



Frankfort Plant Board

BID INVITATION #1798

ISSUED ON

December 6, 2023

BY

**THE ELECTRIC & WATER PLANT BOARD OF THE
CITY OF FRANKFORT, KENTUCKY**

FOR

Power Transformer

TO BE OPENED ON

December 28, 2023 at 1:30PM

**PROCUREMENT CONTRACT
NO. 1125-07-P1**

**69-13.8 kV SUBSTATION POWER
TRANSFORMERS WITH LTC'S
STATE FARM
SUBSTATION**

**Prepared and issued by:
Frankfort Plant Board
Frankfort, KY
(Buyer)**

**In conjunction with:
Power Centric Solutions, LLC
Gallatin, TN
(Engineer)**

December 2023

SEALS PAGE

The engineering material and data contained in these Contract Documents were prepared under the supervision and direction of the undersigned, whose seal(s) as a registered professional engineer(s) is (are) affixed below.

Prepared By:

Power Centric Solutions, LLC



Adam Stevenson
Principal & Vice President

December 4, 2023

Date Issued

Quality Assurance Review



Keith Deaton, P.E.
Senior Vice President

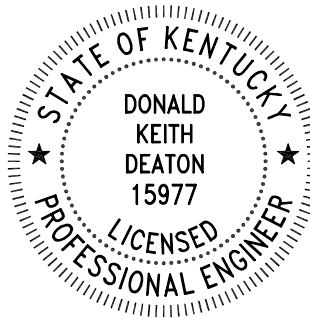


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INVITATION TO BID

Frankfort Plant Board (Buyer) invites Bidders to submit bids for one 69-13.8-kV 15/20/25//28 MVA substation power transformers with LTC (Goods). The contract generally consists of furnishing, and delivery to Frankfort Plant Board's State Farm Substation approximately located at 1215 Glenss Creek Rd, Frankfort, KY 40601, Frankfort, KY 40601, including unloading, assembly and testing the Goods with provision for Special Services by a manufacturer's field service engineer.

The Goods are requested for delivery by January 2025, or best delivery available.

The Special Services shall be completed within 10 calendar days after Buyer's written notice following acceptance of delivery of the Goods.

Bidders shall submit one original and one duplicate of Bid per the Instructions to Bidders.

Buyer will receive sealed bids until 1:30 pm local time on December 28, 2023, at the office of the Buyer:

Frankfort Plant Board
305 Hickory Drive
Frankfort, KY 40601
Attention: Eli Adamson

Bids will then be opened publicly and read aloud. Bids received after the time of announced opening will not be accepted.

A set of electronic Bid Documents may be obtained from astevenson@pwrcentric.com.

Buyer reserves the right to reject any or all Bids, including without limitation the rights to reject any or all nonconforming, non-responsive, unbalanced or conditional Bids; and to reject the Bid of any Bidder if Buyer believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established. Buyer also reserves the right to waive all informalities not involving price, time, or other material changes to technical or contractual requirements.

INSTRUCTIONS TO BIDDERS

ARTICLE 1—DEFINED TERMS

1.01 Terms used in these Instructions to Bidders will have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below.

A. *None*

ARTICLE 2—PROCUREMENT BIDDING DOCUMENTS

2.01 Bidder may obtain complete sets of the Procurement Bidding Documents, in the number and for the purchase price, if any, stated in the advertisement or invitation to bid. Bidders must obtain a complete set of the Procurement Contract Documents as listed in the Procurement Agreement.

2.02 Bidder must use a complete set of the Procurement Bidding Documents in preparing the Bid; neither Buyer nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Procurement Bidding Documents.

2.03 Buyer and Engineer make copies of Procurement Bidding Documents available on the above terms only for obtaining Bids for furnishing Goods, and do not authorize or confer a license for any other use.

ARTICLE 3—QUALIFICATIONS OF BIDDERS

3.01 Buyer may at any time conduct such investigations as Buyer deems necessary to establish the responsibility, qualifications, and financial ability of Bidder, and after the opening of Bids may require a Bidder to submit documentation of its qualifications, including but not limited to financial data and documentation of previous experience providing goods comparable to the specified Goods.

3.02 Bidder is to carefully review those portions of the Bid Form requiring Bidder's representations and certifications.

3.03 Bidder shall submit a qualifications statement with the Bid, including financial data and documentation of previous experience providing comparable goods, to demonstrate Bidder's qualifications to furnish the specified Goods.

ARTICLE 4—SITE VISIT; PRE-BID CONFERENCE

- 4.01 Upon request, Buyer will provide Bidder access to the Point of Destination to conduct such examinations and observations as Bidder deems necessary for submission of a Bid.

ARTICLE 5—INTERPRETATIONS AND ADDENDA

- 5.01 All questions about the meaning or intent of the Procurement Bidding Documents are to be submitted to Engineer in writing at:
astevenson@pwercentric.com
- 5.02 Interpretations or clarifications considered necessary by Engineer in response to such written questions will be issued by Addenda mailed or delivered to all parties recorded as having received the Procurement Bidding Documents. Questions received less than 10 days prior to the date for opening of Bids will not be answered. Only answers in the Addenda will be binding. Oral statements, interpretations, and clarifications may not be relied upon in the preparation of a Bid and will not be binding or legally effective.
- 5.03 Addenda may be issued to clarify, correct, or change the Procurement Bidding Documents as deemed advisable by Buyer or Engineer.

ARTICLE 6—BID SECURITY

- 6.01 **-NOT REQUIRED-**

ARTICLE 7—PROCUREMENT CONTRACT TIMES

- 7.01 See applicable provisions in the Procurement Agreement.

ARTICLE 8—LIQUIDATED DAMAGES

- 8.01 Any provisions for liquidated damages, such as those for Seller's failure to attain a specified Milestone such as the delivery of the Goods, are set forth in the Procurement Agreement.

ARTICLE 9—CONFIDENTIALITY OF BID INFORMATION

- 9.01 Confidential information is information in the Bid, or in documents submitted by Bidder with the Bid or submitted subsequent to the opening of Bids in support of the Bid, that Bidder clearly and prominently labels in writing to be a trade secret, proprietary, or confidential. Bids will be opened and accompanying documents, if any, will be maintained in a manner that endeavors to avoid disclosing confidential information to third parties, to the extent allowed by Laws and Regulations.
- 9.02 Bidder shall clearly and prominently mark confidential information with the word "CONFIDENTIAL" on each page or sheet or on the cover of bound documents. Place "CONFIDENTIAL" stamps or watermarks so that they do not obscure any of the required

information on the document, either in the original or in a way that would obscure any of the required information in a photocopy of the document.

- 9.03 If Buyer is requested to disclose confidential information, becomes legally compelled to disclose confidential information, or is required by a regulatory body, governing agency, or controlling authority to disclose confidential information, or make any other disclosure that is prohibited or otherwise constrained by these Procurement Bidding Requirements, Buyer will provide Bidder with prompt notice so Bidder may seek a protective order or other appropriate remedy. Bidder will be solely responsible for submitting to the regulatory body, governing agency, or controlling authority any arguments, briefs, memoranda, motions, authorities, or other information in opposition to disclosure.
- 9.04 Buyer's obligations with respect to confidential information are nullified by the following exceptions:
- A. Confidential information becomes a part of the public domain through publication or otherwise, through no fault of the Buyer;
 - B. Buyer can demonstrate through suitable documentation that the confidential information was already in the Buyer's possession, and not previously marked as confidential, or was otherwise publicly available prior to the date of Bid submittal;
 - C. The confidential information is subsequently and independently disclosed to the Buyer by a third party who has a lawful right to disclose such information;
 - D. Buyer concludes in good faith that the information is not confidential, or that disclosure is required or justified; or
 - E. Buyer is required to disclose the confidential information by court order or by applicable Laws and Regulations.
- 9.05 Notwithstanding any other provision of the Procurement Bidding Documents, it is stipulated and agreed that by accepting a Bid, Buyer has not and does not waive its legal immunity (if any) from suit or liability.

ARTICLE 10—"OR-EQUAL" ITEMS

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

ARTICLE 11—PREPARATION OF BID

- 11.01 The Bid Form is included with the Procurement Bidding Documents. Additional copies of Procurement Bidding Documents may be obtained from the Issuing Office.
- 11.02 All blanks on the Bid Form must be completed and the Bid Form must be signed by an individual authorized to act on behalf of the Bidder. Alterations must be initialed by an individual authorized to act on behalf of the Bidder. A Bid price must be indicated for each item in the Bid Form. In the case of optional alternates, the words “No Bid” may be entered.
- 11.03 Bidder must acknowledge all Addenda by filling in the number and date of each Addendum in the Bid Form and sign where indicated to verify that the Addenda were received. A Bid that does not acknowledge receipt of all Addenda may be considered non-responsive.
- 11.04 Bidder shall:
- A. Sign the Bid Form as indicated in the Bid Form.
 - B. Include evidence of authority to sign.
 - C. Provide information on the individual to be contacted for any communications regarding the Bid.
 - D. Provide evidence of the Bidder’s authority and qualification to do business in the locality of the Project, to the extent required, or indicate the ability to obtain such authority and qualification prior to award of the Procurement Contract.
- 11.05 The responsibilities of each Bidder submitting a Bid are described in the Bidder’s representations and certifications set forth in Article 6 of the Bid Form.

ARTICLE 12—BASIS OF BID; COMPARISON OF BIDS

- 12.01 *Lump Sum*
- A. Bidder shall submit a Bid on a lump sum basis as set forth in the Bid Form.

ARTICLE 13—SUBMITTAL OF BID

- 13.01 Bidder shall refer to the invitation to bid for specific identification of the date, time, and place where Bids are to be submitted.
- 13.02 Bidder must submit one separate unbound copy of the completed Bid Form, and, if required, the Bid Security and the other documents required to be submitted under the terms of Article 4 of the Bid Form.
- 13.03 A Bid must be submitted no later than the date and time prescribed and at the place indicated in the advertisement or invitation to bid. Submit the Bid in an envelope plainly marked with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted) and the name and address of Bidder. Enclose the Bid security and other documents required to be submitted with the Bid as listed in the Bid Form. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall

be enclosed in a separate package plainly marked on the outside with the notation "BID ENCLOSED."

ARTICLE 14—MODIFICATION OR WITHDRAWAL OF BID

- 14.01 A Bid may be modified or withdrawn by a document duly signed in the same manner that a Bid must be signed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids.
- 14.02 If, within 24 hours after Bids are opened, any Bidder files a duly signed written notice with Buyer and promptly thereafter demonstrates to the reasonable satisfaction of Buyer that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid, and the Bid security will be returned.

ARTICLE 15—OPENING OF BIDS

- 15.01 Bids will be publicly opened at the time and place indicated in the advertisement or invitation to bid and read aloud, unless obviously non-responsive. An abstract of the amounts of the Base Bids and Alternate Bids, if any, will be made available to Bidders after Bids have been opened and reviewed by the Buyer.

ARTICLE 16—BIDS TO REMAIN SUBJECT TO ACCEPTANCE

- 16.01 All Bids will remain subject to acceptance for the period stated in the Bid Form, but Buyer may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

ARTICLE 17—EVALUATION OF BIDS AND AWARD OF PROCUREMENT CONTRACT

- 17.01 Buyer reserves the right to reject any and all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Buyer also reserves the right to waive all informalities not involving price, time, or changes in the Goods.
- 17.02 Buyer will reject the Bid of any Bidder that Buyer finds, after reasonable inquiry and evaluation, to not be responsible.
- 17.03 In evaluating Bids, Buyer will consider whether the Bids comply with the prescribed requirements, and such alternates, unit prices, and other data as may be requested in the Bid Form or may be requested from Bidders prior to a Notice of Award.
- 17.04 Bids may be evaluated on the basis of pricing, delivery time, operating costs, performance data and warranty.
- 17.05 For purposes of evaluation, the lifetime operating cost of the transformer will be estimated using the following loss evaluation formulae. The estimated operating cost will be added to the bid price for ranking.
- A. No-Load Losses: \$8,956 x kW no-load loss for each unit
 - B. Load Losses: \$4,526 x kW load-loss at the transformer OA rating for each unit

17.06 If Buyer awards the Procurement Contract, such award will be to the responsible Bidder submitting the lowest evaluated responsive Bid.

ARTICLE 18—BONDS AND INSURANCE

18.01 Article 5 of the General Conditions and Article 5 of the Supplementary Conditions set forth Buyer's requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the signed Procurement Agreement to Buyer, it must be accompanied by such bonds and acceptable evidence of insurance.

ARTICLE 19—SIGNING OF PROCUREMENT AGREEMENT

19.01 When Buyer issues a Notice of Award to the Successful Bidder, it will be accompanied by the unsigned counterparts of the Procurement Agreement along with the other Procurement Contract Documents identified in the Procurement Agreement. Within 10 days thereafter, Successful Bidder must execute and deliver the required number of counterparts of the Procurement Agreement and any bonds and insurance documentation required to be delivered by the Procurement Contract Documents to Buyer. Within 10 days thereafter, Buyer will deliver one fully executed counterpart of the Procurement Agreement to Successful Bidder, together with printed and electronic copies of the Procurement Contract Documents as stated in Paragraph 2.02 of the General Conditions.

ARTICLE 20—SALES AND USE TAXES

20.01 Buyer is exempt from **Kentucky** state sales and use taxes on materials and equipment to be incorporated in the Project. Exempt taxes must not be included in the Bid. Refer to P-700, Paragraph 7.05 for additional information.

BID FORM FOR PROCUREMENT CONTRACT

The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 1—BUYER AND BIDDER

1.01 This Bid is submitted to:

Frankfort Plant Board

305 Hickory Dr

Frankfort, KY 40601

Attention: Eli Adamson

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into a Procurement Contract with Buyer in the form included in the Procurement Bidding Documents, and to furnish the Goods as specified or indicated in the Procurement Bidding Documents, for the prices and within the times indicated in this Bid, and in accordance with the other terms and conditions of the Procurement Bidding Documents.

ARTICLE 2—BASIS OF BID

2.01 *Lump Sum Bids*

A. Bidder will furnish the Goods in accordance with the Procurement Contract Documents for the following Procurement Contract Price(s):

1. Lump Sum Bid Price (single or multiple Lump Sum)

Furnish one 69-13.8 kV 15/20/25//28 MVA power transformer with LTC's F.O.B owner's transformer foundation with Special Services by manufacturer's field service engineer, including offloading, assembly and testing.	
Lump Sum Bid Price	\$
<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> _____ and _____ /100 (Use Words)	<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> (Use Figures)

2.02 *Guaranteed Performance*

A. No Load Loss for one transformer: _____ kW

B. Load Loss for one transformer at OA rating: _____ kW

ARTICLE 3—TIME OF COMPLETION

3.01 Bidder agrees that the furnishing of Goods will conform to the schedule of Procurement Contract Times set forth in Article 2 of the Procurement Agreement. If the delivery time is less than that set forth in the Procurement Agreement, the proposed delivery time is:

A. Goods: _____Date

3.02 Bidder accepts the provisions of the Procurement Agreement as to liquidated damages.

ARTICLE 4—ATTACHMENTS TO THIS BID

4.01 The following documents are attached to and made a condition of this Bid:

- A. Proposed Exceptions and Deviations
- B. Required Bidder Qualification Statement with supporting data
- C. Certifications or evidence of ability to meet bonding and insurance requirements of the General and Supplementary Conditions
- D. If necessary, identify any Attachments by Bidder that are to be made part of its Bid
- E. The Bidder shall furnish with its Proposal a bill of materials that shall be complete and include material descriptions, quantities, weights, manufacturer names, and catalog types. The bill of materials shall be submitted for the Buyer’s analysis of bids only and shall not become part of the bound Procurement Contract Documents.

ARTICLE 5—BIDDER’S ACKNOWLEDGMENTS

5.01 Bidder accepts all terms and conditions of the Instructions to Bidders. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period that Bidder may agree to in writing upon request of Buyer.

5.02 Bidder has examined and carefully studied the Procurement Bidding Documents, the related data identified in the Procurement Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged:

Addendum No.	Addendum Date

ARTICLE 6—BIDDER’S REPRESENTATIONS AND CERTIFICATIONS

6.01 *Bidder’s Representations*

- A. In submitting this Bid, Bidder represents that:
 - 1. Bidder has examined and carefully studied the Procurement Contract Documents.

2. If required by the Instructions to Bidders to visit the Point of Destination and the site where the Goods are to be installed, or if, in Bidder's judgment, any observable local or site conditions may affect the delivery, cost, progress, or furnishing of the Goods, then Bidder has visited the Point of Destination and site where the Goods are to be installed and become familiar with and is satisfied as to the observable local and site conditions that may affect delivery, cost, progress, and furnishing of the Goods.
3. Bidder is familiar with and is satisfied as to all Laws and Regulations that may affect the cost, progress, and performance of Seller's obligations under the Procurement Contract.
4. Bidder has carefully studied, considered, and correlated the information known to Bidder with respect to the effect of such information on the cost, progress, and performance of Seller's obligations under the Procurement Contract.
5. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Procurement Contract Documents, and the written resolution (if any) thereof by Engineer is acceptable to Bidder.
6. The Procurement Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance of Seller's obligations under the Procurement Contract.
7. The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of the Bidding Requirements, that without exception the Bid (including all Bid prices) is premised upon furnishing the Goods required by the Procurement Contract Documents.

6.02 *Bidder's Certifications*

A. Bidder certifies that:

1. This Bid 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 collusive agreement or rules of any group, association, organization, or corporation;
2. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
3. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
4. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Procurement Contract. For the purposes of this Paragraph 6.02.A.4:
 - a. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process;

- b. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Buyer, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Buyer of the benefits of free and open competition;
- c. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Buyer, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
- d. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process.

This Bid is offered by:

Bidder:

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

(typed or printed)

Title:

(typed or printed)

(If Bidder is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

Phone:

Email:

License No.:

Classification:

Limitation:

PROPOSED EXCEPTIONS OR DEVIATIONS

PROPOSED EXCEPTIONS AND DEVIATIONS MAY ONLY BE SUBMITTED ON THIS FORM AND MAY BE ACCEPTED OR REJECTED UNILATERALLY BY BUYER, IN ITS SOLE DISCRETION.

Each exception and deviation proposed (excluding Priced Options specified in the Bid Form) must be summarized and additively or deductively priced below with specific details attached in accordance with the instructions below. The summary must include a reference to the Section(s) of the Procurement Contract Documents affected by the proposed exception. Bids that do not comply with these requirements for the presentation of exceptions may be considered nonresponsive and may be rejected at the discretion of the Buyer.

SUMMARY

Description	Price Adjustment Amount (Indicate deductions in parentheses)

Presentation of Specific Details of Exceptions and Deviations

1. Describe specific details of exceptions and deviations by referencing the applicable page number, article number, and article title from the Procurement Contract Documents. Include this information directly in “Description” column of table above and/or include a separate attachment referencing it in the Description” column.
2. Present proposed deletions by setting off in brackets, thus: [delete this language], and present proposed substitute or new language by underlining, thus: substitute this language.
3. Exceptions which are general, which make reference to Seller’s standard terms and conditions, or which make reference to Seller’s descriptive information as a whole are not acceptable.
4. Each exception or deviation is to be separately priced. Zero may be used.

BIDDER'S QUALIFICATIONS

THE FOLLOWING STATEMENTS OF EXPERIENCE AND GENERAL QUALIFICATIONS OF BIDDER ARE SUBMITTED AS PART OF THE BID AND BIDDER REPRESENTS AND GUARANTEES THE TRUTHFULNESS AND ACCURACY THEREOF.

- A. Bidder has been in business continuously from the year _____.
- B. Bidder has had experience in manufacturing equipment comparable to that required by the Procurement Contract Documents as a prime manufacturer for _____ years, as a component manufacturer for _____ years, or as an equipment supplier for _____ years.
- C. Following is a list of the equipment Bidder has manufactured or supplied which is similar in character and in magnitude to that required by the Contract Documents:

Year	Name	Location	Contract Amount

D. Field Services Personnel

Bidder shall submit

1. evidence that Bidder maintains and has readily available trained field service personnel who are thoroughly familiar, in detail, with all of the Goods to be furnished and capable of directing any major or minor repair work which may be required on the Goods;
2. locations of trained field service personnel and suitable shop facilities nearest the Project site, capable of repair or replacement of any part of the equipment to be furnished; and
3. evidence that the proposed field service personnel and shop facilities have had experience in the repair of comparable equipment over a period of time to ensure the dependability of the work if the field service personnel or shop facilities are not owned by Bidder or the original manufacturer and are to be maintained by contract.

NOTICE OF AWARD

Dated: _____

Project:	Buyer:	Buyer's Contract No.:
Contract:		Engineer's Project No.:
Bidder:		
Bidder's Address:		

You are notified that your Bid dated _____ **DATE** for the above Contract has been considered. You are the Successful Bidder and are awarded a Contract for one 69-13.8 15/20/25//28MVA kV Power Transformer with LTC.

The Total Price of your Contract:
 _____ and _____/100 Dollars (\$ _____)
 (Use words) (Use figures)

Three sets of the Contract Documents will be delivered separately after compliance with the following conditions. You must comply with the following conditions precedent within 10 days of the date you receive this Notice of Award.

1. Deliver the Performance Bond and Payment Bond in accordance with the General and Supplementary Conditions.
2. Deliver Insurance Certificates as evidence of insurance coverage required by General Conditions and Supplementary Conditions.
3. Other conditions precedent:

Failure to comply with these conditions within the time specified will entitle Buyer to consider you in default, annul this Notice of Award and declare your Bid security (if required) forfeited.

Within ten days after you comply with the above conditions, Buyer will provide copies of the Agreement and conformed Contract Documents for execution.

 Frankfort Plant Board
 Buyer

By: _____
 Authorized Signature

 Title

AGREEMENT BETWEEN BUYER AND SELLER FOR PROCUREMENT CONTRACT

This Procurement Agreement is by and between **Frankfort Plant Board** (“Buyer”) and _____ (“Seller”).

Terms used in this Procurement Agreement have the meanings stated in the General Conditions of the Procurement Contract and the Supplementary Conditions of the Procurement Contract.

Buyer and Seller hereby agree as follows:

ARTICLE 1—PROCUREMENT CONTRACT

1.01 *Goods*

- A. Seller shall furnish the Goods and Special Services as specified or indicated in the Procurement Contract Documents. The Goods are generally described as follows:

One 69-13.8-kV 15/20/25//28MVA Power Transformer with LTC

1.02 *The Project*

- A. The Project, of which the Goods are a part, is generally described as State Farm Substation.

1.03 *Engineer*

- A. Buyer has retained **Power Centric Solutions** ("Engineer"), to prepare Procurement Contract Documents and act as Buyer's representative. Engineer assumes all duties and responsibilities and has the rights and authority assigned to Engineer in the Procurement Contract Documents in connection with Seller's furnishing of Goods.

1.04 *Point of Destination*

- A. The Point of Destination is designated as:
Frankfort Plant Board's State Farm Substation
1215 Glens Creek Rd, Frankfort, KY 40601
Frankfort, KY 40601

ARTICLE 2—PROCUREMENT CONTRACT TIMES

2.01 *Time of the Essence*

- A. All time limits for Milestones, including the submittal of Shop Drawings and Samples, the delivery of Goods as stated in the Procurement Contract Documents, are of the essence of the Procurement Contract.

2.02 *Schedule of Procurement Contract Times*

- A. The following schedule sets forth the Procurement Contract Times:

Milestone	Date or Days	Notes
Submit Shop Drawings	45	
Deliver acceptable Goods to Point of Destination	January 2025, or best available	Delivery may be made in the 15-day period before delivery date

2.03 *Shop Drawings and Samples*

- A. *Submittal of Shop Drawings and Samples:* Seller shall submit all Shop Drawings and Samples required by the Procurement Contract Documents to Engineer for its review and approval.
- B. *Engineer’s Review:* It is the intent of the parties that Engineer will conduct its review of Shop Drawings and Samples and issue its approval, or a denial accompanied by substantive comments regarding information needed to gain approval, within **14** days after Seller's submittal of such Shop Drawings and Samples, or within such longer period that is needed because of the quantity and quality of such submittals. Resubmittals will be limited whenever possible.

