

~~5.09 Acceptance of Bonds and Insurance; Option to Replace~~

~~A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by paragraph 2.05.C. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Authorization Request shall be issued to adjust the Contract Price accordingly.~~

~~5.10 Partial Utilization, Acknowledgment of Property Insurer~~

~~A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Completion of all the Work, no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.~~

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 Supervision and Superintendence

A. Refer to Article II, Section 54, of the Construction Contract - Generating.

6.02 Labor, Working Hours

A. Contractor shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, and Contractor will not permit overtime work or the performance of Work on Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice.

6.03 Services, Materials, and Equipment

A. Unless otherwise specified in the General Requirements, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used,

cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 Progress Schedule

A. Contractor shall adhere to the progress schedule established as may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance proposed adjustments in the progress schedule that will not result in changing the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 12. Such adjustments may only be made by a Change Authorization Request or Written Amendment.

6.05 Substitutes and "Or-Equals"

A. "Or-Equal" Items: If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:

1. in the exercise of reasonable judgment Engineer determines that: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and;

2. Contractor certifies that: (i) there is no increase in cost to the Owner; and (ii) it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

B. Substitute Items

1. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under above paragraph, it will be considered a proposed substitute item.

2. Contractor shall submit sufficient information as provided below to allow Engineer to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.

3. The procedure for review by Engineer will be as set forth herein, as supplemented in the General Requirements and as Engineer may decide is appropriate under the circumstances.

4. Contractor shall first make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time, whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute item from

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that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change, all of which will be considered by Engineer in evaluating the proposed substitute item. Engineer may require Contractor to furnish additional data about the proposed substitute item.

C. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by Engineer will be similar to that provided herein.

D. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made as specified herein. Engineer will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized without ENGINEER's prior written acceptance, which will be evidenced by a Change Authorization Request. Engineer will advise Contractor in writing of any negative determination.

E. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

F. *Engineer's Cost Reimbursement:* Engineer will record time required by Engineer and Engineer's Consultants in evaluating substitute proposed or submitted by Contractor pursuant to paragraphs herein and in making changes in the Contract Documents (or in the provisions of any other direct contract with Owner for work on the Project) occasioned thereby. Whether or not Engineer approves a substitute item so proposed or submitted by Contractor, Contractor shall reimburse Owner for the charges of Engineer and Engineer's Consultants for evaluating each such proposed substitute.

G. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 Concerning Subcontractors, Suppliers, and Others

A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

B. If the Contract Document require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Contract, and if Contractor has submitted a list thereof in accordance with the Contract Documents, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Authorization Request will be issued or Written Amendment signed. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially

or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity, nor shall it create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, Engineer's Consultants, and all other individuals or entities identified in the Construction Contract - Generating to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 Patent Fees and Royalties

A. Refer to Article VI, Section 3 4-of the Construction Contract - Generating.

6.08 Permits

A. Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Contract. Contractor shall pay all charges of utility owners for connections to the Work, and Owner shall pay all charges of such utility owners for capital costs related thereto, such as plant investment fees.

6.09 Laws and Regulations

A. Contractor shall give all notices and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (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 such Work; however, it shall not be Contractor's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Contract if there were no Bids) having an effect on the cost or time of performance of the Work may 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 therefore as provide herein.

D. Refer to Article VI, Section 5 4-of the Construction Contract – Generating.

6.10 Taxes

A. Refer to Section 00210 – Supplementary Instructions to Bidders.

6.11 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner, Engineer, Engineer's Consultant, and the officers, directors, partners, employees, agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (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 claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

B. *Removal of Debris During Performance of the Work.* Refer to Article IV, Section 1 of the Construction Contract – Generating.

C. *Cleaning:* Refer to Article IV, Section 1 of the Construction Contract – Generating.

D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 Record Documents

A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Authorization Requests, Instructions to Contractor, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved

Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

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6.13 Safety and Protection

A. Refer to Article IV, Section 1 of the Construction Contract – Generating.

B. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connections with the Work. The Owner, Engineer, and Engineer's consultant will not have such responsibility. No action under taken by the Owner or Engineer under paragraphs 15.01 or 15.02, or Article 9 will constitute a transfer of this responsibility or acceptance of this responsibility by the Owner, Engineer, or Engineer's consultant.

6.14 Safety Representative

A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 Hazard Communication Programs

A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 Emergencies

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, an Instruction to Contractor or Change Authorization Request will be issued.

6.17 Shop Drawings and Samples

A. Contractor shall submit Shop Drawings to Engineer for review in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals will be identified as Engineer may require and in the number of copies specified in the General Requirements. 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 and to enable Engineer to review the information for the limited purposes required by paragraph 6.17.E.

B. Contractor shall also submit Samples to Engineer for review in accordance with the acceptable schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as Engineer may require to enable Engineer to review the submittal for the limited purposes required by paragraph 6.17.E. The numbers of each Sample to be submitted will be as specified in the Specifications.

C. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals acceptable to Engineer, any related Work performed prior to Engineer's review of the pertinent submittal will be at the sole expense and responsibility of Contractor.

D. Submittal Procedures

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

- a. all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
- b. all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;
- c. all information relative to means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incident thereto; and
- d. Contractor shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

2. Each submittal shall bear a stamp or specific written indication that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.

3. If Contractor wishes to propose a variation from the requirements of the Contract Documents and a drawing or sample will be used to help describe the variation, the drawing or sample shall not be submitted as a Shop Drawing or sample, but rather will have specific notations regarding the variation and shall be transmitted to the Engineer with a letter describing all aspects of the variation, including any effect the variation will have on work of separate contractors, if any, and its effect, if any, on the Contract Price or Contract Time. If Engineer determines that the variation will be acceptable, the variation will be authorized by a Change Authorization Request executed by the Owner and Contractor.

E. Engineer 's Review

1. Engineer will timely review Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals acceptable to Engineer. Engineer's review will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Engineer's review of Shop Drawings or Samples shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents; nor will any review by Engineer relieve Contractor from responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions of paragraph 6.17.D.1.

F. 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 revisions other than the corrections called for by Engineer on previous submittals.

6.18 Continuing the Work

A. 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, except as permitted by paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 Contractor's General Warranty and Guarantee

Contractor warrants and guarantees to Owner, Engineer, and Engineer's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

- 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
- 2. normal wear and tear under normal usage.

B. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

- 1. observations by Engineer;
- 2. recommendation by Engineer or payment by Owner of any progress or final payment;
- 3. the issuance of a Certificate of Completion or any payment related thereto by Owner;
- 4. use or occupancy of the Work or any part thereof by Owner;
- 5. any acceptance by Owner or any failure to do so;
- 6. any review of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
- 7. any inspection, test, or approval by others; or
- 8. any correction of defective Work by Owner.

6.20 Indemnification

~~A. Refer to Article IV, Section 1 of the Construction Contract - Generating.~~

ARTICLE 7 - OTHER WORK

7.01 Related Work at Site

A. Owner may perform other work related to the Project at the Site by Owner's employees, or let other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

- 1. written notice thereof will be given to Contractor prior to starting any such other work; and
- 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefore as provided herein.

B. Contractor shall afford each other contractor who is a party to such a direct contract and each utility owner (and Owner, if Owner is performing the other work with Owner's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 Coordination

A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

- 1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
- 2. the specific matters to be covered by such authority and responsibility will be itemized; and
- 3. the extent of such authority and responsibilities will be provided.

B. Owner shall have sole authority and responsibility for such coordination.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor.

8.02 Replacement of Engineer

A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 Furnish Data

A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

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8.04 Pay Promptly When Due

A. Owner shall make payments to Contractor promptly when they are due.

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8.05 Lands and Easements; Reports and Tests

A. Owner's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by Engineer in preparing the Contract Documents.

8.06 Insurance

A. Owner's responsibilities, if any, in respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 Change Authorization Requests

A. Owner is obligated to execute Change Authorization Requests as indicated in paragraph 10.03.

8.08 Inspections, Tests, and Approvals

A. Owner's responsibility in respect to certain inspections, tests, and approvals is set forth in paragraph 13.03.B.

8.09 Limitations on Owner's Responsibilities

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.10 Undisclosed Hazardous Environmental Condition

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in paragraph 4.06.

8.11 Evidence of Financial Arrangements

A. If and to the extent Owner has agreed to furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents, Owner's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 Owner's Representative

A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents and will not be changed without written consent of Owner and Engineer.

9.02 Visits to Site

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer,

for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in paragraph 9.10, and particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 Project Representative

A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.10 and in the Supplementary Conditions. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Contract Documents.

9.04 Clarifications and Interpretations

A. Engineer will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as Engineer may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on Owner and Contractor. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a written clarification or interpretation, a Claim may be made therefor as provided herein.

9.05 Authorized Variations in Work

A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by an Instruction to Contractor and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of an Instruction to Contractor, a Claim may be made therefor as provided herein.

9.06 Rejecting Defective Work

A. Engineer will have authority to disapprove or reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.07 Shop Drawings, Change Authorization Requests and Payments

A. In connection with Engineer's authority as to Shop Drawings and Samples, see paragraph 6.17.

B. In connection with Engineer's authority as to Change Authorization Requests, see Articles 10, 11, and 12.

C. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.08 Determinations for Unit Price Work

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of paragraph 10.05.

9.09 Decisions on Requirements of Contract Documents and Acceptability of Work

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to Engineer in writing, in accordance with the provisions of paragraph 10.05, with a request for a formal decision.

B. When functioning as interpreter and judge under this paragraph 9.09, 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 9.09 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 14.07) will be a condition precedent to any exercise by Owner or Contractor of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

9.10 Limitations on Engineer's Authority and Responsibilities

A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case

of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

E. The limitations upon authority and responsibility set forth in this paragraph 9.10 shall also apply to Engineer's Consultants, Resident Project Representative, and assistants.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 Authorized Changes in the Work

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Written Amendment, a Change Authorization Request, or an Instruction to Contractor. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved, which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of an Instruction to Contractor or Change Authorization Request, a Claim may be made therefor as provided herein.

10.02 Unauthorized Changes in the Work

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in paragraph 3.04, except in the case of an emergency as provided in paragraph 6.16 or in the case of uncovering Work as provided in paragraph 13.04.B.

10.03 Execution of Change Authorization Requests

A. Owner and Contractor shall execute appropriate Change Authorization Requests recommended by Engineer (or Written Amendments) covering:

1. changes in the Work which are: (i) ordered by Owner pursuant to paragraph 10.01.A, (ii) required because of acceptance of defective Work under paragraph 13.08.A or Owner's correction of defective Work under paragraph 13.09, or (iii) agreed to by the parties;
2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with an Instruction to Contractor; and
3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to paragraph 10.05; provided that, in lieu of executing any such Change Authorization Request, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.18.A.

10.04 Notification to Surety

A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of such notice will be Contractor's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

10.05 Claims and Disputes

A. Notice: Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. Notice of the amount or extent of the Claim, dispute, or other matter with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matter). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of paragraph 12.01.B. A

in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

B. Engineer's Decision: Engineer will render a formal 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, dispute, or other matter will be final and binding upon Owner and Contractor unless:

1. an appeal from Engineer's decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 16; or

2. if no such dispute resolution procedures have been set forth in Article 16, a written notice of intention to appeal from Engineer's written decision 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 or within 60 days after Substantial Completion, whichever is later (unless otherwise agreed 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 10.05.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.

D. No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this paragraph 10.05.

ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

11.01 Cost of the Work

A. **Costs Included:** The term Cost of the Work means the sum of all costs necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Authorization Request or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be as described in Section 01200 – Price and Payment Procedures.

B. **Documentation:** Whenever the Cost of the Work for any purpose is to be determined pursuant to paragraphs 11.01.A, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 Cash Allowances

A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums as may be acceptable to Owner and Engineer. Contractor agrees that:

1. the allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. Contractor's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the allowances have been included

B. Prior to final payment, an appropriate Change Authorization Request will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 Unit Price Work

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of paragraph 9.08.

B. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

2. there is no corresponding adjustment with respect any other item of Work; and

3. if Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 Change of Contract Price

A. Refer to Section 01200 – Price and Payment Procedures.

12.02 Change of Contract Times

A. The Contract Times (or Milestones) may only be changed by a Change Authorization Request or by a Written Amendment. Any Claim for an adjustment in the Contract Times (or Milestones) shall be based on written notice submitted by the party making the claim to the Engineer and the other party to the Contract in accordance with the provisions of paragraph 10.05.

B. Any adjustment of the Contract Times (or Milestones) covered by a Change Authorization Request or of any Claim for an adjustment in the Contract Times (or Milestones) will be determined in accordance with the provisions of this Article 12.

12.03 Delays Beyond Contractor's Control

A. Where Contractor is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of Contractor, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

12.04 Delays Within Contractor's Control

A. The Contract Times (or Milestones) will not be extended due to delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

A. Where Contractor is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both Owner and Contractor, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be Contractor's sole and exclusive remedy for such delay.

12.06 Delay Damages

A. In no event shall Owner or Engineer be liable to Contractor, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. delays caused by or within the control of Contractor; or
2. delays beyond the control of both Owner and Contractor including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

B. Nothing in this paragraph 12.06 bars a change in Contract Price pursuant to this Article 12 to compensate Contractor due to delay, interference, or disruption directly attributable to actions or inactions of Owner or anyone for whom Owner is responsible.

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 Notice of Defects

A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 Access to Work

A. Owner, Engineer, Engineer's Consultants, other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's Site safety procedures and programs so that they may comply therewith as applicable.

13.03 Tests and Inspections

A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. Contractor shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation.

F. Uncovering Work as provided in paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 Uncovering Work

A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineers may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, Contractor shall pay all Claims, costs, losses, and damages (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 such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in paragraph 10.05. If, however, such Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided herein.

13.05 Owner May Stop the Work

A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 Correction or Removal of Defective Work

A. Refer to Article II, Section 56 of the Construction Contract – Generating.

13.07 Correction Period

A. Refer to Article II, Section 56 of the Construction Contract – Generating.

B. In special circumstances where a particular item of equipment is placed in continuous service before Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

C. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

D. Contractor's obligations under this paragraph are in addition to any other obligation or warranty. The provisions of this paragraph shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

13.08 Acceptance of Defective Work

A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all Claims, costs, losses, and damages (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) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Authorization Request will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided herein. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 Owner May Correct Defective Work

A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work or to remove and replace rejected Work as required by Engineer in accordance with paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct and remedy any such deficiency.

B. In exercising the rights and remedies under this paragraph, Owner shall proceed expeditiously. In connection with such corrective and remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's Consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

C. All Claims, costs, losses, and damages (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) incurred or sustained by Owner in exercising the rights and remedies under this paragraph 13.09 will be charged against Contractor, and a Change Authorization Request will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided herein. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

D. Contractor shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this paragraph 13.09.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 Schedule of Values

A. Not used.

14.02 Progress Payments

A. Refer to Article III, Section 1 of the Construction Contract – Generating.

14.03 Contractor's Warranty of Title

A. Refer to Article IV, Section 3 of the Construction Contract – Generating.

14.04 Substantial Completion

A. Refer to Article III, Section 1 of the Construction Contract – Generating.

14.05 Partial Utilization

A. Refer to Article IV, Section 3 4-of the Construction Contract – Generating.

14.06 Final Inspection

A. Refer to Article III, Section 4 4-of the Construction Contract – Generating.

14.07 Final Payment

A. Refer to Article III, Section 1 of the Construction Contract – Generating.

B. *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 a bank or trust company authorized to do business in Kentucky.

1. 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.

2. 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.

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

14.08 Final Completion Delayed

A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment and recommendation of Engineer, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 Waiver of Claims

A. Refer to Article III, Section 2 of the Construction Contract – Generating.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 Owner May Suspend Work

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided herein.

15.02 Owner May Terminate for Cause

A. Refer to Article V, Section 1 of the Construction Contract -- Generating.

15.03 Owner May Terminate For Convenience

A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, elect to terminate the Contract. In such case, Contractor shall be paid (without duplication of any items):

- 1. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
- 2. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
- 3. for all claims, costs, losses, and damages (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) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
- 4. for reasonable expenses directly attributable to termination.

B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 Contractor May Stop Work or Terminate

A. If, through no act or fault of Contractor, the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or Engineer fails to act on any Application for Payment within 30 days after it is submitted, or Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in paragraph 15.03. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph 15.04 are not intended to preclude Contractor from making a Claim for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

16.01 Methods and Procedures

A. Owner and Contractor may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

ARTICLE 17 - MISCELLANEOUS

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17.01 Giving Notice

A. Whenever any provision of the Contract Documents 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.

17.02 Computation of Times

A. When any period of time is referred to in the Contract Documents 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 will be omitted from the computation.

17.03 Cumulative Remedies

A. Refer to Article V, Section 3 of the Construction Contract -- Generating.

17.04 Survival of Obligations

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Agreement.

17.05 Controlling Law

A. This Contract is to be governed by the law of the state in which the Project is located.

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17.06 ~~Liquidated Damages⁽⁹⁾~~

~~A. Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if Work is not completed within the times specified in the Construction Contract — Generating, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$5,000 for each of the following items for each day that expires after the time specified in the Construction Contract — Generating for Completion and readiness for final payment until the Work is completed and ready for final payment, to a total maximum of 10% of the total bid target price.~~

- ~~1. Boiler and Turbine Island building enclosed: December 1, 2003.~~

- ~~2. Boiler and Turbine Island building heating system activated: December 1, 2003.~~
- ~~3. Mechanical Work substantially complete: November 30, 2004.~~
- ~~4. Electrical and Instrumentation and Controls Work substantially complete: November 30, 2004.~~

~~17.07 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.~~

~~17.078 Lobbying Certification~~

~~A. Certification regarding lobbying is required. 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>Cherne Contracting Corporation</u>	<u>EKPC Unit 4 - Contract F281B</u>
Organization Name	PR/Award or Project Name
<u>A. William Cherne, Jr. - President</u>	
Name and Title	
<u></u>	<u>9/20/06</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.

Cherne Contracting Corporation
Organization Name

A. William Cherne, President
Name of Authorized Official


Signature

10/24/05
Date

Contract F332 – Painting

This contract is not scheduled to be awarded until the summer of 2008. No expenditures have been made on this contract.

FILE COPY

Contract F300

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 5 minutes 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.

ENGINEERING SERVICE CONTRACT FOR THE DESIGN AND CONSTRUCTION OF A GENERATING PLANT

PSC Request 1a. Attachment No. 25 PAGE 1

AGREEMENT, made January 3, 2005, between East Kentucky Power Cooperative, Inc. (hereinafter called the "Owner") and Stanley Consultants, Inc of Muscatine, Iowa hereinafter called the "Engineer")

WHEREAS, the Administrator of the Rural Utilities Service (hereinafter called the "Administrator") of the United States of America (hereinafter called the "Government") has approved the making of a loan or loan guarantee of not in excess of \$ N/A by the Government to the Owner pursuant to the Rural Electrification Administration Act of 1936, as amended, approximately \$ N/A of which is intended to finance, in whole or in part, the construction and operation of an electrical generating plant which is estimated to cost \$ 469.7 million and consists of a 278 mw coal-fired, steam electric, circulating fluidized bed baseload unit at Spurlock Station, including GSU transformers.

in the State of Kentucky, having the Rural Utilities Service project designation of Spurlock 4, (hereinafter called the "Project"), located at such place as the Owner with the approval of the Administrator shall designate;

NOW, THEREFORE, in consideration of the mutual undertakings herein contained, the parties hereto agree as follows:

ARTICLE I

General Obligation of Engineer

In accordance with the normal standards and practices used in the profession, the Engineer shall diligently and competently render all engineering services which shall be necessary or advisable for the expeditious, economical, and sound design and construction of the Project with due consideration to applicable ecological and environmental requirements. The enumeration of specific duties and obligations to be performed by the Engineer hereunder shall not be construed to limit the general undertakings of the Engineer.

ARTICLE II

Design of Project

Section 1. *The Engineer shall prepare and within 30 days after the approval hereof by the Administrator submit in duplicate to the Owner for approval and to the Administrator for approval, if approval of the Administrator is required, a "Project Design Manual" which shall consist of, but not necessarily be limited to, the following items*

(a) *A detailed statement covering the procedures to be followed by the Engineer in the performance of this Agreement, including, without limitation, such matters as the routing and distribution of copies of correspondence and reports, the furnishing of lists of plans and specifications, procedures relating to the awarding of construction and equipment contracts, identification of persons to be called by telephone with respect to various subject matters, contract closeouts, and meetings*

(b) *A design outline which includes all design criteria for the Project, including, without limitation, plant site, equipment, building requirements, environmental equipment and other environmental factors, civil, electrical, and mechanical requirements. The outline shall comply with the requirements of RUS Environmental Policies and Procedures.*

(c) *Evaluation studies which support the economic basis for the design and selection of equipment, including, without limitation, turbine throttle and exhaust conditions, boiler feed pump, air quality equipment, and condenser.*

(d) *Testing procedures which outline the responsibilities to be assumed by the Owner, Engineer, and contractor and include, without limitation, acceptance testing, concrete tests, laboratory testing, radiographic inspection, electrical checkout, and testing.*

Section 2. *In addition, the Engineer shall prepare and within 30 days after the approval hereof by the Administrator submit in duplicate to the Owner for approval and to the Administrator for approval, if approval of the Administrator is required, preliminary plans (hereinafter called the "Preliminary Plans") which shall consist of:*

(a) *A single-line diagram of proposed main and auxiliary electrical connections, including all major equipment, switching and substations.*

(b) *A single-line flow diagram of proposed steam, water, gas, oil, and air connections, including all major equipment.*

(c) *A schedule, in a form acceptable to the Owner and Administrator, showing by months the estimated time required for each major subdivision of the Project for design, fabrication, and installation, and the estimated date the project will be available for commercial service. Such schedule shall specify, in percentages, the portion of the total design performance of the Engineer under this Agreement which each item of design represents.*

(d) *The Engineer's estimate of the total cost of the completed Project, by components, together with the forecast of the amounts of money needed by the Owner each month until completion of the Project.*

Section 3. *Promptly upon receipt of approval by the Owner and by the Administrator, if the approval of the Administrator is required, of the Project Design Manual and Preliminary Plans, the Engineer shall proceed with preparation of and shall submit, in duplicate, to the Owner and to the Administrator, if approval of the Administrator is required, complete and detailed plans and specifications, drawings, maps, and other engineering documents required for the construction of the Project (all of the foregoing being hereinafter sometimes collectively called the "Plans and Specifications"). In the preparation of the Plans and Specifications, the Engineer shall consult with the Owner to the end that the Project shall serve the purposes intended by the Owner. The Engineer shall diligently make such necessary changes in the Plans and Specifications as may be required by the Owner and the Administrator. The Plans and Specifications shall include the following:*

(a) *Detailed drawings showing the complete design and layout of the Project.*

(b) *The form of construction contract (hereinafter called the "Construction Contract") to be entered into between the Contractor and Owner for the construction of the Project, including forms of notice and instructions to bidders, material and construction specifications, contractor's proposal, bidder's qualifications,*

contractor's bond, and construction drawings. If the Owner or the Administrator shall direct that the Project shall be constructed under more than one contract, the Engineer shall submit forms of all necessary Construction Contracts and shall also prepare and submit in connection with each such contract all that is hereinabove required of the Engineer in connection with the Construction Contract. All maps, drawings, plans, specifications, estimates, and other documents required to be prepared or submitted by the Engineer under this section or other sections of the Agreement shall conform to applicable environmental requirements related to the project, including those commitments contained in the RUS Final Environmental Statement, standard specifications, and other forms prescribed by the Administrator, unless deviation therefrom shall be permitted by the Administrator in writing.

Section 4. *The Engineer shall also proceed to procure and submit to the Owner and to the Administrator, if approval of the Administrator is required, forms of other contracts and documents for the equipment and materials proposed to be purchased by the Owner for use in connection with the construction of the Project or any services necessary or desirable in connection therewith.*

Section 5. *The Engineer, immediately upon receipt of notice from the Owner and from the Administrator, if approval of the Administrator is required, of their approval for bidding purposes of the form of Construction Contract or any contracts for materials, equipment, and services, as the case may be, shall, unless otherwise instructed by the Owner with the prior approval of the Administrator, take all appropriate and necessary action to procure full, free, and competitive bidding for the award of such contracts. In fulfilling this responsibility, the Engineer shall prepare and submit to the Owner for approval a recommended bidders' list. Upon approval of such list by the Owner, the Engineer, in collaboration with the Owner, shall fix a date for the opening of bids for such contracts. The Engineer shall be available to each prospective bidder for consultation with respect to the details of the Plans and Specifications and all other matters pertaining to the preparation of the Proposals for the construction of the Project or the supply of materials, equipment or services therefor.*

Section 6. *The Engineer shall attend all openings of bids for the construction of the Project, or any part thereof, or for the furnishing of materials, equipment, and services therefor. In case fewer than three (3) bids are received for the construction of the Project or component parts of the Project, the Owner shall be notified immediately and such bids shall remain unopened unless permission is obtained from the Owner for the opening of such bids. If bids are opened, the Engineer shall carefully check and prepare tabulations of all bids received and shall render to the Owner all such assistance as shall be required in connection with consideration of the bids so that contracts may be prudently and properly awarded. The Engineer shall submit in writing to the Owner its first, second, and third choice of bidders, materials, and equipment to be used in each case, with its recommendation and reasons for the selection. When the Owner has indicated its choice of bidders, materials, and equipment, the Engineer shall forward a tabulation of the bids, copies of the recommendation, and the Owner's selection to the Administrator, if approval of the Administrator is required. If requested by the Administrator, the Engineer shall forward one complete copy of all original bids received. Upon approval by the Administrator, if approval of the Administrator is required, of the selection of a bidder, materials, and equipment, the Engineer shall prepare three counterparts of the contract to be executed by the Owner and the Contractor and shall forward such executed counterparts to the Administrator for approval, if approval of the Administrator is required.*

Section 7. *The Engineer shall furnish to the Owner all engineering information, services, data, and drawings required for procuring all necessary or desirable permits, licenses, franchises, titles, rights, and authorizations and shall cooperate with the Owner's attorney in the procuring thereof.*

ARTICLE III

Construction Management

Section 1. *The Engineer shall supervise the construction of the Project and shall make a diligent effort to ensure the expeditious and economical construction thereof in accordance with the Plans and Specifications and the terms of the Construction Contract and equipment or material contracts and the loan contract (hereinafter called the "Loan Contract") entered into between the Owner and the Government or any other lenders specifying the terms upon which the Project shall be constructed and financed. The Engineer shall carefully inspect all materials and equipment prior to their incorporation in the Project and shall promptly reject those not in compliance with the Specifications. The Engineer shall also supervise and inspect the incorporation of the*

materials in the Project and the workmanship with which such materials are incorporated. The Engineer, as representative of the Owner, shall have sole responsibility for requiring the Contractor to perform the Construction Contract in accordance with its terms and the Plans and Specifications, and, in performing the duties incident to such responsibility, the Engineer shall issue to the Contractor such directives and impose such restrictions as may be required to obtain reasonable and proper compliance by the Contractor with the terms of the Construction Contract and the Plans and Specifications in the construction of the Project, provided that the Engineer shall not be required to exercise any actual control over employees of the Contractor. The term "supervise" when used herein shall not confer upon the Engineer responsibility for the Contractor's construction means, methods, or techniques. The obligations of the Engineer hereunder run to and are for the benefit of only the Owner and the Administrator.

Section 2. If, after the Construction Contract has been approved by the Administrator, if approval of the Administrator is required, it shall be determined that any change or changes in the Plans and Specifications are advisable, the Engineer shall prepare and submit to the Owner and the Contractor all necessary details in connection with such change or changes. The execution of such changes by the Engineer shall be within the intent of the Engineer's general undertakings as outlined elsewhere in this contract. Upon approval of the change or changes by the Owner and the Contractor, the proposed change or changes shall be submitted by the Engineer to the Administrator, if approval of the Administrator is required, in the form of a contract amendment.

Section 3. The Engineer shall prepare all estimates, certificates, reports, and other documents required to be executed by the Engineer pursuant to the terms of the Construction Contract, equipment or material contracts, or the Loan Contract. When any bid specification is forwarded to RUS for review, an updated cost estimate for the proposed contract shall also be included. After all major equipment contracts have been awarded and all permits have been received, and after approximately forty percent (40%) of the project design has been completed and construction has commenced, the Engineer shall update, on a quarterly basis, unless more frequently requested by the Owner, the information required under Article II, Section 2 (d) hereof.

Section 4. The Engineer shall, upon completion of construction of component parts of the Project, make a complete inspection and conduct, utilizing the Owner's operating personnel and/or the manufacturer's representatives, such component and system tests as shall be necessary to assure conformance with the Plans and Specifications, the standards required by the Construction Contract, equipment and materials contracts, and the guarantees given in connection therewith.

Section 5. The Engineer shall schedule and coordinate the start-up activities for placing the plant in service. This shall include preparation of system operating schedules, written system start-up procedures, and operating manuals describing the various plant systems and operating procedures.

Section 6. The Engineer shall prepare written procedures for final acceptance tests of major equipment, such procedures being subject to the Owner's concurrence. Furthermore, the Engineer shall conduct, utilizing the Owner's operating personnel, final acceptance tests of major equipment. Such tests shall be made in the presence of duly qualified representatives of the Owner and the Administrator, if the Administrator elects to attend, and the time and procedure of such tests shall be agreed upon by the Engineer, the Owner, and the Administrator. After completion of each final acceptance test, the Engineer shall prepare copies of the test results and recommendations as to acceptability of equipment and submit them to the Owner for review.

Section 7. A competent resident engineer with full authority to act for the Engineer shall be maintained by the Engineer at the site of the Project during the entire period of any construction activity. The Engineer shall maintain at the site of the Project and under the direct supervision of the resident engineer a sufficient number of qualified engineering field inspectors to fully discharge the responsibilities of the Engineer pursuant to Article III, Section 1 hereof.

