certification Regarding Debarment and Suspension*

A. Certification regarding debarment, suspension, ineligibility and voluntary exclusion is required on all services greater than \$25,000. Forms are attached for this certification.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS**

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in the covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms *covered transaction*, *debarred*, *suspended*, *ineligible*, *lower tier covered transaction*, *participant*, *person*, *primary covered transaction*, *principal*, *proposal*, and *voluntarily excluded*, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

CERTIFICATION

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

<u>Yuba Heat Transfer</u>	<u>Spurlock Station - Unit 4</u>
Organization Name	PR/Award or Project Name
<u>Kanti Shah, Manager of Estimating / Sr. Sales Engineer</u>	
Name and Title	
<u>Kanti Shah</u>	<u>February 16, 2005</u>
Signature	Date

LOBBYING CERTIFICATION

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

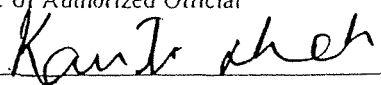
This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Yuba Heat Transfer

Organization Name

Kanti Shah, Manager of Estimating / Sr. Sales Engineer

Name of Authorized Official


Signature

February 16, 2005

Date

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. Work covered by Equipment Contract.
- B. Contract.
- C. Work by others.
- D. Copies of Drawings and Project Manuals.
- E. References.

1.02 WORK COVERED BY EQUIPMENT CONTRACT

- A. Work of this ~~Equipment Contract~~ **Agreement** comprises of design, fabrication, testing, and delivery of ~~tubular~~ feedwater heaters, **complete with specified auxiliary components** for East Kentucky Power Cooperative, Maysville, Kentucky.

1.03 CONTRACT

- A. Work shall be performed under single lump sum Contract.

1.04 WORK BY OTHERS

- A. Receiving, unloading, storing, and field erection of equipment.
- B. Foundations, foundation bolts, bolt sleeves, and equipment bases.
- C. Grouting materials and placing thereof.
- ~~D. Furnishing and installing motor control center for electric motor driven equipment.~~
- ~~E. Furnishing, installing, and wiring analog instrumentation and controls consisting of field level, flow, pressure, and temperature transmitters, flow elements, controllers, and interface to DCS.~~
- F.D.** Connection to site utilities.

1.05 COPIES OF DRAWINGS AND PROJECT MANUALS

- A. After Notice of Award, ~~Seller~~ **Contractor** may obtain, at no charge, maximum of 5 sets of project manuals. Additional copies of project manuals will be furnished at Engineer's reproduction cost plus handling charge. If ~~Seller's~~ **Contractor's** requirements for additional project manuals necessitates reprinting of project manuals, ~~Seller~~ **Contractor** shall pay entire cost of such reprinting. Partial sets of project manuals will not be provided.
- B. Revised project manuals, if required, will be provided by Engineer to show authorized changes or extra Work under provisions of Item "A." preceding.

1.06 REFERENCES

- A. For products or workmanship specified by association, trade, or other consensus standards, comply with requirements of the standard, except when more rigid requirements are specified or are required by applicable codes.