2.04 *Liquidated Damages*

- A. Buyer and Seller recognize that time is of the essence as stated in Paragraph 2.01, and that Buyer will suffer financial and other losses if the Goods are not delivered to the Point of Destination and ready for receipt of delivery by Buyer within the time specified in Paragraph 2.02, plus any extensions thereof allowed in accordance with this Procurement Contract. The parties also recognize that the timely performance of services by others involved in the Project is materially dependent upon Seller’s specific compliance with the delivery requirements of Paragraph 2.02. Further, the parties recognize the time, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the loss (whether direct, consequential, or otherwise) suffered by Buyer if complete, acceptable Goods are not delivered on time. Accordingly, instead of requiring any such proof, Buyer and Seller agree that as liquidated damages for delay (but not as a penalty) Seller shall pay Buyer **\$500.00** for each day that expires after the time specified in Paragraph 2.02 for delivery of acceptable Goods.
- B. Buyer intends to procure Goods that meet or exceed the guaranteed performance identified in the Seller’s Bid. If factory tests indicate that the Goods do not meet the guaranteed performance the Buyer will suffer damage.

If the transformer losses marginally exceed the guaranteed losses, the Buyer will incur increased operating costs. If the losses substantially exceed the guaranteed values, the Goods may not be suitable for Buyer’s use.

- 1. If the losses, as determined by factory testing, are found to be between 1 and 1.1 times the losses stated in the bid, the Contract Price for Goods shall be reduced in accordance with the cost reduction formula below.

2. If the losses, as determined by factory testing, are in excess of 1.1 times the guaranteed performance, the Buyer may consider the Goods defective. If the Buyer determines the Goods to be non-conforming, the Seller shall replace the non-conforming Goods to the satisfaction of the Buyer.

Cost Adjustment Formula for Power Transformers

The contract price for each unit shall be adjusted downward in accordance with the following formulae. No credit will be given for power transformers that exhibit actual losses lower than the guarantee.

No Load Loss Adjustment

$\$8,956 \times \text{No Load Loss Determined by Factory Tests minus guaranteed no-load loss, kW:}$
\$ _____

Load Loss Adjustment

$\$4,526 \times \text{Load Loss Determined by Factory Test minus guaranteed load loss, kW:}$
\$ _____

ARTICLE 3—PROCUREMENT CONTRACT PRICE

3.01 Procurement Contract Price and Total Price

- A. The Procurement Contract Price is comprised of the Lump Sum amount set forth in the following paragraphs.
- B. Buyer shall pay Seller a Lump Sum of \$[amount] for furnishing the Goods in accordance with the Procurement Contract Documents.

3.02 Procurement Contract Price and Total Price—Based on Attached Bid

- A. For furnishing the Goods in accordance with the Procurement Contract Documents, Buyer shall pay Seller the prices stated in Seller's Bid, attached hereto as an exhibit.

ARTICLE 4—PAYMENT PROCEDURES

4.01 Submittal and Processing of Applications for Payment

- A. Seller shall submit Applications for Payment in accordance with Article 13 of the General Conditions and the following paragraphs. Engineer and Buyer will process such Applications for Payment in accordance with said Article 13.

4.02 Progress Payments; Final Payment

- A. Seller may submit an Application for Payment requesting the stated percentage of Procurement Contract Price upon attainment of each of the following Payment Line Items:

Payment Line Item (Lump Sum)	Percentage of Lump Sum
1. Delivery of Goods to Point of Destination in accordance with the Procurement Contract Documents	90
2. Final Payment: Correction of non-conformities, provision of final Operations and Maintenance manuals, submittal of warranties and other final documentation required by the Procurement Contract Documents	10
Total Procurement Contract Price (Lump Sum)	100

- B. Buyer shall pay Seller the amount owed under an Application for Payment within 30 days after Engineer's presentation to Buyer of the Application for Payment and Engineer's recommendation.

4.03 *Interest*

- A. All amounts not paid when due will bear interest as the rate of 5 percent per annum.

ARTICLE 5—PROCUREMENT CONTRACT DOCUMENTS

5.01 *List of Procurement Contract Documents*

- A. The Procurement Contract Documents consist of the following:
1. This Procurement Agreement.
 2. General Conditions of the Procurement Contract.
 3. Supplementary Conditions of the Procurement Contract.
 4. Procurement Specifications as listed in the Procurement Specifications table of contents.
 5. Procurement Drawings
 6. Addenda Numbers __
 7. Bonds:
 - a. Performance bond (together with power of attorney).
 - b. Payment bond (together with power of attorney).
 8. Exhibits to this Procurement Agreement (enumerated as follows):
 - a. Documentation submitted by Seller **[identify]**; and
 - b. **[Other Exhibits]**.
 9. The following which may be delivered or issued on or after the Effective Date of the Procurement Contract and are not attached hereto:
 - a. Change Orders;
 - b. Change Directives; and

- c. Field Orders.
- B. The documents listed in Paragraph 6.01.A are attached to this Procurement Agreement (except as expressly noted otherwise above).
- C. There are no Procurement Contract Documents other than those listed above.
- D. The Procurement Contract Documents may only be amended or supplemented as provided in Paragraph 11.01 of the Procurement General Conditions.

ARTICLE 6—SELLER’S REPRESENTATIONS AND CERTIFICATIONS

6.01 *Seller’s Representations*

- A. In order to induce Buyer to enter into this Procurement Agreement, Seller makes the following representations:
 - 1. Seller has examined and carefully studied the Procurement Contract Documents.
 - 2. If required by the Instructions to Bidders to visit the Point of Destination and the site where the Goods are to be installed, or if, in Seller’s judgment, any observable local or site conditions may affect the delivery, cost, progress, or furnishing of the Goods, then Seller has visited the Point of Destination and site where the Goods are to be installed and become familiar with and is satisfied as to the observable local and site conditions that may affect delivery, cost, and progress.
 - 3. Seller is familiar with and is satisfied as to all Laws and Regulations that may affect the cost, progress, and performance of Seller's obligations under the Procurement Contract.
 - 4. Seller has carefully studied, considered, and correlated the information known to Seller with respect to the effect of such information on the cost, progress, and performance of Seller's obligations under the Procurement Contract.
 - 5. Seller has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Seller has discovered in the Procurement Contract Documents, and the written resolution (if any) thereof by Engineer is acceptable to Seller.
 - 6. The Procurement Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance of Seller's obligations under the Procurement Contract.
 - 7. Seller’s entry into this Procurement Contract constitutes an incontrovertible representation by Seller that without exception all prices in the Procurement Agreement are premised upon furnishing the Goods as required by the Procurement Contract Documents.
 - 8. Seller’s Bid, solely as to the prices set forth therein.

6.02 *Seller's Certifications*

- A. Seller certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Procurement Contract. For the purposes of this Paragraph 7.02:
1. “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Procurement Contract execution;
 2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Procurement Contract to the detriment of Buyer, (b) to establish bid or contract prices at artificial non-competitive levels, or (c) to deprive Buyer of the benefits of free and open competition;
 3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Buyer, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
 4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Procurement Contract.

ARTICLE 7—CONFIDENTIALITY

7.01 *Confidential Information*

- A. Confidential information is information in documents submitted by Seller that Seller clearly and prominently labels in writing to be a trade secret, proprietary, or confidential. Such documents, if any, will be maintained in a manner that endeavors to avoid disclosing confidential information to third parties, to the extent allowed by Laws and Regulations.
- B. Seller shall clearly and prominently mark confidential information with the word “CONFIDENTIAL” on each page or sheet or on the cover of bound documents. Place “CONFIDENTIAL” stamps or watermarks so that they do not obscure any of the required information on the document, either in the original or in a way that would obscure any of the required information in a photocopy of the document.

7.02 *Disclosure of Confidential Information*

- A. If Buyer is requested to disclose confidential information, or becomes legally compelled (by oral questions, interrogatories, requests for information or documents, subpoena, civil or criminal investigative demand, public information requests, or other requests under Laws and Regulations) to disclose confidential information, or is required by a regulatory body, governing agency, or controlling authority to disclose confidential information, or make any other disclosure that is prohibited or otherwise constrained by the Procurement Contract, Buyer will provide Seller with prompt notice so Seller may seek an appropriate protective order or other remedy.

Seller will be solely responsible for submitting to the regulatory body, governing agency, or controlling authority any arguments, briefs, memoranda, motions, authorities, or other information in opposition to disclosure.

- B. Buyer's obligations with respect to confidential information are nullified by the following exceptions:
1. Confidential information becomes a part of the public domain through publication or otherwise, through no fault of the Buyer;
 2. Buyer can demonstrate through suitable documentation that the confidential information was already in the Buyer's possession, and not previously marked as confidential, or was otherwise publicly available prior to the Effective Date of the Procurement Contract;
 3. The confidential information is subsequently and independently disclosed to the Buyer by a third party who has a lawful right to disclose such information;
 4. Buyer has a good faith belief that disclosure is required or justified; or
 5. Buyer is required to disclose the confidential information by court order or by applicable Laws and Regulations.

7.03 *Waiver of Immunity*

- A. Notwithstanding any other provision of the Procurement Contract, it is stipulated and agreed that by accepting confidential information, Buyer has not and does not waive its legal immunity (if any) from suit or liability.

ARTICLE 8—MUTUAL WAIVER

8.01 *Mutual Waiver of Consequential Damages*

- A. Buyer and Seller waive against each other, and against the other's officers, directors, members, partners, employees, agents, consultants, and subcontractors, any and all claims for or entitlement to incidental, indirect, or consequential damages arising out of, resulting from, or related to the Procurement Contract. The terms of this mutual waiver do not apply to or limit any claim by either Buyer or Seller against the other based on any of the following: (a) contribution or indemnification, (b) liquidated damages, (c) costs, losses, or damages attributable to personal or bodily injury, sickness, disease, or death, or to injury to or destruction of the tangible property of others, (d) intentional or reckless wrongful conduct, or (e) rights conferred by any bond provided by Seller under this Procurement Contract.

IN WITNESS WHEREOF, Buyer and Seller have signed this Procurement Agreement. Counterparts have been delivered to Buyer and Seller.

The Effective Date of the Procurement Contract is **[date to be inserted at the time of execution]**.

Buyer

Seller

(typed or printed name of organization)

(typed or printed name of organization)

By: _____
(individual's signature)

By: _____
(individual's signature)

Date: _____
(date signed)

Date: _____
(date signed)

Name: _____
(typed or printed)

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Title: _____
(typed or printed)

(If Seller is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____
(individual's signature)

Attest: _____
(individual's signature)

Title: _____
(typed or printed)

Title: _____
(typed or printed)

Address for giving notices:

Address for giving notices:

Designated Representative:

Designated Representative:

Name: _____
(typed or printed)

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Title: _____
(typed or printed)

Address:

Address:

Phone: _____

Phone: _____

Email: _____

Email: _____

(If Buyer is a corporation, attach evidence of authority to sign. If Buyer is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

PERFORMANCE BOND FOR PROCUREMENT CONTRACT

<p>Seller Name: _____ Address <i>(principal place of business)</i>: _____</p>	<p>Surety Name: _____ Address <i>(principal place of business)</i>: _____</p>
<p>Buyer Name: _____ Mailing address <i>(principal place of business)</i>: _____</p>	<p>Procurement Contract Description <i>(name and location)</i>: _____</p> <p>Procurement Contract Price: _____ Effective Date of Procurement Contract: _____</p>
<p>Bond Bond Amount: _____ Date of Bond: _____ <i>(Date of Bond cannot be earlier than Effective Date of Procurement Contract)</i> Modifications to this Bond form: <input type="checkbox"/> None <input type="checkbox"/> See Paragraph 15</p>	
<p>Surety and Seller, intending to be legally bound hereby, subject to the terms set forth in this Performance Bond, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.</p>	
<p>Seller as Principal</p>	<p>Surety</p>
<p>_____ <i>(Full formal name of Seller)</i></p>	<p>_____ <i>(Full formal name of Surety) (corporate seal)</i></p>
<p>By: _____ <i>(Signature)</i></p>	<p>By: _____ <i>(Signature)(Attach Power of Attorney)</i></p>
<p>Name: _____ <i>(Printed or typed)</i></p>	<p>Name: _____ <i>(Printed or typed)</i></p>
<p>Title: _____</p>	<p>Title: _____</p>
<p>Attest: _____ <i>(Signature)</i></p>	<p>Attest: _____ <i>(Signature)</i></p>
<p>Name: _____ <i>(Printed or typed)</i></p>	<p>Name: _____ <i>(Printed or typed)</i></p>
<p>Title: _____</p>	<p>Title: _____</p>
<p><i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Seller, Surety, Buyer, or other party is considered plural where applicable.</i></p>	

1. The Seller and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Buyer for the performance of the Procurement Contract, which is incorporated herein by reference.
2. If the Seller performs the Procurement Contract, the Surety and the Seller shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.
3. If there is no Buyer Default under the Procurement Contract, the Surety's obligation under this Bond will arise after:
 - 3.1. The Buyer first provides notice to the Seller and the Surety that the Buyer is considering declaring a Seller Default. Such notice may indicate whether the Buyer is requesting a conference among the Buyer, Seller, and Surety to discuss the Seller's performance. If the Buyer does not request a conference, the Surety may, within five (5) business days after receipt of the Buyer's notice, request such a conference. If the Surety timely requests a conference, the Buyer shall attend. Unless the Buyer agrees otherwise, any conference requested under this Paragraph 3.1 will be held within ten (10) business days of the Surety's receipt of the Buyer's notice. If the Buyer, the Seller, and the Surety agree, the Seller shall be allowed a reasonable time to perform the Procurement Contract, but such an agreement does not waive the Buyer's right, if any, subsequently to declare a Seller Default;
 - 3.2. The Buyer declares a Seller Default, terminates the Procurement Contract, and notifies the Surety; and
 - 3.3. The Buyer has agreed to pay the Balance of the Procurement Contract Price in accordance with the terms of the Procurement Contract to the Surety or to a seller selected to perform the Procurement Contract.
4. Failure on the part of the Buyer to comply with the notice requirement in Paragraph 3.1 does not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
5. When the Buyer has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 5.1. Arrange for the Seller, with the consent of the Buyer, to perform and complete the Procurement Contract;
 - 5.2. Undertake to perform and complete the Procurement Contract itself, through its agents or independent contractors;
 - 5.3. Obtain bids or negotiated proposals from qualified sellers acceptable to the Buyer for a contract for performance and completion of the Procurement Contract, arrange for a contract to be prepared for execution by the Buyer and a seller selected with the Buyer's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Procurement Contract, and pay to the Buyer

the amount of damages as described in Paragraph 7 in excess of the Balance of the Procurement Contract Price incurred by the Buyer as a result of the Seller Default; or

- 5.4. Waive its right to perform and complete, arrange for completion, or obtain a new seller, and with reasonable promptness under the circumstances:
 - 5.4.1. After investigation, determine the amount for which Surety may be liable to the Buyer and, as soon as practicable after the amount is determined, make payment to the Buyer; or
 - 5.4.2. Deny liability in whole or in part and notify the Buyer, citing the reasons for denial.
6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven (7) days after receipt of an additional written notice from the Buyer to the Surety demanding that the Surety perform its obligations under this Bond, and the Buyer shall be entitled to enforce any remedy available to the Buyer. If the Surety proceeds as provided in Paragraph 5.4, and the Buyer refuses the payment, or the Surety has denied liability, in whole or in part, without further notice, the Buyer shall be entitled to enforce any remedy available to the Buyer.
7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Buyer will not be greater than those of the Seller under the Procurement Contract, and the responsibilities of the Buyer to the Surety will not be greater than those of the Buyer under the Procurement Contract. Subject to the commitment by the Buyer to pay the Balance of the Procurement Contract Price, the Surety is obligated, without duplication for:
 - 7.1. the responsibilities of the Seller for correction of defective or non-conforming Goods, and completion of the Procurement Contract;
 - 7.2. additional legal, design professional, and delay costs resulting from the Seller's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and
 - 7.3. liquidated damages, or if no liquidated damages are specified in the Procurement Contract, actual damages caused by delayed performance or non-performance of the Seller.
8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.
9. The Surety shall not be liable to the Buyer or others for obligations of the Seller that are unrelated to the Procurement Contract, and the Balance of the Procurement Contract Price will not be reduced or set off on account of any such unrelated obligations. No right of action will accrue on this Bond to any person or entity other than the Buyer or its heirs, executors, administrators, successors, and assigns.
10. The Surety hereby waives notice of any change, including changes of time, to the Procurement Contract or to related subcontracts, purchase orders, and other obligations.
11. Any proceeding, legal or equitable, under this Bond must be instituted in any court of competent jurisdiction where the Point of Destination is located and must be instituted within two years after a declaration of Seller Default, or within two years after the Seller ceased

working, or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit will be applicable.

12. Notice to the Surety, the Buyer, or the Seller must be mailed or delivered to the address shown on the page on which their signature appears.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Point of Destination, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.
14. Definitions
 - 14.1. *Balance of the Procurement Contract Price*—The total amount payable by the Buyer to the Seller under the Procurement Contract after all proper adjustments have been made including allowance for the Seller for any amounts received or to be received by the Buyer in settlement of insurance or other claims for damages to which the Seller is entitled, reduced by all valid and proper payments made to or on behalf of the Seller under the Procurement Contract.
 - 14.2. *Buyer Default*—Failure of the Buyer, which has not been remedied or waived, to pay the Seller as required under the Procurement Contract or to perform and complete or comply with the other material terms of the Procurement Contract.
 - 14.3. *Goods*—The full scope of materials, equipment, other items, and services to be furnished by Seller, as defined in the Procurement Contract.
 - 14.4. *Point of Destination*—The location where delivery of the Goods shall be made, as stated in the Procurement Contract.
 - 14.5. *Procurement Contract*—The contractual agreement between the Buyer and Seller identified on the cover page, including all Procurement Contract Documents and changes made to the Procurement Contract.
 - 14.6. *Seller Default*—Failure of the Seller, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Procurement Contract.
 - 14.7. *Procurement Contract Documents*—All the documents that comprise the contractual agreement between the Buyer and Seller.
15. Modifications to this Bond are as follows: **None**

PAYMENT BOND FOR PROCUREMENT CONTRACT

<p>Seller</p> <p>Name: _____</p> <p>Address <i>(principal place of business)</i>: _____</p>	<p>Surety</p> <p>Name: _____</p> <p>Address <i>(principal place of business)</i>: _____</p>
<p>Buyer</p> <p>Name: _____</p> <p>Mailing address <i>(principal place of business)</i>: _____</p>	<p>Procurement Contract</p> <p>Description <i>(name and location)</i>: [Buyer's project/contract name, and location of the Point of Destination]</p> <p>Procurement Contract Price: _____</p> <p>Effective Date of Procurement Contract: _____</p>
<p>Bond</p> <p>Bond Amount: _____</p> <p>Date of Bond: _____ <i>(Date of Bond cannot be earlier than Effective Date of Procurement Contract)</i></p> <p>Modifications to this Bond form: <input type="checkbox"/> None <input type="checkbox"/> See Paragraph 17</p>	
<p>Surety and Seller, intending to be legally bound hereby, subject to the terms set forth in this Payment Bond, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.</p>	
<p>Seller as Principal</p>	<p>Surety</p>
<p>_____ <i>(Full formal name of Seller)</i></p>	<p>_____ <i>(Full formal name of Surety) (corporate seal)</i></p>
<p>By: _____ <i>(Signature)</i></p>	<p>By: _____ <i>(Signature)(Attach Power of Attorney)</i></p>
<p>Name: _____ <i>(Printed or typed)</i></p>	<p>Name: _____ <i>(Printed or typed)</i></p>
<p>Title: _____</p>	<p>Title: _____</p>
<p>Attest: _____ <i>(Signature)</i></p>	<p>Attest: _____ <i>(Signature)</i></p>
<p>Name: _____ <i>(Printed or typed)</i></p>	<p>Name: _____ <i>(Printed or typed)</i></p>
<p>Title: _____</p>	<p>Title: _____</p>
<p><i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Seller, Surety, Buyer, or other party is considered plural where applicable.</i></p>	

1. The Seller and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Buyer to pay for labor, materials, and equipment furnished for use in the performance of the Procurement Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Seller promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Buyer from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Procurement Contract, then the Surety and the Seller shall have no obligation under this Bond.
3. If there is no Buyer Default under the Procurement Contract, the Surety's obligation to the Buyer under this Bond will arise after the Buyer has promptly notified the Seller and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Buyer or the Buyer's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Procurement Contract, and tendered defense of such claims, demands, liens, or suits to the Seller and the Surety.
4. When the Buyer has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Buyer against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond will arise after the following:
 - 5.1. Claimants who do not have a direct contract with the Seller
 - 5.1.1. have furnished a written notice of non-payment to the Seller, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2. have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2. Claimants who are employed by or have a direct contract with the Seller have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Buyer to the Seller, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1. Send an answer to the Claimant, with a copy to the Buyer, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2. Pay or arrange for payment of any undisputed amounts.
 - 7.3. The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 will not be deemed to constitute a waiver of defenses the Surety or Seller may have or acquire as to

a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

8. The Surety's total obligation will not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond will be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Buyer to the Seller under the Procurement Contract will be used for the performance of the Procurement Contract and to satisfy claims, if any, under any procurement performance bond. By the Seller furnishing and the Buyer accepting this Bond, they agree that all funds earned by the Seller in the performance of the Procurement Contract are dedicated to satisfying obligations of the Seller and Surety under this Bond, subject to the Buyer's priority to use the funds for the completion of the Goods.
10. The Surety shall not be liable to the Buyer, Claimants, or others for obligations of the Seller that are unrelated to the Procurement Contract. The Buyer shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Procurement Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action will be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the Point of Destination is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Procurement Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit will be applicable.
13. Notice and Claims to the Surety, the Buyer, or the Seller must be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, will be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement where the Point of Destination is located, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Seller and Buyer shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. Definitions

- 16.1. *Buyer Default*—Failure of the Buyer, which has not been remedied or waived, to pay the Seller as required under the Procurement Contract or to perform and complete or comply with the other material terms of the Procurement Contract.
- 16.2. *Claim*—A written statement by the Claimant including at a minimum:
- 16.2.1. The name of the Claimant;
 - 16.2.2. The name of the person for whom the labor was done, or materials or equipment furnished;
 - 16.2.3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Procurement Contract;
 - 16.2.4. A brief description of the labor, materials, or equipment furnished;
 - 16.2.5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Procurement Contract;
 - 16.2.6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
 - 16.2.7. The total amount of previous payments received by the Claimant; and
 - 16.2.8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.
- 16.3. *Claimant*—An individual or entity having a direct contract with the Seller or with a subcontractor of the Seller to furnish labor, materials, or equipment for use in the performance of the Procurement Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic’s lien or similar statute against the real property upon which the Point of Destination is located or where the Goods are to be installed or furnished. The intent of this Bond is to include without limitation in the terms of “labor, materials, or equipment” that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Procurement Contract, architectural and engineering services required for performance of the work of the Seller and the Seller’s subcontractors, and all other items for which a mechanic’s lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
- 16.4. *Goods*—The full scope of materials, equipment, other items, and services to be furnished by Seller, as defined in the Procurement Contract.
- 16.5. *Point of Destination*—The location where delivery of the Goods shall be made, as stated in the Procurement Contract.
- 16.6. *Procurement Contract*—The contractual agreement between the Buyer and Seller identified on the cover page, including all Procurement Contract Documents and all changes made to the Procurement Contract.

16.7. *Procurement Contract Documents*—All the documents that comprise the contractual agreement between the Buyer and Seller.