ARTICLE IV

Final Documents

The Engineer shall, upon the completion of the inspection and tests in respect of the Project provided in Sections 4 and 6 of Article III, obtain or prepare and deliver to the Owner the following:

- (a) A nameplate inventory and summary in triplicate of all equipment and facilities incorporated in the Project together with a breakdown of contract costs arranged by Standard List of Retirement Units, RUS Bulletin 181-2.
- (b) Two complete sets of final inventory (record) drawings showing the location and layout of the Project in accordance with revisions to design drawings and field records of construction. All information required by this Agreement to be included in the maps and drawings shall be included in the record drawings. One complete set of the record drawings shall be in reproducible form satisfactory to the Owner. The Engineer shall also provide the Owner with any other original manufacturer's equipment drawings not otherwise available to the Owner.
- (c) An itemized statement in triplicate of the amounts payable by the Owner under all contracts for the construction of the Project and the furnishing of materials, equipment, and services thereof.
- (d) A certificate in triplicate to the effect that the Project has been fully constructed substantially in accordance with the Plans and Specifications if and as amended.
- (e) A detailed report in duplicate of all tests, in a form satisfactory to the Owner.
- (f) All maps, tracings, and drawings prepared or used by the Engineer in connection with the performance of the duties of the Engineer under this Agreement.
- (g) Operating and maintenance manuals received from manufacturers.

When the Owner has determined that the Project is available for commercial service, the Engineer shall report to the Owner and the Administrator, for depreciation purposes, the estimated total contract cost of the Project, plus the Owner's other related overhead cost, as obtained from the Owner, showing as a separate item the cost of land (a non-depreciable item).

ARTICLE V

Compensation

Section 1. The Owner shall pay the Engineer for the services performed hereunder as indicated in the attached Schedule A.

Section 2. The total compensation to be paid in connection with this Agreement shall not exceed

~~\$ 16.2 million~~ **Sixteen million, two hundred thousand** Dollars.)

Section 3. The Engineer shall submit to the Owner each month a certified statement in duplicate of the amounts due for services hereunder, which statement shall be in accordance with the applicable reports of engineering progress required by Article VI, Section 1 hereof, and shall be in such detail and contain such supporting data as the Owner may request. The Owner shall review and approve each statement within thirty (30) days or inform the Engineer of the reasons the statement cannot be approved. Upon approval of each such statement by the Owner, ninety (90) percent of the amount thereof shall be due and payable. The balance of the compensation payable under Section 1 hereof shall be due and payable within thirty (30) days after completion of the Project. The Project shall be deemed complete for the purposes of the Agreement when all required final documents, including a certificate of completion, have been submitted by the Engineer and approved by the Owner and by the Administrator, if approval of the Administrator is required.

Section 4. *In the event that this Agreement at any time be terminated pursuant to Article VI, Section 2 hereof, the compensation which shall be payable by the Owner to the Engineer for services rendered prior to such termination shall be computed as follows:*

(a) *Compensation for services in respect of the Design of the Project shall be determined in accordance with Section 1 of this Article V, using the final report of engineering progress referred to in Article VI, Section 1 hereof to determine the percentage of completion of the services in respect of design of the Project as of the effective date of termination*

(b) *Compensation for services in respect of supervision and inspection of construction of the Project and all other services shall be computed at the rate of \$ see per staff hour of supervision and inspection of construction performed by the Engineer prior to the effective date of termination, but in no event shall such compensation exceed an amount computed in accordance with the provisions of Section 1 of this Article V. The Engineer shall submit to the Owner, in duplicate, a statement of the staff hours of supervision and inspection of construction in such detail and with such supporting data as may be requested by the Owner*

proposal dated
1/6/2004

Section 5. *Compensation payable to the Engineer under any of the Articles of this Agreement shall be in addition to taxes or levies (excluding Federal, State, and Local Income Taxes) which may be assessed against the Engineer by any State or political subdivision directly on services performed or payments for services performed by the Engineer pursuant to this Agreement. Such taxes or levies which the Engineer may be required to collect or pay, shall, in turn, be added by the Engineer to invoices submitted to the Owner pursuant to this Agreement.*

Section 6. *At or prior to the time when any payments shall be made to the Engineer pursuant to this Agreement, the Engineer if requested by the Owner shall furnish to the Owner, as a condition precedent to such payment, a certificate to the effect that all salaries or wages earned by the employees of the Engineer in connection with the Project have been fully paid by the Engineer up to and including a date not more than fifteen (15) days prior to the date when such payment shall be made. At or before the time when the final payment provided to be made hereunder shall be made to the Engineer by the Owner, the Engineer shall also furnish to the Owner, as a condition precedent to such payment, a certificate in form satisfactory to the Administrator that all the employees of the Engineer have been paid for services rendered by them in connection with the Project and that all other obligations which might become a lien on the Project have been paid.*

Section 7. *Interest at the rate of five percent (5 %) per annum [percentage is not to exceed any applicable State usury laws] shall be paid by the Owner to the Engineer on all unpaid balances due the Engineer, commencing thirty (30) days after the due date, provided that the delay in payment beyond the due date shall not have been caused by any condition within the control of the Engineer. Such compensation shall be paid ten (10) days after the amount of the interest has been determined by the Engineer and the Owner.*

ARTICLE VI

Miscellaneous

Section 1. *The Engineer shall prepare and execute in such form and detail as the Owner and the Administrator shall direct all estimates, certificates, reports, and other documents required to be executed by the Engineer pursuant to the Construction Contract or the Loan Contract, including, without limitation, a monthly report of engineering progress on the form of schedule referred to in Article II, Section 2 (c) hereof, showing the percentage of completion of each of the subdivisions thereof and the overall percentage of completion of engineering services in respect of the design and construction of the Project as of the date of each such report; Monthly Cost Estimates and Forecasts of Cash Requirements in the form referred to in Article II, Section 2 (d) hereof, which shall contain explanations of changes, if any, from prior Monthly Cost Estimates and Forecasts of Cash Requirements. From time to time the Engineer shall prepare and submit to the Owner for approval and to the Administrator for approval, if approval of the Administrator is required, all necessary changes in the schedule referred to in Article II, Section 2 (c) hereof; provided, however, that no changes shall be made in the percentages assigned to each item of design in the original schedule approved by the Owner and by the Administrator, if approval of the Administrator is required, pursuant to Article II, Section 2 (c) hereof.*

Section 2. *The Owner may at any time terminate this Agreement by giving notice to the Engineer in writing to that effect, delivered or mailed to the Engineer's last known address not less than twelve (12) calendar*

days prior to the effective date of termination specified in the notice. From and after the effective date specified in such notice, this Agreement shall be terminated, except that the Engineer shall be entitled to receive compensation for services hereunder as provided in Section 3 of Article V hereof, and the Engineer shall be obligated forthwith to deliver to the Owner all maps, tracings, and drawings of the Project and all other letters, documents, and other material including all records pertaining thereto. If this Agreement shall be terminated, the Engineer shall prepare and submit to the Owner and the Administrator a final report of engineering progress as of the date of termination.

Section 3. Insurance. The Engineer shall take out and maintain throughout the period of this Agreement insurance of the following types and minimum amounts:

(a) Workers' compensation and employers' liability insurance, as required by law, covering all of the Engineer's employees who perform any of the obligations of the Engineer under the Agreement. 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 Agreement 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 Agreement, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than \$1 million per person and \$1 million per occurrence, and property damage limits of \$1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(d) Errors and Omissions (Professional Liability) Insurance in an amount at least as large as the maximum compensation specified in Article V, Section 2, but not less than \$500,000.

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsections "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 total compensation to be paid under this Agreement.

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 Engineer shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than thirty (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

The Engineer shall also follow the requirements of 7 CFR part 1788, RUS Fidelity and Insurance Requirements for Electric and Telephone Borrowers.

Section 4. The obligations and duties to be performed by the Engineer under this Agreement shall be performed by persons qualified to perform such duties efficiently. The Engineer, if the Owner shall so direct in writing, shall replace any resident engineer or other persons employed by the Engineer in connection with the Project. For the information of the Owner and the Administrator, the Engineer shall file with the Owner and the Administrator a statement, signed by the Engineer, of the qualifications, including specific experience of each engineer and inspector assigned to the Project and the duties assigned to each.

Section 5. Approvals, directions, and notices provided to be given hereunder by the Administrator to the Engineer or the Owner shall be deemed to be properly given if given by the Administrator or by any person authorized by the Administrator to give such approvals, directions, or notices.

Section 6. The Engineer shall follow all applicable RUS rules and regulations.

Section 7. This Agreement may be simultaneously executed and delivered in three or more counterparts, each of which so executed and delivered shall be deemed to be an original, and all constitute but one and the same instrument.

Section 8. The obligations of the Engineer under this Agreement shall not be assigned without the approval in writing of the Owner and of the Administrator.

Section 9. This Agreement shall be effective only from and after the time when it shall be approved by the Administrator in writing. Neither this Agreement nor any provision thereof shall be modified, amended, rescinded, waived, or terminated without the approval of the Administrator.

Section 10. The Engineer shall comply with applicable statutes pertaining to engineering and warrants that Steven J. Schebler [Name of Engineer] who will be in responsible charge of the Project possesses license number 15430 issued by the State of Kentucky on the 3rd day of January, 2005.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed

East Ky Power Cooperative Inc
Owner

By Ray M. Palk
President

ATTEST:

Della E. Dawson Secretary
For and on behalf of the Corporate Secretary

Stanley Consultants, Inc
Engineer

St. J. Schobler
Vice President

ATTEST:

Paul A. Lane Secretary



Stanley Consultants INC.

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

UNIT 4

PSC Request 1a.
Attachment No. 25
PAGE 9

4
January 6, 2008

Mr. Randy Dials
Vice President, Production
East Kentucky Power Cooperative
4775 Lexington Road
P. O. Box 707
Winchester, KY 40392-0707

Dear Mr. Dials:

Subject: Spurlock Station - Unit 4
Detailed Design Services Proposal

East Kentucky Power Cooperative's objective is to install Spurlock Station, Unit 4, a 300 MW (gross), coal-fired steam-electric generating unit located at Spurlock Station next to Unit 3, with a commercial operation date of December 2007. Stanley Consultants will provide professional services as defined in our attached Scope of Work. Terms and Conditions are the same as our existing contract on Unit 3.

Stanley Consultants will commit the resources and capabilities to your project to meet the established objectives.

East Kentucky Power Cooperative is a valued client of Stanley Consultants. We are proposing the Gilbert Project Team for this work. Our extensive experience with coal-fired generating plant design; design of Spurlock Station Units 1 and 2, and Gilbert Unit 3; and the capability to perform all aspects of the project makes our team uniquely qualified for this project.

We are pleased to continue the long-standing relationship between our two organizations.

Sincerely,

Stanley Consultants, Inc.

Steven J. Schebler, P.E.
Vice President

Attachment

sjs13:ds:4ICMU-5403.ltl



**SCOPE OF WORK
UNIT 4
DETAILED DESIGN
EAST KENTUCKY POWER COOPERATIVE**

Stanley Consultants will prepare detailed design documents for Unit 4, a 300 MW (gross), coal-fired steam-electric generating unit located at Spurlock Station next to Unit 3.

Stanley Consultants' work includes the design of the turbine-generator island, turbine building, coal and limestone handling to boiler vendor terminations, underground piping ties, cooling tower and basin, and electrical work to the high side of the transformer. Building work will include the design of siding and roofing enclosure for the boiler vendor's building enclosure. The boiler vendor will design and install all systems, equipment, and steel above ground from and including the coal silos to the stack connection.

The DCS Specifications will include network overview diagrams, system descriptions, and input/output (I/O) point listings. Controls work scope will be the same as Unit 3.

Interconnection wiring diagrams are provided for turbine-generator, limestone, coal handling, ash handling, and selected motor controls not provided by Contracts 36, 201, and 281.

The basis of design will be the approved design outline of Unit 4, which is expected to be completed by June 2004.

The contract breakdown is as follows:

Construction Contracts

- Contract 1 – Turbine Generator
- Contract 201 – Boiler Island and Turbine Island Steel
- Contract 221 – Chimney
- Contract 222 – Cooling Tower
- Contract 251 – Piling
- Contract 261 – Substructure
- Contract 281 – Balance of Plant
- Contract 211 – Coal Handling

Equipment Contracts

<u>Contract No.</u>	<u>Title</u>
6	Feedwater Heaters
8	Deaerator
11	Condenser
16	Circulating Water Pumps
17	Condensate Pumps
21	Boiler Feed Pumps
36	Controls (DCS)
131	Transformers
146	Switchgear
204	Cont. Emission Monitor (by East Kentucky Power Cooperative)



Specifications will be prepared (with the exception of negotiated Contracts 1 and 201) utilizing RUS front-end documents. The anticipated drawings are similar to Unit 3 drawing list (as applicable). Our proposal is subject to mutually agreed contract terms and conditions (the same terms as Unit 3).

Detailed design "after award" services include shop drawing review of all work designed by Stanley Consultants, as requested in Stanley Consultants' prepared specifications. This work occurs after award of equipment and construction contracts and information is used in the final design process.

Review of the boiler vendor shop drawings will be for interface points only, since the boiler island will be a design-build contract.

Periodic review meetings will occur once per month, which includes reviews of preliminary plans and specifications until design is complete.

All specifications and drawings will be issued in preliminary format for East Kentucky Power Cooperative's review. After resolution of comments, documents will be issued final for bid.

The level of detail of the detailed design will be the same as that provided for Gilbert Unit 3.

We have included preparation of a master schedule (Primavera software), which will be updated each month through design and construction. Construction scheduling will be done in the field.

All drawings will be prepared in Intergraph Microstation and converted to AutoCAD (East Kentucky Power Cooperative selected release number).

All contract administration will be provided by East Kentucky Power Cooperative. All bids will be received by East Kentucky Power Cooperative and copies sent to Stanley Consultants for review and recommendation. Conformed contracts will be prepared by Stanley Consultants and issued by East Kentucky Power Cooperative. Stanley Consultants will send all specifications and drawings to bidders. The overall plant cost estimate will be updated throughout the detailed design and construction as contracts are awarded, reflecting all changes that may occur.

Questions during construction, inspection by design team members, full-time inspection services, as-built drawings, meetings during construction and construction start-up, and performance testing will be proposed later.

Resident services will be provided by East Kentucky Power Cooperative. No Stanley Consultants' field inspection work is included with this proposal. On-site inspection or periodic visits by the design engineers during construction and/or start-up will be proposed later as desired by East Kentucky Power Cooperative.

Additional work shall be in accordance with our schedule of Hourly Fees and Charges (Form C 04-05, attached) as mutually agreed.



**ESTIMATED FEE
UNIT 4
DETAILED DESIGN
EAST KENTUCKY POWER COOPERATIVE**

Stanley Consultants proposes a not-to-exceed fee for detailed design of Unit 4 in the amount of Eight Million Seven Hundred Thirty Thousand Dollars (\$8,730,000).

Stanley Consultants proposed to prepare the Unit 4 design outline for a total estimated not-to-exceed fee of Three Hundred Thirty Thousand Dollars (\$330,000); this is included in the \$8,730,000 fee.

Proposal is based on identical (to Unit 3) Turbine-Generator and Auxiliaries and Fluidized Bed Boiler and Emission Control Equipment.

Proposed is based on these differences from Unit 3:

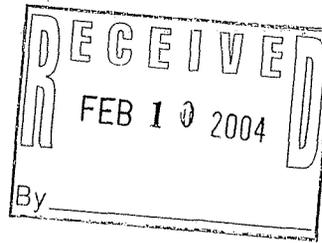
- Reuse of existing control room.
- Coal handling includes conveyor from transfer to Unit 3 to Crusher House; second crusher and crusher house expansion; conveyor to plant; side discharge coal tripper.
- Design per 2002 Kentucky Building Code.
- Fluid drives on three major fans.
- New air compressor.
- Additional fuel oil pumps and new piping to plant.
- Additional fire water pump.
- Identical boiler feed pump arrangement.
- Identical feedwater heater sizing and location in plant.
- Study and design for black start.
- Limestone silos remain the same height as Unit 3.



Stanley Consultants INC.

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

UNIT 4
STANLEY



PSC Request 1a.
Attachment No. 25
PAGE 13

February 6, 2004

Mr. Craig Johnson
Project Manager
East Kentucky Power Cooperative
Spurlock Station
P.O. Box 398
Maysville, KY 41056

Dear Mr. Johnson:

Subject: Unit 4 - Spurlock Station
Design Services

In addition to the base design fee proposed, we have estimated the cost for a 3D design, utilizing the Bentley Triforma software package (piping 2.5" and larger), cable tray, and steel for Unit 4.

For the Turbine Island 3D only, the additional fee is estimated at Five Hundred Sixty Thousand Dollars (\$560,000).

If ISOMETRICS are requested for above-ground BOP piping, in lieu of the BOP contractor furnishing, an additional fee of Fifty Thousand Dollars (\$50,000) is estimated.

The complete 3D design package is therefore:

$$\$560,000 + \$50,000 = \$610,000$$

In addition to the design fee proposed, if Stanley Consultants undertakes the Unit 4 pipe support design work (performed by Lisega on Unit 3), we estimate an additional Four Hundred Eighty Thousand Dollars (\$480,000) in fee. The pipe support design services include:

1. Perform pipe stress analysis, type select hangers, and locate hangers for the large bore (2.5" and larger) with design temperatures equal to or greater than 150°F.
2. Type select and locate hangers on large bore piping systems with design temperatures less than 150°F and have diameters 14" or greater.
3. Provide supplementary steel guide details for each required configuration. Guide details will include connection details and steel member sizes based on span and loads.

Deliverables will be in the following forms:

1. Hanger schedules that will indicate the hanger type, loads, and movements.
2. Plan drawing locating the hangers.



Mr. Craig Johnson
February 6, 2004
Page 2

3. MSS detail sheets will be developed for each hanger type.
4. Drawings for supplementary steel guide details.

If representative (not actual) 3D modeling of pipe support is desired, after completion of the pipe support design phase, the 3D model will include the pipe supports. This additional modeling fee is estimated at Eighty Thousand Dollars (\$80,000).

Therefore, the total pipe support design fee is:

$$\$480,000 + \$80,000 = \$560,000$$

If you have any questions regarding these options, please let me know.

Sincerely,

Stanley Consultants, Inc.

Steven J. Schebler, P.E.
Vice President

cc: Mr. Randy Dials
cc: Mr. Sam Holloway

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Stanley Consultants INC.

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Engineering, Environmental and Construction Services - Worldwide

PSC Request 1a.
Attachment No. 25
PAGE 15

October 15, 2004 (Revision 1)

Mr. Craig Johnson
Project Manager
East Kentucky Power Cooperative
Spurlock Station
P O. Box 398
Maysville, Kentucky 41056

Dear Craig:

Subject: Spurlock Station - Unit 4
Field Services

As you requested we have estimated our fee for field services you anticipate through April 1, 2008 for Spurlock Unit 4.

Terms and Conditions and Hourly Fees and Charges are in accordance with our existing Agreement on Unit 4.

The estimated total not-to-exceed fee for the enclosed scope is \$6,300,000 (six million three hundred thousand dollars).

Resumes of the proposed on-site field engineers will be provided at a later date. Proposed field engineers will be subject to East Kentucky Power Cooperative approval.

Please incorporate this work into our contract for Unit 4.

Stanley Consultants, Inc.

Steven J. Schebler, P.E.
Senior Vice President

cc: Mr. Sam Holloway, EKPC
cc: Mr. Randy Dials, EKPC

sjs:wsb:SPEMU-7657rev1.PE1



Stanley Consultants, Inc., will provide on-site construction inspection as follows:

- Senior Mechanical Engineer - SC 15 Rate
Duration on-site June 3, 2005, through April 1, 2008
- Mechanical Engineer - SC 14 Rate
Duration on-site November 1, 2005, through April 1, 2008
- Senior Electrical Engineer - SC 15 Rate
Duration on-site November 1, 2005, through April 1, 2008
- I&C Engineer - SC 14 Rate
Duration on-site November 1, 2005, through April 1, 2008
- Structural Engineer - SC 14 Rate
Duration on-site June 3, 2005, through June 3, 2006

PSC Request 1a.
Attachment No. 25
PAGE 16

This is a total of 133 man months

As a part of their duties, one engineer will be assigned to maintain the master project schedule throughout the duration of the project, updated monthly. Stanley Consultants field services will be provided in accordance with the procedures listed in our field services manual previously sent to East Kentucky Power Cooperative (EKPC).

Vacations and time off on the job will be coordinated so that one engineer will always be on-site during normal work hours.

We have included a total contingency of 34 man months for overtime (at straight time rates) equally distributed among engineers on-site in our estimate.

In addition, we have included time and expense for the project manager, project engineer, and lead design engineers to visit the site periodically (monthly) and provide field trip reports to EKPC. This includes 24 hrs/month for 2005 per person and 32 hrs/month per person for 2006, 2007, and 2008. This would begin August 2005 through April 1, 2008. This time and expense for Muscatine-based engineers is estimated at \$1,080,000. This is included in the total not-to-exceed fee.

The total Muscatine-based engineers' estimated man-hours are 5,000. The total field engineers' man-hours are 28,750. If additional field assistance is requested beyond these man-hour estimates, the rates in effect at the time requested will be used.

Our estimate includes moving expenses to and from Maysville, Kentucky, for field engineers on-site. Mileage is estimated for use of personal cars for job-related work. The site engineers will assist with startup, but no other assistance is included in the estimate, except for the periodic trips, at this time.

If other startup assistance is requested it will be proposed later. All contract administration will be provided by EKPC.

Offices, desk, copiers, and other office supplies will be provided by EKPC on-site. Stanley Consultants will provide each engineer with a computer. One letter-sized computer printer will be provided for the duration of the project.

If the project is delayed beyond April 1, 2008, additional time may be requested if the estimated hours have been used.

Spurlock 4

Clarifications to Engineering Service Contract

Article II-Section 3. (a)

As defined in proposal: Field Services 10/15/2004
 Design Services 9/22/2004

Article III, Sections 1., 4., 5., 6., and 7

Supervision and Inspection are to be provided by Owner unless otherwise directed. Inspection services by Engineer will be provided in accordance with our hourly fees and charges in effect at the time required.

Article IV, Item (a)

This item will be complete by Owner.

Article V, Section 3.

Change 90 percent to 100 percent of the amount thereof shall be due and payable. Delete remaining three sentences referring to payment of withheld funds.

Article VI, Section 3. (d)

Owner & Engineer have agreed to a minimum coverage of \$15 million.



Hourly Fees and Charges

Fiscal Year 2004-2005

I. Compensation for office-based personnel in the contiguous United States for time in the performance of the work shall be in accordance with the following Hourly Fees:

Classification	Hourly Fee	Classification	Hourly Fee	Classification	Hourly Fee
SC-1	28.80	SC-8	76.00	SC-15	129.80
SC-2	36.25	SC-9	81.85	SC-16	144.60
SC-3	43.50	SC-10	88.75	SC-17	165.70
SC-4	49.85	SC-11	96.35	SC-18	186.25
SC-5	56.30	SC-12	103.75	SC-19	215.00
SC-6	62.65	SC-13	111.45		
SC-7	69.80	SC-14	120.25		

Travel time in the interest of the work and away from the assigned office, either local or intercity, will be charged in accordance with the foregoing schedule. When traveling by public carrier, the maximum charge will be eight hours per day.

II. Compensation for items of expense and other charges incurred in connection with the performance of the work shall be in accordance with the following schedule:

Automobile	\$0.50/mile
Automobile Assigned to Project Site	\$30.00/cal. day
Four-Wheel Drive Vehicles	\$0.60/mile
Four-Wheel Drive Vehicles Assigned to Project Site	\$40.00/cal. day
Computer-Aided Drafting and Design (CADD)	\$15.00/hour
Mylar Plots	\$10.00/plot
Global Positioning System Receivers	\$18.50/hour
Ground Transportation (rental car, taxi, etc.)	At Cost Plus 10%
Air Travel (commercial and charter)	At Cost Plus 10%
Living Expenses (away from assigned office)	At Cost Plus 10%
Telephone and Facsimile	At Cost Plus 10%
Equipment Rental	At Cost Plus 10%
Laboratory Work	At Cost Plus 10%
Soils Testing and Analysis	At Cost Plus 10%
Outside Photographic Work	At Cost Plus 10%
Duplicating Work	(schedule supplied upon request)
Technical Testing and Surveying Equipment	(schedule supplied upon request)

III. Compensation for purchases, items of expense, and other charges not scheduled above, incurred in connection with the performance of the work, shall be at cost plus 10%.

IV. Compensation for use of proprietary computer programs shall be as a surcharge rate applied to the data processing system charges. Compensation for outside computer system services shall be at net cost plus a surcharge rate to cover data communication costs. Compensation for programming, data entry, and consultation shall be in accordance with Article I above. (Schedule supplied upon request.)

V. Interest at the rate of 1-1/2% per month will be charged on invoices not paid within 30 days.

VI. Charges are subject to revision on or after April 2, 2005.

Contracts Not Awarded

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

GE Energy Services

21A

EKPC

SMITH

PROPOSAL

TO:

REDACTED

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:		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 SMITH STATION, UNIT # 1 PER GEN
PROPOSAL, IPS # 101748/102132 -CL-A+, SUBMITTED
ON 29 APRIL 2004, AND OPTIONS AS LISTED IN
GEN 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,*

13 copies

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 G.E.I. APPENDIX A, ATTACHMENT III, ARTICLE G.C. 3)
SEE G.E.I. 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 G.E.I. 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.~~

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.

THE CONTRACT PRICE
DELIVERY AND PERFORMANCE WILL BE EQUITABLY ADJUSTED TO REFLECT ADDITIONAL COST OR OBLIGATIONS INCURRED BY BIDDER DUE TO CHANGES IN APPLICABLE LAWS.

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 GEN 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 GEN - 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

File 13 JUN 05

~~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 GEII APPENDIX A - ATTACHMENT III~~

- ARTICLE G. C. 7, PAYMENTS AND ATTACHMENT I, PAYMENT SCHEDULE
- b. Interest at the rate of FOUR percent¹ (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 percent² (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 GE 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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13 Jun 05

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*

THE OWNER SHALL BE RESPONSIBLE FOR DISPOSAL OF HAZARDOUS MATERIALS EXISTING AT THE WEBSITE PRIOR TO BIDDER MOBILIZATION WHICH REQUIRE REMOVAL TO SUPPORT THE BIDDERS SCOPE OF WORK OBLIGATIONS. 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 1b.
Attachment No. 2
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

MINIMUM REQUIREMENTS SET FORTH IN GEII APPENDIX A, ATTACHMENT II - GE COMPANY MINIMUM BUILDER RISK COVERAGE REQUIREMENTS FOR TURBINE CENTER LINE PRODUCTS

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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 FEIT 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 FEIT 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.

Waller
13 JUN 03

- 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 G.E.I. 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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13 JUN 05

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 CEJI 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

[Handwritten signature]
13 JUN 05

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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13 Jun 05*

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:

Connie Rogers
Secretary

Dated 13 JUN 05

General Electric International
Bidder

[Signature]
Acting ~~President~~ Centerline Installations

4200 Wildwood Parkway
Atlanta, Georgia, ^{Address} 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

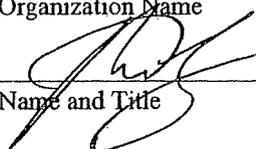
1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in the covered transaction. The prospective participant 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

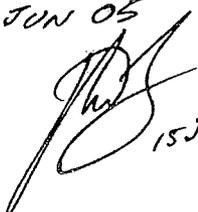
- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
 - (b) Have not within a three-year 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.

GE11 - CENTERLINE INSTALLATIONS (1+FS)
Organization Name PR/Award or Project Name

 PATRICK CAFFEY - ACTING GENERAL MANAGER
Name and Title

15 JUNE 05
Signature Date

* SEE ATTACHED LETTER DATED 15 JUN 05

 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
dave1.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 Contractors' 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,

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 Smith Station per GE Proposal #101748/102132 dated April 29, 2004 with options as listed in GE11 letter of Nov. 7, 2004.

for a total contract price of \$  dollars.)

East Kentucky Power Coop
Owner

By Ray M. Palk
President *by dge*

Della E. Jamison, For and on
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





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.

U.S. Department of Agriculture
Rural Utilities Service

PSC Request 1b.
Attachment No. 2
PAGE 26

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 0570-0107. 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.

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

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 (97-332) 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 number for this collection is 0707-0187. The time for reviewing comments on this collection of information does not include the time for reviewing comments on this collection of information. Send comments regarding this collection of information, including suggestions for reducing the burden, to Washington, DC 20503-2941 and to the Office of Management and Budget, Paperwork Project (97-332).

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)

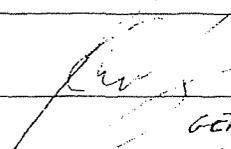
Rural Utilities Service Project SPURLOCK UNIT # 4 + SMITH UNIT # 1

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  PATRIKA 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.

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

	<i>Title</i>

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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>Owner</i>
_____ <i>Date</i>	By _____ <i>President</i>
	_____ <i>Name of Contractor</i>
_____ <i>Date</i>	By _____ _____ <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 MERCHANT ABILITY 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 it's 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.

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.



FILE COPY

GE Energy

D1B

East Kentucky Power Cooperative, Inc.

Smith Station Unit #1

One (1) D5 Steam Turbine-Generator

U.S. Department of Agriculture
Rural Utilities Service

PSC Request 1b.
Attachment No. 2
PAGE 61

EQUIPMENT CONTRACT

NOTICE AND INSTRUCTIONS TO BIDDERS

- 1. Sealed proposals** for the furnishing and delivering f.o.b. to plant site near Trapp, KY, one turbine generator for Smith 1 as per G.E. Proposal IPS-102132 dated June 2005 for *equipment for the rural electric project of Smith 1RUS designation Fayette-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, 2005, 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.
- 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 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.*
- 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.*
- 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.

June 2005

GE ID# 1047482132

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:*

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, Inc.

Owner

By Randy Dials / dp

Vice President - Production

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: Smith Station STG#1 Price: 

Item: _____ Price: _____

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

The nearest accessible rail siding to Smith 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 ~~projeet~~ 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 preceeding 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-102132 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 April 30, 2007-20 .

~~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.

June 2005

GE ID# 102132

- 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.~~*
- b. *Public liability insurance ~~covering all operations under the contract shall have~~ having 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 ~~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~~ 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 and Loss Payee 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 in 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.