- B. Conform to reference standard by date of issue current on date for receiving bids, except where a specific date is established by code.
- C. Obtain copies of standards where required by product specification sections.
- D. Should specified reference standards conflict with Equipment Contract, request clarification from the Engineer before proceeding.
- E. Neither the contractual relationships, duties, or responsibilities of the parties in Contract nor those of the Engineer shall be altered from the Equipment Contract by mention or inference otherwise in any reference document.
- F. Abbreviations used in Drawings and Specifications are as specified in ANSI Y1.1 and IEEE 260.
- G. Schedule of references:
 - 1. AFBMA - Anti-Friction Bearing Manufacturers Association
 - 2. AFS – American Foundrymen’s Society
 - 3. AGMA - American Gear Manufacturers Association
 - 4. AIChE – American Institute of Chemical Engineers
 - 5. AISC - American Institute of Steel Construction
 - 6. AISI - American Iron and Steel Institute
 - 7. ANSI - American National Standards Institute
 - 8. API - American Petroleum Institute
 - 9. ASA – Acoustical Society of America
 - 10. ASCE – American Society of Civil Engineers
 - 11. ASHRAE - American Society of Heating, Refrigerating and Air Conditioning Engineers
 - 12. ASME - American Society of Mechanical Engineers
 - 13. ASPA - American Sod Producers Association
 - 14. ASTM - American Society for Testing and Materials
 - 15. AWS - American Welding Society
 - 16. CEMA – Conveyor Equipment Manufacturer’s Association
 - 17. CISPI – Cast Iron Soil Pipe Institute
 - 18. CMAA - Crane Manufacturers Association of America
 - 19. CPSC - Consumer Products Safety Council
 - 20. CRSI - -Concrete Reinforcing Steel Institute
 - 21. EIA - Electronic Industries Association
 - 22. EJMA - Expansion Joint Manufacturers Association
 - 23. ETL - Electrical Testing Laboratory
 - 24. FGMA - Flat Glass Marketing Association
 - 25. FM - Factory Mutual System
 - 26. HI – Hydraulics Institute
 - ~~27. HEI – Heat Exchange Institute~~
 - ~~28-27.~~ IAPMO International Association of Plumbing and Mechanical Officials
 - ~~29-28.~~ IEEE - Institute of Electrical and Electronics Engineers
 - ~~30-29.~~ IES - Illuminating Engineering Society
 - ~~31-30.~~ ISA - Instrument Society of America
 - ~~32-31.~~ MSS - Manufacturer's Standardization Society of the Valve and Fittings Industry
 - ~~33-32.~~ NAAMM - National Association of Architectural Metal Manufacturers
 - ~~34-33.~~ NBS – National Bureau of Standards
 - ~~35-34.~~ NEMA - National Electrical Manufacturers' Association
 - ~~36-35.~~ NFPA - National Fire Protection Association
 - ~~37-36.~~ NRMCA - National Ready Mixed Concrete Association
 - ~~38-37.~~ OSHA - Occupational Safety and Health Administration
 - ~~39-38.~~ PCA - Portland Cement Association
 - ~~40-39.~~ PCI - Prestressed Concrete Institute
 - ~~41-40.~~ PFI - Pipe Fabrication Institute
 - ~~42-41.~~ RUS - Rural Utilities Services

- 43.42. SAMA - Scientific Apparatus Makers Association
- 44.43. SDI - Steel Deck Institute
- 45.44. SSPC - Steel Structures Painting Council
- 46.45. TCA -- Tile Council of America
- 47.46. TEMA - Tubular Exchanger Manufacturers Association
- 48.47. UL - Underwriters' Laboratories

PART 2 PRODUCTS

NOT USED

PART 3 EXECUTION

NOT USED

END OF SECTION

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. Form of schedules.
- B. Content of schedules.
- C. Progress revisions.
- D. Submissions.

1.02 FORM OF SCHEDULES

- A. Prepare schedules in form of horizontal bar chart.
 - 1. Provide separate horizontal bar for each operation.
 - 2. Horizontal time scale: Identify first work day of each week.
 - 3. Scale and spacing: To allow space for notations and future revisions.
- B. Format of listings: Chronological order of start of each item of Work.

1.03 CONTENT OF SCHEDULES

- A. Progress schedule show:
 - 1. Complete sequence of work by activity.
 - 2. Dates for beginning, and completion of, each major element of design, procurement, and fabrication.
 - 3. Projected percentage of completion for each item, as of first day of each month.
- B. Submittal Schedule for Shop Drawings, manuals, and Samples shall show dates for Contractor's submittals.

1.04 PROGRESS REVISIONS

- A. Indicate progress of each activity to date of submission.
- B. Show changes occurring since previous submission of schedule:
 - 1. Major changes in scope.
 - 2. Activities modified since previous submission.
 - 3. Revised projections of progress and completion.
 - 4. Other identifiable changes.
- C. Provide narrative report as needed to define:
 - 1. Statement summarizing the status and condition of the work.
 - 2. Status of major material procurement.
 - a. Description of work.
 - b. Date order is to be placed or the date order was placed.
 - c. Subcontractor's name.
 - 3. Problem areas, anticipated delays, and impact on schedule.
 - 4. Corrective action recommended, and its effect.
- D. Progress photographs of specific parts of stages of work when requested by Engineer.

1.05 SUBMISSIONS

- A. Submit proposed milestone schedule with Proposal.
- B. Submit initial schedules and revised progress schedules as indicated in Section 01335.
- C. Submit 2 opaque reproducible copies of schedule to Owner and 2 to Engineer.