17. Modifications to this Bond are as follows: **None**

STANDARD GENERAL CONDITIONS OF THE PROCUREMENT CONTRACT

Prepared By



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ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

- A. Whenever used in the Procurement Bidding Requirements or Procurement Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated, which are applicable to the singular or plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Procurement Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Procurement Contract Documents.
 2. *Application for Payment*—The document prepared by Seller, in a form acceptable to Buyer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Procurement Contract Documents.
 3. *Bid*—An offer or proposal of a prospective Seller submitted on the prescribed form setting forth the prices for the Goods to be provided.
 4. *Bidder*—An individual or entity that, as a prospective Seller, submits a Bid to Buyer.
 5. *Buyer*—The individual or entity purchasing the Goods.
 6. *Change Directive*—A written directive from Buyer to Seller issued on or after the Effective Date of the Procurement Contract, ordering an addition, deletion, or revision in the Goods.
 7. *Change Order*—A document which is signed by Seller and Buyer and authorizes an addition, deletion, or revision to the Procurement Contract Documents or an adjustment in the Procurement Contract Price or the Procurement Contract Times, issued on or after the Effective Date of the Procurement Contract. Change Orders may be the result of mutual agreement by Buyer and Seller, or of resolution of a Claim.
 8. *Claim*—A demand or assertion by Buyer or Seller seeking an adjustment of Procurement Contract Price or Procurement Contract Times, or both, or other relief with respect to the terms of the Procurement Contract. A demand for money or services by a third party is not a Claim.
 9. *Contractor/Assignee*—A construction contractor with which Project Owner enters into a construction contract, and to which Project Owner, as initial Buyer, assigns this Procurement Contract.

10. *Effective Date of the Procurement Contract*—The date indicated in the Procurement Agreement on which the Procurement Contract becomes effective.
11. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
12. *Electronic Means*—Electronic mail (e-mail), upload/download from a secure Project website, or other communications methods that allow: the transmission or communication of Electronic Documents; the documentation of transmissions, including sending and receipt; printing of the transmitted Electronic Document by the recipient; the storage and archiving of the Electronic Document by sender and recipient; and the use by recipient of the Electronic Document for purposes permitted by this Procurement Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
13. *Engineer*—The individual or entity designated as such in the Procurement Agreement.
14. *Field Order*—A written order issued by Engineer which requires minor changes in the Goods or Special Services, but which does not involve a change in the Procurement Contract Price or Procurement Contract Times.
15. *Goods*—The tangible and movable personal property that is described in the Procurement Contract Documents, regardless of whether the property is to be later attached to realty.
16. *Goods*—The full scope of materials, equipment, other items, and services to be furnished by Seller, including Goods, as defined herein, and Special Services, if any, as defined herein. This term refers to both the Goods and the Special Services, or to either the Goods or the Special Services, and to any portion of the Goods or the Special Services, as the context requires.
17. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
18. *Milestone*—A principal event specified in the Procurement Contract that Seller must attain by the date or within the number of days indicated, including but not limited to the delivery of the Goods and the furnishing of Special Services.
19. *Notice of Award*—The written notice, by Buyer to a Bidder, of Buyer’s acceptance of the Bid.
20. *Point of Destination*—The specific address of the location where delivery of the Goods will be made, as stated in the Procurement Agreement.

21. *Procurement Agreement*—The written instrument, executed by Buyer and Seller, that sets forth the Procurement Contract Price and Procurement Contract Times, identifies the parties and the Engineer, and designates the specific items that are Procurement Contract Documents.
22. *Procurement Bidding Documents*—The Procurement Bidding Requirements and the proposed Procurement Contract Documents (including all Addenda).
23. *Procurement Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and Bid Form with any supplements.
- 24.
25. *Procurement Contract*—The entire and integrated written agreement between Buyer and Seller concerning the Goods.
26. *Procurement Contract Documents*—Those items so designated in the Procurement Agreement, and which together comprise the Procurement Contract. Shop Drawings and other Seller submittals are not Procurement Contract Documents, even if accepted, reviewed, or approved by Engineer or Buyer.
27. *Procurement Contract Price*—The money that Buyer has agreed to pay Seller for furnishing the Goods in accordance with the Procurement Contract Documents.
28. *Procurement Contract Times*—The times stated in the Procurement Agreement by which the Goods must be delivered, Special Services must be furnished, and other Milestones must be attained.
29. *Procurement Drawings*—That part of the Procurement Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Goods to be furnished by Seller. Shop Drawings and other Seller submittals are not Procurement Drawings as so defined.
30. *Procurement Specifications*—That part of the Procurement Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the furnishing of the Goods, and certain administrative requirements and procedural matters applicable thereto.
31. *Project*—The total undertaking to be accomplished for Project Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Goods are a part.
32. *Project Owner*—The entity that has retained (or will retain) engineers, contractors, and others for the planning, study, design, construction, testing, commissioning, and start-up of facilities and improvements. As of the Effective Date of the Procurement Contract, the Project Owner is the Buyer.

33. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Goods and which establish the standards by which such portion of the Goods will be judged.
34. *Schedule of Submittals*—A schedule, prepared and maintained by Seller, of required Submittals and the time requirements for Engineer’s review of the Submittals.
35. *Seller*—The individual or entity furnishing the Goods.
36. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Seller and submitted by Seller to illustrate some portion of the Goods. Shop Drawings, whether approved or not, are not Procurement Drawings and are not Procurement Contract Documents.
37. *Special Services*—Services to be performed by Seller (or its agents or subcontractors) in association with the Goods to be furnished by Seller, as required by the Procurement Contract Documents.
38. *Submittal*—A written or graphic document, prepared by or for Seller, which the Procurement Contract Documents require Seller to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or site quality-control testing and inspections; warranties and certifications; suppliers’ instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; record documents; and other such documents required by the Procurement Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Procurement Contract Documents. Change proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
39. *Successful Bidder*—The Bidder whose Bid the Buyer accepts, and to which Buyer makes an award of the Procurement Contract.
40. *Supplementary Conditions*—The part of the Procurement Contract that amends or supplements these General Conditions.
41. *Unit Price Goods*—Goods to be paid for on the basis of unit prices (if any).

1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B and 1.02.C are not defined, but have the indicated meanings when used in the Bidding Requirements or Procurement Contract Documents.
- B. *Intent of Certain Terms or Adjectives*

1. The Procurement Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Goods. It is intended that such exercise of professional judgment, action, or determination will be commercially reasonable and will be solely to evaluate, in general, the Goods for compliance with the requirements of and information in the Procurement Contract Documents and conformance with the design concept of the completed Project as a functioning whole, as shown or indicated in the Procurement Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective will not be effective to assign to Engineer any duty or authority to supervise or direct the furnishing of Goods or Special Services or any duty or authority to undertake responsibility contrary to any other provision of the Procurement Contract Documents.
 2. The word “non-conforming” when modifying the words “Goods,” “Goods,” or “Special Services,” refers to Goods that are unsatisfactory, faulty, or deficient in that they:
 - a. do not conform to or comply with the requirements of the Procurement Contract Documents;
 - b. do not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Procurement Contract Documents; or
 - c. in the case of Special Services, have not been completed.
 3. The word “receipt” when referring to the Goods, means the physical taking and possession by the Buyer under the conditions specified in Paragraph 9.02.B.2.
 4. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
 5. The word "furnish," when used in connection with the Goods means to supply and deliver said Goods to the Point of Destination (or some other specified location) and to perform said Special Services fully, all in accordance with the Procurement Contract Documents.
- C. *Procurement Contract Price or Procurement Contract Times*: References to a change in “Procurement Contract Price or Procurement Contract Times” or “Procurement Contract Times or Procurement Contract Price” or similar, indicate that such change applies to (1) Procurement Contract Price, (2) Procurement Contract Times, or (3) both Procurement Contract Price and Procurement Contract Times, as warranted, even if the term “or both” is not expressed.

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

ARTICLE 2—PRELIMINARY MATTERS

2.01 Delivery of Bonds and Evidence of Insurance

- A. When Seller delivers the executed counterparts of the Procurement Agreement to Buyer, the Seller also shall deliver to Buyer the performance bond and payment bond (if the Procurement Contract requires Seller to furnish such bonds).
- B. *Evidence of Seller's Insurance:* When Seller delivers the signed counterparts of the Procurement Agreement to Buyer, the Seller also shall deliver to Buyer, with copies to each additional insured (as identified in the Procurement Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Seller in accordance with Article 5. Evidence of insurance to be obtained at a later date, such as insurance relating to transit or storage of the Goods, will be provided to Buyer at the time of such insurance is obtained.
- C. *Evidence of Buyer's Insurance:* After receipt of the signed counterparts of the Procurement Agreement and all required bonds and insurance documentation, Buyer shall promptly deliver to Seller, with copies to each additional insured (as identified in the Procurement Contract), certificates and other evidence of insurance (if any) required to be provided by Buyer.

2.02 Copies of Documents

- A. ~~Buyer shall furnish to Seller four printed copies of the Procurement Contract (including one fully executed counterpart of the Procurement Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.~~ Buyer shall furnish to Seller one printed copy of the Procurement Contract Documents (including one fully signed counterpart of the Procurement Agreement), and one in electronic portable document format (PDF).

2.03 Electronic Transmittals

- A. Except as otherwise stated elsewhere in the Procurement Contract, the Buyer, Seller, and Engineer may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Procurement Contract does not establish protocols for Electronic Means, then Buyer, Seller, and Engineer shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the

Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

2.04 Preliminary Schedules

- A. Within 15 days after the Effective Date of the Procurement Contract, Seller shall submit to Buyer and Engineer for timely review:
 - 1. a progress schedule of activities, consistent with the Procurement Contract Times, including at a minimum, Shop Drawing and Sample submittals, tests, and deliveries as required by the Procurement Contract Documents.
 - a. The progress schedule will be acceptable to Buyer and Engineer if it provides an orderly progression of the Submittals, tests, and deliveries to completion within the specified Milestones of the Procurement Contract Times.
 - b. Such acceptance will not impose on Buyer or Engineer responsibility for the progress schedule, for sequencing, scheduling, or progress of Seller's performance of its obligations under the Procurement Contract, nor interfere with or relieve Seller from Seller's full responsibility therefor.
 - c. Such acceptance will not be deemed as an acknowledgment of the reasonableness and attainability of the schedule.
 - 2. a preliminary schedule of Submittals.
- B. No progress payment will be made to Seller until an acceptable progress schedule and acceptable schedule of Submittals are submitted to Buyer and Engineer (and other conditions applicable to progress payments are met).

2.05 Preliminary Conference

- A. Within 20 days after the Procurement Contract Times start to run, a conference attended by Seller, Buyer, Engineer and others as appropriate will be held to establish a working understanding among the parties as to the Goods and to discuss the schedules referred to in Paragraph 2.04.A, procedures for handling Shop Drawings and other Submittals, processing Applications for Payment, and maintaining required records.

2.06 Safety

- A. Buyer and Seller shall comply with all applicable Laws and Regulations relating to the safety of persons or property, and to the protection of persons or property from damage, injury, or loss.
- B. When Seller's personnel, or the personnel of any subcontractor to Seller, are present at the Point of Destination or any work area or site controlled by Buyer, the Seller shall be responsible for the compliance by such personnel with any applicable requirements of Buyer's safety programs that are made known to Seller.

- C. If Buyer or its representatives visit the Seller's manufacturing or storage facilities, for testing, inspection, or other purposes, Seller shall inform Buyer in advance of any safety preparations, standards, or programs with which Buyer and its representatives must comply.

ARTICLE 3—PROCUREMENT CONTRACT DOCUMENTS

3.01 Intent

- A. The Procurement Contract Documents are complementary; what is called for by one is as binding as if called for by all.
- B. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Procurement Contract Documents or from prevailing custom or trade usage as being required to produce or furnish the indicated Goods will be provided, whether or not specifically called for, at no additional cost to Buyer.
- C. Unless otherwise stated in the Procurement Contract Documents, if there is a discrepancy between the electronic or digital versions of the Procurement Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version will govern.
- D. The Procurement Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Procurement Contract Documents, as provided in Paragraph 3.04.
- F. Any provision or part of the Procurement Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Buyer and Seller.

3.02 Reference Standards

- A. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws and Regulations, whether such reference be specific or by implication, means the standard, specification, manual, code, or Laws and Regulations in effect at the time of opening of Bids (or on the Effective Date of the Procurement Agreement if there were no Bids), except as may be otherwise specifically stated in the Procurement Contract Documents.
- B. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a supplier, will be effective to change the duties or responsibilities of Buyer, Seller, or Engineer from those set forth in the part of the Procurement Contract Documents prepared by or for Engineer. No such provision or instruction will be effective to assign to Buyer or Engineer any duty or authority to supervise or direct the performance of Seller's obligations, or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Procurement Contract Documents prepared by or for Engineer.

3.03 Reporting and Resolving Discrepancies

A. *Reporting Discrepancies*

1. *Seller's Review of Procurement Contract Documents:* If, before or during the performance of Seller's obligations, Seller discovers any conflict, error, ambiguity, or discrepancy within the Procurement Contract Documents, or between the Procurement Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any supplier to Seller, then Seller shall promptly report it to Engineer (or if the Procurement Contract is assigned, then directly to Contractor/Assignee) in writing. Seller shall not proceed with the Goods affected thereby until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer (or if the Procurement Contract is assigned, then by Contractor/Assignee) or by an amendment or supplement to the Procurement Contract Documents issued pursuant to Article 11.
2. Seller shall not be liable to Buyer or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Procurement Contract Documents unless Seller had actual knowledge thereof.

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

1. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Procurement Contract Documents); or
2. the provisions of any Laws or Regulations applicable to the furnishing of the Goods (unless such an interpretation of the provisions of the Procurement Contract Documents would result in violation of such Law or Regulation).

3.04 Requirements of the Procurement Drawings and Procurement Specifications

A. During the performance of Seller's obligations and until final payment, Seller and Buyer shall submit to the Engineer all matters in question concerning the requirements of the Procurement Drawings and Procurement Specifications (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Goods, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Procurement Drawings and Procurement Specifications, and judge of the acceptability of the Goods thereunder.

1. After assignment (if any) Seller shall submit such matters directly to Contractor/Assignee for response or administration, and the Procurement Contract provisions in Paragraphs 3.04.B and C will not apply.

- B. Engineer will issue with reasonable promptness a written clarification, interpretation, or decision on the issue submitted, and if necessary, initiate an amendment or supplement to the Procurement Drawings or Procurement Specifications. Engineer’s written clarification, interpretation, or decision will be consistent with the overall intent of the Procurement Contract Documents, and will be final and binding on Seller and Buyer. If either Buyer or Seller believes that a written clarification or interpretation justifies an adjustment in the Procurement Contract Price or Procurement Contract Times, either may make a Claim for such adjustment as provided in Article 12.
- C. If a submitted matter in question concerns terms and conditions of the Procurement Contract Documents that do not involve (1) the performance or acceptability of the Goods and Services, (2) the design (as set forth in the Procurement Drawings, Procurement Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Buyer and Seller that Engineer is unable to provide a decision or interpretation.

3.05 Reuse of Documents

- A. Seller and its subcontractors and suppliers shall not:
 - 1. have or acquire any title to or ownership rights in any of the Procurement Drawings, Procurement Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions, or reuse any such Procurement Drawings, Procurement Specifications, other documents, or copies thereof, on extensions of the Project or any other project, without written consent of Buyer and Engineer and specific written verification or adaptation by Engineer; or
 - 2. have or acquire any title or ownership rights in any other Procurement Contract Documents, reuse any such Procurement Contract Documents for any purpose without Buyer’s express written consent, or violate any copyrights pertaining to such Procurement Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Procurement Contract. Nothing herein precludes Seller from retaining copies of the Procurement Contract Documents for record purposes.

ARTICLE 4—COMMENCEMENT AND SCHEDULE

4.01 Commencement of Procurement Contract Times

- A. The Procurement Contract Times will commence to run on the Effective Date of the Procurement Contract.

4.02 Continuing Performance

- A. Seller shall adhere to the progress schedule established in accordance with Paragraph 2.04.A., as duly adjusted, and the Goods will be delivered and the Special Services furnished within the Procurement Contract Times.
- B. Seller shall carry on furnishing of the Goods and adhere to the progress schedule during all disputes or disagreements with Buyer. No furnishing of Goods will be delayed or postponed pending resolution of any disputes or disagreements, except as expressly permitted herein, or as Buyer and Seller may otherwise agree in writing.

4.03 Adjustments to Progress Schedule

- A. The progress schedule established in accordance with Paragraph 2.04 may be adjusted from time to time as provided below.
 - 1. Seller shall submit to Buyer for acceptance (to the extent indicated in Paragraph 2.04) proposed adjustments in the progress schedule that will not result in changing the Procurement Contract Times. Such adjustments will comply with any applicable provisions of the Procurement Specifications.
 - 2. Proposed adjustments in the progress schedule that will change the Procurement Contract Times must be submitted in accordance with the requirements of Article 11. Adjustments in Procurement Contract Times may only be made by a Change Order.

4.04 Delays

- A. If Buyer, Engineer, or anyone for whom Buyer is responsible, delays, disrupts, or interferes with Seller's performance or progress, then Seller shall be entitled to an equitable adjustment in Procurement Contract Price or Procurement Contract Times.
- B. Seller shall not be entitled to an adjustment in Procurement Contract Price or Procurement Contract Times for delay, disruption, or interference caused by or within the control of Seller or anyone for whom Seller is responsible.
- C. If Seller's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Buyer, Seller, and those for which they are responsible, then Seller shall be entitled to an equitable adjustment in Procurement Contract Times. Such an adjustment will be Seller's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Procurement Contract Times under this paragraph include but are not limited to the following:
 - 1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 - 2. abnormal weather conditions;
 - 3. inspection delays by governmental authorities, and custom delays;

4. international shipping delays;
 5. acts or failures to act of third-party entities; and
 6. acts of war or terrorism.
- D. *Adjustments of Procurement Contract Times or Procurement Contract Price—General Provisions:* Seller’s entitlement to an adjustment of Procurement Contract Times or Procurement Contract Price is limited as follows:
1. Seller’s entitlement to an adjustment of the Procurement Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of Seller’s obligations, as of the time of the delay, disruption, or interference.
 2. Seller shall not be entitled to an adjustment in Procurement Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Seller. Such a concurrent delay by Seller does not preclude an adjustment of Procurement Contract Times to which Seller is otherwise entitled.
 3. Adjustments of Procurement Contract Times or Procurement Contract Price are subject to the provisions of Articles 11 and 12.
- E. Each Seller request seeking a delay-related increase in Procurement Contract Times or Procurement Contract Price must be supplemented by supporting data that sets forth in detail the following: (1) the circumstances that form the basis for the requested adjustment; (2) the date upon which each cause of delay, disruption, or interference began to affect Seller’s progress; (3) the date upon which each cause of delay, disruption, or interference ceased to affect Seller’s progress; (4) the number of days’ increase in Procurement Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and (5) the impact on Procurement Contract Price. Seller shall also furnish such additional supporting documentation as Buyer or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion.

ARTICLE 5—BONDS AND INSURANCE

5.01 Performance, Payment, and Other Bonds

- A. Seller shall furnish a performance bond and a payment bond, each in an amount at least equal to the Procurement Contract Price, as security for the faithful performance and payment of Seller’s obligations under the Procurement Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 9.04, whichever is later, except as provided otherwise by Laws or

Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Procurement Contract.

1. Required Performance Bond Form: The performance bond that Seller furnishes will be in the form of EJCDC® P-610, Performance Bond (2010 or 2019 edition).
 2. Required Payment Bond Form: The payment bond that Contractor furnishes will be in the form of EJCDC® P-615, Payment Bond (2010 or 2019 edition).
- B. Seller shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Procurement Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Buyer prior to execution of the Procurement Contract, except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- D. Seller shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Seller is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Seller shall promptly notify Buyer and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements of this Procurement Contract.
- F. If Seller has failed to obtain a required bond, Buyer may exercise Buyer’s termination rights under Article 14.
- G. Upon request to Buyer from any subcontractor, supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of Seller’s obligations, Buyer shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Seller from any subcontractor, supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of Seller’s obligations, Seller shall provide a copy of the payment bond to such person or entity.

5.02 Insurance

- A. Seller shall provide insurance of the types and coverages and in the amounts stipulated in the Supplementary Conditions.

- B. Failure of Buyer to demand certificates of insurance or other evidence of Seller's full compliance with these insurance requirements or failure of Buyer to identify a deficiency in compliance from the evidence provided will not be construed as a waiver of Seller's obligation to maintain such insurance.
- C. Upon assignment of this Procurement Contract, Seller shall name the Contractor/Assignee as an additional insured and comply with the written request of Contractor/Assignee to provide evidence of insurance.
- D. Buyer does not represent that insurance coverage and limits established in this Procurement Contract necessarily will be adequate to protect Seller.
- E. The insurance and insurance limits required herein will not be deemed as a limitation on Seller's liability under the indemnities and other rights granted to Buyer in the Procurement Contract.
- F. Seller shall purchase and maintain such liability and other insurance as is appropriate for the furnishing of Goods and as will provide protection from claims set forth below which may arise out of or result from Seller's furnishing of the Goods or Special Services and Seller's other obligations under the Procurement Contract Documents, whether the furnishing of Goods or other obligations are to be performed by Seller, any subcontractor or supplier, or by anyone directly or indirectly employed by any of them to furnish the Goods, or by anyone for whose acts any of them may be liable:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 - 2. claims for damages because of bodily injury, occupational sickness or disease, or death of Seller's employees;
 - 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Seller's employees;
 - 4. claims for damages insured by reasonably available personal injury liability coverage which are sustained: (a) by any person as a result of an offense directly or indirectly related to the employment of such person by Seller, or (b) by any other person for any other reason;
 - 5. claims for damages, other than to the Goods, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
 - 6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- G. The policies of insurance so required by this Paragraph 5.02 to be purchased and maintained must:

1. with respect to insurance required by Paragraphs SC-5.02.F.3 through SC-5.02.F.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) Buyer, Engineer, their consultants, and all of whom must be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds must provide primary coverage for all claims covered thereby;
 2. include at least the specific coverages and be written for not less than the limits of liability provided below or required by Laws or Regulations, whichever is greater;
 3. include completed operations insurance;
 4. include contractual liability insurance covering Seller's indemnity obligations under Paragraph 7.07;
 5. contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder will provide a copy of the notice to the other party, each other insured, and Engineer;
 6. remain in effect at least until final payment and at all times thereafter when Seller may be correcting, removing, or replacing non-conforming Goods in accordance with Paragraph 9.03 and 9.04; and
 7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and Seller shall furnish Buyer and each other additional insured identified in these Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Buyer and any such additional insured of continuation of such insurance at final payment and one year thereafter).
- H. The limits of liability for the insurance required by Paragraph SC-5.02.F must provide coverage for not less than the following amounts or greater where required by Laws and Regulations:
1. Workers' Compensation, and related coverages under Paragraphs SC-5.02.F.1 and F.2:

<u>Workers' Compensation and Related Policies</u>	<u>Policy limits of not less than</u>
<u>Workers' Compensation</u>	
<u>State</u>	<u>Statutory</u>

<u>Workers' Compensation and Related Policies</u>	<u>Policy limits of not less than</u>
<u>Applicable Federal</u>	<u>Statutory</u>
<u>Each accident</u>	<u>\$1,000,000</u>
<u>Each employee</u>	<u>\$1,000,000</u>
<u>Policy limit</u>	<u>\$1,000,000</u>

2. Seller's General Liability under Paragraphs SC-5.02.F.3 through F.6 which must include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Seller:

<u>Commercial General Liability</u>	<u>Policy limits of not less than</u>
<u>General Aggregate</u>	<u>\$3,000,000</u>
<u>Products—Completed Operations Aggregate</u>	<u>\$1,000,000</u>
<u>Personal and Advertising Injury</u>	<u>\$1,000,000</u>
<u>Bodily Injury and Property Damage—Each Occurrence</u>	<u>\$1,000,000</u>

3. Automobile Liability under Paragraph SC-5.02.F.6:

<u>Automobile Liability</u>	<u>Policy limits of not less than</u>
<u>Bodily Injury</u>	
<u>Each Person</u>	<u>\$1,000,000</u>
<u>Each Accident</u>	<u>\$1,000,000</u>
<u>Combined Single Limit (Bodily Injury and Property Damage)</u>	<u>\$3,000,000</u>

- I. Seller shall deliver to Buyer, with copies to each additional insured identified in these Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Buyer or any other additional insured) which Seller is required to purchase and maintain.