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 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:

Daniel Stobaugh
Secretary

Dated 6-15-05
43065

General Electric Company

Bill Newcomer
Bidder
President Account Ex.
9465 Bakircay Lane Powell, OH

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.

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 following Equipment:

One turbine generator for Smith Power Station as per G.E. Proposal #IPS-102132 dated June 2005

for a total contract price



East Kentucky Power Cooperative, Inc.

Owner

By *Roy M. Falk*
President

Della E. Damron Forandon
Secretary
behalf of the Corporate Secretary

December 15, 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":

- (a) RUS Contract Form 198 and Attachments
- (b) General Terms & Conditions of Sale ("GC")
- (c) Seller's Technical Proposal Description- IPS-102132 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 102132, 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 April 30, 2007, ("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 102132	Cumulative
Nov-04	LOI Effective Date		0.00%
Dec-04	LOI#2 Effective Date		0.00%
Jan-05			0.00%
Feb-05	Calendar Payment	2.00%	2.00%
Mar-05			2.00%
Apr-05			2.00%
May-05			2.00%
Jun-05			2.00%
Jul-05			2.00%
Aug-05			2.00%
Sep-05			2.00%
Oct-05	Calendar Payment	8.00%	10.00%
Nov-05			10.00%
Dec-05			10.00%
Jan-06	Calendar Payment	2.00%	12.00%
Feb-06	"	2.00%	14.00%
Mar-06	"	2.00%	16.00%
Apr-06	"	2.00%	18.00%
May-06	"	3.00%	21.00%
Jun-06	"	3.00%	24.00%
Jul-06	"	4.00%	28.00%
Aug-06	"	4.00%	32.00%
Sep-06	"	6.00%	38.00%
Oct-06	"	10.00%	48.00%
Nov-06	"	12.00%	60.00%
Dec-06	"	12.00%	72.00%
Jan-07	"	3.00%	75.00%
Feb-07		0.00%	75.00%
Mar-07		0.00%	75.00%
Apr-07	ST2 RTS	20.00%	95.00%
May-07	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.

ATTACHMENT 3

Month	Event	ST 102132
Nov-04	Signed Agreement	0.00%
Dec-04		0.00%
Jan-05		0.00%
Feb-05	Calendar Payment	2.00%
Mar-05		2.00%
Apr-05		2.00%
May-05		2.00%
Jun-05	Contract	2.00%
Jul-05		2.00%
Aug-05		2.00%
Sep-05		2.00%
Oct-05	Calendar Payment	10.00%
Nov-05	"	10.00%
Dec-05	"	10.00%
Jan-06	"	12.00%
Feb-06	"	14.00%
Mar-06	"	16.00%
Apr-06	"	18.00%
May-06	"	21.00%
Jun-06	"	24.00%
Jul-06	"	28.00%
Aug-06	"	32.00%
Sep-06	"	38.00%
Oct-06	"	48.00%
Nov-06	"	60.00%
Dec-06	"	72.00%
Jan-07	"	75.00%
Feb-07		75.00%
Mar-07		95.00%
Apr-07	ST2 RTS	100.00%
May-07		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 Description.
- 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 Description 102132, , 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 Smith Station Unit #1 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 log sheets 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).



GE Energy

PSC Request 1b.
Attachment No. 2
PAGE 94

**GE Energy
Equipment and Services Proposal**

for

One (1) D5 Steam Turbine-Generator

to

**East Kentucky Power Cooperative, Inc.
Smith Station Unit #1**

**Technical Document, Attachment #5 No: 102132S1N1
Dated: June, 2005**

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Conformed Contract

for

**Contract G3 – Site Improvements
Smith Station
Trapp, Kentucky**

Between

**East Kentucky Power Cooperative, Inc.
Winchester, Kentucky**

And

**The Allen Company, Inc.
Winchester, Kentucky**

October 2006



East Kentucky Power Cooperative, Inc.

Project Manual

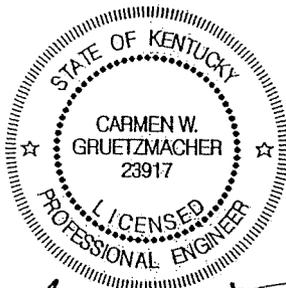
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Contract G3 – Site Improvements

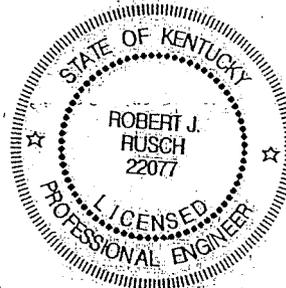
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Trapp, Kentucky

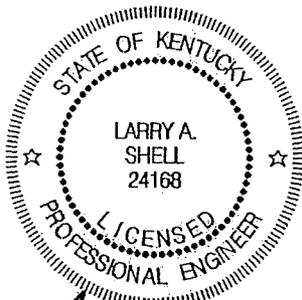
East Kentucky Power Cooperative
Winchester, Kentucky



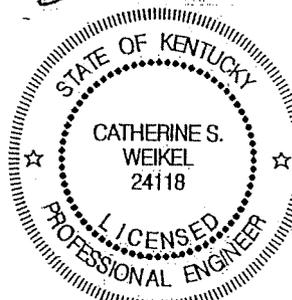
Carmen W. Gruetzmacher



Robert J. Rusch



Larry A. Shell



Catherine S. Weikel

June 22, 2006



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

CONTRACT G3 – SITE IMPROVEMENTS
SMITH STATION
TRAPP, KENTUCKY

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PAGE 3

EAST KENTUCKY POWER COOPERATIVE
WINCHESTER, KENTUCKY

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U.S. Department of Agriculture
Rural Utilities Service

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CONSTRUCTION CONTRACT GENERATING

NOTICE AND INSTRUCTIONS TO BIDDERS

1. **Sealed proposals for the construction, including the supply of necessary labor, materials and equipment, of a rural electric project of East Kentucky Power Cooperative, Inc., RUS designation Kentucky 59 Fayette, (hereinafter called the "Owner") will be received by the Owner on or before 4 o'clock P M, July 14th 2006, 2006, at its office at P.O. Box 707, 4775 Lexington Road, 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 707, 4775 Lexington Road, 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, its license number if a license is required by the State, 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 site of the project and of the Plans, Specifications, Construction Drawings, and forms of Contractor's Proposal and Contractor's Bond, 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 project. 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 Completion of Construction** of the project is of the essence of the Contract and shall be as specified by the Engineer in the Proposal.
7. **Bid Bond.** Each Proposal must be accompanied by a Bid Bond in the form attached hereto or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the Owner, in an amount equal to ten percent (10%) of the maximum bid price. Each Bidder agrees, provided its Proposal is one of the three low Proposals, that, by filing its Proposal together with such Bid Bond or check in consideration of the Owner's receiving and considering such Proposals, said Proposal shall be firm and binding upon each such Bidder and such Bid Bond or check shall be held by the Owner until a Proposal is accepted and a satisfactory Contractor's Bond is furnished (where required) by the successful Bidder and such acceptance has been approved by the Administrator, or for a period not to exceed ~~sixty (60)~~ ^{ninety (90)} days from the date hereinbefore set for the opening of Proposals, whichever period shall be the shorter. If such Proposal is not one of the three low Proposals, the Bid Bond or check will be returned in each instance within a period of ten (10) days to the Bidder furnishing same.
8. **Contractor's Bond.** For a Contract in excess of \$100,000, the Bidder agrees to furnish a Contractor's Bond in triplicate in the form attached hereto with sureties listed by the United States Treasury Department as Acceptable Sureties, in a penal sum not less than the contract price.
9. **Failure to Furnish Contractor's Bond.** Should the successful Bidder fail or refuse to execute such counterparts or to furnish a Contractor's Bond (where required) within ten (10) days after written notification of the acceptance of the Proposal by the Owner, the Bidder will be considered to have abandoned the Proposal. In such event, the Owner shall be entitled (a) to enforce the Bid Bond in accordance with its terms, or (b) if a certified check has been delivered with the Proposal, to retain from the proceeds of the certified check, the difference (not exceeding the amount of the certified check) between the amount of the Proposal and such larger amount for which the Owner may in good faith contract with another party to construct the project. The term "Successful Bidder" shall be deemed to include any Bidder whose Proposal is accepted after another Bidder has previously refused or has been unable to execute the counterparts or to furnish a satisfactory Contractor's Bond (where required.)
10. **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:
- a) If the Proposal contains a provision for "escalation" or increase of the base price quoted, the maximum amount possible under such escalation shall be stated and will be used for price comparison.
-
11. **Debarment Certification.** The Bidder must provide to the Owner a suspension and debarment certificate in the form attached hereto.
12. **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.
13. **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.
14. **Bid Rejection.** The Owner reserves the right to reject any or all Proposals.
15. **Definition of Terms.** The terms "Administrator," "Engineer," "Completion of Construction," and "Completion of the Project" as used throughout this Contract shall be as defined in Article VI, Section 1, of the Proposal. Refer to General Conditions, Article 1 for additional definition of terms.

16. The Owner Represents:

a. *If by provisions of the Proposal the Owner shall have undertaken to furnish any materials for the construction of the project, such materials are on hand at locations specified or if such materials are not on hand they will be made available by the Owner to the successful Bidder at the locations specified before the time such materials are required for construction.*

b. *All funds necessary for prompt payment for the construction of the project will be available.*

If the Owner shall fail to comply with any of the undertakings contained in the foregoing representation or if any of such representations shall be incorrect, the Bidder will be entitled to an extension of time of completion for a period equal to the delay, if any, caused by the failure of the Owner to comply with such undertakings or by any such incorrect representation; provided the Bidder shall have promptly notified the Owner in writing of its desire to extend the time of completion in accordance with the foregoing; provided, however, that such extension, if any, of the time of completion shall be the sole remedy of the Bidder for the Owner's failure, because of conditions beyond the control and without the fault of the Owner, to furnish materials in accordance with subparagraph a. above.

East Kentucky Power Cooperative, Inc.

Owner

By Randy J. [Signature]

Vice President Production

Title

June 22, 2006

Date

PROPOSAL

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: _____ Price: _____

Item: _____ Price: _____

Item: _____ Price: _____

Item: _____ Price: _____

See Section 00410 - Proposal Form.

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:*

Contract G3 - Site Improvements

Smith Station

Trapp, Kentucky

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 X required, and if required,*

it possesses Contractor's License No. _____ for the State of _____

in which the project is located and said license expires on _____, 20__.

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 Section 00210 - Supplementary Instructions to Bidders.*

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 of Notice to Proceed later than _____ 10 _____ 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.~~ ^{by November 22 December 8⁽¹⁾, 2006.}*
- 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.*
- 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*

⁽¹⁾ Addendum No. 1

any change in the construction to be done shall require an extension of time, a reasonable 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.*

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.*
- 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*

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.*
- 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.

- 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.*

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*

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. Refer to **Standard General Conditions, Article 14.07.**

- b. Interest at the rate of eight percent¹ (8%) 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.
- c. Interest at the rate of eight percent¹ (8%) 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.² 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

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.

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:

- “broom clean” and*
- 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*

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.*
- 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.

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 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.*

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 Five Thousand _____ dollars (\$5,000 _____) 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. _____, to a maximum of 10% of the Contract Price.*~~

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. Refer to the General Conditions.

- 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.
- 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 ^{and Engineer} 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.*

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.

Case No. 2006-00364

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PUBLIC SERVICE
COMMISSION

Conformed Contract

for

**Contract F261 – Substructure
Spurlock Station Unit 4
Maysville, Kentucky**

Between

**East Kentucky Power Cooperative, Inc.
Winchester, Kentucky**

And

**Baker Concrete Construction
Monroe, Ohio**

September 2005



Stanley Consultants INC

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

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PUBLIC SERVICE
COMMISSION

Project Manual

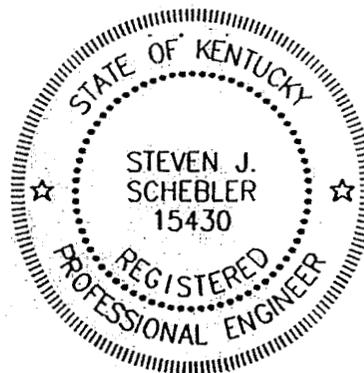
for

Contract F261 - Substructure Spurlock Station - Unit 4 Maysville, Kentucky

East Kentucky Power Cooperative, Inc. Winchester, Kentucky



Carmen Gruetzmacher Jr.
2/28/2005



Steven J. Schebler
2-28-2005

February 28, 2005



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

CONTRACT EF261 - SUBSTRUCTURE
SPURLOCK STATION UNIT 4
E. A. GILBERT UNIT 3
MAYSVILLE, KENTUCKY

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PAGE 3

EAST KENTUCKY POWER COOPERATIVE, INC.
WINCHESTER, KENTUCKY

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Section 16130 Raceway⁽¹⁾

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STANDARD DRAWING LIST

1

STANDARD DRAWINGS

Bound Herein

⁽¹⁾ See Addendum No. 1

Addenda

- B. External protective coating: Metallic zinc applied by hot-dip galvanizing or electrogalvanizing; coating shall not flake or crack when conduit is bent. An overcoat of transparent enamel or transparent lacquer shall be applied.
- C. Interior surface: Protected by zinc, enamel, or other equivalent corrosion-resistant coating.
- D. Couplings, unions, and fittings: Threaded-type, galvanized steel.
- E. Conduit bodies: Threaded-type, cast metal or malleable iron type with zinc or cadmium coating.

2.02 RIGID ALUMINUM CONDUIT

- A. Material: Aluminum alloy No. 6063-T1.
- B. Couplings, unions, and fittings: Threaded type, aluminum alloy containing not more than 0.40 percent copper.
- C. Conduit bodies: Threaded type, fabricated from aluminum alloy or cadmium-plated malleable iron.

2.03 RIGID NONMETALLIC CONDUIT

- A. Material: Polyvinyl chloride (PVC) plastic compound.
- B. Conduits shall withstand temperatures of power cables operating at 90°C installed within.
- C. Couplings and Fittings:
 - 1. Made from same material as conduit, except as otherwise specified.
 - 2. Threadless type; connect to conduit by solvent cement process.
 - 3. Provide belled end fittings at manhole or wall entrances.
 - 4. Adapter fittings for connection of plastic conduit to rigid steel conduit shall be threadless connection to plastic, threaded connection to rigid steel, female-type.

PART 3 EXECUTION

3.01 GENERAL

- A. Coordinate timing of installation and locations of equipment with other trades. Coordinate duct bank crossing of circulating water pipe.
- B. Locations indicated on drawings are approximate. Coordinate actual locations in field to avoid conflicts with other equipment.
- C. For concrete slabs-on-grade, conduit may be below slab.
- D. Conduit ends:
 - 1. Cap all conduits with approved threaded fittings.
 - 2. Cap conduit ends during construction to prevent entrance of foreign material.
- E. Provide 4" of stub up for conduit in floor entering into free-standing equipment. Terminate with grounding bushings.

3.02 USES AND LIMITATIONS

- A. Rigid steel conduit:

1. Use rigid steel conduit for elbows that transition from elbow grade to above grade and at all direction changes mid run of duct bank.
 2. Do not use straight lengths underground for direct-burial or duct banks.
- B. Rigid aluminum conduit:
1. Use rigid aluminum conduit for elbows that transition from elbow grade to above grade in location specifically called out on drawings.
 2. Do not use straight lengths underground for direct-burial or duct banks.
- C. Rigid nonmetallic conduit: Schedule 40 PVC in concrete-encased duct banks or under building slab on grade.

3.03 BENDS AND OFFSETS

- A. Bends in conduit shall be made without reducing internal diameter of conduit. The use of a pipe tee or vise for bending conduit shall not be permitted. Only approved conduit bending equipment shall be used.
- B. The inside radius of field conduit bends shall be not less than six times inside diameter of conduit. Conduits deformed or crushed in any way shall be removed from job site.

3.04 THREADING CONDUIT

- A. Cut ends of conduit square with hand or power saw and ream to remove burrs and sharp edges. Do not use wheel cutter.
- B. Threads cut on job Site shall have same effective length, thread dimensions, and taper as factory-cut threads.
- C. Carefully remove burrs and paint male threads as follows:
1. Steel conduit: One coat of zinc chromate.
 2. Aluminum conduit: Anti-seize compound containing powdered zinc or lubricating graphite.
- D. Apply coat of zinc chromate to zinc-coated conduits where protective coating is damaged by installation or by thread cutting.
- E. Use cutting oil used in threading operations, dies shall be kept sharp, and provisions shall be made for chip clearance.

3.05 PENETRATIONS AND OPENINGS

- A. Transition conduits from below grade to above grade in location detailed by Engineer. Do not install conduits according to scale.

3.06 UNDERGROUND RACEWAY SYSTEM

- A. Direct buried conduit:
1. Direct buried underground or below slab conduit shall be Schedule 40 PVC unless indicated otherwise and installed to yield a completely corrosion protected conduit system.
 2. Slope conduits for proper drainage back to manholes.
 3. Depth: Minimum 24 inches below grade.
- B. Concrete encased ducts:
1. Concrete encased underground ducts shall be type PVC Schedule 40.

2. Duct spacers shall support runs of concrete encased ducts and spacer support distance as indicated of 8' maximum oc or as shown. Duct runs shall be braced during concrete placement to prevent "floating." Maintain horizontal and vertical alignment.
 3. Duct runs between manholes shall be crowned at midpoint to allow drainage back to manholes. The slope shall be a minimum of 1/32-inch per foot of slope. Duct runs from stub-ups back to manholes shall be sloped same.
 4. Provide belled end fittings at terminations of conduits at walls.
- C. Elbows that transition from below grade to above grade shall be rigid galvanized steel and shall be bonded to grounding system. Provide adapters for connection of rigid steel conduit to nonmetallic conduit.
- D. Concrete work:
1. Do not pour duct bank concrete without forming. Over poured concrete shall be removed. Reconstruct forming if damage and repour.
 2. Tie down conduits using steel stakes and wire to prevent floating during concrete pouring.
 3. Remove foreign substances from conduits before pouring concrete.
 4. Prevent loose excavated material from falling into trench during concrete pouring.
 5. Pour each section of duct bank complete in one operation
 6. Begin concrete pouring at 1 end of duct bank, working toward other end. Do not pour concrete from each end toward center.
 7. Do not use mechanical vibrators.
 8. Construction shall be in accordance with Division 3 requirements.
- E. After construction of duct bank is complete, Contractor shall pull a mandrel through each duct. Mandrel shall be 1/4" smaller in diameter than duct. If obstruction is encountered, or if there is evidence of a water pocket, that section of duct bank shall be located, removed, and rebuilt at no cost to Owner.
- F. Underground utility marking tape:
1. Provide solid aluminum foil core tapes for protection, location, and identification of underground utility installations.
 2. Meet or exceed industry standards for APWA color code.
 3. Resist degradation from acids and alkalis found in soil.
 4. Contain environmentally safe lead-free pigments and organic lead-free ink identifying type of utility line it protects.
 5. Provide a width of tape appropriate for detection of conduit at required depth of installation.
 6. Provide detection tape above all duct banks or direct buried conduits not installed under building slabs.
- G. Provide square head threaded conduit plugs in every conduit stubbed above grade. Square head threaded conduit plug shall be made of same material as conduit it is being installed. Use of recessed type plugs not acceptable.
- H. Install duct banks as shown on duct bank profiles. Profiles will be provided after award of Contract. Contractor shall notify Engineer of constructability issues prior to installation.
- I. For bidding purposes Contractor shall assume a duct bank average depth of 6' to top of duct bank.

END OF SECTION

- 1) K.C. Voss
- 2) R. J. Rusch



ADDENDUM NO. 2
APRIL 5, 2005

CONTRACT F261 - SUBSTRUCTURE
SPURLOCK STATION UNIT 4

MAYSVILLE, KENTUCKY

EAST KENTUCKY POWER COOPERATIVE, INC.
WINCHESTER, KENTUCKY

1. DRAWINGS

The following Drawings have been revised, as indicated by revision number, and are reissued herewith:

Drawing No.	Title	Rev. No.
F201	Plant Turbine Area Piling Plan	1
F202	Plant Boiler Area Piling Plan	1
F221	Baghouse Area Piling Plan	1
F223	Transformer Area Piling Plan	1
F224	Chimney Piling Plan	1

END OF ADDENDUM NO. 2

- 1) L. A. Shell
- 2) C. W. Gruetzmacher

REDACTED

**Development of Contract Price/
Exceptions and Clarifications**

A.	Original Base Bid Price	
B.	Revised Base Bid Price ⁽¹⁾	
C.	Deducts - Items 1-9, 11-13 ⁽¹⁾	
D.	Adds - Item 10 ⁽¹⁾	
E.	Additional Pricing - Items 1-2 ⁽¹⁾	<u>not accepted</u>
	Total Contract Award Price (Sum of B, C, D, and E)	

⁽¹⁾ Josh Middleswarth, Baker Concrete letter April 20, 2005.

U.S. Department of Agriculture
Rural Utilities Service

PSC Request 1a.
Attachment No. 22
PAGE 11

CONSTRUCTION CONTRACT

GENERATING

NOTICE AND INSTRUCTIONS TO BIDDERS

- 1. Sealed proposals for the construction, including the supply of necessary labor, materials and equipment, of a rural electric project of East Kentucky Power Cooperative, Inc., RUS designation Kentucky 59 Fayette, (hereinafter called the "Owner") will be received by the Owner on or before 4 o'clock P M., March 25, 2005, at its office at P.O. Box 707, 4775 Lexington Road, 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 707, 4775 Lexington Road, 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, its license number if a license is required by the State, 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 site of the project and of the Plans, Specifications, Construction Drawings, and forms of Contractor's Proposal and Contractor's Bond, 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 project. 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 Completion of Construction of the project is of the essence of the Contract and shall be as specified by the Engineer in the Proposal.**

7. **Bid Bond.** ~~Each Proposal must be accompanied by a Bid Bond in the form attached hereto or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the Owner, in an amount equal to ten percent (10%) of the maximum bid price. Each Bidder agrees, provided its Proposal is one of the three low Proposals, that, by filing its Proposal together with such Bid Bond or check in consideration of the Owner's receiving and considering such Proposals, said Proposal shall be firm and binding upon each such Bidder and such Bid Bond or check shall be held by the Owner until a Proposal is accepted and a satisfactory Contractor's Bond is furnished (where required) by the successful Bidder and such acceptance has been approved by the Administrator, or for a period not to exceed sixty (60) days from the date hereinbefore set for the opening of Proposals, whichever period shall be the shorter. If such Proposal is not one of the three low Proposals, the Bid Bond or check will be returned in each instance within a period of ten (10) days to the Bidder furnishing same.~~
~~ninety (90)~~
8. **Contractor's Bond.** For a Contract in excess of \$100,000, the Bidder agrees to furnish a Contractor's Bond in triplicate in the form attached hereto with sureties listed by the United States Treasury Department as Acceptable Sureties, in a penal sum not less than the contract price.
9. **Failure to Furnish Contractor's Bond.** Should the successful Bidder fail or refuse to execute such counterparts or to furnish a Contractor's Bond (where required) within ten (10) days after written notification of the acceptance of the Proposal by the Owner, the Bidder will be considered to have abandoned the Proposal. In such event, the Owner shall be entitled (a) to enforce the Bid Bond in accordance with its terms, or (b) if a certified check has been delivered with the Proposal, to retain from the proceeds of the certified check, the difference (not exceeding the amount of the certified check) between the amount of the Proposal and such larger amount for which the Owner may in good faith contract with another party to construct the project. The term "Successful Bidder" shall be deemed to include any Bidder whose Proposal is accepted after another Bidder has previously refused or has been unable to execute the counterparts or to furnish a satisfactory Contractor's Bond (where required.)
10. **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:
- a) If the Proposal contains a provision for "escalation" or increase of the base price quoted, the maximum amount possible under such escalation shall be stated and will be used for price comparison.
- b) Evaluation of equipment proposed as defined in specifications.
11. **Debarment Certification.** The Bidder must provide to the Owner a suspension and debarment certificate in the form attached hereto.
12. **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.
13. **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.
14. **Bid Rejection.** The Owner reserves the right to reject any or all Proposals.
15. **Definition of Terms.** The terms "Administrator," "Engineer," "Completion of Construction," and "Completion of the Project" as used throughout this Contract shall be as defined in Article VI, Section 1, of the Proposal.

16. The Owner Represents:

a. *If by provisions of the Proposal the Owner shall have undertaken to furnish any materials for the construction of the project, such materials are on hand at locations specified or if such materials are not on hand they will be made available by the Owner to the successful Bidder at the locations specified before the time such materials are required for construction.*

b. *All funds necessary for prompt payment for the construction of the project will be available.*

If the Owner shall fail to comply with any of the undertakings contained in the foregoing representation or if any of such representations shall be incorrect, the Bidder will be entitled to an extension of time of completion for a period equal to the delay, if any, caused by the failure of the Owner to comply with such undertakings or by any such incorrect representation, provided the Bidder shall have promptly notified the Owner in writing of its desire to extend the time of completion in accordance with the foregoing; provided, however, that such extension, if any, of the time of completion shall be the sole remedy of the Bidder for the Owner's failure, because of conditions beyond the control and without the fault of the Owner, to furnish materials in accordance with subparagraph a. above.

East Kentucky Power Cooperative, Inc.

Owner

By Randy J. Tate

Vice President Production

Title

February 28, 2005

Date

PROPOSAL

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: _____ Price: _____

Item: _____ Price: _____

Item: _____ Price: _____

Item: _____ Price: _____

See Section 00410 - Proposal Form.

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:*

Contract F261 - Substructure

Spurlock Station - Unit 4

Maysville, Kentucky

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 X required, and if required,*

it possesses Contractor's License No _____ for the State of _____
in which the project is located and said license expires on _____, 20__.

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 Section 00210 - Supplementary Instructions to Bidders.*~~

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 _____ 10 _____ 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.~~ ^{by June 27, 2003. by August 16, 2007.}*
- 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.*
- 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*

any change in the construction to be done shall require an extension of time, a reasonable 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.*

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.*
- 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*

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.*
- 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.

- 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.*

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*

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. Refer to General Conditions, Article 14.07.

- b. Interest at the rate of five and one-half percent¹ (5-1/2%) 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.
- c. Interest at the rate of five and one-half percent¹ (5-1/2%) 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

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.

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:

- ↙ **"broom clean" and**
- 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. Bidder assumes no responsibility for full or partial negligence of Architect and Engineer, Subcontractors of others, or the Designs, Plans, and Specifications of others.*
 - (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.
- 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~~^{\$5} million each occurrence, limits for property damage of not less than ~~\$1~~^{\$5} million each occurrence, and ~~\$1~~^{\$5} million aggregate for accidents during the policy period. A single limit of ~~\$1~~^{\$5} 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.

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

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.*

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 Five Thousand _____ dollars (\$5,000)~~ **for each phase of concrete construction as defined on Drawing F105 that expires** 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.~~*

, to a maximum of \$700,000 10% of the Contract Price.

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. Refer to the General Conditions.

- 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.*
- 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 ^{and Engineer} 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.*

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.

Section 6. 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 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.*

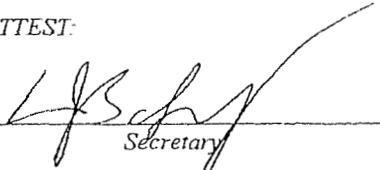
Section 8. Successors and Assigns. *Each and all of the covenants and agreements herein contained shall extend to and be binding upon the successors and assigns of the parties hereto. The Owner and Bidder acknowledge that this Contract is assigned to the Government, acting through the Administrator, 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 X , require approval of the Administrator. No acceptance of a Proposal for a contract upon which approval of the Administrator*

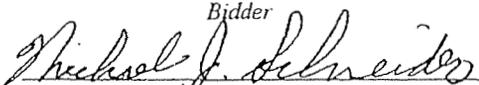
is required shall become effective until the contract has been approved by the Administrator; provided that no obligation shall arise hereunder unless such approval is given within one-hundred twenty (120) days after the date set for the opening of the proposals. The acceptance of a Proposal for a contract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

ATTEST:


Secretary

Dated 3-24-05

Baker Concrete Construction, Inc.

Bidder

President

990 N. Main St. / Monroe, OH 45050-0290
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

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, Baker Concrete Construction

, for the construction of the following:

Substructure for Spurlock 4

for a total contract price

[REDACTED]

East Kentucky Power Cooperative

Owner

By Ray M. Palk
President

Della E. Danson, Foundon
Secretary
behalf of the Corporate Secretary

May 10, 2005
Date of Contract

U.S. Department of Agriculture
Rural Utilities Service

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CONTRACTOR'S BOND

1. Know all men 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.

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.
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 till 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.*

Date

Date

Owner

By _____
President

Name Of Contactor

By _____

Title

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 0573-0107. 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

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 Contract F261 – Substructure, Spur-lock Station – Unit 4

The undersigned, being, the Contractor ¹

in a certain contract No. _____ dated _____, between the undersigned

and East Kentucky Power Cooperative ²

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.³

Baker Concrete Const.

By SS Martin

Stephen Martin

Date April 18, 2005

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

² United States means United States, its territories and possessions.

³ A current list of eligible countries may be obtained by contacting RUS.

U.S. Department of Agriculture
Rural Utilities Service

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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 only to the extent
of payment received.
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.

U.S. Department of Agriculture
Rural Utilities Service

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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 manufacturer, material suppliers and subcontractors have been furnished the Owner.

_____ Date _____ 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.

1.01 COPIES OF BIDDING DOCUMENTS

- A. Complete sets of the Bidding Documents in the number and for the deposit sum, if any, stated in the Notice and Instructions to Bidders may be obtained from the Owner.
- B. Complete sets of Bidding Documents must be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- C. Owner and Engineer in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining Bids for the Work and do not confer a license or grant for any other use

1.02 EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA, AND SITE

- A. Subsurface and physical conditions:
 - 1. General Conditions identify:
 - a. Those reports of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Bidding Documents.
 - b. Those drawings of physical conditions in or relating to existing surface and subsurface structures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Bidding Documents.
 - 2. Copies of reports and drawings referenced in above will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which Bidder is entitled to rely as provided in paragraph 4.02 of the General Conditions has been identified and established in paragraph 4.02. Bidder is responsible for any interpretation or conclusion Bidder draws from any "technical data" or any other data, interpretations, opinions or information contained in such reports or shown or indicated in such drawings.
- B. Underground Facilities: Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the Site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities, including Owner, or others.
- C. Hazardous Environmental Condition:
 - 1. General Conditions identify those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that Engineer has used in preparing the Bidding Documents.
 - 2. Copies of reports and drawings referenced in paragraph 4.03.A of the General Conditions will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which Bidder is entitled to rely as provided in paragraph 4.06 of the General Conditions has been identified and established in paragraph 4.06. Bidder is responsible for any interpretation or conclusion Bidder draws from any "technical data" or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.
- D. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated conditions appear in paragraphs 4.02, 4.03, and 4.04 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work appear in paragraph 4.06 of the General Conditions.