PART 2 PRODUCTS

NOT USED

PART 3 EXECUTION

NOT USED

END OF SECTION

PART 1 GENERAL

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1.01 SECTION INCLUDES

- A. Shop Drawings.
- B. Samples.
- C. Data sheets.**
- D. Contractor responsibilities.
- E. Submission requirements.
- F. Document submittal schedule.
- G. Resubmission requirements.
- H. Distribution.
- I. Engineer duties.
- J. Shop Drawing Transmittal Form.**

1.02 SHOP DRAWINGS

- A. Contractor shall submit the items listed in the "Document Submittal Schedule."
- B. Designate in progress schedule, or in separate coordinated schedule, dates for submission of all required documents.
- C. Shop Drawings shall be presented in clear and thorough manner, complete with respect to dimensions, design criteria, materials of construction, and like information to enable Engineer to review information as required.
- D. Sheet size:
 - 1. Minimum: 8-1/2" x 11".
 - 2. Maximum: 36" x 60".

1.03 SAMPLES

- A. Samples shall be identified clearly as to material, manufacturer, any pertinent catalog numbers, and use for which Intended, and shall be of sufficient size and quantity to clearly illustrate:
 - 1. Functional characteristics of item, with integrally related parts and attachment devices.
 - 2. Full range of color, texture, and pattern.

1.04 DATA SHEETS

- A. **Data Sheets may require information not known until Contractor's engineering is complete. Furnish estimated values based on good engineering judgment. Estimated values shall be identified by placement of "(est.)" next to value.**
- B. **Data Sheets shall be updated and resubmitted by Contractor once final values are known.**
- C. **Do not leave items blank or labeled "To Be Determined" or "Later."**

D. Do not submit manufacturer Product Data instead of completed Data Sheets.

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1.05 CONTRACTOR RESPONSIBILITIES

- A. Review Shop Drawings and Samples prior to submission.
- B. Determine and verify:
 - 1. Field construction criteria.
 - 2. Catalog numbers and similar data.
 - 3. Conformance to Specifications.
- C. Coordinate each submittal with other submittals and with requirements of Work and of Contract Documents.
- D. Notify Engineer in writing, at time of submission, of any variation in submittals from requirements of Contract Documents. Any such deviations permitted by Engineer will require modifications of Contract Documents.
- E. Begin no fabrication or Work which requires submittals until return of submittals by Engineer with Engineer stamp, as either "Reviewed" or "Reviewed as Noted." Any related Work performed prior to such return of pertinent submittal will be sole expense and responsibility of Contractor.
- F. Equipment shall not be delivered until return of shop test results by Engineer with Engineer stamp, as either "Reviewed" or "Reviewed as Noted." Any related Work performed prior to such return of pertinent submittal will be sole expense and responsibility of Contractor.

1.06 SUBMISSION REQUIREMENTS

- A. Make submittals to Engineer promptly in accordance with approved schedule, and in such sequence as to cause no delay in Work or in work of any other contractor.
- B. Deliver submittals to:
 - Mr. Larry Shell
 - Stanley Consultants, Inc.
 - Stanley Building
 - 225 Iowa Avenue
 - Muscatine, Iowa 52761
- C. Number of submittals required:
 - 1. Shop Drawings:
 - a. Submit 83 reproducible copies of each Shop Drawing.
 - b. Copies of drawings submitted shall be black line on white background.
 - c. Engineer will use 35 mm microfilm system in processing Shop Drawings. Shop Drawings shall be suitable for microfilming. Shop Drawings submitted which are not suitable for microfilming will not be reviewed.
 - 2. Samples: Submit number stated in each Specification section.
 - 3. Drawings shall be folded to 8-1/2" x 11". Reproducible prints shall be rolled.
- D. Submittals shall contain:
 - 1. Date of submission and dates of any previous submissions.
 - 2. Project title and number.
 - 3. Contract identification.
 - 4. Names of:
 - a. Contractor.
 - b. Supplier.
 - c. Manufacturer.

5. Identification of product, with Specification section number.
6. Field dimensions, clearly identified as such.
7. Relation to adjacent or critical features of Work or materials.
8. Applicable standards, such as ASTM or Federal Specification numbers.
9. Identification of deviations from Contract Documents.
10. Identification of revisions on resubmittals.
11. An 8" x 3" blank space for Engineer stamp.
12. Indication of Contractor's approval, initialed or signed, with wording substantially as follows:

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"Contractor represents to Owner and Engineer that Contractor has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data, or assumes full responsibility for doing so and has reviewed or coordinated each Shop Drawing or Sample with requirements of Equipment and Equipment Contract."