5.03 Surety or Insurance Companies

- A. All bonds and insurance required by the Procurement Contract Documents to be purchased and maintained by Buyer or Seller 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. Such surety and insurance companies must also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

ARTICLE 6—LICENSES AND FEES

6.01 Intellectual Property and License Fees

- A. Except to the extent stated elsewhere in the Procurement Contract Documents, Seller is not transferring any patent rights, copyrights, or other intellectual property rights for the Goods delivered.
- B. To the extent Seller is manufacturing to Buyer's design, Buyer retains all patent rights, copyrights, and other intellectual property rights in such design.
- C. If an invention, design, process, product, or device is specified in the Procurement Contract Documents for incorporation in the Goods or for the performance of Special Services, and if, to the actual knowledge of Buyer or Engineer, its use is subject to patent rights, copyrights, or other intellectual property rights calling for the payment of a license fee or royalty to others, then the existence of such rights and payment obligations will be disclosed to Seller in the Procurement Contract Documents.
- D. Seller shall pay all license fees and royalties and assume all costs incident to the use or the furnishing of the Goods, unless specified otherwise by the Procurement Contract Documents.

6.02 Seller's Infringement

- A. Subject to Paragraph 6.01, to the fullest extent permitted by Laws and Regulations, Seller shall indemnify and hold harmless Buyer, Engineer, and their officers, directors, members, partners, employees, agents, consultants, contractors, and subcontractors, from and against all claims, costs, losses, damages, and judgments (including but not limited to all reasonable fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement or alleged infringement of any patent, copyright, or other intellectual property right by any of the Goods as delivered or Special Services as performed.
- B. Buyer will promptly notify Seller in writing of any claim, suit, or threat of suit by a third party for any infringement or alleged infringement of any patent, copyright, or other intellectual property right with respect to the Goods as delivered or Special Services as performed.
- C. Seller shall promptly defend or settle the claim or suit. Seller shall have control over such claim or suit, bear all expenses, and satisfy any adverse judgment.
 1. If Seller fails to defend such suit or claim after written notice by Buyer, Seller will be bound, in any subsequent suit or claim against Seller by Buyer, by any factual determination in the prior suit or claim.
 2. If Buyer fails to provide Seller the opportunity to defend such suit or claim, Buyer shall be barred from any remedy against Seller for such suit or claim.

- D. If a determination is made that Seller has infringed upon the intellectual property rights of another, Seller may, at Seller's own expense, obtain the necessary licenses for Buyer's benefit, or replace the Goods and provide related design and construction, consistent with the requirements of the Procurement Contract Documents, to avoid the infringement.

6.03 Buyer's Infringement

- A. Subject to Paragraph 6.01, and to the fullest extent permitted by Laws and Regulations, Buyer shall be responsible to Seller for any infringement or alleged infringement of any patent, copyright, or other intellectual property right caused by Seller's compliance with the Procurement Drawings or Procurement Specifications, and will reimburse Seller for any license fee or royalties paid by Seller to others if such payment resulted from any invention, design, process, product, or device specified to be furnished or performed in the Procurement Drawings or Procurement Specifications, but not identified as being subject to payment of such license fee or royalty.
- B. Seller will promptly notify Buyer in writing of any claim, suit, or threat of suit by a third party for intellectual property infringement arising from Seller's compliance with the Procurement Drawings or Procurement Specifications.
- C. Buyer shall defend or settle the claim or suit. Buyer shall have control over such claim or suit, bear all expenses, and satisfy any adverse judgment.
 - 1. If Buyer fails to defend such suit or claim after written notice by Seller, Buyer will be bound, in any subsequent suit or claim against Buyer by Seller, by any factual determination in the prior suit or claim.
 - 2. If Seller fails to provide Buyer the opportunity to defend such suit or claim, Seller shall be barred from any remedy against Buyer for such suit or claim.

ARTICLE 7—SELLER'S RESPONSIBILITIES

7.01 Performance of Obligations

- A. Seller shall be solely responsible for the means, methods, techniques, sequences, and procedures necessary to perform its obligations in accordance with the Procurement Contract Documents.
- B. Seller shall supervise, inspect, and direct the furnishing of the Goods competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform its obligations in accordance with the Procurement Contract Documents.
- C. Seller shall coordinate the provision of Special Services to avoid or limit interference or disruption of other activities at the location where the Special Services are to occur, including but not limited to ongoing facility operations and construction activities.

7.02 Labor, Materials and Equipment

- A. Seller shall provide competent, qualified and trained personnel in all aspects of its performance of the Procurement Contract.
- B. All Goods, and all equipment and material incorporated into the Goods, must be as specified, and unless specified otherwise in the Procurement Contract Documents, must be:
 - 1. new, and of good quality;
 - 2. protected, assembled, connected, cleaned, and conditioned in accordance with the original manufacturer's instructions; and
 - 3. shop-assembled to the greatest extent practicable.

7.03 Laws and Regulations

- A. Seller shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of its obligations in accordance with the Procurement Contract Documents. Except where otherwise expressly required by such Laws and Regulations, neither Buyer nor Engineer shall be responsible for monitoring Seller's compliance with any Laws or Regulations.
- B. If Seller furnishes Goods knowing or having reason to know that such furnishing is contrary to Laws or Regulations, Seller 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 performance. It will not be Seller's responsibility to make certain that the Procurement Specifications and Procurement Drawings are in accordance with Laws and Regulations, but this provision will not relieve Seller of Seller's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Procurement Contract if there were no Bids) that have a direct effect on the cost or time of Seller's performance will be the subject of an adjustment in Procurement Contract Price or Procurement Contract Times. If Buyer and Seller are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Article 12.

7.04 "Or Equals"

- A. Whenever an item of material or equipment to be incorporated into the Goods is specified or described in the Procurement Contract Documents by using the names of one or more proprietary items or specific suppliers or manufacturers, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, other items of material or equipment or material or equipment of other suppliers or manufacturers may be submitted to Buyer for Engineer's review.

1. If in Engineer's sole discretion, such an item of material or equipment proposed by Seller 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.
 2. For the purposes of this paragraph, a proposed item of material or equipment may be considered functionally equal to an item so named only if in the exercise of reasonable judgment, Engineer determines that: 1) it is at least equal in quality, durability, appearance, strength, and design characteristics; 2) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole; 3) it has an acceptable record of performance and availability of responsive service; and (4) Seller certifies that if approved: a) there will be no increase in any cost, including capital, installation or operating costs, to Buyer; and b) the proposed item will conform substantially to the detailed requirements of the item named in the Procurement Contract Documents.
- B. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or Submittal made pursuant to Paragraph 7.04.A. Engineer will be the sole judge of whether to accept or reject such a proposal or Submittal. No "or equal" will be ordered, manufactured or utilized until Engineer's review is complete, which will be evidenced by an approved Shop Drawing. Engineer will advise Buyer and Seller in writing of any negative determination. Notwithstanding Engineer's approval of an "or-equal" item, Seller shall remain obligated to comply with the requirements of the Procurement Contract Documents.
- C. *Special Guarantee:* Buyer may require Seller to furnish at Seller's expense a special performance guarantee or other surety with respect to any such proposed "or-equal."
- D. *Data:* Seller shall provide all data in support of any such proposed "or equal" at Seller's expense.

7.05 Taxes

- A. Seller shall pay all taxes and duties arising out of the sale of the Goods and the performance of Special Services. All taxes and duties are included in the Procurement Contract Price, except as noted in the Supplementary Conditions.
- B. Buyer is exempt from payment of sales and compensating use taxes of the State of Kentucky and of cities and counties thereof on all materials and equipment to be incorporated into the Project facilities.
1. Buyer will furnish the required certificates of tax exemption to Seller with respect to materials and equipment to be incorporated into the Project facilities.
 2. Buyer's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Seller, or to supplies or materials not incorporated into the Project facilities.

3. The Procurement Contract Price does not include the cost of sales or compensating use taxes to the extent such are exempted by this paragraph.

7.06 Submittals

A. *Shop Drawing and Sample Requirements*

1. Before submitting a Shop Drawing or Sample, Seller shall:
 - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Procurement Contract Documents;
 - b. determine and verify:
 - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal; and
 - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of Seller's obligations.
 - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Seller has satisfied its obligations under the Procurement Contract Documents with respect to Seller's review of that Submittal, and that Seller approves the Submittal.
3. With each Shop Drawing or Sample, Seller shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Procurement Contract Documents. This notice will be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.

B. *Submittal Procedures for Shop Drawings and Samples:* Seller shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.

1. *Shop Drawings*

- a. Seller shall submit the number of copies required in the Procurement Specifications.
- b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment

Seller proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.06.C.

2. *Samples*

- a. Seller shall submit the number of Samples required in the Procurement Specifications.
 - b. Seller shall clearly identify each Sample as to material, supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.06.C.
3. Where a Shop Drawing or Sample is required by the Procurement Contract Documents or the Schedule of Submittals, any related work performed by Seller prior to Engineer's review and approval of the pertinent Submittal will be at the sole expense and responsibility of Seller.

C. *Engineer's Review of Shop Drawings and Samples*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Goods, comply with the requirements of the Procurement Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Procurement Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, manufacturing, fabrication, installation, or shipping, or to safety precautions or programs incident thereto.
3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Seller from responsibility for any variation from the requirements of the Procurement Contract Documents unless Seller has complied with the requirements of Paragraph 7.06.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Procurement Contract Documents in a Field Order or other appropriate Procurement Contract modification.
5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Seller from responsibility for complying with the requirements of Paragraphs 7.06.A and B.

6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Procurement Contract Documents, will not, under any circumstances, change the Procurement Contract Times or Procurement Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing or Sample will result in such item becoming a Procurement Contract Document.
8. Seller shall furnish Goods that comply with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.06.C.4.

D. *Resubmittal Procedures for Shop Drawings and Samples*

1. Seller 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 and approval. Seller shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.
2. Seller shall furnish required Shop Drawing and Sample Submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Seller shall be responsible for Engineer's charges to Buyer for such time. Buyer may impose a set-off against payments due Seller to secure reimbursement for such charges.
3. If Seller requests a change of a previously approved Shop Drawing or Sample, Seller shall be responsible for Engineer's charges to Buyer for its review time, and Buyer may impose a set-off against payments due Seller to secure reimbursement for such charges, unless the need for such change is beyond the control of Seller.

E. *Submittals Other than Shop Drawings and Samples*

1. The following provisions apply to all Submittals other than Shop Drawings and Samples:
 - a. Seller shall submit all such Submittals to the Engineer in accordance with the schedule of Submittals and pursuant to the applicable terms of the Procurement Contract Documents.
 - b. Engineer will provide timely review of all such Submittals in accordance with the schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the schedule of Submittals will be deemed accepted.

- c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Procurement Contract Documents as to general form and content of the Submittal.
 - d. If any such Submittal is not accepted, Seller shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.04 and 2.05.

7.07 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, Seller shall indemnify and hold harmless Buyer, Engineer, Project Owner, and any assignee of Buyer, including Contractor/Assignee, and their officers, directors, members, partners, employees, agents, consultants, contractors, and subcontractors, 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 Seller's obligations under the Procurement Contract.
- B. In any and all claims against Buyer, Engineer, Project Owner, or any assignee of Buyer, including Contractor/Assignee, or their officers, directors, members, partners, employees, agents, consultants, contractors, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Seller, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to furnish any of the Goods, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.07.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Seller or any such subcontractor, supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.08 Concerning Subcontractors and Suppliers

- A. Seller may retain subcontractors and suppliers for the performance of parts of the furnishing of the Goods. The Seller's retention of a subcontractor or supplier will not relieve Seller's obligation to Buyer to perform and complete the furnishing the Goods in accordance with the Procurement Contract Documents.

ARTICLE 8—SHIPPING AND DELIVERY

8.01 Shipping

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

8.02 Delivery

- A. Seller shall deliver the Goods free on board (FOB) to the Point of Destination, freight prepaid, in accordance with the Procurement Contract Times set forth in the Procurement Agreement, or other date agreed to by Buyer and Seller.
- B. At least 10 days before shipment, Seller shall provide written notice to Buyer of the manner of shipment and the anticipated delivery date. The notice must also include any instructions concerning special equipment or services required at the Point of Destination to unload and care for the Goods. Seller shall also require the carrier to give Buyer at least 24 hours' notice by telephone prior to the anticipated time of delivery.
- C. Buyer will be responsible and bear all costs for unloading the Goods from carrier.
- D. Buyer will assure that adequate facilities are available to receive delivery of the Goods at the time established for delivery, or on another date agreed to by Buyer and Seller.
- E. No partial deliveries will be allowed, unless permitted or required by the Procurement Contract Documents or agreed to in writing by Buyer.
- F. Provisions governing inspection on delivery are set forth in Paragraph 9.02.

8.03 Risk of Loss

- A. Risk of loss and insurable interests transfer from Seller to Buyer upon Buyer's receipt of the Goods.
- B. Notwithstanding the provisions of Paragraph 8.03.A, if Buyer rejects the Goods as non-conforming, the risk of loss on such Goods will remain with Seller until Seller corrects the non-conformity or Buyer accepts the Goods. If rejected Goods remain at the Point of Destination pending modification and acceptance, then Seller shall be responsible for arranging adequate protection and maintenance of the Goods at Seller's expense.

ARTICLE 9—BUYER'S RIGHTS

9.01 Seller's Warranties and Guarantees

- A. Seller warrants and guarantees to Buyer that the title to the Goods conveyed will be proper, its transfer rightful, and free from any security interest, lien, or other

encumbrance. Seller shall defend, indemnify, and hold Buyer harmless against any liens, claims, or demands contesting or affecting title of the Goods conveyed.

- B. Seller warrants and guarantees to Buyer that all Goods will conform with the Procurement Contract Documents, and with the standards established by any Samples approved by Engineer. Engineer shall be entitled to rely on Seller's warranty and guarantee. If the Procurement Contract Documents do not otherwise specify the characteristics or the quality of the Goods, the Goods must comply with the requirements of Paragraph 7.02.B.
- C. Seller's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, improper modification, improper maintenance, or improper operation by persons other than Seller;
 - 2. excessive corrosion or chemical attack, unless corrosive or chemically-damaging conditions were disclosed by Buyer in the Procurement Contract Documents and the Procurement Contract Documents required the Goods to withstand such conditions;
 - 3. use in a manner contrary to Seller's written instructions for installation, operation, and maintenance; or
 - 4. normal wear and tear under normal usage.
- D. Seller's obligation to furnish the Goods in accordance with the Procurement Contract Documents will be absolute. None of the following will constitute an acceptance of Goods that are non-conforming, or a release of Seller's obligation to furnish the Goods in accordance with the Procurement Contract Documents:
 - 1. observations by Buyer, Engineer, or Project Owner;
 - 2. recommendation by Engineer or payment by Buyer of any progress or final payment;
 - 3. use of the Goods by Buyer or Project Owner;
 - 4. any acceptance by Buyer, Engineer, or Project Owner, or any failure to do so;
 - 5. the end of the correction period established in Paragraph 9.04;
 - 6. the issuance of a notice of acceptance;
 - 7. any inspection, test or approval by others; or
 - 8. any correction of non-conforming Goods by Buyer or Project Owner.
- E. Buyer shall promptly notify Seller of any breach of Seller's warranties or guarantees.

9.02 Inspections and Testing

A. *General Provisions*

1. The Procurement Contract Documents specify required inspections and tests. Buyer shall have the right to perform, or cause to be performed, reasonable inspections and require reasonable tests of the Goods at Seller's facility, and at the Point of Destination. Seller shall allow Buyer a reasonable time to perform such inspections or tests.
2. Seller shall reimburse Buyer for all expenses, except for travel, lodging, and subsistence expenses of Buyer's and Engineer's representatives, for inspections and tests specified in the Procurement Contract Documents. If as the result of any such specified testing the Goods are determined to be non-conforming, then Seller shall also bear the travel, lodging, and subsistence expenses of Buyer's and Engineer's representatives, and all expenses of re-inspection or retesting.
3. Buyer shall bear all expenses of inspections and tests that are not specified in the Procurement Contract Documents (other than any re-inspection or retesting resulting from a determination of non-conformity, as set forth in Paragraph 9.03); provided, however, that if as the result of any such non-specified inspections or testing the Goods are determined to be non-conforming, then Seller shall bear all expenses of such inspections and testing, and of any necessary re-inspection and retesting.
4. Seller shall provide Buyer timely written notice of the readiness of the Goods for all inspections, tests, or approvals which the Procurement Contract Documents specify are to be observed by Buyer prior to shipment.
5. Buyer will give Seller timely notice of all specified tests, inspections, and approvals of the Goods which are to be conducted at the Point of Destination, and a representative of Seller will attend such tests, inspections, and approvals.
6. If, on the basis of inspections or testing, the Goods appear to be conforming, Buyer will give Seller prompt notice thereof. If on the basis of inspections or testing, the Goods appear to be non-conforming, Buyer will give Seller prompt notice thereof and will advise Seller of the remedy Buyer elects under the provisions of Paragraph 9.03.
7. Neither payments made by Buyer to Seller prior to any tests or inspections, nor any tests or inspections, will constitute acceptance of non-conforming Goods, or prejudice Buyer's rights under the Procurement Contract.

B. *Visual Inspection on Delivery*

1. Buyer will visually inspect the Goods upon delivery solely for purposes of identifying the Goods, general verification of quantities, and observation of apparent condition. Such visual inspection will not be construed as final or as receipt of any Goods that, as a result of subsequent inspections and tests, are determined to be non-conforming.
2. If, on the basis of the visual inspection specified in Paragraph 9.02.B.1, the Goods appear to comply with the requirements of the Procurement Contract Documents

as to quantities and condition, then within 10 days of delivery Buyer shall issue to Seller Buyer's acknowledgment of the receipt of Goods.

C. *Final Inspection*

1. After all of the Goods have been incorporated into the Project, tested in accordance with such testing requirements as are specified, and are functioning as required, and Seller has performed and completed all Special Services, Buyer will make a final inspection.
2. If, on the basis of the final inspection, Buyer determines that the Goods are conforming, Buyer's notice thereof will constitute Buyer's acceptance of the Goods, subject to any limitations stated in the notice.
3. If, on the basis of the final inspection, the Goods are non-conforming, Buyer will identify the non-conformity in writing.

9.03 Non-Conforming Goods

A. If, on the basis of inspections and testing prior to delivery, the Goods are found to be non-conforming, or if at any time after Buyer has acknowledged receipt of delivery and before the expiration of the correction period described in Paragraph 9.04, Buyer determines that the Goods are non-conforming, then Seller shall promptly, without cost to Buyer and in response to written instructions from Buyer, either correct such non-conforming Goods, or, if Goods are rejected by Buyer, remove and replace the non-conforming Goods with conforming Goods, including all work required for reinstallation.

B. *Buyer's Rejection of Non-Conforming Goods*

1. If Buyer elects to reject the Goods in whole or in part, Buyer's notice to Seller will describe in sufficient detail the non-conforming aspect of the Goods. If Goods have been delivered to Buyer, Seller shall promptly, and within the Procurement Contract Times, remove and replace the rejected Goods.
2. Seller shall bear all costs, losses and damages attributable to the removal, replacement, reinspection, and retesting of the non-conforming Goods.
3. Upon rejection of the Goods, Buyer retains a security interest in the Goods to the extent of any payments made and expenses incurred in their testing and inspection.

C. *Buyer's Rejection of Non-Conforming Special Services*

1. If at any time Buyer elects to reject the Special Services in whole or in part, Buyer's notice to Seller will describe in sufficient detail the non-conforming aspect of the Special Services.
2. Seller shall promptly provide conforming Special Services acceptable to Buyer.

3. If Seller fails to provide conforming Special Services, Buyer may remove the Special Services from the scope of the Procurement Contract, and equitably reduce the Procurement Contract Price.
- D. *Remedying Non-Conforming Goods*: If Buyer elects to permit the Seller to modify the Goods to correct the non-conformance, then Seller shall promptly provide a schedule for such modifications and shall make the Goods conforming within a reasonable time.
 - E. *Buyer's Acceptance of Non-Conforming Goods*: Instead of requiring correction or removal and replacement of non-conforming Goods discovered either before or after final payment, Buyer may accept the non-conforming Goods. Seller shall bear all reasonable costs, losses, and damages attributable to Buyer's evaluation of and determination to accept such non-conforming Goods.
 - F. *Seller Obligations*: Seller shall pay all claims, costs, losses, and damages, including but not limited to all fees and charges for re-inspection, retesting and for any engineers, architects, attorneys and other professionals, and all court or arbitration or other dispute resolution costs arising out of or relating to the non-conforming Goods. Seller's obligations will include the costs of the correction or removal and replacement of the non-conforming Goods and the replacement of property of Buyer and others destroyed by the correction or removal and replacement of the non-conforming Goods, and obtaining conforming Special Services from others.
 - G. *Buyer's Rejection of Conforming Goods*: If Buyer asserts that Goods are non-conforming and such Goods are determined to be conforming, or if Buyer rejects as non-conforming Goods that are later determined to be conforming, then Seller shall be entitled to reimbursement from Buyer of costs incurred by Seller in inspecting, testing, correcting, removing, or replacing the conforming Goods, including but not limited to fees and charges of engineers, architects, attorneys and other professionals, and all court or arbitration or other dispute resolution costs associated with the incorrect assertion of non-conformance or rejection of conforming Goods.

9.04 Correction Period

- A. Seller's responsibility for correcting all non-conformities in the Goods will extend for a period of one year after the acceptance of the Goods in accordance with Paragraph 9.02.C.2.
- B. Where non-conforming Goods and Services (and damage to other work resulting therefrom) have been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Goods and Services will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- C. Seller's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph may not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 10—ENGINEER’S STATUS

10.01 Engineer’s Role Defined

- A. Engineer will be Buyer’s representative until assignment (if any) of the Procurement Contract.
- B. The duties and responsibilities and the limitations of authority of Engineer prior to assignment, if any, of the Procurement Contract, are set forth in the Procurement Contract Documents.
- C. Engineer’s responsibilities, if any, after an assignment (if any) of the Procurement Contract, are set forth in the Procurement Agreement.

10.02 Duties and Responsibilities; Authority; Limitations

- A. As set forth in Article 3, Engineer will be the initial interpreter of the Procurement Contract Documents and judge of the acceptability of the Goods, and will issue clarifications, interpretations, and decisions regarding such issues.
- B. Acting on behalf of Buyer under the provisions of Article 9, Engineer has the authority to disapprove or reject Goods that Engineer believes to be non-conforming. Engineer also has the authority to require special inspection or testing of the Goods or Special Services as provided in Paragraph 9.02, whether or not the Goods are fabricated or installed, or the Special Services are completed.
- C. Engineer may authorize minor deviations or variations in the Procurement Contract Documents by: 1) written approval of specific variations set forth in Shop Drawings when Seller has duly noted such variations as required in Paragraph 7.06.A.3, or 2) a Field Order.
- D. As set forth in Article 12, Engineer will review Claims, and render decisions on Claims.
- E. In rendering any interpretations, clarifications, reviews, decisions, disapprovals, acceptances, rejections, authorizations, and judgments, Engineer will not show partiality to Buyer or Seller. Engineer will not be liable to Buyer, Seller, or others in connection with any interpretations, clarifications, reviews, decisions, disapprovals, acceptances, rejections, authorizations, or judgments conducted or rendered by Engineer in good faith.
- F. Engineer will not supervise, direct, control, or have authority over or be responsible for the means, methods, techniques, sequences, or procedures used by Seller to perform its obligations under this Procurement Contract, or the safety precautions and programs incident thereto, or for any failure of Seller to comply with Laws and Regulations applicable to the performance of its obligations. Engineer will not be responsible for Seller’s failure to furnish the Goods in accordance with the Procurement Contract Documents.