- E. On request, Owner will provide Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies.
- F. Reference is made to Article 7 of the General Conditions for the identification of the general nature of other work that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) that relates to the Work for which a Proposal is to be submitted. On request, Owner will provide to each Bidder for examination access to or copies of Construction Contract – Generating (other than portions thereof related to price) for such other work.
- G. 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 other related data identified in the Bidding Documents;
 2. Visit the Site and become familiar with and satisfy Bidder as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;
 3. Become familiar with and satisfy Bidder as to all federal, state, and local Laws and Regulations that may affect cost, progress, or performance of the Work;
 4. Carefully study all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified as provided in paragraph 4.02 of the General Conditions, and carefully study all reports and drawings of a Hazardous Environmental Condition, if any, at the Site which have been identified as provided in paragraph 4.06 of the General Conditions;
 5. Obtain and carefully study (or assume responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto;
 6. Agree at the time of submitting its Proposal that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Proposal for performance of the Work at the price bid and within the times and in accordance with the other terms and conditions of the Bidding Documents;
 7. Become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;
 8. Correlate the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents;
 9. 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
 10. Determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.
- H. The submission of a Proposal will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Proposal is premised upon performing and furnishing the Work required by the Bidding Documents and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly 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 performing and furnishing the Work.

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1.03 PRE-BID CONFERENCE

~~A. A pre-Bid conference will be held at 1:00 pm on February 14, 2002 at Spurlock Station. Representatives of Owner and Engineer will be present to discuss the Project. Bidders are required to attend and participate in the conference. Engineer will transmit to all prospective Bidders of record such Addenda as Engineer considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.~~ PAGE 36

1.04 SITE AND OTHER AREAS

A. The Site is identified in the Bidding Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by Contractor. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Bidding Documents.

1.05 INTERPRETATIONS AND ADDENDA

A. All questions about the meaning or intent of the Bidding Documents are to be submitted to Engineer in writing.

Mr. Larry Shell
Stanley Consultants, Inc.
225 Iowa Avenue
Muscatine, IA 52761-3764
Telephone: 563.264.6455
Fax: 563.264.6658
E-mail: shelllarry@stanleygroup.com

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 may not be answered. Only questions answered by 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.

1.06 CONTRACT TIMES

A. The number of days within which, or the dates by which, the Work is to be (a) Substantially Completed and (b) also completed and ready for final payment are set forth in Section 01110.

1.07 LIQUIDATED DAMAGES

A. Provisions for liquidated damages, if any, are set forth in the **Construction Contract - Generating**.

1.08 SUBSTITUTE AND "OR-EQUAL" ITEMS

A. The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration of possible substitute or "or-equal" items. Whenever it is specified or described in the Bidding Documents that a substitute or "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 submission 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.

1.09 BASIS OF PROPOSAL; EVALUATION OF PROPOSALS

A. Lump Sum:

1. Bidders shall submit a Proposal on a lump sum basis for the Base Proposal and shall include a separate price for each alternate described in the Bidding Documents as provided for in the Proposal form. The price for each alternate will be the amount added to or deleted from the Base Proposal if Owner selects the alternate.
2. In the evaluation of Proposals, alternates will be applied in the same order as listed in the Proposal form. Owner may select or reject each alternate as best serves its interests, and may use prices bid for each selected alternate in determining Successful Bidder.

B. The Proposal price shall include such amounts as the Bidder deems proper for overhead and profit on account of cash allowances, if any, named in the Contract Documents as provided in paragraph 11.02 of the General Conditions.

C. Bid prices will be compared after adjusting for differences in the time designated by Bidders for Substantial Completion. The adjusting amount will be determined at the rate set forth in the Contract Documents for liquidated damages for failing to achieve Substantial Completion for each day before or after the desired date appearing in Section 01110.

1.10 SUBMITTAL OF PROPOSALS

A. Proposal form is included with the Bidding Documents.

B. Each prospective Bidder is furnished one copy of the Bidding Documents.

C. One 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, Inc.
Attention: Mr. Craig Johnson
4775 Lexington Road
P. O. Box 707
Winchester, KY 40392-0707
Telephone: 859.744.4812
Fax: 859.744.6008
E-mail: craig.johnson@ekpc.coop

D. 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 52761-3764
Telephone: 563.264.6455
Fax: 563.264.6658
E-mail: shelllarry@stanleygroup.com

E. 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. All blanks on Proposal form shall be completed by

printing in black ink or by typewriter. No alterations or interlineations will be permitted, unless made before submission and initialed and dated

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- F. Proposal shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Proposal Form.
- G. Any lump sum Proposal Price shall be stated in words and figures; in case of conflict, words take precedence.
- H. Names shall be typed or printed in ink below the signatures. Address and telephone number for communications regarding the Proposal shall be shown.
- I. Facsimile copies of Proposals will not be accepted.

1.11 MODIFICATION AND WITHDRAWAL OF PROPOSAL

- A. Bid may be modified or withdrawn by an appropriate document duly executed in the manner that a Proposal must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids.
- B. If within 24 hours after Bids are opened any Bidder files a duly 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, that Bidder may withdraw its Bid, and the Proposal security will be returned. Thereafter, if the Work is rebid, that Bidder will be disqualified from further bidding on the Work.

1.12 SALES AND USE TAXES

- A. Prices set forth in the Proposal shall not include any sums which are, or may be, payable by the Bidder or the Owner on account of any Kentucky Sales or Use Tax upon the sale, purchase, or use of material, supplies, or equipment incorporated in the Project.
- B. Owner will be fully responsible to the Department of Revenue for any Kentucky Sales or Use Tax that may be applied as a direct consequence of the Project, and the Bidder shall not pay this Tax when purchasing materials, supplies, or equipment for the Project.
- C. When applicable, the Owner will provide the Bidder with appropriate exemption forms for the purchase of such materials, supplies, or equipment, and the Bidder will cooperate with the Owner in supplying pertinent data and information to assist the Owner in taking maximum advantage of Kentucky Sales and Use Tax exemptions. The Bidder agrees to state separately the cost of labor and materials, supplies or equipment incorporated in the Proposal.
- D. Any sales or use tax payable as a consequence of a failure on the part of the Bidder to comply with these provisions will be paid by the Bidder as an additional expense of the Bidder, and any amounts paid will not be reimbursable by the Owner.

1.13 UNIT ADJUSTMENT PRICES

- A. Submit unit adjustment prices for items listed in Proposal Form and described in Contract Documents.
- B. Owner may accept or reject proposed unit adjustment prices without invalidating remainder of Proposal or any Agreement based thereon.

END OF SECTION

PROJECT AND CONTRACT IDENTIFICATION

This Proposal pertains to Contract EF261 – Substructure for ~~Spurlock Unit 4~~ ~~the E. A. Gilbert Unit 3~~ Project, for East Kentucky Power Cooperative.

Article 1. BID RECIPIENT

- 1.1 This Proposal is submitted to: East Kentucky Power Cooperative, Inc.
Attn: Mr. Craig Johnson
P. O. Box 0707
4475 Lexington Road
Winchester, KY 40392-0707
- 1.2 The undersigned Bidder proposes and agrees, if this Proposal is accepted, to enter into an Contract with Owner in the form included in the Construction Contract - Generating to perform the Work as specified or indicated in the Construction Contract - Generating for the prices and within the times indicated in this Proposal and in accordance with the other terms and conditions of the Construction Contract - Generating.

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 bid 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 Contract as to liquidated damages in the event of its failure to perform the Work in accordance with the schedule set forth in the Contract.

Article 3. BIDDER'S REPRESENTATIONS

- 3.1 In submitting this Proposal, Bidder represents, as set forth in the Contract, that:
 - 3.1.1 Bidder has examined and carefully studied the Construction Contract - Generating, the other related data identified in the Construction Contract - Generating, and the following Addenda, receipt of all which is hereby acknowledged.

Addendum No.	Addendum Date
<u>1</u>	<u>3-17-05</u>
_____	_____
_____	_____

- 3.1.2 Bidder has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified as provided in paragraph 4.02 of the General Conditions, and
- 3.1.3 Bidder has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Construction Contract - Generating to be employed by Bidder; and safety precautions and programs incident thereto.

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- 3.1.4 Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Construction Contract - Generating.
- 3.1.5 Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Construction Contract - Generating.
- 3.1.6 Bidder has correlated the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Construction Contract - Generating, and all additional examinations, investigations, explorations, tests, studies, and data with the Construction Contract - Generating.
- 3.1.7 Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Construction Contract - Generating, and the written resolution thereof by Engineer is acceptable to Bidder.
- 3.1.8 The Construction Contract - Generating is generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
- 3.1.9 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 perform the Work in accordance with the Construction Contract - Generating for the following price(s):

4.1.1 Lump Sum Base Bid Price:

~~SEVENTEEN MILLION, FOUR HUNDRED FIFTY THOUSAND~~
(words) (i)
~~DOLLARS~~ (\$ 17,450,000)
(figures)

4.1.3 Unit Adjustment Prices: If quantities of the following items are changed from those on which Lump Sum Base Bid Price is based, the Contract Price will be adjusted by Change Order on the basis of the following prices subject to Section 01200. Adjustment prices are subject to acceptance by Owner, and rejection of one or more adjustment prices will not invalidate acceptance of this Proposal.

4.1.3.1 Following unit adjustment prices apply to aggregate net change for total job.

Item	Reference Section	Unit	Unit Adjustment Add Price	Unit Adjustment Deduct Price
Structural Earth Excavation	02315	CY	\$ 22.00	\$ 16.50
Structural Backfill	02315	CY	\$ 32.00	\$ 24.00
Base Material	02315	CY	\$ 42.00	\$ 31.50

¹ See Development of Contract Price

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Item	Reference Section	Unit	Unit Adjustment Add/Price	Unit Adjustment Deduct/Price
Reinforcing Bar:				
#4 through #6	03200	Lb.	\$ 0.70	\$ 0.53
#7 through #9	03200	Lb.	\$ 0.68	\$ 0.51
#10 and #11	03200	Lb.	\$ 0.66	\$ 0.50
#14 and #18	03200	Lb.	\$ 0.64	\$ 0.48
Concrete: (FORM, PLACE, FURNISH CONCRETE)				
Grade Beams and Pile Caps	03300	CY	\$ 360.00	\$ 270.00
Turbine Generator Foundation Pedestal (all concrete above base slab)	03300	CY	\$ 380.00	\$ 285.00
Mass Concrete On Grade	03300	CY	\$ 160.00	\$ 120.00
Flowable Cementitious Fill	03300	CY	\$ 145.00	\$ 109.00
Equipment Pads	03300	SF	\$ 26.00	\$ 19.50
Miscellaneous Metals	05590	Lb.	\$ 6.00	\$ 4.50
Anchor Bolt Assemblies	05590	Lb.	\$ 6.00	\$ 4.50

Article 5. TIME OF COMPLETION

5.1 Bidder agrees that the performance of the Work will conform to the schedule set forth in Section 01110.

Article 6. ATTACHMENTS TO THIS PROPOSAL

6.1 The following documents are attached to and made a condition of this Proposal:

6.1.1 Bid Bond;

6.1.2 RUS Form 200, Contractor's Proposal;

6.1.3 Certification Regarding Debarment, Suspension, and Other Responsibility Matters – Primary Covered Transactions;

6.1.4 Lobbying Certification;

6.1.5 Contractor's requirements for plant services;

6.1.6 Section 01335, submittals required with Proposal; and

6.1.7 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 Construction Contract - Generating, referencing page number and paragraph of Construction Contract - Generating 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 Construction Contract - Generating unless specifically listed as an exception or clarification. If Bidder submits drawings, printed forms, standard statements, or other revisions which conflict with Construction Contract - Generating, the Construction Contract - Generating will prevail.

END OF SECTION 00410

ARTICLE 1- DEFINITIONS AND TERMINOLOGY**1.01 Defined Terms**

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the Contract Documents.

2. *Application for Payment*--The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

3. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

4. *Bidder*--The individual or entity who submits a Proposal directly to Owner.

5. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

6. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, Bid security form, if any, and the Proposal form with any supplements.

7. *Bonds*--Performance and payment bonds and other instruments of security.

8. *Change Order Authorization Request (CAR)*--A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

9. *Claim*--A 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. A demand for money or services by a third party is not a Claim.

10. *Contract*--The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

11. *Contract Documents*--The Contract Documents establish the rights and obligations of the parties and include the Construction Contract - Generating, 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, together with all Written Amendments, Change Orders, Authorization Requests, Work Change Directives, Field Orders, and Engineer's written interpretations and clarifications issued on or after the Effective Date of the Contract. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by Owner to Contractor are not Contract Documents.

12. *Contract Price*--The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Contract (subject to the provisions of paragraph 11.03 in the case of Unit Price Work).

13. *Contract Times*--The number of days or the dates stated in the Contract to: (i) achieve Substantial Completion; and (ii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

14. *Contractor*--The individual or entity with whom Owner has entered into the Agreement.

15. *Cost of the Work*--See paragraph 11.01 A for definition.

16. *Drawings*--That part of the Contract Documents prepared or approved by Engineer, which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.

17. *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.

18. *Engineer*-- Stanley Consultants, Inc.

19. *Engineer's Consultant*--An individual or entity having a contract with Engineer to furnish services as Engineer's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

20. *Field Order*--A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

21. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

22. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

23. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

24. *Instruction to Contractor*-- Same as "Field Order."

25. *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.

26. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

27. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

28. *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 Agreement.

29. *Notice to Proceed*--A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

30. *Owner*--The individual, entity, public body, or authority with whom Contractor has entered into the Contract and for whom the Work is to be performed.

31. *Partial Utilization*--Use by Owner of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

32. *PCBs*--Polychlorinated biphenyls.

33. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

34. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.

35. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. 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.

36. *Proposal*--The offer or bid of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

37. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq) as amended from time to time.

38. *Resident Project Representative*--The authorized representative of Engineer who may be assigned to the Site or any part thereof.

39. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

40. *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 Work.

41. *Site*--Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

42. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

43. *Subcontractor*--An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

44. *Supplier*--A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any Subcontractor.

45. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

46. *Unit Price Work*--Work to be paid for on the basis of unit prices.

47. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

48. *Written Amendment*--A written statement modifying the Contract Documents, signed by Owner and Contractor on or after the Effective Date of the Contract and normally dealing with the nonengineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

1.02 Terminology

A. Intent of Certain Terms or Adjectives

1. Whenever in the Contract Documents the terms "as allowed," "as approved," or terms of like effect or import are used, or 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 Work, it is intended that such action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). These of any such term or adjective shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work or any

duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10 or any other provision of the Contract Documents.

B. Day

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

C. Defective

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with paragraph 14.04 or 14.05).

D. Furnish, Install, Perform, Provide

1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, "provide" is implied.

E. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 - PRELIMINARY MATTERS

2.01 Delivery of Bonds

A. When Contractor delivers the executed Contracts to Owner, Contractor shall also deliver to Owner such Bonds as Contractor may be required to furnish.

2.02 Copies of Documents

A. Refer to Section 01300 regarding copies of Drawings and Project Manuals.

2.03 Starting the Work

A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.04 Before Starting Construction

A. *Contractor's Review of Contract Documents:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to 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; however, Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor knew or reasonably should have known thereof.

B. *Preliminary Schedules:* Within ten days after the Effective Date of the Contract (unless otherwise specified in the General

Requirements), Contractor shall submit to Engineer for its timely review.

1. a preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal; and

3. a preliminary schedule of values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

C. *Evidence of Insurance*: Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Construction Contract - Generating.

2.05 Preconstruction Conference

A. Within 20 days after the Contract Times start to run, but before any Work at the Site is started, a conference attended by Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.04.B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.06 Initial Acceptance of Schedules

A. Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with paragraph 2.04.B. Contractor shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The progress schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on 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.

2. Contractor's schedule of Shop Drawing and Sample submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

3. Contractor's schedule of values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 Intent

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

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the 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 the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 Reference Standards

A. *Standards, Specifications, Codes, Laws, and Regulations*

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

2. 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, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to Owner, Engineer, or any of Engineer's Consultants, agents, or employees any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 Reporting and Resolving Discrepancies

A. *Reporting Discrepancies*

1. If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, Contractor shall report it to Engineer in writing at once. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.04; provided, however, that 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*

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

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

b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 Amending and Supplementing Contract Documents

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: (i) a Written Amendment; or (ii) a Change Order Authorization Request.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways: (i) a Field Order or an Instruction to Contractor; or (ii) Engineer's written interpretation or clarification.

3.05 Reuse of Documents

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A. Contractor and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with Owner: (i) shall not have or 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 Engineer's Consultant, including electronic media editions; and (ii) shall not reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaption by Engineer. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

4.01 Availability of Lands

A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site, Contractor may make a Claim therefor as provided herein.

B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 Subsurface and Physical Conditions

A. In the preparation of Drawings and Specifications, Engineer or Engineer's Consultants relied upon the following reports of explorations and tests of subsurface conditions at the Site:

1. Report dated ~~October 18, 2004~~, prepared by Fuller, Mossbarger, Scott & May Engineers, Inc., entitled: "Report of Geotechnical Exploration - Spurlock Station - E. A. Gilbert Unit No. 3 - Maysville, Mason County, Kentucky". The "technical data" contained in such report upon which Contractor may rely is data contained in the boring logs, exclusive of ground water evaluation data.

B. Copies of reports and drawings itemized above that are not included with Bidding Documents may be examined at East Kentucky Power Cooperative, Inc., Attention: Mr. Craig Johnson-Jim Shipp, 4775 Lexington Road, Winchester, KY 40392-0707; or at Stanley Consultants, Inc., Attention: Mr. Larry Shell, 225 Iowa Avenue, Muscatine, IA 52761-3764 during regular business hours. These reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which Contractor may rely as identified and established above are incorporated therein by reference. Contractor is not entitled to rely upon other information and data utilized by Engineer and Engineer's Consultants in the preparation of Drawings and Specifications.

C. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any Claim against Owner, Engineer, or any of Engineer's Consultants with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 Differing Subsurface or Physical Conditions

A. Notice. If Contractor believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in paragraph 4.02 is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *Engineer's Review:* After receipt of written notice as required by paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.

C. Possible Price and Times Adjustments

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must meet any one or more of the categories described in paragraph 4.03.A; and
 - b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.08 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner in respect of Contract Price and Contract Times by the submission of a Proposal or becoming bound under a negotiated contract; or
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
 - c. Contractor failed to give the written notice within the time and as required by paragraph 4.03.A.
3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided herein. However, Owner, Engineer, and Engineer's Consultants shall not be liable to Contractor for any claims, costs, losses, or damages (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) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 Underground Facilities

A. *Shown or Indicated*: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data; and
2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all such information and data,
 - b. locating all Underground Facilities shown or indicated in the Contract Documents,
 - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction, and
 - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work

B. – *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, an ~~Instruction to Contractor Work Change Directive~~ or a ~~Change Authorization Request Order~~ will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price of Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided herein.

4.05 Reference Points

A. Owner shall provide engineering surveys to establish reference points for construction, which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 Hazardous Environmental Condition at Site

A. *Reports and Drawings*: Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the Engineer in the preparation of the Contract Documents

B. *Limited Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any Claim against Owner, Engineer or any of Engineer's Consultants with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site, which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 6.16); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered to Contractor written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided herein.

F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided herein. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, Engineer, ~~Engineer's Consultants~~ and the officers,

directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (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 a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this paragraph 4.06 E shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner, Engineer, Engineer's Consultants, and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (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 a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this paragraph 4.06 F shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

I. The provisions of paragraphs 4.02, 4.03, and 4.04 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 - BONDS AND INSURANCE

~~5.01 Performance, Payment, and Other Bonds~~ 5.01 Contractor's Bond

A. Contractor shall furnish performance and payment Bonds, each Bond, in an amount at least equal to the Contract Price as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents. These Bonds Bond shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other Bonds as are required by the Contract Documents.

B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the Construction Contract - Generating. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

C. If the surety on any Bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.01.B, Contractor shall within 20 days thereafter substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 5.01.B and 5.02.

5.02 Licensed Sureties and Insurers

A. All Bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required.

5.03 Certificates of Insurance

A. Contractor shall deliver to Owner, with copies to each additional insured identified in the Construction Contract - Generating, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which

~~Contractor is required to purchase and maintain. Owner shall deliver to Contractor, with copies to each additional insured identified in the Construction Contract - Generating, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.~~

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~~5.04 Contractor's Liability Insurance~~

~~A. Refer to Article IV of the Construction Contract - Generating~~

~~5.05 Owner's Liability Insurance~~

~~A. Refer to Article IV of the Construction Contract - Generating~~

~~5.06 Property Insurance~~

~~A. Refer to Article IV of the Construction Contract - Generating~~

~~5.07 Waiver of Rights~~

~~A. Owner and Contractor intend that all policies purchased in accordance with paragraph 5.06 will protect Owner, Contractor, Subcontractors, Engineer, Engineer's Consultants, and all other individuals or entities identified in the Construction Contract - Generating to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, Engineer, Engineer's Consultants, and all other individuals or entities identified in the Construction Contract - Generating to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.~~

~~B. Owner waives all rights against Contractor, Subcontractors, Engineer, Engineer's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for:~~

~~1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other peril whether or not insured by Owner; and~~

~~2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant, after completion, or after final payment.~~

~~C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, Engineer, or Engineer's Consultants and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them.~~

~~5.08 Receipt and Application of Insurance Proceeds~~

~~A. Any insured loss under the policies of insurance required by paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.08. B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.~~

~~B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.~~

~~5.09 Acceptance of Bonds and Insurance; Option to Replace~~

~~A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by paragraph 2.05.C. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.~~

~~5.10 Partial Utilization, Acknowledgment of Property Insurer~~

~~A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Completion of all the Work, no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.~~

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 Supervision and Superintendence

A. Refer to Article II, Section 54, of the Construction Contract - Generating.

6.02 Labor, Working Hours

A. Contractor shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, and Contractor will not permit overtime work or the performance of Work on Saturday, Sunday, or any legal holiday without Owner's written

consent (which will not be unreasonably withheld) given in prior written notice to Engineer.

6.03 Services, Materials, and Equipment

A. Unless otherwise specified in the General Requirements, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 Progress Schedule

A. Contractor shall adhere to the progress schedule established as may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance proposed adjustments in the progress schedule that will not result in changing the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 12. Such adjustments may only be made by a Change Order/Authorization Request or Written Amendment.

6.05 Substitutes and "Or-Equals"

A. "Or-Equal" Items. If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:

1. in the exercise of reasonable judgment Engineer determines that: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and,

2. Contractor certifies that: (i) there is no increase in cost to the Owner; and (ii) it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

B. Substitute Items

1. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under above paragraph, it will be considered a proposed substitute item.

2. Contractor shall submit sufficient information as provided below to allow Engineer to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.

3. The procedure for review by Engineer will be as set forth herein, as supplemented in the General Requirements and as Engineer may decide is appropriate under the circumstances.

4. Contractor shall first make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time, whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change, all of which will be considered by Engineer in evaluating the proposed substitute item. Engineer may require Contractor to furnish additional data about the proposed substitute item.

C. Substitute Construction Methods or Procedures: If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by Engineer will be similar to that provided herein.

D. Engineer's Evaluation: Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made as specified herein. Engineer will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized without ENGINEER's prior written acceptance, which will be evidenced by a **Change Order Authorization Request**. Engineer will advise Contractor in writing of any negative determination.

E. Special Guarantee: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

F. Engineer's Cost Reimbursement: Engineer will record time required by Engineer and Engineer's Consultants in evaluating substitute proposed or submitted by Contractor pursuant to paragraphs herein and in making changes in the Contract Documents (or in the provisions of any other direct contract with Owner for work on the Project) occasioned thereby. Whether or not Engineer approves a substitute item so proposed or submitted by Contractor, Contractor shall reimburse Owner for the charges of Engineer and Engineer's Consultants for evaluating each such proposed substitute.

G. Contractor's Expense: Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 Concerning Subcontractors, Suppliers, and Others

A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or

perform any of the Work against whom Contractor has reasonable objection

B. If the Contract Document require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Contract, and if Contractor has submitted a list thereof in accordance with the Contract Documents, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate **Change Order Authorization Request** will be issued or **Written Amendment** signed. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity, nor shall it create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, ~~Engineer, Engineer's Consultants,~~ and all other individuals or entities identified in the Construction Contract - Generating to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 Patent Fees and Royalties

A. Refer to Article VI, Section 43 of the Construction Contract - Generating.

6.08 Permits

A. Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Contract. Contractor shall pay all charges of utility owners for connections to the Work, and Owner shall pay all charges of such utility owners for capital costs related thereto, such as plant investment fees.

6.09 Laws and Regulations

A. Contractor shall give all notices and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (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 such Work, however, it shall not be Contractor's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Contract if there were no Bids) having an effect on the cost or time of performance of the Work may 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 therefore as provide herein.

D. Refer to Article VI, Section 45 of the Construction Contract – Generating.

6.10 Taxes

A. Refer to Section 00210 – Supplementary Instructions to Bidders.

6.11 Use of Site and Other Areas

A. *Limitation on Use of Site and Other Areas*

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner, Engineer, Engineer's Consultant, and the officers, directors, partners, employees, agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (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 claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

B. *Removal of Debris During Performance of the Work:* Refer to Article IV, Section 1 of the Construction Contract – Generating.

C. *Cleaning:* Refer to Article IV, Section 1 of the Construction Contract – Generating.

D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 Record Documents

A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, ~~Work~~ Change Directives, Authorization Requests, Instructions to Contractor, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

6.13 Safety and Protection

A. Refer to Article IV, Section 1 of the Construction Contract – Generating.

B. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connections with the Work. The Owner, Engineer, and Engineer's consultant will not have such responsibility. No action under taken by the Owner or Engineer under paragraphs 15.01 or 15.02, or Article 9 will constitute a transfer of this responsibility or acceptance of this responsibility by the Owner, Engineer, or Engineer's consultant."

6.14 Safety Representative

A. Contractor shall designate a qualified and experienced safety representative at the Site whose ~~duties~~ duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 Hazard Communication Programs

A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 Emergencies

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a ~~Work Change Directive~~ ~~Instruction to Contractor~~ or Change Order Authorization Request will be issued.

6.17 Shop Drawings and Samples

A. Contractor shall submit Shop Drawings to Engineer for review in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals will be identified as Engineer may require and in the number of copies specified in the General Requirements. 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 and to enable Engineer to review the information for the limited purposes required by paragraph 6.17 E.

B. Contractor shall also submit Samples to Engineer for review in accordance with the acceptable schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as Engineer may require to enable Engineer to review the submittal for the limited purposes required by paragraph 6.17 E. The numbers of each Sample to be submitted will be as specified in the Specifications.

C. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals acceptable to Engineer, any related Work performed prior to Engineer's review of the pertinent submittal will be at the sole expense and responsibility of Contractor

D. Submittal Procedures

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

- a. all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
- b. all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;
- c. all information relative to means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incident thereto; and
- d. Contractor shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

2. Each submittal shall bear a stamp or specific written indication that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.

3. If Contractor wishes to propose a variation from the requirements of the Contract Documents and a drawing or sample will be used to help describe the variation, the drawing or sample shall not be submitted as a Shop Drawing or sample, but rather will have specific notations regarding the variation and shall be transmitted to the Engineer with a letter describing all aspects of the variation, including any effect the variation will have on work of separate contractors, if any, and its effect, if any, on the Contract Price or Contract Time. If Engineer determines that the variation will be acceptable, the variation will be authorized by a Change Order/Authorization Request executed by the Owner and Contractor.

E. Engineer's Review

1. Engineer will timely review Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals acceptable to Engineer. Engineer's review will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Engineer's review of Shop Drawings or Samples shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents; nor will any review by Engineer relieve Contractor from responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions of paragraph 6.17.D.1.

F. 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 revisions other than the corrections called for by Engineer on previous submittals.

6.18 Continuing the Work

A. 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, except as permitted by paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 Contractor's General Warranty and Guarantee

A. Contractor warrants and guarantees to Owner, Engineer, and Engineer's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
2. normal wear and tear under normal usage.

B. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

1. observations by Engineer;
2. recommendation by Engineer or payment by Owner of any progress or final payment;
3. the issuance of a Certificate of Completion or any payment related thereto by Owner;
4. use or occupancy of the Work or any part thereof by Owner;
5. any acceptance by Owner or any failure to do so;
6. any review of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
7. any inspection, test, or approval by others; or
8. any correction of defective Work by Owner.

6.20 Indemnification

~~A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner, Engineer, Engineer's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (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 the performance of the Work, provided that any such claim, cost, loss, or damage:~~

~~1. is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom; and~~

~~2. is caused in whole or in part by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such individual or entity.~~

~~B. In any and all claims against Owner or Engineer or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed~~

~~by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.~~

~~C. The indemnification obligations of Contractor under paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's Consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them arising out of:~~

~~1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or~~

~~2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.~~

ARTICLE 7 - OTHER WORK

7.01 Related Work at Site

A. Owner may perform other work related to the Project at the Site by Owner's employees, or let other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to Contractor prior to starting any such other work; and

2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefore as provided herein

B. Contractor shall afford each other contractor who is a party to such a direct contract and each utility owner (and Owner, if Owner is performing the other work with Owner's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 Coordination

A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

B. Owner shall have sole authority and responsibility for such coordination.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

8.02 Replacement of Engineer

A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 Furnish Data

A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

8.04 Pay Promptly When Due

A. Owner shall make payments to Contractor promptly when they are due.

8.05 Lands and Easements; Reports and Tests

A. Owner's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by Engineer in preparing the Contract Documents.

8.06 Insurance

A. Owner's responsibilities, if any, in respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 Change Orders/Authorization Requests

A. Owner is obligated to execute Change Orders/Authorization Requests as indicated in paragraph 10.03.

8.08 Inspections, Tests, and Approvals

A. Owner's responsibility in respect to certain inspections, tests, and approvals is set forth in paragraph 13.03.B.

8.09 Limitations on Owner's Responsibilities

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.10 Undisclosed Hazardous Environmental Condition

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in paragraph 4.06.