13. If Equipment Contract includes performance specifications stating required results which can be verified as meeting stipulated criteria, so that further detailed design by Contractor prior to fabrication is necessary, Shop Drawings must be prepared under seal of professional engineer registered in appropriate jurisdiction and Shop Drawing certification shall contain wording substantially as follows:

"I hereby certify that this engineering document was prepared by me or under my direct personal supervision, that I am a duly licensed Professional Engineer under the laws of the State of Kentucky and I accept responsibility for the adequacy of this document to meet criteria stipulated in the Contract Documents".

14. Shop Drawing Transmittal Form is bound herein. This form is also available on disk and may be obtained from the Engineer. Contractor shall reproduce any additional copies required and use in accordance with instructions given with Transmittal Form. Contractor shall submit 2 copies of Transmittal Form for initial submittals and resubmittals.

1.07 DOCUMENT SUBMITTAL SCHEDULE

Item	Description	Reference Section Number	Time of Submittal (calendar days after Notice to Proceed unless noted otherwise)
GENERAL			
1.	Quality assurance manual		45 45 to 60
2.	Inspection and test plan		30 days prior to first fabrication
3.	Welding procedures, including procedure qualification records	01460	45 45 to 60
4.	Preliminary schedules for fabrication, shop testing, and delivery of equipment	01320	With Proposal
5.	Progress schedules	01320	15 days after Notice to Proceed and by the 10th of each month until the equipment arrives on site
6.	Preliminary operating and maintenance instruction manuals	01785	75 days prior to equipment shipment
7.	Final operating and maintenance instruction manuals	01785	30 days after receiving comments to preliminary manual at time of equipment shipment
8.	Proposed test procedures for shop testing	15223	30 days prior to performing shop tests

Item	Description	Reference Section Number	Time of Submittal (calendar days after Notice to Proceed unless noted otherwise)
9.	Notification of tests	01451 15523	30 (preliminary) and 3 (firm) days prior to test/inspection
10.	Test data and inspection certificates	15523	Within 14 days following each test or inspection
11.	Priced recommended spare parts list		With Proposal instruction manual
12.	Lubrication/consumables chemical list		With preliminary instruction manual
DELIVERY			
1.	Notice of preshipment inspection	01600	30 days prior to shipment
2.	Shipping notice	00700 01600	15 days prior to arrival
3.	Packing lists, lists of shipped loose items, lists of bulk materials shipped	01600	15 days prior to shipment
4.	Material Safety Data Sheets		60 days prior to first shipment to site
5.	Notice of presence of hazardous materials		When hazardous materials are shipped to site
TECHNICAL			
1.	Completed Feedwater Heater Specification Sheets	15523	With Proposal
2.	Completed Bidder Data and Information forms	00434	With Proposal
3.	Outline drawings for each heater indicating supports, nozzles, and miscellaneous connections including all major dimensions and heater loads.		Preliminary with Proposal within 30 days and Certified 2145 to 60 days after Notice to Proceed
4.	Recommended operating air vent sizes		With Proposal and 30 days after Notice to Proceed
5.	Safety relief valve drawings		30
6.	Nozzle detail drawings		30
7.	Complete erection drawings indicating recommended lift points		60
8.	Foundation and anchorage requirements		Preliminary with Proposal and Certified 21 days after Notice to Proceed
9.	Allowable reaction forces and directions on piping nozzles including nozzle movements		21
10.	Steam and water volumes in heater shells		30
11.	Drawing showing channel access opening with sealing procedure		With Proposal and 30 days after Notice to Proceed
12.	Erection and storage requirements including unit weights and center of gravity		60
13.	Channel closure details		With Proposal and 30 days after Notice to Proceed

1.08 RESUBMISSION REQUIREMENTS

- A. Make any corrections or changes in submittals required by Engineer and resubmit until stamped as "Reviewed" or "For Information Only" by Engineer. Contractor shall include issue number or issue date in document revision block or other clearly identified location on document. Changes shall be back-circled or otherwise clearly identified

1.09 DISTRIBUTION

- A. Distribute reproductions of Shop Drawings which carry Engineer stamp as either "Reviewed" or "Reviewed as Noted" to:
 - 1. Record Documents file.
 - 2. Subcontractors.
 - 3. Supplier or fabricator.
- B. Distribute Samples which carry Engineer stamp as either "Reviewed" or "Reviewed as Noted" as directed by Engineer.