ARTICLE 11—CHANGES

11.01 Amending and Supplementing the Procurement Contract

- A. The Procurement Contract may be amended or supplemented by a Change Order, a Change Directive, or a Field Order.
- B. If an amendment or supplement to the Procurement Contract includes a change in the Procurement Contract Price or the Procurement Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Procurement Contract that involve (1) the conformance or acceptability of the Goods, (2) the design (as set forth in the Procurement Drawings, Procurement Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Buyer and Seller may amend other terms and conditions of the Procurement Contract without the recommendation of the Engineer.

11.02 Change Orders

- A. Buyer and Seller shall execute appropriate Change Orders covering:
 1. Changes in Procurement Contract Price or Procurement Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Goods furnished in accordance with a Change Directive;
 2. Changes in Procurement Contract Price resulting from a Buyer set-off, unless Seller has duly contested such set-off;
 3. Changes in the Goods which are: (a) ordered by Buyer pursuant to Paragraph 11.05, (b) required because of Buyer's acceptance of non-conforming Goods and Services under Paragraph 9.03 or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Goods involves the design (as set forth in the Procurement Drawings, Procurement Specifications, or otherwise) or other engineering or technical matters; and
 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Change Directive; Article 12, Claims; and similar provisions.
- B. If Buyer or Seller refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 Change Directives

- A. A Change Directive will not change the Procurement Contract Price or the Procurement Contract Times but is evidence that the parties expect that the modification ordered or documented by a Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Change Directive's effect, if any, on the Procurement Contract Price and

Procurement Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Procurement Contract Documents governing adjustments, expressly including Paragraph 11.08 regarding change of Procurement Contract Price.

- B. If Buyer has issued a Change Directive and Buyer or Seller believes that an adjustment in Procurement Contract Times or Procurement Contract Price is necessary, then such party shall submit a Claim seeking such an adjustment no later than 30 days after the completion of the Goods and Services set out in the Change Directive.

11.04 Field Orders

- A. Engineer may authorize minor changes in the Goods and Services if the changes do not involve an adjustment in the Procurement Contract Price or the Procurement Contract Times and are compatible with the design concept as indicated by the Procurement Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Buyer and also on Seller, which shall perform the Goods involved promptly.
- B. If Seller believes that a Field Order justifies an adjustment in the Procurement Contract Price or Procurement Contract Times, then before proceeding with the Goods at issue, Seller shall submit a Claim as provided herein.

11.05 Buyer-Authorized Changes in the Goods

- A. Without invalidating the Procurement Contract and without notice to any surety, Buyer may, at any time or from time to time, order additions, deletions, or revisions in the Goods. Changes involving the design (as set forth in the Procurement Drawings, Procurement Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Goods may be accomplished by a Change Order, if Buyer and Seller have agreed as to the effect, if any, of the changes on Procurement Contract Times or Procurement Contract Price; or by a Change Directive. Upon receipt of any such document, Seller shall promptly proceed with the Goods involved; or, in the case of a deletion in the Goods, promptly cease activities with respect to such deletion. Added or revised Goods must be performed under the applicable conditions of the Procurement Contract Documents.

11.06 Buyer's Contingency Allowance

- A. The Buyer's Contingency Allowance, if any such is set forth in the Procurement Agreement, is for the sole use of Buyer to cover unanticipated costs.
- B. If Buyer exercises its unilateral right to use all or a portion of the Buyer's Contingency Allowance, Buyer will issue a written directive that documents the costs to which the allowance is applied, Seller's entitlement to compensation, and the consequent reduction in such allowance.

- C. Prior to final payment, the Total Price, as set forth in the Procurement Agreement, will be duly adjusted to account for any unused portion of the Buyer's Contingency Allowance.
- D. The Procurement Agreement, Article 5, addresses the impact on Buyer's Contingency Allowance of an assignment of the Procurement Contract.

11.07 Unauthorized Changes in the Goods

- A. Seller shall not be entitled to an increase in the Procurement Contract Price or an extension of the Procurement Contract Times with respect to any work performed that is not required by the Procurement Contract Documents, as amended, modified, or supplemented.

11.08 Change of Procurement Contract Price

- A. The Procurement Contract Price may only be changed by a Change Order. Any Claim for an adjustment of Procurement Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Procurement Contract Price will be determined as follows:
 - 1. For changes in Unit Price Goods, by application of the unit prices to the quantities of the items involved;
 - 2. To the extent the cost of the change is not covered by unit prices, then by a mutually agreed lump sum; or
 - 3. To the extent the cost of the change is not covered by unit prices and the parties do not reach mutual agreement to a lump sum, then on the basis of documented costs plus a Seller's fee for overhead and profit of 15%.

11.09 Change of Procurement Contract Times

- A. The Procurement Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Procurement Contract Times must comply with the provisions of Article 12.

11.10 Notification to Surety

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Goods or the provisions of the Procurement Contract (including, but not limited to, Procurement Contract Price or Procurement Contract Times), the giving of any such notice will be Seller's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12—CLAIMS, DISPUTES, AND DISPUTE RESOLUTION

12.01 Claims, Disputes, and Dispute Resolution

- A. The parties agree to endeavor to avoid or resolve Claims through direct, good faith discussions and negotiations whenever practicable. Thereafter, the parties agree that mediation is a condition precedent prior to filing any lawsuit. Mediators must be licensed engineers, contractors, attorneys, or construction managers.

ARTICLE 13—PAYMENT

13.01 Applications for Progress Payments

- A. Seller shall submit to Buyer for Engineer's review Applications for Payment filled out and signed by Seller and accompanied by such supporting documentation as is required by the Procurement Contract Documents and also as Buyer or Engineer may reasonably require.
- B. The timing and amounts of progress payments will be as stipulated in the Procurement Agreement.
- C. Any Application for Payment that is based in whole or in part on the delivery of Goods must be accompanied by a bill of sale, invoice, or other documentation reasonably satisfactory to Buyer warranting that Buyer has rightfully received good title to the Goods from Seller and that, upon payment, the Goods will be free and clear of all liens. Such documentation will include releases and waivers from all parties with viable lien rights.
- D. Buyer shall notify Seller promptly of any deficiency in the required documentation.

13.02 Review of Applications for Progress Payments

- A. *Review of Applications*
 1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Buyer, or return the Application to Seller indicating in writing Engineer's reasons for refusing to recommend payment.
 2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Buyer, based on Engineer's observations of Seller's progress, as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Goods or other obligations of Seller have progressed to the point indicated;

- b. the quality of the Goods or other obligations of Seller are generally in accordance with the Procurement Contract Documents; and
 - c. the conditions precedent to Seller being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Seller's progress.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
- a. inspections made to check the quality or the quantity of the Goods or other obligations of Seller have been exhaustive, extended to every aspect of the Goods or other obligations of Seller in progress, or involved detailed inspections of the Goods or other obligations of Seller beyond the responsibilities specifically assigned to Engineer in the Procurement Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Seller to be paid additionally by Buyer, or entitle Buyer to withhold payment to Seller.
4. Neither Engineer's review of Seller's progress for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
- a. to supervise, direct, or control the Seller's performance or furnishing of Goods or other obligations of Seller; or
 - b. for the means, methods, techniques, sequences, or procedures of construction, manufacturing, fabrication, installation, or shipping, or the safety precautions and programs incident thereto; or
 - c. for Seller's failure to comply with Laws and Regulations applicable to Seller's performance under the Procurement Contract; or
 - d. to make any examination to ascertain how or for what purposes Seller has used the money paid for the Procurement Contract Price; or
 - e. to determine that title to any of the Goods or component parts have passed to Buyer free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Buyer stated in Paragraph 13.02.A.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Buyer from loss because:
- a. the Goods and Services are non-conforming, requiring correction or replacement;
 - b. the Procurement Contract Price has been reduced by Change Orders;

- c. Buyer has been required to correct non-conforming Goods in accordance with Paragraph 9.03.C, or has accepted non-conforming Goods pursuant to Paragraph 9.03.E; or
- d. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Seller and therefore justify termination for cause under the Procurement Contract Documents.

13.03 Basis and Amount of Progress Payments

- A. The basis and amounts of the progress payments will be as provided in the Procurement Agreement, subject to the provisions of this Article 13 regarding reductions in payment.

13.04 Suspension of or Reduction in Payment

- A. Buyer may temporarily cease making progress payments, or reduce the amount of a progress payment, even though recommended for payment by Engineer, under the following circumstances:
 - 1. Buyer has reasonable grounds to conclude that Seller will not furnish the Goods or the Special Services in accordance with the Procurement Contract Documents, and
 - 2. Buyer has requested in writing assurances from Seller that the Goods will be delivered or furnished in accordance with the Procurement Contract Documents, and Seller has failed to provide adequate assurances within ten days of Buyer's written request.
 - 3. In addition to any reductions in payment (set-offs) recommended by Engineer, Buyer is entitled to impose a set-off against payment based on any of the following:
 - a. claims have been made against Buyer based on Seller's conduct in the performance or furnishing of the Goods, or has incurred costs, losses, or damages resulting from Seller's conduct in the performance or furnishing of the Goods, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. Seller has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Point of Destination or the worksite;
 - c. Seller has failed to provide and maintain required bonds or insurance;
 - d. Buyer has incurred extra charges or engineering costs related to Submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - e. the Goods are non-conforming, requiring correction or replacement;

- f. Buyer has been required to correct non-conforming Goods, in accordance with Paragraph 9.03.C, or has accepted non-conforming Goods pursuant to Paragraph 9.03.E;
 - g. the Procurement Contract Price has been reduced by Change Orders;
 - h. an event that would constitute a default by Seller and therefore justify a termination for cause has occurred;
 - i. liquidated or other damages have accrued as a result of Seller's failure to achieve Milestones, Substantial Completion, or final completion of the Goods; or
 - j. liens have been filed in connection with the Procurement Contract, except where Seller has delivered a specific bond satisfactory to Buyer to secure the satisfaction and discharge of such liens.
- B. If Buyer refuses to make payment of the full amount recommended by Engineer, Buyer will provide Seller and Engineer immediate written notice stating the reason for such action and promptly pay Seller any amount remaining after deduction of the amount withheld. Buyer shall promptly pay Seller the amount withheld when Seller corrects the reason for such action to Buyer's satisfaction.

13.05 Final Payment

- A. After Seller has corrected all non-conformities to the reasonable satisfaction of Buyer and Engineer and furnished all Special Services, Seller may submit its final Application for Payment following the procedures for progress payments.
- B. The final Application for Payment will be accompanied by all documentation called for in the Procurement Contract Documents (including but not limited to all final operations and maintenance manuals, and any special warranties), a list of all unsettled Claims, and the written consent of surety to the making of final payment.
- C. If, on the basis of final inspection and the review of the final Application for Payment and accompanying documentation, Engineer is reasonably satisfied that Seller has furnished the Goods in accordance with the Procurement Contract Documents, and that Seller has fulfilled all other obligations under the Procurement Contract Documents, then Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment subject to the provisions of Paragraph 13.02, and present the final Application for Payment to Buyer. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Buyer from loss for the reasons stated in Paragraph 13.02.
- D. If Engineer does not recommend final payment, Engineer will return the final Application for Payment to Seller, indicating the reasons for refusing to recommend final payment, in which case Seller shall make the necessary corrections and resubmit the final Application for Payment.

- E. In support of its recommendation of final payment Engineer will also give written notice to Buyer and Seller that the Goods are acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 13.06.
- F. If the final Application for Payment and accompanying documentation are appropriate as to form and substance, Buyer shall, within 30 days after receipt thereof, pay Seller the amount recommended by Engineer, less any sum Buyer is entitled to set off against Engineer's recommendation, pursuant to the provisions of Paragraph 13.04.
- G. Buyer will not make final payment, or return or release included retainage (if any) at any time, unless Seller submits written consent of the surety to such payment, return, or release.

13.06 Waiver of Claims

- A. By making final payment, Buyer waives its claim or right to liquidated damages or other damages for late completion by Seller, except as set forth in an outstanding Claim, appeal, set-off, or express reservation of rights by Buyer. Buyer reserves all other claims or rights after final payment.
- B. The acceptance of final payment by Seller will constitute a waiver by Seller of all claims and rights against Buyer other than those pending matters that have been duly submitted or appealed under the provisions of Article 12.

ARTICLE 14—CANCELLATION, SUSPENSION, AND TERMINATION

14.01 Cancellation

- A. Buyer has the right to cancel the Procurement Contract, without cause, at any time prior to delivery of the Goods by written notice. Cancellation pursuant to the terms of this paragraph will not constitute a breach of contract by Buyer. Upon cancellation:
 - 1. Buyer shall pay Seller for the direct costs incurred in producing any Goods that Seller has specially manufactured for the Project, plus a fair and reasonable amount for overhead and profit.
 - 2. For Goods that are not specially manufactured for the Project, Seller shall be entitled to a restocking charge of 10 percent of the unpaid Procurement Contract Price of such Goods.

14.02 Suspension of Performance by Buyer

- A. Buyer has the right to suspend performance of the Procurement Contract for up to 90 days, without cause, by written notice. Upon suspension under this paragraph, Seller shall be entitled to an increase in the Procurement Contract Times and Procurement Contract Price caused by the suspension, provided that performance would not have been suspended or delayed for causes attributable to Seller.

14.03 Suspension of Performance by Seller

A. Seller may suspend the furnishing of the Goods only under the following circumstance:

1. Seller has reasonable grounds to conclude that Buyer will not perform its future payment obligations under the Procurement Contract; and
2. Seller has requested in writing assurances from Buyer that future payments will be made in accordance with the Procurement Contract, and Buyer has failed to provide such assurances within ten days of Seller's written request.

14.04 Breach and Termination

A. *Buyer's Breach*

1. Seller shall have the right to terminate the Procurement Contract for cause by declaring a breach if Buyer fails to comply with any material provision of the Procurement Contract. Upon termination, Seller shall be entitled to all remedies provided by Laws and Regulations.
2. If Seller believes Buyer is in breach of its obligations under the Procurement Contract, Seller shall provide Buyer with reasonably prompt written notice setting forth in sufficient detail the reasons for declaring that it believes a breach has occurred. Buyer shall have 7 days from receipt of the written notice declaring the breach (or such longer period of time as Seller may grant in writing) within which to cure or to proceed diligently to cure such alleged breach.

B. *Seller's Breach*

1. Buyer may terminate Seller's right to perform the Procurement Contract for cause by declaring a breach should Seller fail to comply with any material provision of the Procurement Contract Documents. Upon termination, Buyer shall be entitled to all remedies provided by Laws and Regulations.
2. In the event Buyer believes Seller is in breach of its obligations under the Procurement Contract, Buyer shall provide Seller with reasonably prompt written notice setting forth in sufficient detail the reasons for declaring that it believes a breach has occurred. Seller shall have 7 days from receipt of the written notice declaring the breach (or such longer period of time as Buyer may grant in writing) within which to cure or to proceed diligently to cure such alleged breach.
3. If and to the extent that Seller has provided a performance bond under the provisions of Paragraph 5.01, the notice and cure procedures of that bond, if any, will supersede the notice and cure procedures of Paragraph 14.04.B.2.

ARTICLE 15—MISCELLANEOUS

15.01 Giving Notice

- A. Whenever any provision of the Procurement Contract requires the giving of written notice to Buyer, Seller, or Engineer, it will be deemed to have been validly given if delivered:
 - 1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
 - 2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
 - 3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

15.02 Controlling Law and Consent to Jurisdiction and Venue

- A. This Procurement Contract is to be governed by the law of the state in which the Goods are to be installed. The parties consent to the jurisdiction of the Franklin County Circuit Court.
- B. In the case of any conflict between the express terms of this Procurement Contract and the Uniform Commercial Code, as adopted in the state whose law governs, it is the intent of the parties that the express terms of this Procurement Contract will apply.

15.03 Computation of Time

- A. When any period of time is referred to in the Procurement Contract by number of 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.

15.04 Cumulative Remedies

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Procurement Contract, and the provisions of this paragraph will be as effective as if repeated specifically in the Procurement Contract in connection with each particular duty, obligation, right, and remedy to which they apply.

15.05 Survival of Obligations

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Procurement Contract, as well as all continuing

obligations indicated in the Procurement Contract, will survive final payment, completion, and acceptance of the Goods or termination or completion of the Procurement Contract or of the services of Seller.

15.06 Entire Agreement

- A. Buyer and Seller agree that this Procurement Contract is the complete and final agreement between them, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Procurement Contract may not be altered, modified, or amended except in writing signed by an authorized representative of both parties.

15.07 No Waiver

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Procurement Contract.

15.08 Headings

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

15.09 Successors and Assigns

- A. Buyer and Seller each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Procurement Contract.

QUALITY REQUIREMENTS

ARTICLE 1—SELLER'S QUALIFICATIONS

1.01 Meet the following criteria in connection with the Goods.

A. Seller

1. Experience in supply or manufacturing of equipment comparable to that required by the Contract Documents as a prime manufacturer, as a component manufacturer, or as an equipment supplier.

1.02 MANUFACTURER'S FIELD SERVICES (SPECIAL SERVICES)

A. Manufacturer's field service engineers

1. Trained field service personnel who are thoroughly familiar, in detail, with all of the Goods to be furnished, capable of directing any major or minor repair work which may be required on the Goods, and who have had experience in the repair of comparable equipment over a period of time.

B. Arrange and pay for manufacturer's field service engineers to provide Special Services at the Project site under the supervision and direction of Buyer's construction contractor. Upon written notice from the Buyer in accordance with the Agreement, provide manufacturer's field service engineer to perform Special Services as specified and confirm to Buyer and Engineer five days in advance of scheduled arrival of manufacturer's field service engineer.

C. Manufacturer's Field Service Engineer's General Responsibilities under the supervision and direction of the Buyer's construction contractor.

1. Perform services typically provided for the type of equipment purchased.
2. Assist as required with field assembly and supervise field repairs before acceptance of Goods
3. Instruct operating personnel in proper use of the Goods.
4. Field Testing
 - a. Furnish, set up and operate test equipment and facilities at no additional cost to the Buyer. Perform checks and test in accordance with the Specifications, manufacturer's recommendations and referenced testing standards.
 - b. Evaluate the test result and advise the Engineer immediately of any discrepancy between test results and test limits or the failure of any device or system under test. Include test limits for acceptability

applicable to each test on the certified test records. Record test in formation, including the evaluation of testing results, on forms approved by the Engineer.

- c. Assume responsibility for loss or damage to the Goods as a result of testing and for replacing damaged Goods including removal of damaged Goods, furnishing transportation, unloading and installation of replacement Goods.

1.03 SOURCE QUALITY CONTROL PROCEDURES

- A. Subject the Goods furnished under these Contract Documents to a complete factory-testing program.
- B. Do not initiate testing program prior to approval of key Shop Drawings by Engineer.
- C. Perform checks and tests in accordance with Specifications, manufacturer's recommendations, and referenced standards.
- D. Record and evaluate test results and advise Engineer immediately of any discrepancy between test results and test limits or the failure of any device or system under test. Include test limits for acceptability applicable to each test on the certified test records.
- E. If required by Specifications, furnish certificates from an independent testing agency which shall certify that the Goods have been examined and tested and are in conformance with the Specifications.
- F. Take samples in accordance with the Specifications as selected by Engineer or independent testing agency. Furnish and ship at no additional cost to Buyer.
- G. Factory Testing
 - 1. Give notice and coordinate with the requirements of **paragraph 9.01 of the General Conditions**. If failure to give proper written notice results in the Goods being assembled or covered before a factory inspection or test, make the Goods ready for inspection or test and reassemble or recover at no additional cost to Buyer.
 - 2. Furnish, set up and operate test equipment and facilities. If facilities for conducting required tests are unavailable to the manufacturer, conduct tests elsewhere or have them performed by an independent agency approved by Engineer.
 - 3. Assume responsibility for protection of the Goods and safety of all personnel during factory testing program.
 - 4. Grounds for rejection:
 - a. failure to withstand tests
 - b. failure to meet ratings
 - c. failure to meet applicable standards

5. In the event of failure
 - a. Submit revisions of documents requiring approval for changes required for rectification and obtain Engineer's approval before making such changes. Provide written details of any changes to be made not requiring approval. Notify Buyer and Engineer in writing before retesting.
 - b. Retest after rectification in presence of Buyer or Engineer.
 - c. Furnish new Goods which meet requirements of the Specifications if rejected Goods cannot be rectified to satisfaction of Buyer.
6. Assume responsibility for all costs associated with any failure, including, but not limited to
 - a. loss or damage to the Goods resulting from testing;
 - b. retesting;
 - c. rectification;
 - d. new Goods to replace damaged or non-rectifiable Goods;
 - e. removal, furnishing, transportation, unloading, and installation of replacement Goods; and
 - f. witness of retesting by Buyer and Engineer including travel, lodging, meals, and payroll.
- H. Protect the Goods after testing and checking to provide that subsequent testing of other equipment or systems does not disturb, damage, or otherwise interfere with functional capability of the Goods.
- I. Submit certified test reports which define tests, list results, and are signed by Seller's representative. Furnish copies of raw data collected during tests when requested by Engineer

SECTION 33 73 14
SUBSTATION POWER TRANSFORMER WITH LTC

ARTICLE 1—SUMMARY OF WORK

1.01 Design, manufacture, test, deliver, and unload power transformer at State Farm Substation.

ARTICLE 2—REFERENCES

- 2.01 ANSI B16.5, Slip-on Welding Flanges
- 2.02 ANSI C80.1, Standard Specifications for Rigid Steel Conduit
- 2.03 IEEE C57.12.10, Requirements for Transformers 230-kV and Below, 833/958 through 8,333/10,417-kVA Single-Phase and 750/862 through 60,000/ 80,000/100,000-kVA Three-Phase
- 2.04 IEEE C57.12.70, Terminal Markings and Connections for Distribution and Power Transformers
- 2.05 IEEE C57.91, Guide for Loading Mineral-Oil Immersed Power Transformers
- 2.06 IEEE C57.12.00, General Requirements for Liquid-Immersed Distribution, Power and Regulating Transformers
- 2.07 IEEE C57.12.11, Guide for Installation of Oil-Immersed Transformers (10 MVA and Larger, and 69-kV to 287-kV Ratings)
- 2.08 IEEE C57.12.80, Terminology for Power and Distribution Transformers
- 2.09 IEEE C57.12.90, Test Code for Liquid-Immersed Distribution, Power and Regulating Transformers and Guide for Short-Circuit Testing of Distribution and Power Transformers
- 2.10 IEEE C57.13, Standard Requirements for Instrument Transformers
- 2.11 IEEE C57.13.1, Guide for Field Testing of Relaying Current Transformers
- 2.12 IEEE C57.13.3, Guide for the Grounding of Instrument Transformer Secondary Circuits and Cases
- 2.13 IEEE C57.19.00, Standard General Requirements and Test Procedures for Outdoor Power Apparatus Bushings
- 2.14 IEEE C57.19.01, Standard Performance Characteristics and Dimensions for Outdoor Apparatus Bushings
- 2.15 IEEE C57.19.100, Guide for Application of Power Apparatus Bushings
- 2.16 IEEE C57.93, Guide for Installation of Liquid-Immersed Power Transformers
- 2.17 IEEE C57.98, Guide for Transformer Impulse Tests (Appendix to ANSI/IEEE C57.12.90)
- 2.18 IEEE C57.120, Loss Evaluation Guide for Power Transformers and Reactors
- 2.19 IEEE C62.11, Standard for Metal-Oxide Surge Arresters for Alternating Current Systems
- 2.20 IEEE C62.33, Guide for the Application of Metal-Oxide Surge Arresters for Alternating Current Systems
- 2.21 IEEE Std 693, IEEE Recommended Practice for Seismic Design of Substations

- 2.22 ASCE 7, Minimum Design Loads for Buildings and other Structures
- 2.23 ASTM B3-74, Specification for Soft or Annealed Copper Wire
- 2.24 ASTM B48-68, Specification for Soft Rectangular and Square Bare Copper Wire for Electrical Conductors
- 2.25 ASTM B187-83, Specification for Copper Bus Bar, Rod, and Shapes
- 2.26 ASTM D-3487, Mineral Insulating Oil Used in Electrical Apparatus
- 2.27 NEMA ICS-1, Industrial Control and Systems: General Requirements
- 2.28 NEMA TR-1, Transformer, Regulators and Reactors
- 2.29 NEMA WC5, Thermoplastic insulated Wire and Cable for the Transmission and Distribution of Electrical Energy
- 2.30 NEMA WC7, Cross-linked Thermosetting-Polyethylene-Insulated Wire and Cable for the Transmission and Distribution of Electrical Energy
- 2.31 NEMA WC8, Ethylene-Propylene-Rubber-Insulated Wire and Cable for the Transmission and Distribution of Electrical Energy
- 2.32 NFPA 70, National Electrical Code (NEC), Current Rating of Control Wiring

ARTICLE 3—DESIGN AND PERFORMANCE REQUIREMENTS

3.01 Design Requirements

- A. Furnish oil-immersed, 3-phase power transformers applied as distribution substation step-down and step-up transformers.
- B. Design and manufacture: Standard design with components by same Manufacturer.
- C. Design equipment, accessories, and supporting structures to meet requirements of project site conditions.
- D. Design transformer to operate in parallel under normal conditions with second transformer of like rating.