8.11 Evidence of Financial Arrangements

A. If and to the extent Owner has agreed to furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents, Owner's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 Owner's Representative

A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents and will not be changed without written consent of Owner and Engineer.

9.02 Visits to Site

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in paragraph 9.10, and particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 Project Representative

A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.10 and in the Supplementary Conditions. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Contract Documents.

9.04 Clarifications and Interpretations

A. Engineer will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as Engineer may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on Owner and Contractor. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a written clarification or interpretation, a Claim may be made therefor as provided herein.

9.05 Authorized Variations in Work

A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Orderan Instruction to Contractor and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both,

as a result of a Field Orderan Instruction to Contractor, a Claim may be made therefor as provided herein.

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9.06 Rejecting Defective Work

A. Engineer will have authority to disapprove or reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.07 Shop Drawings, Change Orders, Authorization Requests and Payments

A. In connection with Engineer's authority as to Shop Drawings and Samples, see paragraph 6.17.

B. In connection with Engineer's authority as to Change Orders, Authorization Requests, see Articles 10, 11, and 12.

C. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.08 Determinations for Unit Price Work

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of paragraph 10.05.

9.09 Decisions on Requirements of Contract Documents and Acceptability of Work

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to Engineer in writing, in accordance with the provisions of paragraph 10.05, with a request for a formal decision.

B. When functioning as interpreter and judge under this paragraph 9.09, 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 9.09 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 14.07) will be a condition precedent to any exercise by Owner or Contractor of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

9.10 Limitations on Engineer's Authority and Responsibilities

A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques,

sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

E. The limitations upon authority and responsibility set forth in this paragraph 9.10 shall also apply to Engineer's Consultants, Resident Project Representative, and assistants.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 Authorized Changes in the Work

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Written Amendment, a Change Order, Authorization Request, or a ~~Work Change Directive~~ **Instruction to Contractor**. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved, which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a ~~Work Change Directive~~ **Instruction to Contractor**, a Claim may be made therefor as provided herein.

10.02 Unauthorized Changes in the Work

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in paragraph 3.04, except in the case of an emergency as provided in paragraph 6.16 or in the case of uncovering Work as provided in paragraph 13.04.B.

10.03 Execution of Change Orders, Authorization Requests

A. Owner and Contractor shall execute appropriate Change Orders, Authorization Requests recommended by Engineer (or Written Amendments) covering:

1. changes in the Work which are: (i) ordered by Owner pursuant to paragraph 10.01.A, (ii) required because of acceptance of defective Work under paragraph 13.08.A or Owner's correction of defective Work under paragraph 13.09, or (iii) agreed to by the parties,

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a ~~Work Change Directive~~ **Instruction to Contractor**; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to paragraph 10.05; provided that, in lieu of executing any such Change Order, Authorization Request, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.18.A.

10.04 Notification to Surety

A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be Contractor's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

10.05 Claims and Disputes

A. Notice: Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. Notice of the amount or extent of the Claim, dispute, or other matter with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matter). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

B. *Engineer's Decision:* Engineer will render a formal 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, dispute, or other matter will be final and binding upon Owner and Contractor unless:

1. an appeal from Engineer's decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 16; or

2. if no such dispute resolution procedures have been set forth in Article 16, a written notice of intention to appeal from Engineer's written decision 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 or within 60 days after Substantial Completion, whichever is later (unless otherwise agreed 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 10.05.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.

D. No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this paragraph 10.05.

ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

11.01 Cost of the Work

A. *Costs Included:* The term Cost of the Work means the sum of all costs necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order, Authorization Request or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be

in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in paragraph 11.01. Refer to Article II, Section 1, of the Construction Contract - Generating.

B

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include without limitation superintendents, foremen, and other personnel employed full-time at the Site. Payroll costs for employees not employed full-time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this paragraph 11.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:

a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Lessee and damages (and related expenses) caused by damage to the Work, not compensated by

insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage, and similar petty cash items in connection with the Work.

i. When the Cost of the Work is used to determine the value of a Change Order or of a Claim, the cost of premiums for additional Bonds and insurance required because of the changes in the Work or caused by the event giving rise to the Claim.

j. When all the Work is performed on the basis of cost-plus, the costs of premiums for all Bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. Costs Excluded: The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in **Documentation**: Whenever the Cost of the Work for any purpose is to be determined pursuant to paragraph 11.01.A.1 or specifically covered by paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraphs 11.01.A and 11.01.B.

C. Contractor's Fee: When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in paragraph 12.01.C.

D. Documentation: Whenever the Cost of the Work for any purpose is to be determined pursuant to paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11 02 Cash Allowances

A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall

cause the Work so covered to be performed for such sums as may be acceptable to Owner and Engineer. Contractor agrees that:

1. the allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. Contractor's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

B. Prior to final payment, an appropriate Change OrderAuthorization Request will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 Unit Price Work

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of paragraph 9.08.

B. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item

C. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

2. there is no corresponding adjustment with respect any other item of Work; and

3. if Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 Change of Contract Price

A. The Contract Price may only be changed by a Change OrderAuthorization Request or by a Written Amendment. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of paragraph 10.05.

B. The value of any Work covered by a Change OrderAuthorization Request or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 12.01.B.2, on the basis of

the Cost of the Work (determined as provided in paragraph 11.01) ~~plus a Contractor's fee for overhead and profit (determined as provided in paragraph 12.01.C).~~

~~C. Contractor's Fee: The Contractor's fee for overhead and profit shall be determined as follows:~~

~~1. a mutually acceptable fixed fee; or~~

~~2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:~~

~~a. for costs incurred under paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;~~

~~b. for costs incurred under paragraph 11.01.A.3, the Contractor's fee shall be five percent;~~

~~c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;~~

~~d. no fee shall be payable on the basis of costs itemized under paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;~~

~~e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and~~

~~f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.~~

12.02 Change of Contract Times

A. The Contract Times (or Milestones) may only be changed by a Change OrderAuthorization Request or by a Written Amendment. Any Claim for an adjustment in the Contract Times (or Milestones) shall be based on written notice submitted by the party making the claim to the Engineer and the other party to the Contract in accordance with the provisions of paragraph 10.05.

B. Any adjustment of the Contract Times (or Milestones) covered by a Change OrderAuthorization Request or of any Claim for an adjustment in the Contract Times (or Milestones) will be determined in accordance with the provisions of this Article 12.

12.03 Delays Beyond Contractor's Control

A. Where Contractor is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of Contractor, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

12.04 Delays Within Contractor's Control

A. The Contract Times (or Milestones) will not be extended due to delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

12.05 Delays Beyond Owner's and Contractor's Control

A. Where Contractor is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both Owner and Contractor, an extension of the Contract Times (or Milestones) in an amount equal to the time

lost due to such delay shall be Contractor's sole and exclusive remedy for such delay.

12.06 Delay Damages

A. In no event shall Owner or Engineer be liable to Contractor, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. delays caused by or within the control of Contractor; or
2. delays beyond the control of both Owner and Contractor including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

B. Nothing in this paragraph 12.06 bars a change in Contract Price pursuant to this Article 12 to compensate Contractor due to delay, interference, or disruption directly attributable to actions or inactions of Owner or anyone for whom Owner is responsible.

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 Notice of Defects

A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 Access to Work

A. Owner, Engineer, Engineer's Consultants, other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's Site safety procedures and programs so that they may comply therewith as applicable.

13.03 Tests and Inspections

A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. Contractor shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation.

F. Uncovering Work as provided in paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely

notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

PSC Request 107 Attachment No. 22 PAGE 57 13.04 Uncovering Work

A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, Contractor shall pay all Claims, costs, losses, and damages (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 such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in paragraph 10.05. If, however, such Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided herein.

13.05 Owner May Stop the Work

A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 Correction or Removal of Defective Work

A. Refer to Article II, Section 65 of the Construction Contract – Generating.

13.07 Correction Period

A. Refer to Article II, Section 65 of the Construction Contract – Generating.

B. In special circumstances where a particular item of equipment is placed in continuous service before Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

C. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

D. Contractor's obligations under this paragraph are in addition to any other obligation or warranty. The provisions of this paragraph shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all Claims, costs, losses, and damages (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) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order Authorization Request will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided herein. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 *Owner May Correct Defective Work*

A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work or to remove and replace rejected Work as required by Engineer in accordance with paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct and remedy any such deficiency.

B. In exercising the rights and remedies under this paragraph, Owner shall proceed expeditiously. In connection with such corrective and remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's Consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

C. All Claims, costs, losses, and damages (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) incurred or sustained by Owner in exercising the rights and remedies under this paragraph 13.09 will be charged against Contractor, and a Change Order Authorization Request will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided herein. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

D. Contractor shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this paragraph 13.09.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

A. The schedule of values established as provided in paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 *Progress Payments*

A. Refer to Article III, Section 1 of the Construction Contract – Generating.

14.03 *Contractor's Warranty of Title*

A. Refer to Article IV, Section 3 of the Construction Contract – Generating.

14.04 *Substantial Completion*

A. Refer to Article III, Section 1 of the Construction Contract – Generating.

14.05 *Partial Utilization*

A. Refer to Article IV, Section 43 of the Construction Contract – Generating.

14.06 *Final Inspection*

A. Refer to Article III, Section 44 of the Construction Contract – Generating.

14.07 *Final Payment*

A. Refer to Article III, Section 1 of the Construction Contract – Generating.

B. *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 a bank or trust company authorized to do business in Kentucky.

1. 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.

2. 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.

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

14.08 *Final Completion Delayed*

A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment and recommendation of Engineer, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 *Waiver of Claims*

A. Refer to Article III, Section 2 of the Construction Contract – Generating.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided herein.

15.02 *Owner May Terminate for Cause*

A. Refer to Article V, Section 1 of the Construction Contract – Generating.

15.03 *Owner May Terminate For Convenience*

A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, elect to terminate the Contract. In such case, Contractor shall be paid (without duplication of any items):

1. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. for all claims, costs, losses, and damages (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) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. for reasonable expenses directly attributable to termination.

B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

A. If, through no act or fault of Contractor, the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or Engineer fails to act on any Application for Payment within 30 days after it is submitted, or Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in paragraph 15.03. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph 15.04 are not intended to preclude Contractor from making a Claim for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

16.01 *Methods and Procedures*

A. Owner and Contractor may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

ARTICLE 17 - MISCELLANEOUS

17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents 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.

17.02 *Computation of Times*

A. When any period of time is referred to in the Contract Documents 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 will be omitted from the computation.

17.03 *Cumulative Remedies*

A. Refer to Article V, Section 3 of the Construction Contract – Generating.

17.04 *Survival of Obligations*

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Agreement.

17.05 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.

17.06 *Liquidated Damages*

~~A. Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if Work is not completed within the times specified in the Construction Contract – Generating, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$5,000 for each day that expires after the time specified in the Construction Contract – Generating for completion and readiness for final payment until the Work is completed and ready for final payment, to a maximum of \$750,000.~~

17.07 *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.

17.0807 *Lobbying Certification*

A. Certification regarding lobbying is required. Forms are attached for this certification.

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

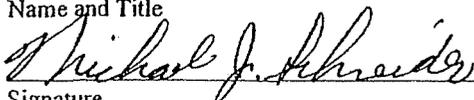
INSTRUCTIONS FOR CERTIFICATION

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>Baker Concrete Construction, Inc.</u>	<u>Spurlock Station Unit 4; contract F261</u>
Organization Name	PR/Award or Project Name
<u>Michael Schneider, V.P. Operations</u>	
Name and Title	
	<u>3-24-05</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.

Baker Concrete Construction, Inc.

Organization Name

Michael Schneider

Name of Authorized Official



Signature

3-24-05

Date

PART 1 GENERAL

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1.01 SECTION INCLUDES

- A. Work covered by Construction Contract.
- B. Contract.
- C. Site conditions.
- D. Work by others.
- E. Work sequence and schedule.
- F. Contractor use of premises.
- G. Owner occupancy.

1.02 WORK COVERED BY CONSTRUCTION CONTRACT

- A. Work of this Agreement generally comprises the following for East Kentucky Power Cooperative, Maysville, Kentucky.
 - 1. Excavation, dewatering and backfilling.
 - 2. Cast-in-place concrete foundations for:
 - a. Main plant and baghouse.
 - b. Chimney.
 - c. Steam turbine generator.
 - d. **Plant equipment**Boiler feed pumps.
 - e. Circulating water pipe.
 - f. Coal conveyors and samplers.
 - g. **Crusher building expansion.**
 - h. **Pre-engineered buildings.**
 - i. Clarifier.
 - j. Acid tank.
 - k. Pipe racks.
 - l. Transformers.
 - 3. **Cooling tower basin**Circulating water pipe.
 - 4. Main plant sub-floor drainage piping.
 - 5. Storm and sanitary sewers.
 - 6. Electrical grounding bars.
 - 7. **Electrical duct banks.**
 - 8. **Precast concrete manholes.**
 - 9. **Structural, ground floor, topping, and elevated slabs.**
 - 10. **Equipment pads.**
 - 11. **Structural and miscellaneous metals.**
 - 12. **Oil-water separator, plant drains lift station, and sump pumps.**

1.03 CONTRACT

- A. Work shall be performed under single lump sum Contract.

1.04 SITE CONDITIONS

- A. Site of generating plant is as follows: 5 miles west of Maysville, KY.
 - 1. Railroad: Chesapeake & Ohio.
 - 2. Highway No.: Kentucky 8, paved.

1.05 WORK BY OTHERS

- A. Work on Project which will be executed prior to start of and during Work of this Agreement, and which is excluded from this Agreement, is by Contract F251 – Piling and is as follows:
1. HP-piling-and-sheet-piling.
 2. Mass excavation for steam turbine generator base slab.
 3. Mass excavation for chimney foundation.
 4. Dewatering system for mass excavations listed above.
- B. Owner will retain services of qualified professional soils consultant and testing laboratory.

1.06 WORK SEQUENCE AND SCHEDULE

- A. Construct Work to accommodate Owner's project schedule; coordinate construction schedule and operations with Owner.
- B. General Construction Schedule:
1. **Contract award: May 10, 2005.**
 - ~~1.2. Contractor mobilization: June 1, 2005 July 22, 2002.~~
 - ~~2.3. Start construction: July 8, 2005. August 1, 2002.~~
 - ~~3.4. Complete construction: August 16, 2007. September 12, 2003.~~
- C. For construction schedule for phases of Work and sequence of construction, see Drawing F105.

1.07 CONTRACTOR USE OF PREMISES

- A. Limit Contractor's use of premises for Work and for storage, to allow for:
1. Work by other contractors.
 2. Owner occupancy.
- B. Coordinate use of premises under direction of Owner. Contractor shall confine construction equipment, storage of materials and equipment and operations of workers to areas permitted by law, ordinances, permits, or requirements of Contract Documents, and shall not unreasonably encumber premises with construction equipment or other material or equipment.
- C. Assume full responsibility for protection and safekeeping of items under this Agreement, stored on Site.
- D. Move any stored items, under Contractor's control, which interfere with operations of Owner or separate contractor.
- E. Obtain and pay for use of additional storage or Work areas needed for operations.

1.08 OWNER OCCUPANCY

- A. Owner will occupy premises during entire period of construction for conduct of its normal operations. Cooperate with Owner's Representative in all construction operations to minimize conflict, and to facilitate Owner usage.

PART 2 PRODUCTS
NOT USED

PART 3 EXECUTION
NOT USED

END OF SECTION

PART 1 GENERAL

PSC Request 1a.
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1.01 SECTION INCLUDES

- A. Schedule of values.
- B. Applications for payment.
- C. Change procedures.
- D. Defect assessment.
- E. Unit adjustment prices.
- F. Alternates

1.02 SCHEDULE OF VALUES

- A. Submit Schedule of Values in duplicate within 15 days of request. Schedule shall contain detailed breakdown of the bid price and a detailed construction schedule. Breakdown shall contain an itemized list of all components of the Project, complete with quantities, unit prices and total costs, the sum of which shall equal the bid price. This schedule, upon approval, shall constitute the basis on which partial payments will be made.
- B. Format: Identify each line item with number and title of the major specification Section. Identify site mobilization, bonds and insurance.
- C. Include separately from each line item, a direct proportional amount of Contractor's overhead and profit.
- D. Revise schedule to list approved Change **Authorization Requests**Orders with each Application For Payment.

1.03 APPLICATIONS FOR PAYMENT

- A. Submit in accordance with the Construction Contract – Generating.
- B. Content and Format: Utilize Schedule of Values for listing items in Application for Payment.
- C. Submit an updated construction schedule with each Application for Payment.
- D. Payment Period: Submit at intervals stipulated in the Contract.
- E. Submit with transmittal letter.
- F. Submit appropriate waivers.
- G. Substantiating Data: When Owner requires substantiating information, submit data justifying dollar amounts in question. Include the following with the application:
 - 1. Current construction photographs.
 - 2. Partial release of liens from major subcontractors and vendors.
 - 3. Record documents as specified in Section 01700, for review by Owner which will be returned to Contractor.
 - 4. Affidavits attesting to off-site stored products.
 - 5. Construction progress schedules, revised and current as specified in Section 01320.

1.04 CHANGE PROCEDURES

- A. Submittals: Submit name of the individual authorized to receive change documents, and be responsible for informing others in Contractor's employ or Subcontractors of changes to the Work.
- B. Owner will advise of minor changes in the Work not involving an adjustment to Contract Price or Contract Time by issuing supplemental instructions.
- C. Owner may issue a Proposal Request which includes a detailed description of a proposed change with supplementary or revised Drawings and specifications, a change in Contract Time for executing the change with a stipulation of any overtime work required and the period of time during which the requested price will be considered valid. Contractor will prepare and submit an estimate within 7 days.
- D. Contractor may propose changes by submitting a request for change to Owner, describing the proposed change and its full effect on the Work. Include a statement describing the reason for the change, and the effect on the Contract Price and Contract Time with full documentation and a statement describing the effect on Work by separate or other contractors. Document any requested substitutions in accordance with Section 01600.
- E. Stipulated Price Change Order: Based on Proposal Request and Contractor's fixed price quotation or Contractor's request for a Change Order as approved by Owner.
- F. Time and Material Change Order: Submit itemized account and supporting data after completion of change, within time limits indicated in the Conditions of the Contract. Owner will determine the change allowable in Contract Price and Contract Time as provided in the Contract Documents.
- G. Maintain detailed records of work done on Time and Material basis. Provide full information required for evaluation of proposed changes, and to substantiate costs for changes in the Work.
- H. Document each quotation for a change in cost or time with sufficient data to allow evaluation of the quotation.
- I. Execution of Change Orders: Owner will issue Change Orders for signatures of parties as provided in the Conditions of the Contract.
- J. Correlation Of Contractor Submittals:
 - 1. Promptly revise Schedule of Values and Application for Payment forms to record each authorized Change Order as a separate line item and adjust the Contract Price.
 - 2. Promptly revise progress schedules to reflect any change in Contract Time, revise sub-schedules to adjust times for other items of work affected by the change, and resubmit.
 - 3. Promptly enter changes in Project Record Documents.

1.05 DEFECT ASSESSMENT

- A. Replace the Work, or portions of the Work, not conforming to specified requirements.
- B. If, in the opinion of Owner, it is not practical to remove and replace the Work, Owner will direct an appropriate remedy or adjust payment.
- C. Authority of Owner to assess defect and identify payment adjustment, is final.
- D. Nonpayment For rejected products: Payment will not be made for rejected products for any of the following:
 - 1. Products wasted or disposed of in a manner that is not acceptable.
 - 2. Products determined as unacceptable before or after placement.
 - 3. Products not completely unloaded from the transporting vehicle.

4. Products placed beyond the lines and levels of the required Work.
5. Products remaining on hand after completion of the Work.
6. Loading, hauling, and disposing of rejected products

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1 06 UNIT ADJUSTMENT PRICES

- A. Unit adjustment prices will be used to adjust Contract Price for additions to or deductions from quantities required by Contract Documents. Net changes of quantities for entire Project shall first be determined before price factors are applied.
- B. Unit adjustment prices apply only to additions to or deductions from quantities required by Contract Documents made necessary by unforeseen conditions or changes deemed necessary or desirable by Owner during construction. Additions or deductions necessary to accommodate equipment furnished and installed under Agreement shall be made by Contractor at its expense and unit adjustment prices shall not apply.

PART 2 PRODUCTS

NOT USED

PART 3 EXECUTION

NOT USED

END OF SECTION

- C. Attendance Required: Job superintendent, major subcontractors and suppliers, Owner, Engineer, as appropriate to agenda topics for each meeting
- D. Agenda:
 - 1. Review minutes of previous meetings.
 - 2. Review of Work progress.
 - 3. Field observations, problems, and decisions.
 - 4. Identification of problems which impede planned progress.
 - 5. Review of submittals schedule and status of submittals.
 - 6. Review of off-site fabrication and delivery schedules.
 - 7. Maintenance of progress schedule.
 - 8. Corrective measures to regain projected schedules.
 - 9. Planned progress during succeeding work period.
 - 10. Coordination of projected progress.
 - 11. Maintenance of quality and work standards.
 - 12. Effect of proposed changes on progress schedule and coordination.
 - 13. Other business relating to Work.
- E. Owner will record minutes and distribute copies within 2 days after meeting to participants and those affected by decisions made.

PART 2 PRODUCTS

NOT USED

PART 3 EXECUTION

NOT USED

END OF SECTION

PART 1 GENERAL

PSC Request 1a.
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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 Owner.

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

PSC Request 1a.
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END OF SECTION

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. Shop Drawings.
- B. Contractor responsibilities.
- C. Submission requirements.
- D. Document submittal schedule.
- E. Resubmission requirements.
- F. Distribution.
- G. Engineer duties.

1.02 SHOP DRAWINGS

- A. Contractor shall submit the items listed in the "Document Submittal Schedule."
- B. Designate in construction 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 CONTRACTOR RESPONSIBILITIES

- A. Review Shop Drawings prior to submission.
- B. Determine and verify:
 - 1. Field measurements.
 - 2. Field construction criteria.
 - 3. Catalog numbers and similar data.
 - 4. 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.

1 04 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 ~~8~~3 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. Drawings 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 Contractor and Engineer stamps.
12. Indication of Contractor's approval, initialed or signed, with wording substantially as follows:

"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 Work and Contract Documents."

13. 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.

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1.05 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		With Proposal
2.	Quality plan		30 days prior to first fabrication
3.	Welding procedures, including procedure qualification records	01460	15
4.	Preliminary construction progress schedules for fabrication, shop testing, delivery of equipment and construction	01320	With Proposal
5.	Construction / progress schedule	01320	15 days after Notice of Award and by the 10th of each month until construction is complete
TECHNICAL – Refer to individual technical sections for listings.			

1.06 RESUBMISSION REQUIREMENTS

- A. Make any corrections or changes in submittals required by Engineer and resubmit until stamped as "Reviewed" 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

1.07 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.

1.08 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

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1.01 SECTION INCLUDES

- A. Quality control and control of installation.
- B. Tolerances.
- C. Building codes and permits.
- D. References
- E. Examination
- F. Preparation

1.02 QUALITY CONTROL AND CONTROL OF INSTALLATION

- A. Monitor quality control over suppliers, manufacturers, products, services, site conditions, and workmanship, to produce Work of specified quality.
- B. Comply with manufacturers' instructions, including each step in sequence.
- C. Should manufacturers' instructions conflict with Contract Documents, request clarification from Engineer before proceeding.
- D. Comply with specified standards as minimum quality for the Work except where more stringent tolerances, codes, or specified requirements indicate higher standards or more precise workmanship.
- E. Perform Work by persons qualified to produce required and specified quality.
- F. Verify that field measurements are as indicated on Shop Drawings or as instructed by manufacturer.
- G. Secure products in place with positive anchorage devices designed and sized to withstand stresses, vibration, physical distortion, or disfigurement.

1.03 TOLERANCES

- A. Monitor fabrication and installation tolerance control of products to produce acceptable Work. Do not permit tolerances to accumulate.
- B. Comply with manufacturers' tolerances. Should manufacturers' tolerances conflict with Contract Documents, request clarification from Engineer before proceeding.
- C. Adjust products to appropriate dimensions; position before securing products in place.

1.04 BUILDING CODES AND PERMITS

- A. Obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses.
- B. Pay all governmental charges and inspection fees necessary for prosecution of Work, which are applicable at time of opening of Bids. Pay all charges of utility service companies for connections to Work. Owner will pay all charges of such companies for capital costs related thereto.
- C. **License from the City of Maysville, Kentucky is required for Contractor and all Subcontractors.**

- D. Give all notices and comply with all laws, ordinances, building and construction codes, rules, and regulations applicable to Work. If Contractor observes that Specifications or Drawings are at variance therewith, give Engineer prompt written notice thereof, and any necessary changes shall be adjusted by appropriate Modification.
- E. If Contractor performs any Work knowing or having reason to know that it is contrary to such laws, ordinances, rules, and regulations, and without such notice to Engineer, Contractor shall bear all costs arising therefrom; however, it shall not be Contractor's primary responsibility to make certain that Specifications and Drawings are in accordance with such laws, ordinances, rules, and regulations.

1.05 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 Construction Contract - Generating, 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 Construction Contract - Generating 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. AA - Aluminum Association
 - 2. AAMA – Architectural Aluminum Manufacturer's Association
 - 3. AABC - Associated Air Balance Council
 - 4. AAMA - American Architectural Manufacturers Association
 - 5. AAN – American Association of Nurserymen
 - 6. AAR –Association of American Railroads
 - 7. AASHTO - American Association of State Highway and Transportation Officials
 - 8. ABMA - American Bearing Manufacturers Association
 - 9. ACI - American Concrete Institute
 - 10. ACGIH - American Conference of Governmental Industrial Hygienists
 - 11. ACIL - American Council of Independent Laboratories
 - 12. ADC - Air Diffusion Council
 - 13. ADSC - The International Association of Foundation Drilling
 - 14. AF&PA – American Forest & Paper Association
 - 15. AFS – American Foundrymen's Society
 - 16. AGA - American Gas Association
 - 17. AGMA - American Gear Manufacturers Association
 - 18. AHA - American Hardboard Association
 - 19. AI - Asphalt Institute
 - 20. AIChE – American Institute of Chemical Engineers
 - 21. AISC - American Institute of Steel Construction
 - 22. AISI - American Iron and Steel Institute
 - 23. AITC - American Institute of Timber Construction
 - 24. AMCA - Air Movement and Control Association
 - 25. ANSI - American National Standards Institute
 - 26. APA – American Pulpwood Association
 - 27. APA/EWA- APA -The Engineered Wood Association

28. API - American Petroleum Institute
29. APMO - International Association of Plumbing
30. AREMA - American Railway Engineering and Maintenance-of-Way Association
31. ARI - Air-Conditioning and Refrigeration Institute
32. ARRA - Asphalt Recycling and Reclaiming Association
33. ASA – Acoustical Society of America
34. ASCE – American Society of Civil Engineers
35. ASHRAE - American Society of Heating, Refrigerating and Air Conditioning Engineers
36. ASME - American Society of Mechanical Engineers
37. ASPA - American Sod Producers Association
38. ASSE - American Society of Sanitary Engineering
39. ASTM - American Society for Testing and Materials
40. AWI - Architectural Woodwork Institute
41. AWPA - American Wood-Preservers' Association
42. AWS - American Welding Society
43. AWWA – American Water Works Association
44. BIA – Brick Industry Association
45. BOCA - Building Officials & Code Administrators International, Inc.
46. CDA - Copper Development Association Inc.
47. CBM - Certified Ballast Manufacturers Association
48. CEMA – Conveyor Equipment Manufacturer's Association
49. CGA - Compressed Gas Association
50. CISCA - Ceilings and Interior Systems Construction Association
51. CISPI – Cast Iron Soil Pipe Institute
52. CLFMI - Chain Link Fence Manufacturers Institute
53. CMAA - Crane Manufacturers Association of America
54. CPSC - Consumer Products Safety Council
55. CRI - Carpet and Rug Institute
56. CRSI - -Concrete Reinforcing Steel Institute
57. CSSB - Cedar Shake and Shingle Bureau
58. CTI - Cooling Technology Institute
59. DASMA - Door and Access Systems Manufacturers Association International
60. DHI - Door and Hardware Institute
61. DIN - Deutsche Normen
62. EIA - Electronic Industries Alliance
63. EIMA - EIFS Industry Members Association
64. EJMA - Expansion Joint Manufacturers Association
65. EPA - Environmental Protection Agency
66. ETL - Electrical Testing Laboratory
67. FAA - Federal Aviation Administration
68. FM – FM Global
69. FS - Federal Specification Unit
70. GA - Gypsum Association
71. GANA - Glass Association of North America
72. HI – Hydraulics Institute
73. HI - Hydronics Institute
74. HMI - Hoist Manufacturer's Institute
75. HMMA - Hollow Metal Manufacturers Association
76. HPVA – Hardwood Plywood and Veneer Association
77. IAS - International Approval Services
78. IAPMO - International Association of Plumbing and Mechanical Officials
79. ICAC - Institute of Clean Air Companies
80. ICBO - International Conference of Building Officials
81. ICC - International Code Council, Inc.
82. ICEA - Insulated Cable Engineers Association
83. IEC - International Electro-technical Council
84. IEEE - Institute of Electrical and Electronics Engineers
85. IES - Illuminating Engineering Society