1.10 ENGINEER DUTIES

- A. Review required submittals with reasonable promptness and in accord with schedule, only for general conformance to design concept of Project and compliance with information given in Contract Documents. Review shall not extend to means, methods, sequences, techniques, or procedures of construction or to safety precautions or program incident thereto. Review of a separate item as such will not indicate approval of assembly in which item functions.
- B. Affix stamp and initials or signature, and indicate requirements for resubmittal, or review of submittal. Engineer's action on submittals is classified as follows:
 - 1. **Reviewed:** Submittal has been reviewed and appears to be in conformance to design concept of Project and Contract Documents. Contractor may proceed with fabrication of work in submittal.
 - 2. **Reviewed As Noted:** Submittal has been reviewed and appears to be in conformance to design concept of Project and Contract Documents, except as noted by Engineer. Contractor may proceed with fabrication of work in submittal with modifications and corrections as indicated by Engineer.
 - 3. **Resubmit:** Submittal has been reviewed and appears not to be in conformance to design concept of Project or with Contract Documents. Contractor shall not proceed with fabrication of work in submittal, but instead shall make any corrections required by Engineer and resubmit for review.
 - 4. **Returned without Review:** Submittal is being returned without having been reviewed because:
 - 1) not required by Contract Documents; 2) grossly incomplete; 3) indicates no attempt at conformance to Contract Documents; 4) cannot be reproduced; 5) lacks Contractor's completed approval stamp; or 6) lacks design professional's seal when required by law or Contract Documents. If submittal is required by Contract Documents, Contractor shall not proceed with Work as detailed in submittal, but instead shall correct defects and resubmit for review.
 - 5. **For Information Only:** Submittal has not been reviewed but is being retained for informational purposes only.
- C. Return submittals to Contractor.
- D. Engineer's review of submittals shall not relieve Contractor from responsibility for any variation from Contract Documents unless Contractor has, in writing, called Engineer's attention to such variation at time of submission, and Engineer has given written concurrence pursuant to Contract Documents to specific variation, nor shall any concurrence by Engineer relieve Contractor from responsibility for errors or omissions in submittals.

PART 2 PRODUCTS

NOT USED

PART 3 EXECUTION

NOT USED

END OF SECTION

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. Service engineer responsibilities.

1.02 SERVICE ENGINEER RESPONSIBILITIES

- A. Contractor shall provide qualified Service Engineer(s), as necessary to:
1. Instruct and advise Owner regarding proper method for unloading, erecting, and installing equipment to assure installation in accordance with manufacturer's instructions.
 2. Assure that alignment and clearances of equipment are checked and adjusted to allowable tolerances.
 3. Inspect completed installation to assure that apparatus is in operating condition, making such detailed checks of equipment installation as are necessary to ascertain that equipment is assembled, installed, aligned, connected, lubricated, and prepared for operation in accordance with manufacturer's instructions and recommendations.
 4. Provide Engineer with duplicate copies of final alignment and clearance measurements on all rotating or reciprocating equipment. Measurements shall clearly identify each piece of equipment.
 5. Supervise preliminary operation of equipment and necessary adjustments.
 6. Fully instruct Owner's operating personnel in operation and maintenance of equipment.
 7. Witness acceptance tests and assist in their performance.
- B. Presence of Service Engineer will in no way relieve Contractor of any responsibility assumed under Agreement.
- C. Provide services of Service Engineer on site for a minimum of 10 days, including 3 round trips from point of origin to site. Contractor shall include in their firm lump sum price additional days and round trips as necessary to complete Service Engineer's responsibilities defined in this Specification.
- D. Work and abilities of Service Engineer shall be subject to review of Owner. If Owner determines that any Service Engineer is not properly qualified, Contractor shall replace Service Engineer upon written notification by Owner.
- E. Contractor shall provide continuity in assignment of Service Engineer to Work. In event substitution of Service Engineer is made which is not at request of Owner, substitute's time for "familiarization" shall be at Contractor's expense.
- F. Service Engineer shall make trips only with approval of Owner, shall report in person daily to Resident Project Representative while at site, and shall submit written record of time spent at site and report on results of trip to site to Resident Project Representative. Per diem unit adjustment price is based on 8 hours at site each day and includes out-of-pocket expenses at site. Only that time spent by Service Engineer at site with Owner's approval shall be credited against total service day as estimated in Agreement. Hours worked in excess of normal 8 hours in any day will be paid for at one-eighth of per diem rate per hour.
- G. If any of Service Engineer's time spent at site or if any of his trips to site are required to make corrections to equipment supplied under Agreement resulting from defective design, material or workmanship used in manufacture of equipment, such time and trips will be at Contractor's expense and will not be counted against number of working days or trips specified, nor will unit adjustment prices apply.

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PART 2 PRODUCTS

NOT USED

PART 3 EXECUTION

NOT USED

END OF SECTION