3.02 Performance Requirements

- A. Loss Evaluation: In accordance with the Procurement Agreement and General Conditions
- B. Audible Sound Level: Average A-weighted, measured in accordance with ANSI C57.12.90:
 - 1. 15 MVA: 70 db
 - 2. 20 MVA: 72 db
 - 3. 25 MVA: 73 db
- C. Overload Capabilities
 - 1. In accordance with ANSI/IEEE C57.91

- a. Design bushings, connectors, leads, and all auxiliary equipment for continuous full load duty and for emergency service at 1.4 times the transformer full load current at the ONAF, ONAF rating for a period of eight hours.

D. Seismic Performance

1. The transformer shall be seismically qualified to moderate seismic qualification.
2. Transformer shall be designed so there will be neither structural damage nor loss of function immediately after an earthquake when subject to design seismic loads occurring simultaneously with dead and normal operation loads.
3. The following methods shall be used for the qualification:
 - a. The transformer (transformer tank, core, coils, anchorage, and other components) except the bushings and surge arresters shall be qualified by static analysis.
 - b. The high side bushings shall be qualified by time history shake table tests. The low side bushings are inherently acceptable.
 - c. The high side surge arresters:
 - 1) shall maintain correct operational state during seismic event
 - 2) shall be qualified by time history shake table tests
 - d. The low side surge arresters are inherently acceptable.
4. Static Analysis
 - a. Static analysis calculations shall include verification of the load path from the core, coils, tank and base to the anchorage for all three orthogonal axes. All components of the load path shall have sufficient rigidity to restrain the core and coil and coil from shifting. Sketches shall be provided with the analysis that clearly shows a complete load path to the anchorage. Load path parts and member shall be clearly labeled and dimensioned. Section properties, calculated stresses and allowables of all load path parts and members shall be provided.
 - b. Appendages, such as radiators and control cabinets, shall be qualified by static analysis, where acceleration is multiplied by 3.
 - c. Static analysis shall be per IEEE 693, A.1.3.1 Static analysis.
5. Time History Test shall be per IEEE 693, A.1.2.2 Time history shake table test, specifically A.1.2.5 composite insulator and bushing test.
6. Acceptance criteria shall be per IEEE 693, A.2 and D.5, Acceptance criteria.
7. Anchorage welds: All transformers shall be designed to be field welded to embedded plates or beams. The outline drawings shall include locations, size and length of field welds.
8. Report. For components qualified by testing, the report shall meet the requirements of IEEE 693, A.5, Static test qualification report. For components

qualified by analysis, the report shall meet the requirements of IEEE 693, A.6, Analysis report.

9. A seismic identification plate shall be attached to transformer as specified in IEEE 693, A.8, Seismic qualification identification plate.

ARTICLE 4—PROJECT/SITE CONDITIONS

- 4.01 Altitude: Less than 3,300 feet above mean sea level
- 4.02 Ambient temperature: -20° Fahrenheit to $+110^{\circ}$ Fahrenheit
- 4.03 Seismic: loading per ASCE 7.05, $S_s = 1.5$ g, Importance Factor 1.5, site class D
- 4.04 Keraunic level: 60 thunderstorm days per year
- 4.05 Extreme wind loading per ASCE 7.05, basic wind speed of 90 mph, importance factor 1.15, exposure category C
- 4.06 Combined ice and wind loading district: NESC Medium
- 4.07 Site Address: Frankfort Plant Board State Farm Substation located near 1215 Glenns Creek Rd, Frankfort, KY 40601, Frankfort, KY 40601.

ARTICLE 5—SUBMITTALS

- 5.01 Submittals shall be in accordance with paragraph 7.06 of the General Conditions.
- 5.02 Schedule submittals to expedite furnishing the Goods and coordinate submission of related items. Deliver each submittal to Engineer with copy to Buyer at following addresses:

- A. Address correspondence to Engineer as follows:

Power Centric Solutions, LLC

PO Box 247 Gallatin, TN 37066

Attention: Adam Stevenson, Project Manager

Phone: (615) 218-5813 Email: astevenson@pwrcentric.com

- B. Address correspondence to Buyer as follows:

Frankfort Plant Board

305 Hickory Drive

Frankfort, KY 40601

Attention: Eli Adamson

5.03 Submit the following quantities:

- A. Shop drawings - One electronic copy (in PDF format) and two 11x17 paper copies including pre-printed manufacturers' data, brochures, suppliers' information, testing reports, certifications, and manufacturer's installation and testing instructions.
- B. Catalogs and cut sheets - One electronic copy (in PDF format) and two paper copies including pre-printed manufacturers' data, brochures, suppliers' information, testing reports, certifications, and manufacturer's installation and testing instructions.
- C. Operation, maintenance, and instruction manuals - One electronic copy (in PDF format) and two paper copies.
- D. Submit the following:
 - 1. Product data: Catalogs and cut sheets
 - 2. Shop Drawings:
 - a. Outline showing general arrangement, legend, plan, elevation, base details, weights, dimensions, and gallons of oil with location of center of gravity with and without oil on outline
 - b. Connection, alarm, control, current, voltage, and auxiliary schematic diagrams
 - c. Internal wiring and connection diagrams (tabular format is not acceptable)
 - d. Bushing current transformers:
 - 1) Excitation and ratio correction factor curves for each secondary ratio
 - 2) Resistance of current transformer secondary and connecting leads for each ratio
 - 3) Actual current ratio and turn ratio for each tap
 - 4) Mechanical and thermal short time (one-second) rating
 - e. Nameplate data, including all current transformer taps. Resubmit nameplate drawing after factory tests with all test data completed
 - f. Physical drawings showing equipment arrangement, terminal block locations, cable entrance, and panel layout
 - g. Terminal block connections
 - h. Bushing lifting accessories and ground pad outlines
 - i. Notes and symbols
 - j. Bill of material
 - k. Detailed description of procedure for vacuum filling of transformers with insulating oil
 - 3. Quality Assurance/Control Submittals
 - a. Design Data:

- 1) Certified seismic qualification tests and analyses, in accordance with IEEE Std. 693.
 - 2) Certified short circuit withstand test results on units of comparable rating and design.
- b. Test Reports
 - c. Manufacturer's instructions
 - d. Manufacturer's field reports

ARTICLE 6—DELIVERY, STORAGE, AND HANDLING

- 6.01 Attach impact recorder to the transformers during transportation periods. Unseal impact recorder only in presence of Buyer or Engineer.
- 6.02 Deliver transformer oil to Buyer's site including all necessary equipment for the oil filling operation.

ARTICLE 7—MAINTENANCE MATERIALS

- 7.01 Make interchangeable with, and same material and workmanship as, corresponding original parts.
- 7.02 Furnish and deliver with units to project storage facilities.
- 7.03 Required Materials or Parts:
 - A. Touch-up paint: ANSI No. 70 (Light Gray), three 1-quart containers
- 7.04 Other parts recommended: at Buyer's option

ARTICLE 8—WARRANTY

- 8.01 Provide five-year manufacturer's warranty on Goods and Services provided.

ARTICLE 9—POWER TRANSFORMER

- 9.01 Principal ratings and electrical characteristics:
 - A. Overload capabilities: In accordance with ANSI C57.91 and the requirements specified in Article 3 of this specification.
 1. Continuous Ratings:
 - a. ONAN, 55° Celsius rise: 15 MVA
 - b. ONAF, 55° Celsius rise, first stage forced cooling: 20 MVA
 - c. ONAF, 55° Celsius rise, second stage forced cooling: 25 MVA
 - d. ONAF, 65° Celsius rise, second stage forced cooling: 28 MVA
 2. Number of phases: 3
 3. Frequency: 60 Hz

4. Cooling class: ONAN, ONAF, ONAF
5. Primary to secondary impedance: ANSI Standard
6. Primary winding:
 - a. Rated voltage: 69-kV
 - b. Connection: Delta
 - c. No-load tap changer: ± 5 -percent in four 2.5-percent steps
7. Secondary winding:
 - a. Rated voltage: 13.8-kV
 - b. Connection: Wye with neutral brought out
8. Basic Impulse Level (BIL)
 - a. H winding: 350-kV
 - b. X winding: 110-kV
9. Maximum Temperature Rise
 - a. By resistance: 65° Celsius
 - b. By hot spot: 80° Celsius
10. Duty: Continuous
11. Angular phase displacement: Per ANSI C57.12.00, Primary to Secondary: (30 degrees with the low voltage lagging the high voltage)

ARTICLE 10—COMPONENTS

10.01 Transformer Tank:

- A. Construction: Welded steel plate, liquid tight, with bolted and gasketed manhole on top of tank, mounted on steel skid base, and suitable for skidding in any direction.
- B. Provide with jacking lugs and pulling eyes for lifting or moving along either axis when completely assembled and oil filled.
- C. Mount a fall control ring on the top of each transformer tank to accommodate worker safety device attachment. Form 4-inch rings from $\frac{1}{2}$ inch diameter rod. Locate so that a worker wearing a 6.5-foot safety tether can work anywhere on top of the transformer, including the bushings, while hooked into the fall control ring.
- D. Provide with two copper faced ground pads at diagonal corners near base, with two bolt terminal connectors.
- E. Mount separate blocks on both corners of the tank on the high voltage and low voltage sides, in a vertical line spaced no more than 3' apart to support the ground cable loop when connected to the high voltage surge arresters.
- F. Maintain positive pressure continually to prevent ingress of moisture during shipping.

10.02 Core:

- A. Material: Highest quality, non-aging, cold rolled, grain oriented, stress free, thin silicon steel laminations, with high permeability and low hysteresis loss.
- B. Properly anneal with smooth surfaces at edges.
- C. Provide each sheet with an insulated surface treatment impervious to hot transformer oil.
- D. Carefully assemble, rigidly clamp, and block to prevent deteriorating vibrations, interference with oil circulation, objectionable noise conditions, and distortions due to short circuit and shipment.
- E. Securely ground to the tank at the top of each transformer in a location accessible from manhole so grounding device can be unbolted without lowering transformer oil level or losing nitrogen pressure.
- F. Provide with means for properly lifting and moving core assembly when untanked.

10.03 Windings:

- A. Material: Electrolytic copper with high conductivity characteristics, conforming to ASTM B3-74 or B48-68.
- B. Provide with thermally upgraded paper insulation system of high dielectric and mechanical strength, arranged to permit free circulation of oil.
- C. Make up, shape, and brace to provide for expansion and contraction due to temperature changes and to avoid abrasion of insulation.
- D. Adequately clamp and brace to prevent distortion or increase in noise above specified limits due to aging in continuous service at rated operating conditions.
- E. Circular helical. Rectangular windings will not be acceptable.

10.04 Cooling Equipment

- A. Type: Two-stage ONAF/ONAF, conforming to ratings previously specified.
- B. Radiators:
 - 1. Nominal dimensions and interchangeable
 - 2. Welded construction, with flanged connections and provisions for draining and venting
 - 3. Provided with lifting eyes or lugs
 - 4. Furnished with oil tight valves at all connections to main tank that will allow removal of radiators without taking transformers out of service
 - 5. Locate on sidewall of Segment 3
- C. Fans:
 - 1. Power supply volts: 240 VAC, single-phase, 60 Hz.

2. Provide magnetic motor starter, and protective devices and manual/automatic selector switch.
 3. Provide individual thermal protection for each fan motor.
 4. Provide individual disconnecting means for each fan motor in the form of a weatherproof, locking plug for each.
 5. Fan impellers one-piece construction
 6. Fan meets OSHA safety requirements
 7. Automatic and manual switch
- D. Controls:
1. Automatically controlled by the winding temperature device, provided with air circuit breaker of suitable rating, automatic starting switches, auxiliary relays, alarm contacts, select switch for AUTOMATIC/OFF/MANUAL operation and any other necessary devices.
 2. Include provisions for SCADA control and status indication of all stages of cooling equipment.
 3. Mounted in main transformer control cabinet
 4. Designed so either stage of cooling equipment can be selected for operation with first stage forced cooling.
- E. Transformer Oil:
1. Pure mineral oil obtained by fractional distillation, unmixed with other substances, meeting the requirements of ASTM D3487
 2. Prepared and refined especially for transformer use; free of moisture, acid, alkali, PCBs, and injurious sulfur compounds
 3. Free of deposit formation under normal operating temperatures
 4. Dielectric strength: Not less than 26,000 volts between 1" discs spaced 1/10" apart
 5. Oil shall be tested for corrosive sulfur according to ASTM D1275 extended test
- F. Oil Preservation System: Positive pressure nitrogen:
1. Include adequate amount of bottled nitrogen to place transformers in service.
 2. Nitrogen control equipment: Mounted in easily accessible, weatherproof, lockable enclosure with adequate space for nitrogen bottles mounted on the transformer tank. Enclosure shall include stainless steel, 3-point latching system.
 3. Nitrogen leads: Soft drawn copper tubing
 4. Provide a certificate of ownership with nitrogen tank.
- G. Bushings:
1. Bushing studs: Threaded, stud type, silver plated
 2. Porcelain: Manufactured by the wet process

3. Glazing: Free of imperfections
 4. Color: ANSI No. 70, Light Gray
 5. High Voltage Bushings:
 - a. Type: Interchangeable
 - b. BIL rating: 350-kV
 - c. Creepage distance: Standard
 - d. Mounting: On tank cover Segment 3
 - e. Tap: Capacitive, for bushing potential device
 - f. Connectors: Stud to flat, tinned NEMA 4-hole pad
 - g. Material: Porcelain manufactured by Wet Process
 6. Low Voltage Bushings:
 - a. BIL rating: 110-kV
 - b. Creepage distance: Standard
 - c. Mounting: On tank cover Segment 1
 - d. Connectors: Stud to flat, tinned NEMA 4-hole pad
 7. Neutral Bushings:
 - a. BIL rating: 110-kV
 - b. Creepage distance: Standard
 - c. Mounting: On tank cover Segment 1
 - d. Connectors: Stud to flat, tinned NEMA 4-hole pad
- H. Bushing Current Transformers (BCT):
1. Windings: Fully distributed
 2. Leads:
 - a. Terminate at 6-point short-circuiting type terminal blocks in control housing.
 - b. Terminate each BCT on separate block.
 - c. Mark leads with permanent sleeve markers to indicate taps and polarity.
 - d. Use No. 10 AWG stranded copper with oil proof insulation.
 3. Relaying Current Transformers:
 - a. Type: Multi-ratio, 5 lead, bushing type
 - b. Accuracy Class: C400
 - c. Rating Factor: 2
 - d. Number and Ratio:
 - 1) Two 600:5 on each high voltage bushing

- 2) Two 1200:5 on each low voltage bushing
- 3) Two 600:5 on neutral bushing

I. No-Load Tap Changer (NLTC):

1. Provide for external operation when transformers are de-energized.
2. Provide with indicating pointer, dial, and means for locking in any position.
3. Mount on sidewall approximately 5' above the base of the transformer.
4. Provide for capability of withstanding full transformer short circuit current without damage.
5. Configure to prevent leaving a winding open or short circuited when operating handle is in locked position.
6. Provide with two 2½-percent taps above and two 2½-percent taps below rated voltage.

J. Automatic Load Tap Changer (LTC)

1. Location: Low voltage winding
2. Type: Reinhausen Type RMVII complete with tank and motor operator. No substitution allowed.
3. Regulating range: 10-percent above to 10-percent below rated voltage in thirty-two ⅝-percent steps, with a total of 33 positions.
4. Rating: Deliver full-kVA capacity for normal and emergency ratings at all LTC positions and at all combinations of LTC and NLTC positions.
5. Tap Selector Switch and Mechanism
 - a. Mount in oil-filled compartment separate from main transformer tank.
 - b. Mount on sidewall of Segment 1.
 - c. Maintain physical isolation so it is not necessary to drain oil or break seal of main transformer tank when servicing LTC.
 - d. Type: Vacuum
 - e. Tap Step Changes:
 - 1) Smooth transition with no low voltage circuit interruption due to contact bounce or failure to maintain contact bypass bridging.
 - 2) Phase-to-phase and phase-to-neutral transient voltage dip (flicker) during any step transition: Maximum 2-percent of nominal voltage.
 - f. Replacement Ratings:
 - 1) Contacts: Capable of 500,000 operations without contact replacement.
 - 2) Mechanical Rating: Capable of 1,000,000 operations.
 - g. Tank Accessories:

- 1) Hinged maintenance door with oil-resistant gasket
 - 2) Drain, filter, and sampling valves
 - 3) Magnetic liquid level indicator with low level alarm contacts at 125 VDC
 - 4) Breather
 - 5) Manhole for inspection of contacts without lowering oil level
 - h. Tap switch, motor drive mechanism, control devices, position indicator, and operation counter, in accordance with ANSI C57.12.10.
6. Controls:
- a. Type: Automatic, microprocessor-based, Beckwith model M-2001-D-6L4S20C0S00 with Beckwith Adaptor Panel Option and DNP3.0 communications protocol.
 - b. Features:
 - 1) Controls for parallel operation by the circulating current method
 - 2) All controls to facilitate independent or parallel operation with an identical unit purchased under this contract, including parallel balancing module, and AC current relay
 - 3) USB interface on front of control and 10/100 base-T Ethernet and fiber optic serial interface on back of control, DNP 3.0 Protocol
 - 4) Include SEL-2725 (2725#2KJK)) ethernet switch in transformer cabinet,
 - c. Equipment:
 - 1) Voltage reduction control switch with three positions, off, step one, and step two
 - 2) Provisions for testing control mechanism
 - 3) One Raise-Lower control switch
 - 4) One Auto-Manual switch
 - 5) Provision for manual operation
 - 6) Overcurrent relay for inhibit of LTC
 - 7) All indication lamps shall be LED type
 - 8) Current transformer for line drop compensation
 - 9) Position indicator with upper and lower drag hands to indicate maximum travel and electrical reset button mounted in the control cabinet.
 - 10) Limit switches and stops to prevent travel beyond extreme tap position
 - 11) Crank or handwheel for manual operation during maintenance
 - 12) Position indication to LTC control using Beckwith Electric M-2948 Tap Position Sensor and M-2025D Current Loop Interface

- 13) Positioning devices and OFF-position contacts
 - 14) Operations counter
 - 15) Form B dry contacts wired to local annunciator for lower limit, upper limit, and hung-up alarms
 - 16) Control circuit protective devices
 - 17) OFF-position contact: Wired to indicating light in main cabinet
 - d. Mounting: In easily accessible control cabinet
 - e. Wiring: Extended to main terminal cabinet and connected to terminal blocks. Wire power supply switch, light and convenience outlet, space heater, and switch to main terminal cabinet.
 - f. All control switches shall be located near LTC control device.
- K. Surge Arresters:
- 1. Polymer, station class, metal-oxide type, Ohio Brass Dynavar PVN or approved equal
 - 2. Ratings:
 - a. Primary voltage: 54-kV duty cycle (42-kV MCOV)
 - b. Secondary voltage: 10-kV duty cycle (8.4-kV MCOV)
 - 3. Mount 3 arresters on the high voltage side of the tank and 3 arresters on the low voltage side of the tank.
- L. Wire and Terminal Blocks:
- 1. Wiring:
 - a. 600 volt insulated copper, Class B stranding, 90° Celsius rating
 - b. No. 12 AWG minimum for current transformer and branch circuits
 - c. No. 14 AWG minimum for control
 - d. All external wiring shall be run in rigid galvanized steel conduits painted to match the transformer tank.
 - e. Terminated with crimp type, ring tongue connectors with non-insulated short shanks; maximum of two terminations per terminal point
 - f. Connected to separate power terminal blocks for power circuits
 - g. Clearly identified with permanent sleeve markers at all terminations
 - h. All wiring originating within transformer shall be color-coded
 - i. Internal device and terminal block identification shall be based on the functional device code and not the physical location of the device. Both may be used, but functional identification must be present.
 - 2. Terminal Blocks:

- a. Provided with bases and barriers molded integrally with brass inserts
- b. Rated at 600 volts
- c. Able to accommodate up to two No. 10 AWG wires per terminal
- d. Provided with marking strips
- e. Installed in sufficient quantity to provide 20-percent minimum spares for each type of block
- f. Short circuiting type for current transformers
- g. Marked to identify source and function
- h. Manufacturer: General Electric Type EB25 and EB27

M. Control Cabinet:

- 1. Provide weatherproof cabinet.
- 2. Mount on sidewall of Segment 1.
- 3. Fasten securely to each transformer tank. Stand control cabinet 18" off tank.
- 4. Doors: Vertically hinged with locking provisions, stainless steel, single-handle, 3-point latching system
- 5. All external hardware and fasteners shall be stainless steel
- 6. Conduit entrance: Removable, gasketed bottom plate, field drilled
- 7. Mount terminal blocks and equipment at least 6" above bottom plate.
- 8. Provide space heaters, partly or totally controlled by thermostat.
- 9. Provide a copper ground bus inside the cabinet suitable for connecting a 2/0 copper cable to external ground. Ground bus shall be accessible from the front door without disassembly of components. All connections to ground shall be through the ground bus.

N. Nitrogen Cabinet:

- 1. Provide weatherproof cabinet.
- 2. Fasten securely to each transformer tank
- 3. Doors: Vertically hinged with locking provisions and single-handle, 3-point latching system
- 4. All external hardware and fasteners shall be stainless steel.

O. Auxiliary and Control Power:

- 1. 120/240 VAC single-phase for fans, space heaters, and other accessories
- 2. 125 VDC for control functions

ARTICLE 11—ACCESSORIES

11.01 Provide power transformers with the following accessories:

- A. Sudden pressure relay device 63 Qualitrol model 900 wired to a Qualitrol model 909 seal-in relay (Device 63x): 125 VDC control voltage, with separate, isolated alarm and trip contacts. All items needed for testing the relay mechanism shall be provided with the unit. Provide two (2) alarm contacts and two (2) trip contacts.
- B. Oil level indicator: Magnetic type with low level nonadjustable two (2) 125 VDC alarm contacts
- C. Oil temperature indicator: Dial type with adjustable, separate, two (2) 125 VDC isolated alarm and trip contacts
- D. Winding temperature indicator: Four sequential operating contacts, operating from a current transformer in one phase of the low voltage winding (two contacts for the operation of cooling equipment, two (2) contacts for alarm, and two (2) contacts for tripping). Indicator shall be located not less than 5' or more than 6' above the base of the transformer and shall not be obstructed.
- E. Cover-mounted, automatic reseal, shielded pressure relief valve device with spring loaded visual signal flag and two (2) 125 VDC alarm contacts, Qualitrol XPRD. Pipe discharge to level of transformer base
- F. High inert gas-pressure and vacuum gauge with two (2) alarm contacts
- G. Low inert gas pressure gauge: Two (2) alarm contacts for nitrogen supply cylinder with contacts set to activate when cylinder pressure drops below 200 psi
- H. Furnish a 120 volt, 1635 Lumen LED light fixture with SPST switch and a 120 volt, 20 ampere single phase duplex GFI type receptacle, complete with protective circuit breaker.
- I. Gas sampling valve
- J. Other standard accessories: Per ANSI C57.12.10.
- K. Transformer alarm monitor. SEL Model 241421A3A3A2X2X1130
- L. All indicators shall be located not less than 5' or more than 6' above the base of the transformer and shall not be obstructed. Liquid temperature and winding temperature indicators shall be mounted within 1' of each other.