- 86. IETF - Internet Engineering Task Force
- 87. IGCC - Insulating Glass Certification Council
- 88. ILI - Indiana Limestone Institute of America
- 89. ISA – Instrumentation, Systems, and Automation Society
- 90. ISO - International Standards Organization
- 91. ITU - International Telecommunications Union
- 92. KCMA - Kitchen Cabinet Manufacturers Association
- 93. LPI - Lightning Protection Institute
- 94. MBMA - Metal Building Manufacturers Association
- 95. MFMA - Maple Flooring Manufacturers Association
- 96. MIA - Marble Institute of America
- 97. MS - Military Standardization Documents
- 98. MSS - Manufacturer's Standardization Society of the Valve and Fittings Industry
- 99. NAA - National Arborist Association
- 100. NAAMM - National Association of Architectural Metal Manufacturers
- 101. NAAMM - North American Association of Mirror Manufacturers
- 102. NACE – NACE International
- 103. NAIMA - North American Insulation Manufacturers Association
- 104. NBHA - National Builders Hardware Association
- 105. NBGQA - National Building Granite Quarries Association, Inc.
- 106. NBS - National Bureau of Standards
- 107. NCMA - National Concrete Masonry Association
- 108. NCTA - National Cable Television Association
- 109. NCRP - National Council on Radiation Protection and Measurement
- 110. NEBB - National Environmental Balancing Bureau
- 111. NECA - National Electrical Contractors Association
- 112. NELMA - National Electrical Contractors Association
- 113. NEMA - National Electrical Manufacturers' Association
- 114. NETA - International Electrical Testing Association
- 115. NFPA - National Fire Protection Association
- 116. NFRC - National Fenestration Rating Council
- 117. NHLA - National Hardwood Lumber Association
- 118. NIBS - National Institute of Building Sciences
- 119. NIST - National Institute of Standards and Technology
- 120. NRMCA - National Ready Mixed Concrete Association
- 121. NLA - National Lime Association
- 122. NLGA - National Lumber Grades Authority
- 123. NOFMA - National Oak Flooring Manufacturers Association
- 124. NPCA - National Paint and Coatings Association
- 125. NRCA – National Roofing Contractors Association
- 126. NRMCA – National Ready Mixed Concrete Association
- 127. NSF – NSF International
- 128. NSPI – National Spa and Pool Institute
- 129. NTMA – National Terrazzo and Mosaic Association
- 130. NUCA – National Utility Contractors Association
- 131. NWWMA – National Woodwork Manufacturer's Association
- 132. NWWDA - National Wood Window and Door Association.
- 133. OSHA – U. S. Department of Labor, Occupational Safety and Health Administration
- 134. PCA - Portland Cement Association
- 135. PCI – Precast/Prestressed Concrete Institute
- 136. PDCA – Painting and Decorating Contractors of America
- 137. PDI – Plumbing and Drainage Institute
- 138. PFI - Pipe Fabrication Institute
- 139. PS - Product Standard
- 140. PTI – Post Tensioning Institute
- 141. RCSC – Research Council on Structural Connections
- 142. RIS – The Redwood Inspection Service
- 143. RUS – U. S. Department of Agriculture, Rural Utilities Services

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- 144. SAE – Society of Automotive Engineers
- 145. SAMA - Scientific Apparatus Makers Association
- 146. SBCCI - Southern Building Code Congress International
- 147. SCMA – Southern Cypress Manufacturers Association
- 148. SCTE - Society of Cable Telecommunications Engineers
- 149. SDI - Steel Deck Institute
- 150. SDI - Steel Door Institute
- 151. SIGMA - Sealed Insulating Glass Manufacturers Association
- 152. SJI - Steel Joist Institute
- 153. SMACNA - Sheet Metal and Air Conditioning Contractors' National Association
- 154. SPIB – Southern Pine Inspection Bureau
- 155. SPRI – Single Ply Roofing Institute
- 156. SSPC – The Society for Protective Coatings
- 157. STI – Steel Tank Institute
- 158. SWI – Steel Window Institute
- 159. SWRI – Sealant, Waterproofing, and Restoration Institute
- 160. TCA – Tile Council of America, Inc.
- 161. TEMA - Tubular Exchanger Manufacturers Association
- 162. TIA/EIA – Telecommunications Industry Association/Electronic Industries Alliance
- 163. TMA – The Masonry Society
- 164. TPI – Truss Plate Institute
- 165. TPI – Turfgrass Producers International
- 166. UL - Underwriters' Laboratories, Inc.
- 167. WCLIB - West Coast Lumber Inspection Bureau
- 168. WDMA – Window and Door Manufacturers Association
- 169. WH – Intertek Testing Services, Warnock Hersey Listing Services
- 170. WIC – Woodwork Institute of California
- 171. WWPA – Western Wood Products Association

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PART 2 PRODUCTS

NOT USED

PART 3 EXECUTION

3.01 EXAMINATION

- A. Verify that existing site conditions and substrate surfaces are acceptable for subsequent Work. Beginning new Work means acceptance of existing conditions.
- B. Verify that existing substrate is capable of structural support or attachment of new Work being applied or attached.
- C. Examine and verify specific conditions described in individual specification sections.
- D. Verify that utility services are available, of the correct characteristics, and in the correct locations.

3.02 PREPARATION

- A. Clean substrate surfaces prior to applying next material or substance.
- B. Seal cracks or openings of substrate prior to applying next material or substance.
- C. Apply manufacturer required or recommended substrate primer, sealer, or conditioner prior to applying any new material or substance in contact or bond.

END OF SECTION

PART 1 GENERAL

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1.01 SECTION INCLUDES

- A. Welding requirements.
- B. Procedure qualification.
- C. Performance qualification.
- D. Submittals.

1.02 WELDING REQUIREMENTS

- A. Welding shall be performed by qualified welding operators using procedures which have been qualified in accordance with applicable codes and standards:
 - 1. ANSI B31.1 Code for Pressure Piping.
 - 2. ASME Boiler and Pressure Vessel Code.
 - 3. AWS D1.1 Structural Welding Code.

1.03 PROCEDURE QUALIFICATION

- A. Contractor, Subcontractor, or fabricator performing welding under jurisdiction of referenced codes shall be responsible for obtaining and qualifying welding procedures. Structural welding procedures conforming to AWS D1.1 are prequalified as defined in AWS D1.1, Chapter 5 and Appendix E.
- B. Contractor shall maintain records, and make available to Owner when requested, certifying successful completion of procedure qualification tests.

1.04 PERFORMANCE QUALIFICATION

- A. Contractor, Subcontractor, or fabricator performing welding under jurisdiction of referenced codes shall be responsible for testing and qualifying its welding operators in accordance with applicable codes, using qualified procedures.
- B. Unless welding operators have been previously qualified by Contractor within last 6 months and have been continuously employed as welders by Contractor following qualification, requalification tests must be performed.

1.05 SUBMITTALS

- A. Except for procedures exempted to AWS D1.1, Section 5.1, submit 1 copy of each welding procedure to Engineer with certificate demonstrating successful qualification of welding procedures for each welding process performed: AWS D1.1 - Forms E-1, E-2, E-3, or ASME QW-483.
- B. Prior to execution of any welding, submit to Engineer 1 copy of welder qualification form for each individual performing welding: AWS D1.1 Form E-4 or ASME QW-484.

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. Temporary utilities:
 - 1. Temporary plant services.
 - 2. Temporary lighting for construction purposes.
 - 3. Temporary heating.
 - 4. Temporary ventilation.
 - 5. Telephone service.
 - 6. Facsimile service.
 - 7. Temporary water service.
 - 8. Temporary sanitary facilities.
- B. Construction facilities:
 - 1. Field offices and sheds.
 - 2. Vehicular access.
 - 3. Parking.
 - 4. Progress cleaning and waste removal.
- C. Temporary controls:
 - 1. Barriers.
 - 2. Security.
 - 3. Water control.
 - 4. Dust control.
 - 5. Erosion and sediment control.
 - 6. Noise control.
 - 7. Pollution control.
- D. Removal of utilities, facilities, and controls.

1.02 TEMPORARY PLANT SERVICES

- A. Electrical energy in reasonable quantities will be furnished at job site for use in construction. If Contractor's requirements are in excess of Owner's facilities or **located remotely**, Contractor shall furnish additional service at own expense.
- B. Service point equipped to supply 3-phase, 480-volt, 60 Hz power will be installed by Owner.
- C. Contractor shall supply 480-volt to 120-volt load centers. Contractor shall furnish and install temporary wiring with suitable fused safety switches from this point as required. Wiring shall be suitable for load and service involved and subject to approval of Owner. Capacity will be shared with other contractors.
- D. Requirements for electrical services must be stated in Proposal and will be reviewed by Owner for availability.
- E. Other services, including compressed air, shall be provided by Contractor to meet own requirements.

1.03 TEMPORARY LIGHTING FOR CONSTRUCTION PURPOSES

- A. Provide and maintain incandescent lighting for construction operations to achieve a minimum lighting level of **5 fc minimum at floor, platform, or stair level. Additional task lighting shall be provided for unusual locations or scaffolding.** ~~2-watt/sq ft.~~

- B. ~~Provide and maintain 1 watt/sq ft lighting to exterior staging and storage areas after dark for security purposes.~~
- C. ~~Provide and maintain 0.25 watt/sq ft H.I.D. lighting to interior work areas after dark for security purposes.~~
- D. Provide branch wiring from power source to distribution boxes with lighting conductors, pigtails, and lamps as required.
- E. Maintain lighting and provide routine repairs.
- F. Permanent building lighting may not be utilized during construction.

1.04 TEMPORARY HEATING

- A. Provide and pay for heating devices and heat as needed to maintain specified conditions for construction operations.

1.05 TEMPORARY VENTILATION

- A. Ventilate enclosed areas to achieve curing of materials, to dissipate humidity, and to prevent accumulation of dust, fumes, vapors, or gases.

1.06 TELEPHONE SERVICE

- A. Provide, maintain, and pay for telephone service to field office at time of project mobilization.

1.07 FACSIMILE SERVICE

- A. Provide, maintain and pay for facsimile service and a dedicated telephone line to field office at time of project mobilization.

1.08 TEMPORARY WATER SERVICE

- A. Owner will pay cost of temporary water. Exercise measures to conserve energy. Utilize Owner's existing water system, extend and supplement with temporary devices as needed to maintain specified conditions for construction operations.
- B. Extend branch piping with outlets located so water is available by hoses with threaded connections.

1.09 TEMPORARY SANITARY FACILITIES

- A. ~~Portable~~**Provide portable** restrooms will be provided by Owner near the work area. ~~Wash sink will be provided by Owner in main building.~~ **Facilities required will be Contractor's responsibility.**
- B. Potable water is available at cooler fill stations and drinking fountains.
- C. Additional facilities required will be Contractor's responsibility.
- D. Use of Owner's facilities will be strictly prohibited.

1.10 FIELD OFFICES AND SHEDS

- A. Storage Areas and sheds: Provide protected storage space at location on plant site as directed by Owner or its representative. Materials or equipment shall be stored so as not to deteriorate by external causes. Size to storage requirements for products of individual Sections, allowing for access

and orderly provision for maintenance and for inspection of products to requirements of Section 01600.

- B. Office: Office space within plant building will not be available to Contractor. Location for an office will be provided by Owner as directed by Owner. Office shall be weathertight, with lighting, electrical outlets, heating, cooling, and ventilating equipment, and equipped with sturdy furniture drawing rack, and drawing display table.
- C. Installation:
 - 1. Install office spaces ready for occupancy prior to start of on-site construction.
 - 2. Employee residential occupancy: Not allowed on Owner's property.
- D. Maintenance and cleaning:
 - 1. Weekly janitorial services for offices; periodic cleaning and maintenance for office and storage areas.
 - 2. Maintain approach walks free of mud, water, and snow.
- E. Removal: At completion of Work remove buildings, foundations, utility services, and debris. Restore areas

1.11 VEHICULAR ACCESS

- A. Construct temporary access roads from existing roads to serve construction area, of a width and load bearing capacity to provide unimpeded traffic for construction purposes.
- B. Construct temporary culverts to span low areas and allow unimpeded drainage.
- C. Extend and relocate as Work progress requires, provide detours as necessary for unimpeded traffic flow.
- D. Location approved by Owner.
- E. Provide unimpeded access for emergency vehicles. Maintain 20' width driveways with turning space between and around combustible materials.
- F. Provide and maintain access to fire hydrants and control valves free of obstructions.
- G. Provide means of removing mud from vehicle wheels before entering streets.
- H. Designated existing on-site roads may be used for construction traffic.

1.12 PARKING

- A. Parking lot will be provided for Contractor parking. Only vehicles allowed beyond this lot are those required for Work, deliveries, and superintendent's vehicle. Vehicles shall have pass issued by Owner.

1.13 PROGRESS CLEANING AND WASTE REMOVAL

- A. Maintain areas free of waste materials, debris, and rubbish. Maintain site in a clean and orderly condition.
- B. Remove debris and rubbish from pipe chases, plenums, attics, crawl spaces, and other closed or remote spaces, prior to enclosing the space.
- C. Broom and vacuum clean interior areas prior to start of surface finishing, and continue cleaning to eliminate dust.

TEMPORARY FACILITIES AND CONTROLS

Page 4 - SECTION 01500

- D. Collect and remove waste materials, debris, and rubbish from site weekly and dispose off-site.
- E. Open free-fall chutes are not permitted. Terminate closed chutes into appropriate containers with lids.

1.14 BARRIERS

- A. Provide barriers to prevent unauthorized entry to construction areas to allow for Owner's use of site, and to protect existing facilities and adjacent properties from damage from construction operations.
- B. Provide barricades and covered walkways required by governing authorities for public rights-of-way.
- C. Protect nonowned vehicular traffic, stored materials, site, and structures from damage.

1.15 SECURITY

- A. Site has perimeter fencing and controlled access through a manned, controlled access gate.
- B. Additional security shall be Contractor's responsibility

1.16 WATER CONTROL

- A. Grade site to drain. Maintain excavations free of water. Provide, operate, and maintain pumping equipment.
- B. Protect site from puddling or running water. Provide water barriers as required to protect site from soil erosion.

1.17 DUST CONTROL

- A. Execute Work by methods to minimize raising dust from construction operations.
- B. Provide positive means to prevent air-borne dust from dispersing into atmosphere.

1.18 EROSION AND SEDIMENT CONTROL

- A. Plan and execute construction by methods to control surface drainage from cuts and fills, from borrow and waste disposal areas. Prevent erosion and sedimentation.
- B. Minimize amount of bare soil exposed at one time.
- C. Provide temporary measures such as berms, dikes, and drains, to prevent water flow.
- D. Construct fill and waste areas by selective placement to avoid erosive surface silts or clays.
- E. Periodically inspect earthwork to detect evidence of erosion and sedimentation; promptly apply corrective measures.

1.19 NOISE CONTROL

- A. Provide methods, means, and facilities to minimize noise produced by construction operations.

1.20 POLLUTION CONTROL

- A. Provide methods, means, and facilities to prevent contamination of soil, water, and atmosphere from discharge of noxious, toxic substances, and pollutants produced by construction operations.

1.21 REMOVAL OF UTILITIES, FACILITIES, AND CONTROLS

- A. Remove temporary utilities, equipment, facilities, and excess materials from Site at the completion of Work, except for mass excavation dewatering equipment.
- B. Unless otherwise stated in Proposal, dispose of hazardous waste generated by Work.
- C. Remove underground installations to a minimum depth of 2'.
- D. Clean and repair damage caused by installation or use of temporary work.
- E. Restore existing and permanent facilities used during construction to original condition. Restore permanent facilities used during construction to specified condition.

PART 2 PRODUCTS

NOT USED

PART 3 EXECUTION

NOT USED

END OF SECTION

**Conformed Contract
Volume 1 - Contract**

for

**Contract F281A - Equipment and Material
Contract F281B - Balance of Plant Installation
Spurlock Station - Unit 4
Maysville, Kentucky**

Between

**East Kentucky Power Cooperative, Inc.
Winchester, Kentucky**

And

**Cherne Contracting Corporation
Eden Prairie, Minnesota**

December 2006



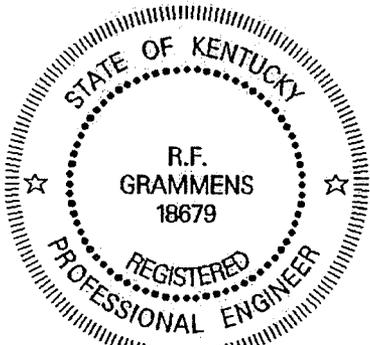
Stanley Consultants

Project Manual

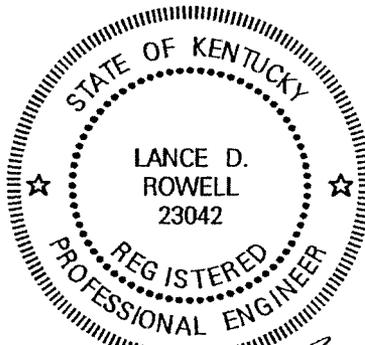
for

Contract F281 – Balance of Plant Spurlock Station - Unit 4 Maysville, Kentucky

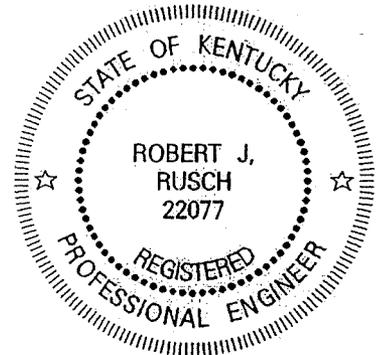
East Kentucky Power Cooperative Winchester, Kentucky



R.F. Grammens



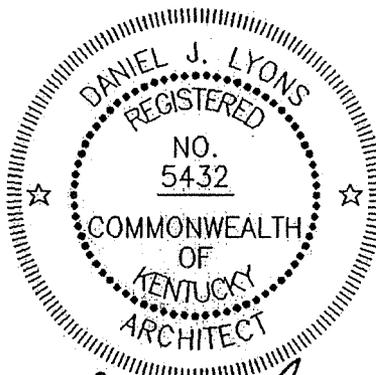
Lance Rowell



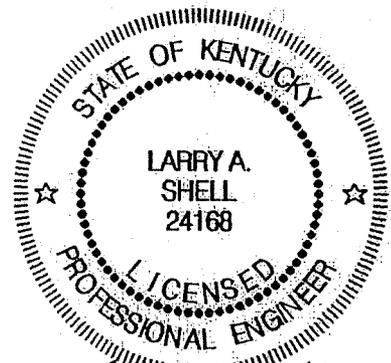
Robert Rusch



Catherine S. Weikel



Daniel J. Lyons



Larry A. Shell

July 11, 2005



Stanley Consultants INC.

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

CONTRACT EF281 – BALANCE OF PLANT
SPURLOCK STATION – UNIT 4
~~E. A. GILBERT UNIT 3~~
MAYSVILLE, KENTUCKY

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EAST KENTUCKY POWER COOPERATIVE, INC.
WINCHESTER, KENTUCKY

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STANDARD DRAWING LIST

1

STANDARD DRAWINGS

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Compact Disc

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EXHIBIT M-2C – VALVE SCHEDULE – AIR OPERATED, NONRETURN

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EXHIBIT E-1 – CABLE SCHEDULE

PSC Request 1a.
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Exceptions and Clarifications

Vendor and Technical

A) COMMERCIAL CLARIFICATIONS

1. Our estimate is based on reaching mutually acceptable terms and conditions.

B) MECHANICAL QUALIFICATIONS

VENDOR

1. Specification Section 13202, 2.01.E, Closed Cycle Cooling Water Head Tank will be fabricated from A516 Grade 70 in lieu of A283 Grade C. This matches what was provided on Unit 3.
2. Specification Section 13435 –
 - a. 1.03. L & M – Sample Cooler furnished will be Johnson March model.
 - b. 1.03. P – JMSI has designed the condition section to utilize the backpressure regulator discharge to be the grab sample source as specified. This design deletes the need for a grab sample valve. Grab sample valve is not included in JM price. JM includes a separate sample line relief valve that will discharge into a dedicated relief valve header. The backpressure regulating/relief valve is an unsafe design.
 - c. 1.03. R – Wet Analyzer Rack: JM has proposed its standard design with a solid 3/16" painted steel faceplate, the same as used on Unit 3. Sensors are mounted behind the face in order to obtain a clean and dry design, very similar to the design on the existing Unit 3 panel.
 - d. 2.08.G – The Honeywell analyzer model number is for dual input model. The P & ID shows a single dissolved oxygen sensor/analyzer which is sequenced between two samples. JM quote is to P & ID design.
3. Specification Section 13455, 2.02.A, Specification Section 16050, 2.03A – In relation to the equipment provided with the Soot Blowing Air Compressor, Atlas Copco provides high quality, industrial grade components in their control system which do not require additional power filtering or conditioning. If either is found to be required, they will be added at extra cost.
4. Specification Section 13455, 2.02.F – In relation to the PLC provided with the Soot Blowing Air Compressor, DCS reads and writes are limited to Read only as follows: All I/O, All Alarms, All Shutdowns, and Pressure Setpoint. No network writes are included.
5. Specification Section 15010, 1.02.B – Relief Valves 4S04-PSV-009, 4S44-PSV-001, and 4S45-PSV-001 exceed the allowable dB on the preliminary data furnished by the vendor. No silencers are included in our bid for relief valves. We will work with vendor to reduce prior to purchase of valves.
6. Specification Section 15110 – Butterfly valves 20" and smaller by Centerline are manufactured to AWWA standards, but are not certified as AWWA. These are the same valves approved and installed on Unit #3.
7. Specification Section 15124, 1.03.I.4 – The predicted pressure drop across the Atlas Copco supplied water manifold will be approximately 15 PSI in lieu of the specified 10 PSI.
8. Specification Section 15124, 2.01.F.2; Specification Section 13455, 1.03.B.1 and 2.05 – Atlas Copco considers the PLC program proprietary and it is not provided.

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9. Specification Section 15124, 2.01.F.7 – Transmitters will be supplied in lieu of switches with the exception of an oil level switch.
10. Specification Section 15124, 2.01.F.7.e.4 – Compressor bearing temperature sensors will be RTDs, manufactured by Pyromation in lieu of thermocouples.
11. Specification Section 15130, 1.03.C – Pump rpm's are as follows:
 - a. CCCW Pumps operate at 1200 rpm. Pumps are identical to those furnished on Unit 3.
 - b. Chilled Water CHW operate at 3600 rpm.
 - c. Service Water Booster Pumps operate at 3600 rpm. Pumps are identical to those furnished on Unit 3.
 - d. Boiler Feed Hot Fill Pump operates at 3600 rpm. It is not possible for this pump to operate at 1750 rpm and develop the head that is required.
 - e. Dilution Water Pumps operate at 3600 rpm. Pumps are identical to those furnished on Unit 3.
 - f. Demineralized Water Transfer Pump operates at 3600 rpm.
 - g. Circulating Seal Water Pump operates at 3600 rpm. This pump does not operate at 1750 rpm.
12. Specification Section 15130, 2.07.D – River Water Makeup Pump, per Goulds Pumps, the sump elevation indicated in spec is inadequate for the rated and run-out conditions, therefore a minimum water level of 487'-9" is required to ensure the pump has adequate NPSHa.
 - a. Minimum low water level required for run out conditions of 11,761 gpm: elevation 487'-9".
 - b. Minimum low water level required for rated condition of 10,000 gpm: 484'-3". At this water level, pump cannot operate at capacities greater than 10,000 gpm.
13. Specification Section 15130, 2.08 – Dilution Water Pump Skid
Shaft is carbon steel with bronze shaft sleeve in lieu of stainless steel.
14. Specification Section 15130, 2.13 – Demineralized Water Transfer Pump
Impeller is semi-open, threaded to shaft in lieu of fully enclosed, keyed to shaft.
15. Specification Section 15130, 2.10 – Condensate Return Units:
 - a. Roth pumps are mounted on top of receiver, therefore suction piping and/or isolation valves are not required.
 - b. Roth pumps require only 1' NPSH in lieu of 2' NPSH specified.
 - c. Motors are 1750 rpm in lieu of 3500 rpm specified.
 - d. Standard Roth warranty only, extended warranty is not available.
16. Specification Section 15131, 2.01.Q – Condenser Vacuum Pump is manufactured in China (PRC), due to sole source specification requirements for Nash.
17. Specification Section 15132 – Taprogge does not use check valves in the recirculation piping. Two additional ball valves have been included at no cost.

18. Specification Section 16050, 2.16 – In relation to the Soot Blowing Air Compressor, pilot lights are not used. All indications are done via the Operator Interface Terminal, using Atlas Copco standard colors as follows:

Condition	Text	Text background	Graphic	
Normal	Yellow	Black	Green	PSC Request 1a.
New Alarm	Flashing Black	Yellow	Flashing Yellow	Attachment No. 23
Acknowledged Alarm	Black	Yellow	Yellow	PAGE 11
New Shutdown	Flashing White	Red	Flashing Red	
Acknowledged Shutdown	White	Red	Red	

19. Specification Section 15342, 2.01.E – The Milton Roy Model XT specified is not capable of 3200 PSI discharge pressure. Johnson March has quoted a Pulsafeeder Model 7440.

20. Specification Section 15760, 2.03 and 2.04

- a. Unit mounted thermostat or unit disconnect switch shown on HVAC schedule is not available from Armstrong on the steam unit heaters and door unit heaters. Remote thermostat will be provided by Cherne.
- b. 1.03.B – Cores are not ARI certified
- c. 2.03.A – Cores are hydro tested at 525 PSIG for a minimum of 60 minutes, not air tested under water
- d. 2.03.B – Enclosures are galvanized steel construction covered with epoxy coating, not phosphatized and not finished with baked enamel
- e. 2.03.C – Horizontal units have 2 way manually adjustable louvers; vertical units have 4 way manually adjustable louvers; door heaters have a high velocity nozzle with no adjustable vane
- f. 2.03.D – Fans are balanced by fan blade manufacturer, not by Armstrong. There are no grease lubricated ball bearings on the fans.
- g. 2.04.A – Heavy duty steel cores, no copper tubing

21. Specification Section 15760, 2.02.F – Unit mounted thermostat or unit disconnect switch is not available from Trane on the UHRA units. Remote thermostat will be provided by Cherne.

22. Exhibit M-2 Valve Schedule:

- a. Boiler Main Steam Stop Valve 4S01-MOV-001 is listed as 4500#, which is not available. 2500# valve will be provided, as was approved on Unit #3.
- b. Valve 4S07-V-018 is 14" on valve list, 8" on P & ID and isometric drawing. An 8" valve has been included in bid.
- c. Small bore CI or DI valves are on valve list section M137 as socket weld. Threaded valves have been included in bid.
- d. Valve 4S46-V-056 is 4" on valve list, should be 1" per P & ID and isometric drawing. A 1" valve has been included in bid.

23. Instrument data sheets 190.02-01 and 02, rev 0, did not include process data. Vendor assumed same conditions as Unit 3 for 4S42-FI-001 and 002.

PIPE FABRICATION

Pipe Fabrication – Cherne will be paid for raw materials upon receipt at shop fabricator's facility. Pricing is based on receiving one electronic data file (.idf or .pcf) and two copies of all drawings.

1. Material pricing is firm for all items released for purchase by 11-5-05 and subject to "price in effect" at time of purchase and industry wide surcharges that may apply for releases after 11-5-05. Freight is subject to "price in effect" at time of purchase and industry wide surcharges that may apply.
2. Standard grooved fittings with flexible couplings will be used in lieu of trimmed fittings shown on isometric drawings.

HANGER FABRICATION

1. This quotation is based on furnishing standard manufacturer products/material in accordance with ASME B31.1, MSS-SP58, 69, 77, and 89 and fabricator standard manufacturing procedures and tolerances. NDE examinations shall comply with MSS SP58 and 89. Acceptance criteria shall meet ASME B31.1 requirements. Examinations are performed by personnel qualified per SNT-TC-1A. Certificates of Compliance are furnished when required in lieu of CMTRs.
2. Hanger fabricator will require access to the 3D model to perform interference checks. Any interference discovered after design is frozen will be for Owner's account.
3. Any design changes made by Engineer during the review process will constitute a change order.
4. Hanger fabricator has included 276,990 pounds of supplementary steel.
5. Specification Section 15060, 1.02.D.1, 1.10.I, 2.03.D and E – Hanger fabricator accepts responsibility for localized stiffening of any/all supplementary steel designed and furnished by them and for stiffening (plates) of existing steel at the "point of attachment only" to existing steel. In regards to Section 15060 – Item 1.10.I – the limiting of localized bending stresses to <3 ksi is extremely stringent and the hanger fabricator would request further discussion on this item to see if any additional flexibility can be allowed.
6. Specification Section 15060, 1.04 – Computer-aided Stress Analysis for "hot small bore" piping is not included.
7. Specification Section 15060, 2.03.I – Welding will conform with ASME Section IX in lieu of AWS D1.1 for hanger supplementary steel fabrication.

SUBCONTRACT

1. Specification Section 07430, Siding – Pricing is firm based on subcontract issued by 11-28-05. Pricing is based on pre-purchasing the coil steel for all metal siding components in order to hold firm pricing. Material will be invoiced when material is received in vendor's facility. Pricing is based on starting 9-18-06 with building closure with liner panels completed by 2-20-07. Completion of insulation and exterior panels will follow.

All roof areas must be released for decking installation by 9-18-06. Three "ready to receive siding" exterior areas must be available immediately after mobilization to meet this schedule.

2. Specification Section 07430, 2.01 – Morin panels are included in this proposal. Add \$130,000 to furnish Centria panels.
3. Specification Section 07541 – The schedule delay will not allow roofing to be completed prior to the 2006 winter. This proposal includes installing the roof expansion joints and roofing board with a cap sheet of Modified Bit during the fall of 2006. This will provide a weather-tight roof for the 2006 / 2007 winter. The polyurethane foam and silicone coating will be completed in the summer of 2007.
4. Specification Section 13121, 1.04.F – Compliance with Factory Mutual requirements is excluded, as the FM requirements are not specifically defined and no allowance can be made.
5. Specification Section 14139 – If required, a phone line from the elevator to the control room is not included in this proposal.
6. Specification Section 14139 – Electrical wiring for the outside alarm bell is not included in this proposal.
7. Specification Section 14139 – Smoke detectors, alarms and wiring are not included in this proposal.
8. Specification Section 14139, 2.02.C.2 – The finish provided for the landing doors is anodized aluminum. A baked enamel finish is not available.
9. Specification Section 14139, 2.04.F – The travel speed for the elevator will be 120 fpm instead of 150 fpm.
10. Specification Section 14139, 2.05.11 – PLC control is not included. Alimak will provide a hall station with an up / down button with a position indicator in the station to tell where the elevator is located in the hoistway. Alimak elevators are controlled by an ALC type microprocessor. The elevator is CSA / ISO9001 / 2000 approved. Any changes will require new approvals by certifying agencies.
11. HVAC subcontract is firm based on subcontract issued by 12-31-05. Deduct \$74,600 to eliminate all motor testing.
12. Specification Section 15720, 2.01 – Hartzell fans are included in the proposal due to problems encountered with other manufacturers. Deduct \$108,962 to furnish Penn-Barry. Deduct \$136,286 to furnish Aerovent.
13. Subcontract pricing is based upon our ability to reach mutually acceptable terms and conditions with the low bid subcontractors.