ARTICLE 12—FINISHES

- 12.01 All external hardware shall be stainless steel.
- 12.02 Clean and treat tank interior and exterior surfaces according to manufacturer's standards.
- 12.03 Apply one prime coat to the exterior surface.
- 12.04 Apply two finish coats, ANSI Color No. 70, Light Gray, to the exterior surface. Minimum paint thickness: 6 mils.
- 12.05 Apply non-skid coating to top of transformer tank.
- 12.06 Paint interior of cabinets white.
- 12.07 Paint interior of transformer tank white.

ARTICLE 13—SOURCE QUALITY CONTROL

- 13.01 Assemble, adjust, and complete manufacturer's standard production tests in accordance with Table 14 of ANSI C57.12.00, C57.12.90; NEMA TR-1 and the following:
 - A. Impulse Test:
 - 1. Perform on terminals of high voltage winding as specified ANSI C57.12.90, Items 10.3. and 10.5. (Front of wave test not required.)
 - 2. Use voltage oscillograms and ground current oscillograms taken simultaneously as specified in ANSI C57.12.90, Items 10.3.1.6 and 10.3.4.1, respectively, for one method of detecting insulation failure. The height of each individual trace at maximum deflection is 30 millimeters minimum.
 - 3. Do not perform additional impulse tests after the tests have been accepted.
 - 4. After impulse tests are completed, use the average absolute voltage voltmeter method to measure excitation loss.
 - B. Winding Impedance:
 - 1. Provide impedance test results for positive and zero sequence values of Z_{ps} .
 - C. Induced Voltage Test:
 - 1. Use test equipment and general method in accordance with IEEE C57.12.90, Item 10.8.
 - 2. Test at full induced-test voltage level.
 - 3. Apparent charge: Maximum 300 picocoulombs (pc), Maximum charge for 1 hour: 100 pc
 - 4. Include results of corona test and measured apparent charge level in certified test report.
 - D. Insulation Resistance Test
 - E. Insulation Power Factor Test:

1. Use test procedure in accordance with ANSI C57.12.90, Item 10.10.
 2. Include results of insulation power factor test in certified test report.
- F. Short-circuit capability: Warrant that the transformers will meet requirements of ANSI C57.12.00.
- G. Pressure test tank with nitrogen tubing installed
- H. Noise tests for each stage of cooling
- I. Temperature rise test for ONAN and maximum load, test shall be conducted on both units.
- J. Dielectric tests on control devices and wiring per NEMA ICS-1.
- K. Current Transformer:
1. Low frequency, one minute 2,500 volts to ground dielectric test on secondaries.
 2. Proper nameplate and polarity markings check.
 3. Polarity and ammeter ratio check after installation of bushing.
- L. Core ground megger test

ARTICLE 14—MANUFACTURER’S SERVICE ENGINEER (SPECIAL SERVICES)

- 14.01 Visually inspect Goods upon delivery. Prior to the Buyer accepting delivery, provide a written report to the Buyer and the Engineer itemizing any damage incurred.
- 14.02 Unseal impact recorders and inspect impact recorder tapes in the presence of Buyer and Engineer immediately upon delivery. Ensure that impact recorders are reinstalled prior to placement on foundations.
- 14.03 Perform the following under the direction of Buyer’s construction contractor:
- A. Perform unloading and re-inspect each impact recorder readings after placement onto foundations.
 - B. Perform transformer field assembly under direction of Buyer’s construction contractor. Record shipping gas pressure prior to assembly.
 - C. Thoroughly inspect all visible assembled parts and connections.
 - D. Check all gages and relays to ensure proper working condition.
 - E. Check and operate all cooling equipment.
 - F. Thoroughly search for leaks.
 - G. Test oil prior to filling and prior to energizing to determine if the dielectric strength is acceptable. Filter the oil, if necessary. Testing shall be done by an Independent Testing Laboratory. Results shall be immediately sent to Buyer and Engineer for approval.
 - H. Visually inspect and operate tap changers to verify satisfactory operation.
 - I. Test all wiring and components for continuity and megger for insulation resistance.

- J. Verify operation of heater, auxiliary, convenience outlet, and light circuits.
- K. Verify operation of LTC, LTC controls, and position indicators, including automatic tap changing with Seller-supplied input voltage.
- L. Provide equipment for and perform vacuum filling of transformer with insulating oil in accordance with ANSI C57.12.11.
- M. Disconnect the main core ground and megger the core insulation resistance. Reconnect the ground upon completion of the test.
- N. Perform manufacturer's standard and optional field tests and field test in accordance with ANSI C57 12.11.8-1980, and submit written results of tests performed, including the following:
 - 1. Insulation power factor test on all windings and bushings.
 - 2. Turn ratio test.
 - 3. Insulation and winding resistance test.
 - 4. Dielectric absorption test.
 - 5. Megger, Ratio, and Polarity test all CT's.
 - 6. SFRA.
 - 7. Additional tests as determined by the manufacturer.

**PROCUREMENT CONTRACT
NO. 1125-07-P1**

**69-13.8 kV SUBSTATION POWER
TRANSFORMERS WITH LTC'S
STATE FARM
SUBSTATION**

**Prepared and issued by:
Frankfort Plant Board
Frankfort, KY
(Buyer)**

**In conjunction with:
Power Centric Solutions, LLC
Gallatin, TN
(Engineer)**

December 2023

SEALS PAGE

The engineering material and data contained in these Contract Documents were prepared under the supervision and direction of the undersigned, whose seal(s) as a registered professional engineer(s) is (are) affixed below.

Prepared By:

Power Centric Solutions, LLC



Adam Stevenson
Principal & Vice President

December 4, 2023

Date Issued

Quality Assurance Review



Keith Deaton, P.E.
Senior Vice President

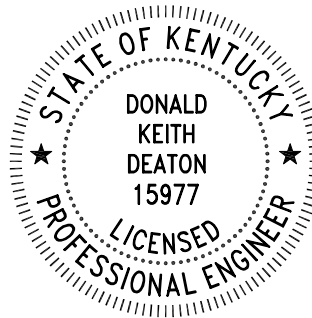


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INVITATION TO BID

Frankfort Plant Board (Buyer) invites Bidders to submit bids for one 69-13.8-kV 15/20/25//28 MVA substation power transformers with LTC (Goods). The contract generally consists of furnishing, and delivery to Frankfort Plant Board's State Farm Substation approximately located at 1215 Glenss Creek Rd, Frankfort, KY 40601, Frankfort, KY 40601, including unloading, assembly and testing the Goods with provision for Special Services by a manufacturer's field service engineer.

The Goods are requested for delivery by January 2025, or best delivery available.

The Special Services shall be completed within 10 calendar days after Buyer's written notice following acceptance of delivery of the Goods.

Bidders shall submit one original and one duplicate of Bid per the Instructions to Bidders.

Buyer will receive sealed bids until 1:30 pm local time on December 28, 2023, at the office of the Buyer:

Frankfort Plant Board
305 Hickory Drive
Frankfort, KY 40601
Attention: Eli Adamson

Bids will then be opened publicly and read aloud. Bids received after the time of announced opening will not be accepted.

A set of electronic Bid Documents may be obtained from astevenson@pwrcentric.com.

Buyer reserves the right to reject any or all Bids, including without limitation the rights to reject any or all nonconforming, non-responsive, unbalanced or conditional Bids; and to reject the Bid of any Bidder if Buyer believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established. Buyer also reserves the right to waive all informalities not involving price, time, or other material changes to technical or contractual requirements.

INSTRUCTIONS TO BIDDERS

ARTICLE 1—DEFINED TERMS

1.01 Terms used in these Instructions to Bidders will have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below.

A. *None*

ARTICLE 2—PROCUREMENT BIDDING DOCUMENTS

2.01 Bidder may obtain complete sets of the Procurement Bidding Documents, in the number and for the purchase price, if any, stated in the advertisement or invitation to bid. Bidders must obtain a complete set of the Procurement Contract Documents as listed in the Procurement Agreement.

2.02 Bidder must use a complete set of the Procurement Bidding Documents in preparing the Bid; neither Buyer nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Procurement Bidding Documents.

2.03 Buyer and Engineer make copies of Procurement Bidding Documents available on the above terms only for obtaining Bids for furnishing Goods, and do not authorize or confer a license for any other use.

ARTICLE 3—QUALIFICATIONS OF BIDDERS

3.01 Buyer may at any time conduct such investigations as Buyer deems necessary to establish the responsibility, qualifications, and financial ability of Bidder, and after the opening of Bids may require a Bidder to submit documentation of its qualifications, including but not limited to financial data and documentation of previous experience providing goods comparable to the specified Goods.

3.02 Bidder is to carefully review those portions of the Bid Form requiring Bidder's representations and certifications.

3.03 Bidder shall submit a qualifications statement with the Bid, including financial data and documentation of previous experience providing comparable goods, to demonstrate Bidder's qualifications to furnish the specified Goods.

ARTICLE 4—SITE VISIT; PRE-BID CONFERENCE

- 4.01 Upon request, Buyer will provide Bidder access to the Point of Destination to conduct such examinations and observations as Bidder deems necessary for submission of a Bid.

ARTICLE 5—INTERPRETATIONS AND ADDENDA

- 5.01 All questions about the meaning or intent of the Procurement Bidding Documents are to be submitted to Engineer in writing at:
astevenson@pwercentric.com
- 5.02 Interpretations or clarifications considered necessary by Engineer in response to such written questions will be issued by Addenda mailed or delivered to all parties recorded as having received the Procurement Bidding Documents. Questions received less than 10 days prior to the date for opening of Bids will not be answered. Only answers in the Addenda will be binding. Oral statements, interpretations, and clarifications may not be relied upon in the preparation of a Bid and will not be binding or legally effective.
- 5.03 Addenda may be issued to clarify, correct, or change the Procurement Bidding Documents as deemed advisable by Buyer or Engineer.

ARTICLE 6—BID SECURITY

- 6.01 **-NOT REQUIRED-**

ARTICLE 7—PROCUREMENT CONTRACT TIMES

- 7.01 See applicable provisions in the Procurement Agreement.

ARTICLE 8—LIQUIDATED DAMAGES

- 8.01 Any provisions for liquidated damages, such as those for Seller's failure to attain a specified Milestone such as the delivery of the Goods, are set forth in the Procurement Agreement.

ARTICLE 9—CONFIDENTIALITY OF BID INFORMATION

- 9.01 Confidential information is information in the Bid, or in documents submitted by Bidder with the Bid or submitted subsequent to the opening of Bids in support of the Bid, that Bidder clearly and prominently labels in writing to be a trade secret, proprietary, or confidential. Bids will be opened and accompanying documents, if any, will be maintained in a manner that endeavors to avoid disclosing confidential information to third parties, to the extent allowed by Laws and Regulations.
- 9.02 Bidder shall clearly and prominently mark confidential information with the word "CONFIDENTIAL" on each page or sheet or on the cover of bound documents. Place "CONFIDENTIAL" stamps or watermarks so that they do not obscure any of the required

information on the document, either in the original or in a way that would obscure any of the required information in a photocopy of the document.

- 9.03 If Buyer is requested to disclose confidential information, becomes legally compelled to disclose confidential information, or is required by a regulatory body, governing agency, or controlling authority to disclose confidential information, or make any other disclosure that is prohibited or otherwise constrained by these Procurement Bidding Requirements, Buyer will provide Bidder with prompt notice so Bidder may seek a protective order or other appropriate remedy. Bidder will be solely responsible for submitting to the regulatory body, governing agency, or controlling authority any arguments, briefs, memoranda, motions, authorities, or other information in opposition to disclosure.
- 9.04 Buyer's obligations with respect to confidential information are nullified by the following exceptions:
- A. Confidential information becomes a part of the public domain through publication or otherwise, through no fault of the Buyer;
 - B. Buyer can demonstrate through suitable documentation that the confidential information was already in the Buyer's possession, and not previously marked as confidential, or was otherwise publicly available prior to the date of Bid submittal;
 - C. The confidential information is subsequently and independently disclosed to the Buyer by a third party who has a lawful right to disclose such information;
 - D. Buyer concludes in good faith that the information is not confidential, or that disclosure is required or justified; or
 - E. Buyer is required to disclose the confidential information by court order or by applicable Laws and Regulations.
- 9.05 Notwithstanding any other provision of the Procurement Bidding Documents, it is stipulated and agreed that by accepting a Bid, Buyer has not and does not waive its legal immunity (if any) from suit or liability.

ARTICLE 10—"OR-EQUAL" ITEMS

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

ARTICLE 11—PREPARATION OF BID

- 11.01 The Bid Form is included with the Procurement Bidding Documents. Additional copies of Procurement Bidding Documents may be obtained from the Issuing Office.
- 11.02 All blanks on the Bid Form must be completed and the Bid Form must be signed by an individual authorized to act on behalf of the Bidder. Alterations must be initialed by an individual authorized to act on behalf of the Bidder. A Bid price must be indicated for each item in the Bid Form. In the case of optional alternates, the words “No Bid” may be entered.
- 11.03 Bidder must acknowledge all Addenda by filling in the number and date of each Addendum in the Bid Form and sign where indicated to verify that the Addenda were received. A Bid that does not acknowledge receipt of all Addenda may be considered non-responsive.
- 11.04 Bidder shall:
- A. Sign the Bid Form as indicated in the Bid Form.
 - B. Include evidence of authority to sign.
 - C. Provide information on the individual to be contacted for any communications regarding the Bid.
 - D. Provide evidence of the Bidder’s authority and qualification to do business in the locality of the Project, to the extent required, or indicate the ability to obtain such authority and qualification prior to award of the Procurement Contract.
- 11.05 The responsibilities of each Bidder submitting a Bid are described in the Bidder’s representations and certifications set forth in Article 6 of the Bid Form.

ARTICLE 12—BASIS OF BID; COMPARISON OF BIDS

- 12.01 *Lump Sum*
- A. Bidder shall submit a Bid on a lump sum basis as set forth in the Bid Form.

ARTICLE 13—SUBMITTAL OF BID

- 13.01 Bidder shall refer to the invitation to bid for specific identification of the date, time, and place where Bids are to be submitted.
- 13.02 Bidder must submit one separate unbound copy of the completed Bid Form, and, if required, the Bid Security and the other documents required to be submitted under the terms of Article 4 of the Bid Form.
- 13.03 A Bid must be submitted no later than the date and time prescribed and at the place indicated in the advertisement or invitation to bid. Submit the Bid in an envelope plainly marked with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted) and the name and address of Bidder. Enclose the Bid security and other documents required to be submitted with the Bid as listed in the Bid Form. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall

be enclosed in a separate package plainly marked on the outside with the notation "BID ENCLOSED."

ARTICLE 14—MODIFICATION OR WITHDRAWAL OF BID

- 14.01 A Bid may be modified or withdrawn by a document duly signed in the same manner that a Bid must be signed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids.
- 14.02 If, within 24 hours after Bids are opened, any Bidder files a duly signed written notice with Buyer and promptly thereafter demonstrates to the reasonable satisfaction of Buyer that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid, and the Bid security will be returned.

ARTICLE 15—OPENING OF BIDS

- 15.01 Bids will be publicly opened at the time and place indicated in the advertisement or invitation to bid and read aloud, unless obviously non-responsive. An abstract of the amounts of the Base Bids and Alternate Bids, if any, will be made available to Bidders after Bids have been opened and reviewed by the Buyer.

ARTICLE 16—BIDS TO REMAIN SUBJECT TO ACCEPTANCE

- 16.01 All Bids will remain subject to acceptance for the period stated in the Bid Form, but Buyer may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

ARTICLE 17—EVALUATION OF BIDS AND AWARD OF PROCUREMENT CONTRACT

- 17.01 Buyer reserves the right to reject any and all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Buyer also reserves the right to waive all informalities not involving price, time, or changes in the Goods.
- 17.02 Buyer will reject the Bid of any Bidder that Buyer finds, after reasonable inquiry and evaluation, to not be responsible.
- 17.03 In evaluating Bids, Buyer will consider whether the Bids comply with the prescribed requirements, and such alternates, unit prices, and other data as may be requested in the Bid Form or may be requested from Bidders prior to a Notice of Award.
- 17.04 Bids may be evaluated on the basis of pricing, delivery time, operating costs, performance data and warranty.
- 17.05 For purposes of evaluation, the lifetime operating cost of the transformer will be estimated using the following loss evaluation formulae. The estimated operating cost will be added to the bid price for ranking.
- A. No-Load Losses: \$8,956 x kW no-load loss for each unit
 - B. Load Losses: \$4,526 x kW load-loss at the transformer OA rating for each unit

17.06 If Buyer awards the Procurement Contract, such award will be to the responsible Bidder submitting the lowest evaluated responsive Bid.

ARTICLE 18—BONDS AND INSURANCE

18.01 Article 5 of the General Conditions and Article 5 of the Supplementary Conditions set forth Buyer's requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the signed Procurement Agreement to Buyer, it must be accompanied by such bonds and acceptable evidence of insurance.

ARTICLE 19—SIGNING OF PROCUREMENT AGREEMENT

19.01 When Buyer issues a Notice of Award to the Successful Bidder, it will be accompanied by the unsigned counterparts of the Procurement Agreement along with the other Procurement Contract Documents identified in the Procurement Agreement. Within 10 days thereafter, Successful Bidder must execute and deliver the required number of counterparts of the Procurement Agreement and any bonds and insurance documentation required to be delivered by the Procurement Contract Documents to Buyer. Within 10 days thereafter, Buyer will deliver one fully executed counterpart of the Procurement Agreement to Successful Bidder, together with printed and electronic copies of the Procurement Contract Documents as stated in Paragraph 2.02 of the General Conditions.

ARTICLE 20—SALES AND USE TAXES

20.01 Buyer is exempt from **Kentucky** state sales and use taxes on materials and equipment to be incorporated in the Project. Exempt taxes must not be included in the Bid. Refer to P-700, Paragraph 7.05 for additional information.

BID FORM FOR PROCUREMENT CONTRACT

The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 1—BUYER AND BIDDER

1.01 This Bid is submitted to:

Frankfort Plant Board
305 Hickory Dr
Frankfort, KY 40601
Attention: Eli Adamson

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into a Procurement Contract with Buyer in the form included in the Procurement Bidding Documents, and to furnish the Goods as specified or indicated in the Procurement Bidding Documents, for the prices and within the times indicated in this Bid, and in accordance with the other terms and conditions of the Procurement Bidding Documents.

ARTICLE 2—BASIS OF BID

2.01 *Lump Sum Bids*

A. Bidder will furnish the Goods in accordance with the Procurement Contract Documents for the following Procurement Contract Price(s):

1. Lump Sum Bid Price (single or multiple Lump Sum)

Furnish one 69-13.8 kV 15/20/25//28 MVA power transformer with LTC's F.O.B owner's transformer foundation with Special Services by manufacturer's field service engineer, including offloading, assembly and testing.	
Lump Sum Bid Price	\$
_____ and _____/100	_____
(Use Words)	(Use Figures)

2.02 *Guaranteed Performance*

A. No Load Loss for one transformer: _____ kW

B. Load Loss for one transformer at OA rating: _____ kW

ARTICLE 3—TIME OF COMPLETION

3.01 Bidder agrees that the furnishing of Goods will conform to the schedule of Procurement Contract Times set forth in Article 2 of the Procurement Agreement. If the delivery time is less than that set forth in the Procurement Agreement, the proposed delivery time is:

A. Goods: _____Date

3.02 Bidder accepts the provisions of the Procurement Agreement as to liquidated damages.

ARTICLE 4—ATTACHMENTS TO THIS BID

4.01 The following documents are attached to and made a condition of this Bid:

- A. Proposed Exceptions and Deviations
- B. Required Bidder Qualification Statement with supporting data
- C. Certifications or evidence of ability to meet bonding and insurance requirements of the General and Supplementary Conditions
- D. If necessary, identify any Attachments by Bidder that are to be made part of its Bid
- E. The Bidder shall furnish with its Proposal a bill of materials that shall be complete and include material descriptions, quantities, weights, manufacturer names, and catalog types. The bill of materials shall be submitted for the Buyer’s analysis of bids only and shall not become part of the bound Procurement Contract Documents.

ARTICLE 5—BIDDER’S ACKNOWLEDGMENTS

5.01 Bidder accepts all terms and conditions of the Instructions to Bidders. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period that Bidder may agree to in writing upon request of Buyer.

5.02 Bidder has examined and carefully studied the Procurement Bidding Documents, the related data identified in the Procurement Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged:

Addendum No.	Addendum Date

ARTICLE 6—BIDDER’S REPRESENTATIONS AND CERTIFICATIONS

6.01 *Bidder’s Representations*

- A. In submitting this Bid, Bidder represents that:
 - 1. Bidder has examined and carefully studied the Procurement Contract Documents.

2. If required by the Instructions to Bidders to visit the Point of Destination and the site where the Goods are to be installed, or if, in Bidder's judgment, any observable local or site conditions may affect the delivery, cost, progress, or furnishing of the Goods, then Bidder has visited the Point of Destination and site where the Goods are to be installed and become familiar with and is satisfied as to the observable local and site conditions that may affect delivery, cost, progress, and furnishing of the Goods.
3. Bidder is familiar with and is satisfied as to all Laws and Regulations that may affect the cost, progress, and performance of Seller's obligations under the Procurement Contract.
4. Bidder has carefully studied, considered, and correlated the information known to Bidder with respect to the effect of such information on the cost, progress, and performance of Seller's obligations under the Procurement Contract.
5. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Procurement Contract Documents, and the written resolution (if any) thereof by Engineer is acceptable to Bidder.
6. The Procurement Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance of Seller's obligations under the Procurement Contract.
7. The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of the Bidding Requirements, that without exception the Bid (including all Bid prices) is premised upon furnishing the Goods required by the Procurement Contract Documents.

6.02 *Bidder's Certifications*

A. Bidder certifies that:

1. This Bid 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 collusive agreement or rules of any group, association, organization, or corporation;
2. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
3. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
4. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Procurement Contract. For the purposes of this Paragraph 6.02.A.4:
 - a. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process;

- b. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Buyer, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Buyer of the benefits of free and open competition;
- c. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Buyer, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
- d. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process.

This Bid is offered by:

Bidder:

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

(typed or printed)

Title:

(typed or printed)

(If Bidder is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

Phone:

Email:

License No.:

Classification:

Limitation:

PROPOSED EXCEPTIONS OR DEVIATIONS

PROPOSED EXCEPTIONS AND DEVIATIONS MAY ONLY BE SUBMITTED ON THIS FORM AND MAY BE ACCEPTED OR REJECTED UNILATERALLY BY BUYER, IN ITS SOLE DISCRETION.

Each exception and deviation proposed (excluding Priced Options specified in the Bid Form) must be summarized and additively or deductively priced below with specific details attached in accordance with the instructions below. The summary must include a reference to the Section(s) of the Procurement Contract Documents affected by the proposed exception. Bids that do not comply with these requirements for the presentation of exceptions may be considered nonresponsive and may be rejected at the discretion of the Buyer.

SUMMARY

Description	Price Adjustment Amount (Indicate deductions in parentheses)

Presentation of Specific Details of Exceptions and Deviations

1. Describe specific details of exceptions and deviations by referencing the applicable page number, article number, and article title from the Procurement Contract Documents. Include this information directly in “Description” column of table above and/or include a separate attachment referencing it in the Description” column.
2. Present proposed deletions by setting off in brackets, thus: [delete this language], and present proposed substitute or new language by underlining, thus: substitute this language.
3. Exceptions which are general, which make reference to Seller’s standard terms and conditions, or which make reference to Seller’s descriptive information as a whole are not acceptable.
4. Each exception or deviation is to be separately priced. Zero may be used.