TECHNICAL

1. Note 9 on M117B requires a "walk down" to include all work and material associated with floor and wall penetrations. Cherne did not perform a walk down and excludes all floor and wall penetrations on this drawing.
2. Most vendors have provided warranties for 18 months after shipment or 12 months after initial operation. We have not included extra money for extended warranties.
3. Specification Section 15050, 2.06 Pipe and Equipment Markers - All markers will be provided by the owner for installation by F281.

4. Specification Section 15020, 1.02D - Delete all reference to demurrage in this section. Commercial terms regarding demurrage will apply.
5. We have not included any supports as listed in addendum # 3. The supports were not detailed in a manner that provides the correct detail to submit a reasonable price for such supports.
6. Drawing F751 Detail C-F751 – The Clarifier support ring is to be installed by F261.
7. Per Stanley verbal direction, we have not included the FOS or the FOR systems from the tank farm to the tie-ins at the existing fuel oil lines. This also excludes supply and installation of the new fuel oil pump and accessories. Also excluded is the pumping out of the oil from existing lines.
8. Our bid is based on Stanley released for construction isometric drawings indicating column lines references.
9. Our bid is based on the Primavera.prx schedule sent by Stanley electronically on September 6, 2005. This schedule supercedes dates in the RFQ.
10. Specification Section 01200 page 5 – Item 1.06.C indicates that unit prices “are stand-alone prices, not subject to cost sharing under the Target Price Agreement.” This is the same language as Unit 3 Contract but practically speaking this is impossible since the work cannot physically be seated into original contract work and unit price work. For example, often during cable pulls, we will be pulling unit price cables along with original contract work and the time cannot be segregated. Unit prices will adjust the Target Price for labor and material.
11. There are several places in the specification (Section 15050 item 2.22.C for example) that state that work will be performed “at no additional cost to Owner” or “repaired at Contractor’s expense” or “Costs....shall be borne by Contractor”, and other similar language. Since this a reimbursable contract we interpret these statements to mean the work will be reimbursable with no adjustment to the Target Price.
12. Specification Section 15050, page 11, item 3.05.C.4 added Owner radiographs of welds not required by code. Any repair work required as a result of this inspection will be reimbursable with no adjustment to the target.
13. M911, Pipe class specifications – AGS2 – Material pricing includes painted fittings in lieu of galvanized fittings.

C) ELECTRICAL CLARIFICATIONS

VENDOR

1) Equipment: DC and Safe AC Systems Specification 16240

Basic Electrical materials & Methods, Section 16050

2.06C Factory Wiring:

Printed Circuit Board (PCB) control wiring will be 22 AWG PVC ribbon cable. Control wires and power wires, depending on their capacity, will be either SIS or cross-linked polyethylene. NEC, bulletin 70, and NEMA PE-1 and PE-5 wiring procedures shall be followed as applicable. Power wiring for all equipment: 10 AWG through 4/0 is Switchboard cable type SIS UL; CSA listed VW-1 90C, 600V, and chemically cross-linked Polyethylene. Control wire 18 AWG

through 14AWG for custom inverters is Switchboard cable type SIS UL, CSA listed VW-1 90C, 600V, and chemically cross-linked Polyethylene. Power wire: 262 MCM through 777 MCM for larger sizes of chargers and inverters is DLO 90C, 600-2000V Ethylene Propylene Rubber (EPR) inner jacket and a Hypalon outer jacket.

2.06I Factory Wiring: Printed Circuit Board wiring will be 300V, 22 AWG ribbon cable.

2.06L Factory Wiring: Internal Wiring power & control wires will be terminated with locking fork terminals in place of ring tongue terminals. Printed Circuit Board signal/data will be will be 22 AWG ribbon cable

2.08I Terminal Boards: The Battery Charger and Inverter's internal terminal boards for alarm relay contacts field connections will be rated 15 Amps at 300 Volts

2.09C Enclosures: The proposed equipment will be supplied in NEMA-1, painted steel enclosures supplied with drip shields. NEMA 12 enclosures for the Battery Chargers and Static Inverters are not available.

2.12 Fuses: The proposed chargers and Inverters will be fitted with Ferraz-Shawmut fuses.

2.13 Control Relays: The proposed chargers and Inverters will be fitted with Agastat, Potter-Brumfield, and Omron relays.

2.14 Control Switches: The proposed chargers and Inverters will be fitted with our standard switches.

DC & SAFE AC SYSTEMS, Section 16240

Page 4, 2.03N Audible noise: The 100kVA Inverters will have an audible noise level of less than 78 db (A) measured at 1.5 meters (5 feet).

Page 5, 2.06B Wiring: The proposed equipment internal wiring will be sized per NEC Table 310-16 for the rated current under "low line" conditions, i.e. maximum expected current.

Page 5, 2.06D Wiring: The wire markers will be heat-stamped for harnessed cables and for non-harnessed wire will be marked with Brady adhesive wire-markers that have a vinyl over-wrap. The vinyl over-wrap makes the wire markers permanent.

System One-Line Dwg # 17500-E147 Rev 2A: Technical Clarifications:

The 1200 Amp Battery disconnects are quoted as fused, NEMA-3R devices. NEMA-12, fused safety switches are not available in this amp size. Additionally, the non-fused disconnects, as specified, cannot be used as UL rated devices without suitable over-current protection. There is no up-stream disconnect switch protection, therefore we have quoted fused disconnects.

The three (3) BCR12600 Battery chargers will not have individual positive/negative DC ground detection alarms. The Ametek Solidstate Controls ground detection circuits will not work properly in a 3-wire 125/250VDC configuration. In lieu of charger based ground detection, Ametek Solidstate Controls will supply a 3-wire ground detection alarm in the PPDC250 Switchboard. The PPDC250 Switchboard cannot be supplied in a NEMA-12 enclosure. We have quoted NEMA-3R enclosures instead. Cutler-Hammer cannot supply NEMA-12 Switchboards nor NEMA-12 Panelboards.

- 2) Specification 16221 2.01 B the Sootblower Air Compressor motor will be manufactured in Helsinki Finland by ABB.

TECHNICAL

1. The conduit and wiring portion of our proposal is based on using the Cable Schedule through Revision 2 and on the panel schedules as shown on drawings E501 through E512. We have not estimated circuits that are referenced or implied on a drawing or in the specifications that are not listed in the Cable Schedule or on the referenced panel schedules.
2. We have not included the installation of the Alstom control panels, junction boxes, miscellaneous equipment and instruments. The only Alstom instruments we have included are the ones that mount into Stanley Consultant designed piping.
3. We have not included the installation of the GE junction boxes and instruments.
4. We have not included the supply or installation of the nameplates shown on drawing E176 Rev 1. The equipment these nameplates serve is not supplied by Cherne.
5. We have not included the equipment support referenced on Drawing E422 Note 2. We are unable to find Note 2 depicted on the drawing.
6. We have included GFI receptacles only where they are noted on the Receptacle and Lighting Drawings. The remaining receptacles are estimated as standard convenience outlets.
7. Specification 16050 requires all field wiring to use insulated ring terminations. Insulated lugs are only available up to size 10 AWG. We have estimated lugs larger than size 10 as non insulated.
8. Specification 16124 3.01 E we have included the swabbing of duct bank cells that we will be pulling through but have not included the unplugging of duct bank cells if they are obstructed.
9. We based the duct bank cable pulling portion of our estimate on not pulling into cells with existing cable in them.
10. Specification 16130 1.04 A 5 we do not call out fittings and location of fittings on our field sketches.
11. Specification 16130 3.09 I, we require that a marked up set of structural steel drawings be transmitted to us that shows the steel that cannot have supports welded to them. There will be over 30,000 weld attachments for electrical supports to the steel.
12. Specification 16132 2.04 E 4 we have not included these covers as we have not been given documents to depict the required areas.
13. Specification 16132 2.08 B and drawing E514 conflict so we have estimated the supports as shown on drawing E514.
14. Specification 16132 3.05 C we asked for a detail of an approved method and were told it would be provided later. At this time, we have included Crouse Hinds TW series "Through Wall Barriers" components for these installations. Special steel framing and or siding consideration to accept barriers have not been estimated.
15. Specification 16132 3.08 F we will replace the damaged cable tray and covers at the end of the project but will require reimbursement for the replacement if it was not damaged by Cherne. This would be true for all electrical installations
16. Specification 02220 3.05 C we have not included the extension of any existing installations. Without an engineer's scope of work, we don't know what they would be or would require.

17. Specification 02220 3.05 E we have not included the removal or relocation of cable trays, raceways, equipment or circuits other than unit heaters, garage door openers, door heaters, 120 volt convenience outlets and light fixtures.
18. Specification 16132 3.08 M we will follow the routing as shown in the Cable Schedule. The fill capacity is determined by the design and will be as per the Cable Schedule routing.
19. Specification 01500 Temporary Facilities and Controls 1.03.E, we will replace High Intensity lamped fixtures that have more than 3,000 hours of burn time. A Metal Halide lamp normally has a 10,000 to 20,000 life of burn hours depending on the lamps wattage.
20. Specification 16050 2.34 D, while installing the conduit indoors we will not be installing plugs. Once the cable is pulled, we will install covers and gaskets.
21. Specification 16130 3.11 A we have not included any underground raceway for the heat trace system. See Specification 15775 3.01 H Addendum 1.
22. Specification 16745 we have not included any patch cables as none are listed or shown on the engineering documents.
23. We have not included the cable clamps as shown on Drawing E514 detail Indoor Mounting Detail, as the cable tray specified will not accept these types of clamps.
24. We have not included cable tray dividers in the baghouse and its electric building or the cooling tower and its electric building.

PROPOSAL

TO:

East Kentucky Power Cooperative

(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:*

Equipment and material including freight are reimbursable
Item: at Contractors Cost. Price: _____
Contractors fee shall be per Attachment 1.
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:*

Contract F-281A Equipment and Material

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.

Section 5. 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.*

ARTICLE II--DELIVERY AND WARRANTY

Section 1. Delivery. *The Bidder shall deliver the Equipment:*

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

_____ not later than _____ . 20_____.

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 Owner, including, but not limited to, acts of God, fires, strikes, and floods.

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.*
- 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.*

ARTICLE III--PAYMENT

Section 1. Payments to Bidder.

- a. *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 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 _____ 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 every 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.*

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.*

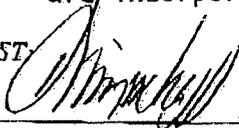
Section 9. Successors and Assigns. *Each and all of the covenants and agreements heretofore contained shall extend to and be binding upon the successors and assigns of the parties hereto. The Owner and Bidder acknowledge that this Contract is assigned to the Government, acting through the Administrator, 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 _____, 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.

NOTE: RUS Form 198 Clarifications - Rev. 2 and Attachment 1 (attached) are incorporated into this proposal.

ATTEST



Secretary

Dated

1/16/06

CHERNE CONTRACTING CORPORATION

Bidder



President

9855 West 78th Street
Eden Prairie MN 55344

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

PSC Request 1a.
Attachment No. 23
PAGE 26

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, Cherne Contracting Corporation

for the following Equipment:

Balance of Plant Equipment required for Spurlock Unit #

for a total contract price of \$   (S.)

East Ky Power Cooperative, Inc
Owner

By _____
President

Secretary

December 6, 2005
Date of Contract

RUS Form 198 Clarifications

Contract F281A - Equipment and Material

REDACTED

Cherne Contracting (Contractor) proposes to purchase and furnish Equipment and Material required for Contract F281A - Equipment and Material for Balance of Plant Spurlock Station - Unit 4 Maysville, Kentucky in accordance with RUS Form 198 subject to the following modifications and understandings:

1. Article I - Section 1: Equipment and Materials will be provided at Contractor's actual cost. Contractor's fixed fee for purchasing ~~and delivering~~ Equipment and Material will be ~~Contractor's fixed fee shall be billable in accordance with the attached billing schedule (Attachment 1).~~ *and*

2. Article II - Section 1: Equipment and Materials will be delivered to the project on a schedule supportive of construction activities under Construction Contract F281B.

3. Article II - Section 2: Contractor will pass through warranties provided by suppliers. Owner's recovery for defective materials will be limited to the recovery Contractor actually receives from supplier.

4. Article III - Section 1: Equipment and Materials will be billable at Contractor's actual cost. Payment will be due Contractor as title is transferred to Owner either when delivered to jobsite or when retained for Owner benefit by supplier. Risk of loss will pass to Owner as material is delivered to jobsite.

5. Article IV - Section 1.d.(i): Delete. Responsibility for claims arising from defect in materials must be borne by the underlying suppliers.

6. Article IV - Section 1.d.(ii): Insert after the word "claim" in line six: ", except to the extent such losses, demands, and causes of action are the result of the negligent or intentional act of the Owner."

7. Article IV - Section 2: Owner will provide Builder's Risk All Risk coverage covering damages resulting from Equipment and Materials provided under this contract. The deductible under this policy is the responsibility of the Owner.

8. Article IV - Section 2: The Owner's rights as an additional insured shall be limited to the Bidder's obligations under this contract.

9. Article V - Sections 1 and 2. Not applicable under this contract.

REDACTED

Material & Equipment
Fixed Fee Billing Schedule

PSC Request 1a.
Attachment No. 23
PAGE 29

Contractor will procure material and equipment for Owner Contract F281, Spurlock Station Unit 4 on a cost reimbursable basis. In addition to the actual cost of material and equipment Contractor will be paid a fixed fee of \$ [REDACTED] for the functions listed below:

- Purchasing Management
- Purchasing Travel
- Overhead and Administration
- Profit

This fee is fixed for the duration of the project exclusive of change orders and extra work orders.

Payment of the fixed fee above shall be per the following schedule. Amounts shown are billable at the beginning of the month.

January 2006
February 2006
March 2006
April 2006
May 2006
June 2006
July 2006
August 2006
September 2006
October 2006
November 2006
December 2006
January 2007
February 2007
March 2007
April 2007
May 2007
June 2007
July 2007
August 2007
September 2007
October 2007
November 2007
December 2007
Total

[REDACTED]

U.S. Department of Agriculture
Rural Utilities Service

PSC Request 1a.
Attachment No. 23
PAGE 30

CONSTRUCTION CONTRACT GENERATING

NOTICE AND INSTRUCTIONS TO BIDDERS

- 1. Sealed proposals for the construction, including the supply of necessary labor, materials and equipment, of a rural electric project of** East Kentucky Power Cooperative, Inc., RUS designation Ky 59 Fayette, (hereinafter called the "Owner") will be received by the Owner on or before N/A o'clock M., N/A, 20 , at its office at N/A at which time and place the proposals will be publicly opened and read. 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 N/A at the latter's office at N/A upon the payment of \$, 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, its license number if a license is required by the State, 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.~~
- 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 site of the project and of the Plans, Specifications, Construction Drawings, and forms of Contractor's Proposal and Contractor's Bond, 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 project. 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 Completion of Construction** of the project is of the essence of the Contract and shall be as specified by the Engineer in the Proposal.
7. **Bid Bond.** ~~Each Proposal must be accompanied by a Bid Bond in the form attached hereto or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the Owner, in an amount equal to ten percent (10%) of the maximum bid price. Each Bidder agrees, provided its Proposal is one of the three low Proposals, that, by filing its Proposal together with such Bid Bond or check in consideration of the Owner's receiving and considering such Proposals, said Proposal shall be firm and binding upon each such Bidder and such Bid Bond or check shall be held by the Owner until a Proposal is accepted and a satisfactory Contractor's Bond is furnished (where required) by the successful Bidder and such acceptance has been approved by the Administrator, or for a period not to exceed sixty (60) days from the date hereinbefore set for the opening of Proposals, whichever period shall be the shorter. If such Proposal is not one of the three low Proposals, the Bid Bond or check will be returned in each instance within a period of ten (10) days to the Bidder furnishing same.~~
8. **Contractor's Bond.** For a Contract in excess of \$100,000, the Bidder agrees to furnish a Contractor's Bond in triplicate in the form attached hereto with sureties listed by the United States Treasury Department as Acceptable Sureties, in a penal sum not less than the contract price.
9. **Failure to Furnish Contractor's Bond.** Should the successful Bidder fail or refuse to execute such counterparts or to furnish a Contractor's Bond (where required) within ten (10) days after written notification of the acceptance of the Proposal by the Owner, the Bidder will be considered to have abandoned the Proposal. In such event, the Owner shall be entitled (a) to enforce the Bid Bond in accordance with its terms, or (b) if a certified check has been delivered with the Proposal, to retain from the proceeds of the certified check, the difference (not exceeding the amount of the certified check) between the amount of the Proposal and such larger amount for which the Owner may in good faith contract with another party to construct the project. The term "Successful Bidder" shall be deemed to include any Bidder whose Proposal is accepted after another Bidder has previously refused or has been unable to execute the counterparts or to furnish a satisfactory Contractor's Bond (where required)
10. **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:
 - (a) If the Proposal contains a provision for "escalation" or increase
of the base price quoted, the maximum amount possible under such
escalation shall be stated and will be used for price comparison.
11. **Debarment Certification.** The Bidder must provide to the Owner a suspension and debarment certificate in the form attached hereto.
12. **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.
13. **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.
14. **Bid Rejection.** The Owner reserves the right to reject any or all Proposals.
15. **Definition of Terms.** The terms "Administrator," "Engineer," "Completion of Construction," and "Completion of the Project" as used throughout this Contract shall be as defined in Article VI, Section 1, of the Proposal.

16. The Owner Represents:

- a. *If by provisions of the Proposal the Owner shall have undertaken to furnish any materials for the construction of the project, such materials are on hand at locations specified or if such materials are not on hand they will be made available by the Owner to the successful Bidder at the locations specified before the time such materials are required for construction.*
- b. *All funds necessary for prompt payment for the construction of the project will be available.*

If the Owner shall fail to comply with any of the undertakings contained in the foregoing representation or if any of such representations shall be incorrect, the Bidder will be entitled to an extension of time of completion for a period equal to the delay, if any, caused by the failure of the Owner to comply with such undertakings or by any such incorrect representation; provided the Bidder shall have promptly notified the Owner in writing of its desire to extend the time of completion in accordance with the foregoing; provided, however, that such extension, if any, of the time of completion shall be the sole remedy of the Bidder for the Owner's failure, because of conditions beyond the control and without the fault of the Owner, to furnish materials in accordance with subparagraph a. above.

East Kentucky Power Cooperative, Inc.
Owner

By Randy Dials/dp

Vice President - Production
Title

January 10, 2006
Date

PROPOSAL

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: ~~SEE SECTION 00410 -- Proposal Form~~ _____

Item: _____ Price: _____

Item: _____ Price: _____

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:*

Balance of Plant - Installation CONTRACT F281B

Spurlock Station Unit 4

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 X, is not required, and if required,*

it possesses Contractor's License No. 1609 for the State of Kentucky

in which the project is located and said license expires on 12/31, 2006.

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.*~~

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 N/A 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 N/A calendar days after Commencement Date.*
- 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.*
- 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*

any change in the construction to be done shall require an extension of time, a reasonable 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.*

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.*
- 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*

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.*
- 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.

- 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.*

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*

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.

six and one-quarter ~~five~~ ^{2010/2/04}

- b. Interest at the rate of ~~five~~ ^{2010/2/04} percent¹ ($5\frac{1}{4}\%$) 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.

six and one-quarter ~~five~~ ^{2010/2/04}

- c. Interest at the rate of ~~five~~ ^{2010/2/04} percent¹ ($5\frac{1}{4}\%$) 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

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.

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 ^{"broom clean" and} 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 and Engineer~~ *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,* except to the extent such claims, causes of action, loss

liabilities, expense, loss, damage, or destruction are the result of the negligent or intentional

acts of the 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*

, except to the extent such losses, demands, and causes of action are the result of the negligent or intentional acts of the Owner.

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.
- 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~~⁵ million each occurrence, limits for property damage of not less than ~~\$1~~⁵ million each occurrence, and ~~\$1~~⁵ million aggregate for accidents during the policy period. A single limit of ~~\$1~~⁵ 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.

~~and-Engineer~~

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

~~and-Engineer~~

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*

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.*

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 FIVE THOUSAND dollars (5,000) 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. , to a maximum of 10% of the Erection Target Price.*

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.*

- 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.*

and Engineer

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.*

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.

Section 6. Equal Opportunity Provisions.

PSC Request 1a.
Attachment No. 23
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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 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.*

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*

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.

NOTE: RUS Form 200 Clarifications and Exceptions Rev 5 including Attachments 1&2 (attached) are incorporated into this proposal.

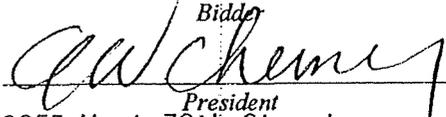
ATTEST:



Secretary

Dated 9/22/06

Cherne Contracting Corporation

Bidder


President

9855 West 78th Street
Eden Prairie Minnesota 55344

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.

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, Cherne Contracting Corporation

, for the construction of the following:

EKPC Spurlock Station Unit 4 - Balance of Plant Contract F281B in

accordance with Contract Documents including Exceptions and
Clarifications

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

East Kentucky Power Cooperative, Inc.
Owner

By _____
President

Secretary

January 10, 2006
Date of Contract

Clarifications and Exceptions

Contract F281B - Balance of Plant Installation

REDACTED

CLARIFICATIONS AND EXCEPTIONS

A. Commercial Clarifications and Exceptions

1. Erection Target Price: Our proposal is based on the Erection Target Price (Section 01200, Article 1.02.C) of [REDACTED] consisting of the following three elements:

- Fixed Costs: (in accordance with Section 01200, Article 1.02.C.2) in the amount of \$17,608,195.
- Variable Costs: (in accordance with Section 01200, Article 1.02.C.3) in the amount of \$ [REDACTED] the Craft Labor Costs portion (1.02.C.3.a through d) of this amount [REDACTED] shall be increased in accordance with Article A.21 below. The Subcontracts portion (1.02.C.3.e) of this amount [REDACTED] shall be adjusted for costs arising from approved changes.
- Incentive Amount: (Section 01200, Article 1.02.C.4) in the amount of [REDACTED] This Incentive Amount is a lump sum (adjustable hereafter only for changes in scope, extra work orders, or Owner caused delays) vs. percentage of variable costs.

The above three elements of the Erection Target Price will be adjusted for additional scope, change orders, extra work or other contractually allowed price increases. The Incentive Amount will be subjected to adjustment at project completion based on the formula as shown below:

Unit 4 Erection Target Price				
<85%	85-90%	>90-100%	>100-107%	107%>
All cost underruns over 15% returned to Owner	Owner/Contractor 70/30% split of next 5% of cost underrun	Owner/Contractor 50/50% split first 10% of cost underrun	Owner/Contractor 50/50% split first 7% of cost overrun**	All cost overruns over 7% paid by Contractor**

Example:

Total billings*	[REDACTED]	(total project cost billings)
Erection Target Price	[REDACTED]	(as adjusted during contract)
Cost overrun	[REDACTED]	
Ratio	[REDACTED]	
Owner share of cost overrun	[REDACTED]	(50% share of first 7% of overrun)
Contractor share of cost overrun**	[REDACTED]	(50% share of first 7% of overrun) (plus 100% of next 1% of overrun)

* Total of Fixed Costs, Variable Costs, and Incentive Amount invoiced under the contract.

** Contractor's share of cost overrun shall not exceed the Incentive Amount otherwise due Contractor. Contractor's share of cost overrun shall be treated as a reduction in the Incentive Amount otherwise due Contractor. Contractor's share of cost underrun shall be treated as an increase in the Incentive Amount otherwise due Contractor.

2. Equipment and Material are excluded from this contract. As such, there is no Equipment and Material Target Price or sharing formula relative to this contract and all such references in Section 01200, Article 1.02.B are deleted.
3. RUS Form 200 Article III Section 1(a) Payments to Bidder and Standard General Conditions Article 14.07 Final Payment: Our proposal is based on use of a letter of credit in lieu of retainage. Such letters of credit shall be structured to provide continuous credit security for the Owner through April 20, 2009 or other date of project completion as mutually agreed by Owner and Contractor. Retainage shall be reduced, or letter of credit released, to an amount reasonably necessary to cover punch list items at mechanical completion.
4. RUS Form 200 Article IV Section 2(a) and (b) Insurance. We provide this insurance at the rate of 13.0% of actual straight time craft wages. This rate is fixed for the duration of the project and is not auditable.
5. We exclude the cost of unloading equipment that arrives prior to our mobilization.
6. We accept the liquidated damage amounts under RUS Form 200 Article V Section 2 and understand that neither the Contractor nor any of its subcontractors and suppliers of any tier shall be responsible in any action or claim for any consequential, performance, incidental, indirect or special damages of any type including loss of revenue, loss of use, loss of output, cost of capital, financing or other similar damages.
7. We are aware of the City of Maysville 1.95% payroll tax. We have based our proposal on the assumption that the cost of this tax will be borne by our employees. However, in the event any of the contractors at the project are increasing employee wages to cover the cost of this tax then the Erection Target Price must be appropriately increased.
8. Our proposal is based on the inclusion of the following language in RUS Form 200 Article IV Section 2:

It is agreed that Owner shall purchase a Builder's Risk Policy covering all risk perils including, but not limited to, flood and earthquake, resultant damage arising out of faulty design, material or workmanship, and hot testing coverage for replacement cost value and at least for the full contract value for the term of the work to be performed.

The insurance required shall add Bidder and its subcontractors related to this work as Additional Insureds to the extent and in such amounts necessary to satisfy their interest with respect to the work hereunder. Bidder shall provide the name and address (P.O. boxes are not acceptable) of each subcontractor to Owner to be named as Additional Insured. Owner hereby grants a waiver of subrogation in favor of the Additional Insureds for such damages caused by perils covered under this Builder's Risk policy.

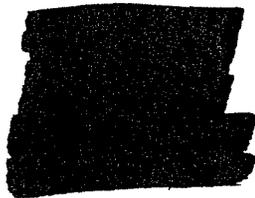
Owner shall furnish Bidder a Certificate of Insurance evidencing the requirements above, and in a form reasonably satisfactory to Bidder. Such certificate shall provide that thirty (30) days written notice shall be given to Bidder prior to cancellation or non-renewal or material change of the coverage.

The deductible under this policy is the responsibility of Owner.

9. RUS Form 200 Article II Section 5.b. Replace "completion of **REDACTED** with "substantial completion" in line 4.
10. RUS Form 200 Article V Section 2. Liquidated Damage dates: Building siding substantially complete: November 30, 2007; Substantial completion of mechanical and electrical work: November 30, 2008. [Note: These dates are subject to Cherne's acceptance of revised project schedule.]
11. Deleted at Rev. 3 as no longer applicable.
12. RUS Form 200, Article VI Section 3 Patent Infringement: Insert after the word "equipment" the words "provided by Bidder".
13. Add to the end of RUS Form 200, Article IV Section 1(c.)(i): "Notwithstanding anything contained herein to the contrary, the indemnifications obligations of the Bidder hereunder apply only to claims, causes of action, losses, liabilities and expenses which relate to events, circumstances or conditions which occur or exist prior to the completion of the contract."
14. Wherever RUS Form 200 or the Standard General Conditions are in conflict with the provisions of Article 1.02, Contractor Compensation, Article 1.02 shall govern.
15. RUS Form 200, Article IV Section 2: Delete the paragraph following subparagraph "c".
16. RUS Form 200, Article IV Section 2: The Owner's rights as an additional insured shall be limited to the Bidder's obligations under this contract.
17. Our proposal is based on Standard General Conditions Article 6.05.F being deleted inasmuch as equipment and material are addressed under a separate contract as a direct reimbursable cost.
18. Care custody and control for material and equipment provided under a separate contract will become of the responsibility of Contractor upon receipt and inspection at the jobsite.
19. Our proposal is based on the same payment terms as Unit 3:
 - Contractor submits cost forecast for the forthcoming month on or about the 25th day of the month.
 - Owner pays this forecast in full by the fifth day of the following month.
 - Contractor submits reconciliation by the 15th day of the month and includes the variance (between the cost forecast and reconciliation) with the next monthly cost forecast.
20. Deleted at Rev. 3 as no longer applicable.
21. The Erection Target Price includes a Craft Labor Cost of [REDACTED] This amount excludes escalation, includes an allowance of [REDACTED] for premium time wages and is

based on December 2005 craft wage and fringe benefit agreements, and 2005 FICA, FUI, and SUI (payroll tax) rates as follows:

Craft Straight Time Wages
Craft Premium Time Wages
Fringes
Payroll Taxes
Insurance (13% of ST wages)



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REDACTED

Total Craft Labor Dollars



Craft Work Hours



Craft Labor Dollars per
Craft Work Hour



The actual cost of craft wages, fringes, payroll taxes, and insurance (at the fixed rate of 13% of straight time craft wages for the duration of the project) for all project hours (base scope, change order scope, and extra work) shall be reimbursable costs under the contract regardless of the final hours expended or the cost per hour.

Should the end of project actual cost of craft labor exceed [REDACTED] per craft work hour (regardless of whether the excess arises from changes in wage rates, fringe rates, payroll tax rates, additional use of overtime, crew mix, or any other reason), the excess cost shall be added to the Erection Target Price in accordance with Attachment 1.

22. Contractor and Owner understand that it may be necessary to offer overtime to attract sufficient qualified craft personnel to meet project work schedules. The Erection Target Price includes [REDACTED] for premium time (overtime) for use during the project as determined by the Contractor.

After these funds have been expended, when overtime or extended work weeks are needed to attract craft labor as reasonably determined by Owner and Contractor or to otherwise meet the project schedule (due to no fault of Contractor), or when spot overtime is needed to complete unfinished work activities in Contractor's determination, such additional premium time will be authorized and the Erection Target Price will be increased by the actual added cost of such premium time. Labor availability will be assessed each month at the monthly progress meeting and action taken as necessary. All premium time costs over the [REDACTED] Erection Target Price allocations will be authorized by the CAR and Contract Amendment process as defined in the contract.

After the [REDACTED] initial overtime budget has been expended, the Contractor shall not be obligated, under any circumstance, to work any overtime without a corresponding increase in the Erection Target Price to cover the costs of such overtime. In no case shall Contractor be obligated to retain on its workforce any craft worker who fails to meet, in Contractor's sole judgment, Contractor's productivity, safety, or quality of work standards.

REDACTED

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Cherne Contracting Corporation

Rev 5 - Sept 11, 2006

In the event the Contractor requests an increase in the Erection Target Price for additional overtime and the Owner denies such request, the parties hereby agree that the Contractor will continue its construction operations on a 40 hour work week basis. The inability to offer overtime may impact the Contractor's ability to attract an adequate quantity of qualified and productive craft personnel and thereby delay work completion. As such, and notwithstanding any language herein to the contrary, in the case of such denial, the Owner agrees to a) extend the mechanical completion date, the project completion date, the milestone dates, and the Liquidated Damage dates by a duration reasonably calculated to make up for the work reduction (computed as the difference between the craft hours scheduled to be worked less the craft hours actually worked) during such periods of 40 hour work weeks, b) increase the Erection Target Price Fixed Costs by an amount equal to the Contractor's actual fixed costs arising from work completed after November 30, 2008, and c) increase the Erection Target Price Incentive Amount by [REDACTED] for each craft hour expended for work completed after November 30, 2008. For the purpose of this Article "work completed after November 30, 2008" shall mean that work performed after November 30, 2008 which must be completed to achieve "substantial mechanical completion" as that term is used in Article 10 above.

23. The Erection Target Price shall be adjusted for changes as follows:

	<u>Change Orders</u>	<u>EWO's</u>
Direct MH's	<u>Estimated MH's</u>	<u>Actual MH's</u>
Indirect MH's	[REDACTED]	<u>Actual MH's</u>
Total MH's	<u>Total MH's</u>	<u>Total MH's</u>
Craft Labor Rate	[REDACTED]	[REDACTED]
Fixed Costs	[REDACTED]	[REDACTED]
Incentive Amount	[REDACTED]	[REDACTED]
Total	[REDACTED]	[REDACTED]

Deletions to the work scope shall be calculated using the above hourly rate less [REDACTED]
 [REDACTED] Deletions shall be applied by change order/by commodity.

24. Fixed Costs and Incentive Amount will be invoiced per the schedule shown on Attachment 2.

REDACTED

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A. 21 Commercial Clarifications and Exceptions

Methodology for Increasing Erection Target Price for changes in the cost of craft labor over the Erection Target Price base rate of [REDACTED] per craft hour

At the completion of the contract, the actual total craft labor costs (wages, fringes, payroll taxes, insurance) will be divided by the actual total craft work hours expended to determine the cost per craft work hour. Should this amount exceed \$ [REDACTED] the difference will be multiplied by the final target craft hours ([REDACTED] hours plus all hours added to the contract through change orders and extra work orders) and the product shall be added to the Erection Target Price.

Example: Assume [REDACTED] actual craft labor costs (as shown below) and [REDACTED] actual expended craft work hours. Further assume that [REDACTED] craft work hours were added to the original [REDACTED] hour target craft hours via change orders and extra work orders.

Craft ST Wages	[REDACTED]
Craft PT Wages	[REDACTED]
Fringes	[REDACTED]
Payroll Taxes	[REDACTED]
Insurance (13% of ST wages)	[REDACTED]
Total "craft labor costs"	[REDACTED]
Total "craft work hours"	[REDACTED]
Cost per craft work hour	[REDACTED]
Base cost per craft work hour	[REDACTED]
Increase cost per craft work hour	[REDACTED]
"Final target craft hours"	[REDACTED]
Increase to the Erection Target Price	[REDACTED]

"Craft work hours" shall include all work hours (base scope, extra work hours, or change orders).

"Craft labor costs" shall include all costs (straight time and premium time wages, fringes, payroll taxes and insurance) on "craft work hours".

"Final target craft hours" shall be the sum of the [REDACTED] base scope target craft hours, all estimate craft hours arising from change orders, and all actual craft hours arising from extra work orders. During the course of the project, the Erection Target Price will be increased for such change order and extra work order hours at the rate of [REDACTED] per hour. At the contract completion, the Erection Target Price will be further increased based on the formula above.

REDACTED

Clarifications and Exceptions Article A.21

Illustration of process for increasing Erection Target Price for changes in the cost per hour and scope hours

	(A) Base Scope Hours	(B) Change Order & Extra Work Order Hours	(A+B) Target Hours	(C) Overtime Hours*	(A+B+C) Total Worked Hours
Base Cost per Hour	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Increased Cost per Hour	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total Cost per Hour	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

- [REDACTED] Included in Erection Target Price at Contract inception
- [REDACTED] Added to Erection Target Price as Change Orders and Extra Work orders are processed
- [REDACTED] Added to Erection Target Price at Contract completion
- [REDACTED] Final Erection Target Price excluding Subcontracts, Fixed Costs, and Incentive Amount
- [REDACTED] Excluded from Erection Target Price and subject to sharing formula.
- [REDACTED] Final erection actual cost excluding Subcontracts, Fixed Costs, and Incentive Amount

* In the event of an hour "underrun", the entries arising from the underrun shall be posted as negatives.

U.S. Department of Agriculture
Rural Utilities Service

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CONTRACTOR'S BOND

1. Know all men 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.

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Rural Utilities Service

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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.
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 till 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____,

Date

Name of Architect or Engineer
By _____

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.*

Date

Date

Owner

By _____
President

Name Of Contactor

By _____

Title

U.S. Department of Agriculture
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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 Contract F281 – Balance of Plant, Spurlock Station – Unit 4

The undersigned, being, the Contractor

in a certain contract No. F-281 dated 10/24, 2005, 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 States² 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.³

Cherne Contracting Corporation

By

A. William Cherne, Jr.

Date 10/24, 2005

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

² United States means United States, its territories and possessions.

³ A current list of eligible countries may be obtained by contacting RUS.

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.

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Rural Utilities Service

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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 only to the extent of payment received.

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.

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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 manufacturer, material suppliers and subcontractors have been furnished the Owner.

_____ Date _____ 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.

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1.01 COPIES OF BIDDING DOCUMENTS

- A. Complete sets of the Bidding Documents in the number and for the deposit sum, if any, stated in the Notice and Instructions to Bidders may be obtained from the Owner.
- B. Complete sets of Bidding Documents must be used in preparing Proposals; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- C. Owner and Engineer in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining Proposals for the Work and do not confer a license or grant for any other use.

1.02 EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA, AND SITE

- A. Subsurface and physical conditions:
 - 1. General Conditions identify:
 - a. Those reports of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Bidding Documents.
 - b. Those drawings of physical conditions in or relating to existing surface and subsurface structures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Bidding Documents.
 - 2. Copies of reports and drawings referenced in above will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which Bidder is entitled to rely as provided in paragraph 4.02 of the General Conditions has been identified and established in paragraph 4.02. Bidder is responsible for any interpretation or conclusion Bidder draws from any "technical data" or any other data, interpretations, opinions or information contained in such reports or shown or indicated in such drawings.
- B. Underground Facilities: Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the Site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities, including Owner, or others.
- C. Hazardous Environmental Condition:
 - 1. General Conditions identify those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that Engineer has used in preparing the Bidding Documents.
 - 2. Copies of reports and drawings referenced in paragraph 4.06.A of the General Conditions will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which Bidder is entitled to rely as provided in paragraph 4.06 of the General Conditions has been identified and established in paragraph 4.06. Bidder is responsible for any interpretation or conclusion Bidder draws from any "technical data" or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.
- D. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated conditions appear in paragraphs 4.02, 4.03, and 4.04 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work appear in paragraph 4.06 of the General Conditions.

- E. On request, Owner will provide Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies.
- F. Reference is made to Article 7 of the General Conditions for the identification of the general nature of other work that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) that relates to the Work for which a Proposal is to be submitted. On request, Owner will provide to each Bidder for examination access to or copies of Construction Contract – Generating (other than portions thereof related to price) for such other work.
- G. 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 other related data identified in the Bidding Documents;
 2. Visit the Site and become familiar with and satisfy Bidder as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;
 3. Become familiar with and satisfy Bidder as to all federal, state, and local Laws and Regulations that may affect cost, progress, or performance of the Work;
 4. Carefully study all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified as provided in paragraph 4.02 of the General Conditions, and carefully study all reports and drawings of a Hazardous Environmental Condition, if any, at the Site which have been identified as provided in paragraph 4.06 of the General Conditions;
 5. Obtain and carefully study (or assume responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto;
 6. Agree at the time of submitting its Proposal that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Proposal for performance of the Work at the price bid and within the times and in accordance with the other terms and conditions of the Bidding Documents;
 7. Become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;
 8. Correlate the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents;
 9. 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
 10. Determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.
- H. The submission of a Proposal will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Proposal is premised upon performing and furnishing the Work required by the Bidding Documents and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly 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 performing and furnishing the Work.

~~1.03~~PRE-BID CONFERENCE

~~A.1. A pre-Bid conference will be held at 9:00 am on September 5, 2002, at Spurlock Station, Maysville, Kentucky. Representatives of Owner and Engineer will be present to discuss the Project. Bidders are required to attend and participate in the conference. Engineer will transmit to all prospective Bidders of record such Addenda as Engineer considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.~~

1.041.03 SITE AND OTHER AREAS

A. The Site is identified in the Bidding Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by Contractor. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Bidding Documents.

1.051.04 INTERPRETATIONS AND ADDENDA

A. All questions about the meaning or intent of the Bidding Documents are to be submitted to Engineer in writing.

Mr. Larry Shell
Stanley Consultants, Inc.
225 Iowa Avenue
Muscatine, IA 52761-3764
Telephone: 563.264.6455
Fax: 563.264.6658
E-mail: shelllarry@stanleygroup.com

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 may not be answered. Only questions answered by 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.

1.061.05 CONTRACT TIMES

A. The number of days within which, or the dates by which, the Work is to be (a) Substantially Completed and (b) also completed and ready for final payment are set forth in Section 01110.

1.071.06 LIQUIDATED DAMAGES

A. Provisions for liquidated damages, if any, are set forth in the ~~General Conditions~~**Construction Contract - Generating**.

1.081.07 SUBSTITUTE AND "OR-EQUAL" ITEMS

A. The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration of possible substitute or "or-equal" items. Whenever it is

specified or described in the Bidding Documents that a substitute or "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 submission 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.

4.091.08 BASIS OF BID; EVALUATION OF PROPOSALS

- A. Bidders shall submit a Proposal on a target price basis for the Base Proposal and shall include a separate price for each alternate described in the Bidding Documents as provided for in the Proposal form. The price for each alternate will be the amount deleted from the Base Proposal if Owner selects the alternate.
- B. Owner may select or reject each alternate as best serves its interests, and may use prices bid for each selected alternate in determining Successful Bidder.
- C. Proposal prices will be compared after adjusting for maximum cost exposure to Owner including target prices, overhead and administrative costs, profit, labor, risk, incentive amounts, and startup services.
- D. Include total cost for services of Service Engineer(s) in Proposal. See Contract Documents for specific requirements.

4.401.09 SUBMITTAL OF PROPOSAL

- A. Proposal form is included with the Bidding Documents.
- B. 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.
- C. One 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, Inc.
Attention: Mr. Craig Johnson
4775 Lexington Road
P. O. Box 707
Winchester, KY 40392-0707
Telephone: 859.744.4812
Fax: 859.744.6008
E-mail: craig@ekpc.comcraig.johnson@ekpc.coop

- D. One duplicate copy of the 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, Inc.
Attention: Ms. Diana Pulliam
P. O. Box 398, Route 8 West
Maysville, KY 41056
Telephone: 606.883.3367
Fax: 606-883-3438
E-mail: diana.pulliam@ekpc.coop

D.E. Two duplicate copies of the 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 Engineer at the following address:

Stanley Consultants, Inc.
Attention: Mr. Larry Shell
225 Iowa Avenue
Muscatine, IA 52761-3764
Telephone: 563.264.6455
Fax: 563.264.6658
E-mail: shelllarry@stanleygroup.com

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E.F. The name and address of the Bidder and the date and hour of the opening of Proposals must appear on the envelope in which the Proposal is submitted. All blanks on Proposal form shall be completed by printing in black ink or by typewriter. No alterations or interlineations will be permitted, unless made before submission and initialed and dated

F.G. Proposal shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Proposal Form.

G.H. Any Proposal Price shall be stated in words and figures; in case of conflict, words take precedence.

H.I. Names shall be typed or printed in ink below the signatures. Address and telephone number for communications regarding the Proposal shall be shown.

I.J. Facsimile copies of Proposals will not be accepted.

4.411.10 MODIFICATION AND WITHDRAWAL OF PROPOSAL

- A. Proposal may be modified or withdrawn by an appropriate document duly 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 duly 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, that Bidder may withdraw its Bid, and the Proposal security will be returned. Thereafter, if the Work is rebid, that Bidder will be disqualified from further bidding on the Work.

4.421.11 SALES AND USE TAXES

- A. Prices set forth in the Proposal shall not include any sums which are, or may be, payable by the Bidder or the Owner on account of any Kentucky Sales or Use Tax upon the sale, purchase, or use of material, supplies, or equipment incorporated in the Project.
- B. Owner will be fully responsible to the Department of Revenue for any Kentucky Sales or Use Tax that may be applied as a direct consequence of the Project, and the Bidder shall not pay this Tax when purchasing materials, supplies, or equipment for the Project.
- C. When applicable, the Owner will provide the Bidder with appropriate exemption forms for the purchase of such materials, supplies, or equipment, and the Bidder will cooperate with the Owner in supplying pertinent data and information to assist the Owner in taking maximum advantage of Kentucky Sales and Use Tax exemptions. The Bidder agrees to state separately the cost of labor and materials, supplies or equipment incorporated in the Proposal.

- D. Any sales or use tax payable as a consequence of a failure on the part of the Bidder to comply with these provisions will be paid by the Bidder as an additional expense of the Bidder, and any amounts paid will not be reimbursable by the Owner.

4.131.12 UNIT ADJUSTMENT PRICES

- A. Submit adjustment prices for items listed in Proposal Form and described in Contract Documents.
- B. Owner may accept or reject proposed unit prices without invalidating remainder of Proposal or any Agreement based thereon.

END OF SECTION

PROJECT AND CONTRACT IDENTIFICATION

This Proposal pertains to Contract EF281 – Balance of Plant 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, Inc.
Attn: Mr. 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 Construction Contract - Generating to perform the Work as specified or indicated in the Construction Contract - Generating for the prices and within the times indicated in this Proposal and in accordance with the other terms and conditions of the Construction Contract - Generating.

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 bid security. The Proposal will remain subject to acceptance for 90120 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 Contract as to liquidated damages in the event of its failure to perform the Work in accordance with the schedule set forth in the Contract.

Article 3. BIDDER'S REPRESENTATIONS

- 3.1 In submitting this Proposal, Bidder represents, as set forth in the Contract, that:
 - 3.1.1 Bidder has examined and carefully studied the Construction Contract - Generating, the other related data identified in the Construction Contract - Generating, and the following Addenda, receipt of all which is hereby acknowledged.

Addendum No.	Addendum Date
One	August 8, 2005
Two	August 26, 2005
Three	September 29, 2005
 - 3.1.2 Bidder has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified as provided in paragraph 4.02 of the General Conditions, and
 - 3.1.3 Bidder has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Construction Contract - Generating to be employed by Bidder, and safety precautions and programs incident thereto.

- 3.1.4 Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Construction Contract - Generating.
- 3.1.5 Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Construction Contract - Generating.
- 3.1.6 Bidder has correlated the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Construction Contract - Generating, and all additional examinations, investigations, explorations, tests, studies, and data with the Construction Contract - Generating.
- 3.1.7 Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Construction Contract - Generating, and the written resolution thereof by Engineer is acceptable to Bidder.
- 3.1.8 The Construction Contract - Generating is generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
- 3.1.9 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 perform the Work in accordance with the Construction Contract - Generating for the following price(s):

4.1.1 Erection Target Bid Price:

4.1.1.1 Fixed Costs:

_____ (words)

_____ (\$ _____) (figures)

4.1.1.2 Variable Costs:

_____ (words)

_____ (\$ _____) (figures)

4.1.1.3 Overhead and Administration Rate: _____ percent (_____%) of variable costs.

4.1.1.4 Profit: _____ percent (_____%) of variable costs.

REDACTED

Craft	Classification	Direct Time Compensation \$/Hr	Benefits \$/Hr	Straight Time Compensation \$/Hr	Overtime (Time & 1/2) \$/Hr
Pipefitters	General Foreman	\$			
	Area Foreman	\$			
	Foreman	\$			
	Journeyman	\$			
	4th Yr Apprentice	\$			
Carpenters	General Foreman	\$			
	Foreman	\$			
	Journeyman	\$			
	70% Apprentice	\$			
Laborers	General Foreman	\$			
	Foreman	\$			
	Journeyman	\$			
Ironworkers	General Foreman	\$			
	Foreman	\$			
	Journeyman	\$			
	70% Apprentice	\$			
Millwrights	General Foreman	\$			
	Assistant GF	\$			
	Foreman	\$			
	Journeyman	\$			
	70% Apprentice	\$			
Boilermakers	General Foreman	\$			
	Foreman	\$			
	Assistant Foreman	\$			
	Journeyman	\$			
	70% Apprentice	\$			
Electricians	General Foreman	\$			
	112% Foreman	\$			
	109% Foreman	\$			
	Journeyman	\$			
	75% Apprentice	\$			
Sheetmetal Workers	General Foreman	\$			
	Foreman	\$			
	Sub Foreman	\$			
	Journeyman	\$			
	70% Apprentice	\$			
Asbestos Workers	General Foreman	\$			
	Foreman	\$			
	Journeyman	\$			
	5th Yr Apprentice	\$			
Cement Finishers	Foreman	\$			
	Journeyman	\$			
Operators	Class A	\$			
	Class A1	\$			
	Class B	\$			

Labor Rates are current as of date of proposal. Rates include wages and fringe benefits only. Insurance and taxes are not included.

17500.03.00
ms474

Craft Manhour Summary
Gilbert Unit #4
Contract F-281

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PROPOSAL FORM
SECTION 00410 - Page 4

Craft	Total
	All Craft
Pipefitter	297,148
Sprinkler Fitters	16,393
Electrician	293,856
Laborer	58,656
Carpenter	50,107
Operator	38,131
Bricklayer	4,748
Insulator	22,936
Boilermaker	7,617
Ironworker	26,940
Sheetmetal	5,072
Millwright	2,077
Cement Finisher	1,331
Roofers	6,460
Painters	
Subtotal	831,472

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4.1.1.6 Estimated total man-hours associated with target variable price: _____
_____.

4.1.1.7 Erection Target Bid Price (Total):

(words)

(\$ _____).
(figures)

04.04.2 Equipment and Material Target Bid Price (Total):

(words)

(\$ _____).
(figures)

4.1.2.1 Target Equipment and Material Price Direct Costs:

(words)

(\$ _____).
(figures)

4.1.2.2 Overhead and Administration Costs: _____ percent (_____%) of Direct Costs.

4.1.2.3 Profit: _____ percent (_____%) of Direct Costs.

4.1.2.4 Risk Provision: Zero percent (0%) of Direct Costs.

4.1.2.5 Application of percentage markups to Direct Costs shall equal Total Equipment and Material Target Bid Price as indicated in subparagraph 4.1.2 above.

4.1.3 Unit Price Bid: Unit Prices have been computed in accordance with paragraph 11.03.B of the General Conditions. Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Bid items will be based on actual quantities provided, determined as provided in the Contract Documents.

Item	Estimated Quantity	Unit	Unit Price	Extended Cost
Flowable Cementitious Fill	150	CY	\$	\$
Start Up Services	5,000	Hr	\$	\$
Pipe Supplementary Support Steel	15,000	LB	\$	\$
CONDUCTOR				
Cable Code: P1-1	1,000	LF	\$	\$
Cable Code: P1-2	5,000	LF	\$	\$
Cable Code: P1-3	1,000	LF	\$	\$
Cable Code: P1-4	1,000	LF	\$	\$
Cable Code: P1-5	1,000	LF	\$	\$
Cable Code: P1-6	1,000	LF	\$	\$
Cable Code: P1-7	1,000	LF	\$	\$
Cable Code: P1-8	2,000	LF	\$	\$
Cable Code: P3-1	2,000	LF	\$	\$
Cable Code: P3-2	1,000	LF	\$	\$

⁽¹⁾ Addendum No. 3

STANDARD GENERAL CONDITIONS FOR THE CONSTRUCTION CONTRACT

ARTICLE 1- DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the Contract Documents.

2. *Application for Payment*--The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

3. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

4. *Bidder*--The individual or entity who submits a Proposal directly to Owner.

5. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

6. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, Bid security form, if any, and the Proposal form with any supplements.

7. *Bonds*--Performance and payment bonds and other instruments of security.

8. *Change Authorization Request (CAR)*--A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

9. *Claim*--A 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. A demand for money or services by a third party is not a Claim.

10. *Contract*--The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

11. *Contract Documents*--The Contract Documents establish the rights and obligations of the parties and include the Construction Contract - Generating, 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, together with all Written Amendments, Change Authorization Requests, Work Change Directives, Field Orders, and Engineer's written interpretations and clarifications issued on or after the Effective Date of the Contract. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by Owner to Contractor are not Contract Documents.

12. *Contract Price*--The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Contract (subject to the provisions of paragraph 11.03 in the case of Unit Price Work).

13. *Contract Times*--The number of days or the dates stated in the Contract to: (i) achieve Substantial Completion; and (ii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

14. *Contractor*--The individual or entity with whom Owner has entered into the Agreement.

15. *Cost of the Work*--See paragraph 11.01.A for definition.

16. *Drawings*--That part of the Contract Documents prepared or approved by Engineer, which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.

17. *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.

18. *Engineer*-- Stanley Consultants, Inc.

19. *Engineer's Consultant*--An individual or entity having a contract with Engineer to furnish services as Engineer's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

20. *Field Order*--A written order issued by Engineer or Owner which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

21. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

22. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

23. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

24. *Instruction to Contractor (ITC)* -- Same as "Field Order."

25. *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.

26. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

27. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

28. *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 Agreement.

29. *Notice to Proceed*--A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

30. *Owner*--The individual, entity, public body, or authority with whom Contractor has entered into the Contract and for whom the Work is to be performed.

31. *Partial Utilization*--Use by Owner of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

32. *PCBs*--Polychlorinated biphenyls.

33. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

34. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.

35. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. 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.

36. *Proposal*—The offer or bid of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

37. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

38. *Resident Project Representative*—The authorized representative of Engineer or Owner who may be assigned to the Site or any part thereof.

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

40. *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 Work.

41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

42. *Specifications*—That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

44. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any Subcontractor.

45. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

46. *Unit Price Work*—Work to be paid for on the basis of unit prices.

47. *Work*—The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

48. *Written Amendment*—A written statement modifying the Contract Documents, signed by Owner and Contractor on or after the Effective Date of the Contract and normally dealing with the nonengineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

1.02 Terminology

A. Intent of Certain Terms or Adjectives

1. Whenever in the Contract Documents the terms "as allowed," "as approved," or terms of like effect or import are used, or 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 Work, it is intended that such action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). These of any such term or adjective shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10 or any other provision of the Contract Documents.

B. Day

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

C. Defective

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with paragraph 14.04 or 14.05).

D. Furnish, Install, Perform, Provide

1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, "provide" is implied.

E. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 - PRELIMINARY MATTERS

2.01 Delivery of Bonds

A. When Contractor delivers the executed Contracts to Owner, Contractor shall also deliver to Owner such Bonds as Contractor may be required to furnish.

2.02 Copies of Documents

A. Refer to Section 01300 regarding copies of Drawings and Project Manuals.

2.03 Starting the Work

A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.04 Before Starting Construction

A. *Contractor's Review of Contract Documents*: Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to 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; however, Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor knew or reasonably should have known thereof.

B. *Preliminary Schedules*: Within ten days after the Effective Date of the Contract (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for its timely review:

1. a preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal; and

3. a preliminary schedule of values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

C. *Evidence of Insurance*: Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Construction Contract - Generating.

2.05 Preconstruction Conference

A. Within 20 days after the Contract Times start to run, but before any Work at the Site is started, a conference attended by Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.04.B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.06 Initial Acceptance of Schedules

A. Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with paragraph 2.04.B. Contractor shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The progress schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on 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.

2. Contractor's schedule of Shop Drawing and Sample submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

3. Contractor's schedule of values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 Intent

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

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the 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 the Contract Documents shall be issued by Engineer as provided in ~~Article 3~~ Request 1a.

3.02 Reference Standards

A. Standards, Specifications, Codes, Laws, and Regulations

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

2. 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, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to Owner, Engineer, or any of Engineer's Consultants, agents, or employees any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies

1. If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, Contractor shall report it to Engineer in writing at once. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.04; provided, however, that 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

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

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

b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 Amending and Supplementing Contract Documents

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: (i) a Written Amendment; or (ii) a Change Authorization Request.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways: (i) an Instruction to Contractor; or (ii) Engineer's written interpretation or clarification.

3.05 Reuse of Documents

A. Contractor and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with Owner: (i) shall not have or 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 Engineer's Consultant, including electronic media editions; and (ii) shall not reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

4.01 Availability of Lands

A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site, Contractor may make a Claim therefor as provided herein.

B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 Subsurface and Physical Conditions

A. In the preparation of Drawings and Specifications, Engineer or Engineer's Consultants relied upon the following reports of explorations and tests of subsurface conditions at the Site:

1. Report dated ~~October 18, 2004~~, prepared by Fuller, Mossbarger, Scott & May Engineers, Inc., entitled: "Report of Geotechnical Exploration - Spurlock Station - E. A. Gilbert Unit No. 3 - Maysville, Mason County, Kentucky". The "technical data" contained in such report upon which Contractor may rely are data contained in the boring logs, exclusive of ground water evaluation data.

B. Copies of reports and drawings itemized above that are not included with Bidding Documents may be examined at East Kentucky Power Cooperative, Inc., Attention: Mr. Craig Johnson, 4775 Lexington Road, Winchester, KY 40392-0707; or at Stanley Consultants, Inc., Attention: Mr. Larry Shell, 225 Iowa Avenue, Muscatine, IA 52761-3764 during regular business hours. These reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which Contractor may rely as identified and established above are incorporated therein by reference. Contractor is not entitled to rely upon other information and data utilized by Engineer and Engineer's Consultants in the preparation of Drawings and Specifications.

C. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" are identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any Claim against Owner, Engineer, or any of Engineer's Consultants with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 Differing Subsurface or Physical Conditions

A. Notice: If Contractor believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *Engineer's Review:* After receipt of written notice as required by paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.

C. Possible Price and Times Adjustments

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

a. such condition must meet any one or more of the categories described in paragraph 4.03.A; and

b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.08 and 11.03.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner in respect of Contract Price and Contract Times by the submission of a Proposal or becoming bound under a negotiated contract; or

b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

c. Contractor failed to give the written notice within the time and as required by paragraph 4.03.A.

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided herein. However, Owner, Engineer, and Engineer's Consultants shall not be liable to Contractor for any claims, costs, losses, or damages (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) sustained by Contractor on or in connection with any other project or anticipated project.

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4.04 *Underground Facilities*

A. *Shown or Indicated*: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data; and
2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all such information and data,
 - b. locating all Underground Facilities shown or indicated in the Contract Documents,
 - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction, and
 - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, an Instruction to Contractor or a Change Authorization Request will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided herein.

4.05 *Reference Points*

A. Owner shall provide engineering surveys to establish reference points for construction, which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 *Hazardous Environmental Condition at Site*

A. *Reports and Drawings*: Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the Engineer in the preparation of the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any Claim against Owner, Engineer or any of Engineer's Consultants with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site, which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 6.16); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered to Contractor written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided herein.

F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided herein. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, ~~Engineer, Engineer's Consultants~~ and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (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 a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work,

and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this paragraph 4.06.E shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner, ~~Engineer, Engineer's Consultants~~ and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (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 a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this paragraph 4.06.F shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

I. The provisions of paragraphs 4.02, 4.03, and 4.04 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 - BONDS AND INSURANCE

5.01 Contractor's Bond

A. Contractor shall furnish Bond, in an amount at least equal to the Contract Price as security for the faithful performance of all Contractor's obligations under the Contract Documents. Bond shall remain in effect at least until 60 days after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents.

B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the Construction Contract - Generating. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

C. If the surety on any Bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.01.B, Contractor shall within 20 days thereafter substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 5.01.B and 5.02.

5.02 Licensed Sureties and Insurers

A. All Bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required.

5.03 Certificates of Insurance

~~A. Contractor shall deliver to Owner, with copies to each additional insured identified in the Construction Contract - Generating, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain. Owner shall deliver to Contractor, with copies to each additional insured identified in the Construction Contract - Generating, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.~~

~~5.04 Contractor's Liability Insurance~~

~~A. Refer to Article IV of the Construction Contract - Generating~~

~~5.05 Owner's Liability Insurance~~

~~A. Refer to Article IV of the Construction Contract - Generating~~

~~5.06 Property Insurance~~

~~A. Refer to Article IV of the Construction Contract - Generating~~

~~5.07 Waiver of Rights~~

~~A.~~

~~B. Owner waives all rights against Contractor, Subcontractors, Engineer, Engineer's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for:~~

~~1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other peril whether or not insured by Owner; and~~

~~2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant, after completion, or after final payment.~~

~~C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, Engineer, or Engineer's Consultants and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them.~~

~~5.08 Receipt and Application of Insurance Proceeds~~

~~A. Any insured loss under the policies of insurance required by paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Authorization Request or Written Amendment.~~

~~B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.~~