BIDDER'S QUALIFICATIONS

THE FOLLOWING STATEMENTS OF EXPERIENCE AND GENERAL QUALIFICATIONS OF BIDDER ARE SUBMITTED AS PART OF THE BID AND BIDDER REPRESENTS AND GUARANTEES THE TRUTHFULNESS AND ACCURACY THEREOF.

- A. Bidder has been in business continuously from the year _____.
- B. Bidder has had experience in manufacturing equipment comparable to that required by the Procurement Contract Documents as a prime manufacturer for _____ years, as a component manufacturer for _____ years, or as an equipment supplier for _____ years.
- C. Following is a list of the equipment Bidder has manufactured or supplied which is similar in character and in magnitude to that required by the Contract Documents:

Year	Name	Location	Contract Amount

D. Field Services Personnel

Bidder shall submit

1. evidence that Bidder maintains and has readily available trained field service personnel who are thoroughly familiar, in detail, with all of the Goods to be furnished and capable of directing any major or minor repair work which may be required on the Goods;
2. locations of trained field service personnel and suitable shop facilities nearest the Project site, capable of repair or replacement of any part of the equipment to be furnished; and
3. evidence that the proposed field service personnel and shop facilities have had experience in the repair of comparable equipment over a period of time to ensure the dependability of the work if the field service personnel or shop facilities are not owned by Bidder or the original manufacturer and are to be maintained by contract.

NOTICE OF AWARD

Dated: _____

Project:	Buyer:	Buyer's Contract No.:
Contract:	Engineer's Project No.:	
Bidder:		
Bidder's Address:		

You are notified that your Bid dated _____ *DATE* for the above Contract has been considered. You are the Successful Bidder and are awarded a Contract for one 69-13.8 15/20/25//28MVA kV Power Transformer with LTC.

The Total Price of your Contract:
_____ and _____/100 Dollars (\$ _____)
(Use words) (Use figures)

Three sets of the Contract Documents will be delivered separately after compliance with the following conditions. You must comply with the following conditions precedent within 10 days of the date you receive this Notice of Award.

1. Deliver the Performance Bond and Payment Bond in accordance with the General and Supplementary Conditions.
2. Deliver Insurance Certificates as evidence of insurance coverage required by General Conditions and Supplementary Conditions.
3. Other conditions precedent:

Failure to comply with these conditions within the time specified will entitle Buyer to consider you in default, annul this Notice of Award and declare your Bid security (if required) forfeited.

Within ten days after you comply with the above conditions, Buyer will provide copies of the Agreement and conformed Contract Documents for execution.

Frankfort Plant Board
Buyer
By: _____
Authorized Signature

Title

AGREEMENT BETWEEN BUYER AND SELLER FOR PROCUREMENT CONTRACT

This Procurement Agreement is by and between **Frankfort Plant Board** (“Buyer”) and _____ (“Seller”).

Terms used in this Procurement Agreement have the meanings stated in the General Conditions of the Procurement Contract and the Supplementary Conditions of the Procurement Contract.

Buyer and Seller hereby agree as follows:

ARTICLE 1—PROCUREMENT CONTRACT

1.01 *Goods*

- A. Seller shall furnish the Goods and Special Services as specified or indicated in the Procurement Contract Documents. The Goods are generally described as follows:

One 69-13.8-kV 15/20/25//28MVA Power Transformer with LTC

1.02 *The Project*

- A. The Project, of which the Goods are a part, is generally described as State Farm Substation.

1.03 *Engineer*

- A. Buyer has retained **Power Centric Solutions** ("Engineer"), to prepare Procurement Contract Documents and act as Buyer's representative. Engineer assumes all duties and responsibilities and has the rights and authority assigned to Engineer in the Procurement Contract Documents in connection with Seller's furnishing of Goods.

1.04 *Point of Destination*

- A. The Point of Destination is designated as:
Frankfort Plant Board's State Farm Substation
1215 Glens Creek Rd, Frankfort, KY 40601
Frankfort, KY 40601

ARTICLE 2—PROCUREMENT CONTRACT TIMES

2.01 *Time of the Essence*

- A. All time limits for Milestones, including the submittal of Shop Drawings and Samples, the delivery of Goods as stated in the Procurement Contract Documents, are of the essence of the Procurement Contract.

2.02 *Schedule of Procurement Contract Times*

- A. The following schedule sets forth the Procurement Contract Times:

Milestone	Date or Days	Notes
Submit Shop Drawings	45	
Deliver acceptable Goods to Point of Destination	January 2025, or best available	Delivery may be made in the 15-day period before delivery date

2.03 *Shop Drawings and Samples*

- A. *Submittal of Shop Drawings and Samples:* Seller shall submit all Shop Drawings and Samples required by the Procurement Contract Documents to Engineer for its review and approval.
- B. *Engineer’s Review:* It is the intent of the parties that Engineer will conduct its review of Shop Drawings and Samples and issue its approval, or a denial accompanied by substantive comments regarding information needed to gain approval, within **14** days after Seller's submittal of such Shop Drawings and Samples, or within such longer period that is needed because of the quantity and quality of such submittals. Resubmittals will be limited whenever possible.

2.04 *Liquidated Damages*

- A. Buyer and Seller recognize that time is of the essence as stated in Paragraph 2.01, and that Buyer will suffer financial and other losses if the Goods are not delivered to the Point of Destination and ready for receipt of delivery by Buyer within the time specified in Paragraph 2.02, plus any extensions thereof allowed in accordance with this Procurement Contract. The parties also recognize that the timely performance of services by others involved in the Project is materially dependent upon Seller’s specific compliance with the delivery requirements of Paragraph 2.02. Further, the parties recognize the time, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the loss (whether direct, consequential, or otherwise) suffered by Buyer if complete, acceptable Goods are not delivered on time. Accordingly, instead of requiring any such proof, Buyer and Seller agree that as liquidated damages for delay (but not as a penalty) Seller shall pay Buyer **\$500.00** for each day that expires after the time specified in Paragraph 2.02 for delivery of acceptable Goods.
- B. Buyer intends to procure Goods that meet or exceed the guaranteed performance identified in the Seller’s Bid. If factory tests indicate that the Goods do not meet the guaranteed performance the Buyer will suffer damage.

If the transformer losses marginally exceed the guaranteed losses, the Buyer will incur increased operating costs. If the losses substantially exceed the guaranteed values, the Goods may not be suitable for Buyer’s use.

- 1. If the losses, as determined by factory testing, are found to be between 1 and 1.1 times the losses stated in the bid, the Contract Price for Goods shall be reduced in accordance with the cost reduction formula below.

2. If the losses, as determined by factory testing, are in excess of 1.1 times the guaranteed performance, the Buyer may consider the Goods defective. If the Buyer determines the Goods to be non-conforming, the Seller shall replace the non-conforming Goods to the satisfaction of the Buyer.

Cost Adjustment Formula for Power Transformers

The contract price for each unit shall be adjusted downward in accordance with the following formulae. No credit will be given for power transformers that exhibit actual losses lower than the guarantee.

No Load Loss Adjustment

$\$8,956 \times \text{No Load Loss Determined by Factory Tests minus guaranteed no-load loss, kW:}$
\$ _____

Load Loss Adjustment

$\$4,526 \times \text{Load Loss Determined by Factory Test minus guaranteed load loss, kW:}$
\$ _____

ARTICLE 3—PROCUREMENT CONTRACT PRICE

3.01 Procurement Contract Price and Total Price

- A. The Procurement Contract Price is comprised of the Lump Sum amount set forth in the following paragraphs.
- B. Buyer shall pay Seller a Lump Sum of \$[amount] for furnishing the Goods in accordance with the Procurement Contract Documents.

3.02 Procurement Contract Price and Total Price—Based on Attached Bid

- A. For furnishing the Goods in accordance with the Procurement Contract Documents, Buyer shall pay Seller the prices stated in Seller's Bid, attached hereto as an exhibit.

ARTICLE 4—PAYMENT PROCEDURES

4.01 Submittal and Processing of Applications for Payment

- A. Seller shall submit Applications for Payment in accordance with Article 13 of the General Conditions and the following paragraphs. Engineer and Buyer will process such Applications for Payment in accordance with said Article 13.

4.02 Progress Payments; Final Payment

- A. Seller may submit an Application for Payment requesting the stated percentage of Procurement Contract Price upon attainment of each of the following Payment Line Items:

Payment Line Item (Lump Sum)	Percentage of Lump Sum
1. Delivery of Goods to Point of Destination in accordance with the Procurement Contract Documents	90
2. Final Payment: Correction of non-conformities, provision of final Operations and Maintenance manuals, submittal of warranties and other final documentation required by the Procurement Contract Documents	10
Total Procurement Contract Price (Lump Sum)	100

- B. Buyer shall pay Seller the amount owed under an Application for Payment within 30 days after Engineer's presentation to Buyer of the Application for Payment and Engineer's recommendation.

4.03 *Interest*

- A. All amounts not paid when due will bear interest as the rate of 5 percent per annum.

ARTICLE 5—PROCUREMENT CONTRACT DOCUMENTS

5.01 *List of Procurement Contract Documents*

- A. The Procurement Contract Documents consist of the following:
1. This Procurement Agreement.
 2. General Conditions of the Procurement Contract.
 3. Supplementary Conditions of the Procurement Contract.
 4. Procurement Specifications as listed in the Procurement Specifications table of contents.
 5. Procurement Drawings
 6. Addenda Numbers __
 7. Bonds:
 - a. Performance bond (together with power of attorney).
 - b. Payment bond (together with power of attorney).
 8. Exhibits to this Procurement Agreement (enumerated as follows):
 - a. Documentation submitted by Seller **[identify]**; and
 - b. **[Other Exhibits]**.
 9. The following which may be delivered or issued on or after the Effective Date of the Procurement Contract and are not attached hereto:
 - a. Change Orders;
 - b. Change Directives; and

- c. Field Orders.
- B. The documents listed in Paragraph 6.01.A are attached to this Procurement Agreement (except as expressly noted otherwise above).
- C. There are no Procurement Contract Documents other than those listed above.
- D. The Procurement Contract Documents may only be amended or supplemented as provided in Paragraph 11.01 of the Procurement General Conditions.

ARTICLE 6—SELLER’S REPRESENTATIONS AND CERTIFICATIONS

6.01 *Seller’s Representations*

- A. In order to induce Buyer to enter into this Procurement Agreement, Seller makes the following representations:
 - 1. Seller has examined and carefully studied the Procurement Contract Documents.
 - 2. If required by the Instructions to Bidders to visit the Point of Destination and the site where the Goods are to be installed, or if, in Seller’s judgment, any observable local or site conditions may affect the delivery, cost, progress, or furnishing of the Goods, then Seller has visited the Point of Destination and site where the Goods are to be installed and become familiar with and is satisfied as to the observable local and site conditions that may affect delivery, cost, and progress.
 - 3. Seller is familiar with and is satisfied as to all Laws and Regulations that may affect the cost, progress, and performance of Seller's obligations under the Procurement Contract.
 - 4. Seller has carefully studied, considered, and correlated the information known to Seller with respect to the effect of such information on the cost, progress, and performance of Seller's obligations under the Procurement Contract.
 - 5. Seller has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Seller has discovered in the Procurement Contract Documents, and the written resolution (if any) thereof by Engineer is acceptable to Seller.
 - 6. The Procurement Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance of Seller's obligations under the Procurement Contract.
 - 7. Seller’s entry into this Procurement Contract constitutes an incontrovertible representation by Seller that without exception all prices in the Procurement Agreement are premised upon furnishing the Goods as required by the Procurement Contract Documents.
 - 8. Seller’s Bid, solely as to the prices set forth therein.

6.02 *Seller's Certifications*

- A. Seller certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Procurement Contract. For the purposes of this Paragraph 7.02:
1. “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Procurement Contract execution;
 2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Procurement Contract to the detriment of Buyer, (b) to establish bid or contract prices at artificial non-competitive levels, or (c) to deprive Buyer of the benefits of free and open competition;
 3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Buyer, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
 4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Procurement Contract.

ARTICLE 7—CONFIDENTIALITY

7.01 *Confidential Information*

- A. Confidential information is information in documents submitted by Seller that Seller clearly and prominently labels in writing to be a trade secret, proprietary, or confidential. Such documents, if any, will be maintained in a manner that endeavors to avoid disclosing confidential information to third parties, to the extent allowed by Laws and Regulations.
- B. Seller shall clearly and prominently mark confidential information with the word “CONFIDENTIAL” on each page or sheet or on the cover of bound documents. Place “CONFIDENTIAL” stamps or watermarks so that they do not obscure any of the required information on the document, either in the original or in a way that would obscure any of the required information in a photocopy of the document.

7.02 *Disclosure of Confidential Information*

- A. If Buyer is requested to disclose confidential information, or becomes legally compelled (by oral questions, interrogatories, requests for information or documents, subpoena, civil or criminal investigative demand, public information requests, or other requests under Laws and Regulations) to disclose confidential information, or is required by a regulatory body, governing agency, or controlling authority to disclose confidential information, or make any other disclosure that is prohibited or otherwise constrained by the Procurement Contract, Buyer will provide Seller with prompt notice so Seller may seek an appropriate protective order or other remedy.

Seller will be solely responsible for submitting to the regulatory body, governing agency, or controlling authority any arguments, briefs, memoranda, motions, authorities, or other information in opposition to disclosure.

- B. Buyer's obligations with respect to confidential information are nullified by the following exceptions:
1. Confidential information becomes a part of the public domain through publication or otherwise, through no fault of the Buyer;
 2. Buyer can demonstrate through suitable documentation that the confidential information was already in the Buyer's possession, and not previously marked as confidential, or was otherwise publicly available prior to the Effective Date of the Procurement Contract;
 3. The confidential information is subsequently and independently disclosed to the Buyer by a third party who has a lawful right to disclose such information;
 4. Buyer has a good faith belief that disclosure is required or justified; or
 5. Buyer is required to disclose the confidential information by court order or by applicable Laws and Regulations.

7.03 *Waiver of Immunity*

- A. Notwithstanding any other provision of the Procurement Contract, it is stipulated and agreed that by accepting confidential information, Buyer has not and does not waive its legal immunity (if any) from suit or liability.

ARTICLE 8—MUTUAL WAIVER

8.01 *Mutual Waiver of Consequential Damages*

- A. Buyer and Seller waive against each other, and against the other's officers, directors, members, partners, employees, agents, consultants, and subcontractors, any and all claims for or entitlement to incidental, indirect, or consequential damages arising out of, resulting from, or related to the Procurement Contract. The terms of this mutual waiver do not apply to or limit any claim by either Buyer or Seller against the other based on any of the following: (a) contribution or indemnification, (b) liquidated damages, (c) costs, losses, or damages attributable to personal or bodily injury, sickness, disease, or death, or to injury to or destruction of the tangible property of others, (d) intentional or reckless wrongful conduct, or (e) rights conferred by any bond provided by Seller under this Procurement Contract.

IN WITNESS WHEREOF, Buyer and Seller have signed this Procurement Agreement. Counterparts have been delivered to Buyer and Seller.

The Effective Date of the Procurement Contract is **[date to be inserted at the time of execution]**.

Buyer

Seller

(typed or printed name of organization)

(typed or printed name of organization)

By: _____
(individual's signature)

By: _____
(individual's signature)

Date: _____
(date signed)

Date: _____
(date signed)

Name: _____
(typed or printed)

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Title: _____
(typed or printed)

(If Seller is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____
(individual's signature)

Attest: _____
(individual's signature)

Title: _____
(typed or printed)

Title: _____
(typed or printed)

Address for giving notices:

Address for giving notices:

Designated Representative:

Designated Representative:

Name: _____
(typed or printed)

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Title: _____
(typed or printed)

Address:

Address:

Phone: _____

Phone: _____

Email: _____

Email: _____

(If Buyer is a corporation, attach evidence of authority to sign. If Buyer is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

PERFORMANCE BOND FOR PROCUREMENT CONTRACT

<p>Seller Name: Address <i>(principal place of business)</i>:</p>	<p>Surety Name: Address <i>(principal place of business)</i>:</p>
<p>Buyer Name: Mailing address <i>(principal place of business)</i>:</p>	<p>Procurement Contract Description <i>(name and location)</i>: Procurement Contract Price: Effective Date of Procurement Contract:</p>
<p>Bond Bond Amount: Date of Bond: <i>(Date of Bond cannot be earlier than Effective Date of Procurement Contract)</i> Modifications to this Bond form: <input type="checkbox"/> None <input type="checkbox"/> See Paragraph 15</p>	
<p>Surety and Seller, intending to be legally bound hereby, subject to the terms set forth in this Performance Bond, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.</p>	
Seller as Principal	Surety
_____ <i>(Full formal name of Seller)</i>	_____ <i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <i>(Signature)</i>	By: _____ <i>(Signature)(Attach Power of Attorney)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
Attest: _____ <i>(Signature)</i>	Attest: _____ <i>(Signature)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
<p><i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Seller, Surety, Buyer, or other party is considered plural where applicable.</i></p>	

1. The Seller and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Buyer for the performance of the Procurement Contract, which is incorporated herein by reference.
2. If the Seller performs the Procurement Contract, the Surety and the Seller shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.
3. If there is no Buyer Default under the Procurement Contract, the Surety's obligation under this Bond will arise after:
 - 3.1. The Buyer first provides notice to the Seller and the Surety that the Buyer is considering declaring a Seller Default. Such notice may indicate whether the Buyer is requesting a conference among the Buyer, Seller, and Surety to discuss the Seller's performance. If the Buyer does not request a conference, the Surety may, within five (5) business days after receipt of the Buyer's notice, request such a conference. If the Surety timely requests a conference, the Buyer shall attend. Unless the Buyer agrees otherwise, any conference requested under this Paragraph 3.1 will be held within ten (10) business days of the Surety's receipt of the Buyer's notice. If the Buyer, the Seller, and the Surety agree, the Seller shall be allowed a reasonable time to perform the Procurement Contract, but such an agreement does not waive the Buyer's right, if any, subsequently to declare a Seller Default;
 - 3.2. The Buyer declares a Seller Default, terminates the Procurement Contract, and notifies the Surety; and
 - 3.3. The Buyer has agreed to pay the Balance of the Procurement Contract Price in accordance with the terms of the Procurement Contract to the Surety or to a seller selected to perform the Procurement Contract.
4. Failure on the part of the Buyer to comply with the notice requirement in Paragraph 3.1 does not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
5. When the Buyer has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 5.1. Arrange for the Seller, with the consent of the Buyer, to perform and complete the Procurement Contract;
 - 5.2. Undertake to perform and complete the Procurement Contract itself, through its agents or independent contractors;
 - 5.3. Obtain bids or negotiated proposals from qualified sellers acceptable to the Buyer for a contract for performance and completion of the Procurement Contract, arrange for a contract to be prepared for execution by the Buyer and a seller selected with the Buyer's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Procurement Contract, and pay to the Buyer

the amount of damages as described in Paragraph 7 in excess of the Balance of the Procurement Contract Price incurred by the Buyer as a result of the Seller Default; or

- 5.4. Waive its right to perform and complete, arrange for completion, or obtain a new seller, and with reasonable promptness under the circumstances:
 - 5.4.1. After investigation, determine the amount for which Surety may be liable to the Buyer and, as soon as practicable after the amount is determined, make payment to the Buyer; or
 - 5.4.2. Deny liability in whole or in part and notify the Buyer, citing the reasons for denial.
6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven (7) days after receipt of an additional written notice from the Buyer to the Surety demanding that the Surety perform its obligations under this Bond, and the Buyer shall be entitled to enforce any remedy available to the Buyer. If the Surety proceeds as provided in Paragraph 5.4, and the Buyer refuses the payment, or the Surety has denied liability, in whole or in part, without further notice, the Buyer shall be entitled to enforce any remedy available to the Buyer.
7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Buyer will not be greater than those of the Seller under the Procurement Contract, and the responsibilities of the Buyer to the Surety will not be greater than those of the Buyer under the Procurement Contract. Subject to the commitment by the Buyer to pay the Balance of the Procurement Contract Price, the Surety is obligated, without duplication for:
 - 7.1. the responsibilities of the Seller for correction of defective or non-conforming Goods, and completion of the Procurement Contract;
 - 7.2. additional legal, design professional, and delay costs resulting from the Seller's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and
 - 7.3. liquidated damages, or if no liquidated damages are specified in the Procurement Contract, actual damages caused by delayed performance or non-performance of the Seller.
8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.
9. The Surety shall not be liable to the Buyer or others for obligations of the Seller that are unrelated to the Procurement Contract, and the Balance of the Procurement Contract Price will not be reduced or set off on account of any such unrelated obligations. No right of action will accrue on this Bond to any person or entity other than the Buyer or its heirs, executors, administrators, successors, and assigns.
10. The Surety hereby waives notice of any change, including changes of time, to the Procurement Contract or to related subcontracts, purchase orders, and other obligations.
11. Any proceeding, legal or equitable, under this Bond must be instituted in any court of competent jurisdiction where the Point of Destination is located and must be instituted within two years after a declaration of Seller Default, or within two years after the Seller ceased

working, or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit will be applicable.

12. Notice to the Surety, the Buyer, or the Seller must be mailed or delivered to the address shown on the page on which their signature appears.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Point of Destination, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.
14. Definitions
 - 14.1. *Balance of the Procurement Contract Price*—The total amount payable by the Buyer to the Seller under the Procurement Contract after all proper adjustments have been made including allowance for the Seller for any amounts received or to be received by the Buyer in settlement of insurance or other claims for damages to which the Seller is entitled, reduced by all valid and proper payments made to or on behalf of the Seller under the Procurement Contract.
 - 14.2. *Buyer Default*—Failure of the Buyer, which has not been remedied or waived, to pay the Seller as required under the Procurement Contract or to perform and complete or comply with the other material terms of the Procurement Contract.
 - 14.3. *Goods*—The full scope of materials, equipment, other items, and services to be furnished by Seller, as defined in the Procurement Contract.
 - 14.4. *Point of Destination*—The location where delivery of the Goods shall be made, as stated in the Procurement Contract.
 - 14.5. *Procurement Contract*—The contractual agreement between the Buyer and Seller identified on the cover page, including all Procurement Contract Documents and changes made to the Procurement Contract.
 - 14.6. *Seller Default*—Failure of the Seller, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Procurement Contract.
 - 14.7. *Procurement Contract Documents*—All the documents that comprise the contractual agreement between the Buyer and Seller.
15. Modifications to this Bond are as follows: **None**

PAYMENT BOND FOR PROCUREMENT CONTRACT

<p>Seller</p> <p>Name: _____</p> <p>Address <i>(principal place of business)</i>: _____</p>	<p>Surety</p> <p>Name: _____</p> <p>Address <i>(principal place of business)</i>: _____</p>
<p>Buyer</p> <p>Name: _____</p> <p>Mailing address <i>(principal place of business)</i>: _____</p>	<p>Procurement Contract</p> <p>Description <i>(name and location)</i>: [Buyer's project/contract name, and location of the Point of Destination]</p> <p>Procurement Contract Price: _____</p> <p>Effective Date of Procurement Contract: _____</p>
<p>Bond</p> <p>Bond Amount: _____</p> <p>Date of Bond: _____ <i>(Date of Bond cannot be earlier than Effective Date of Procurement Contract)</i></p> <p>Modifications to this Bond form: <input type="checkbox"/> None <input type="checkbox"/> See Paragraph 17</p>	
<p>Surety and Seller, intending to be legally bound hereby, subject to the terms set forth in this Payment Bond, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.</p>	
<p>Seller as Principal</p>	<p>Surety</p>
<p>_____ <i>(Full formal name of Seller)</i></p>	<p>_____ <i>(Full formal name of Surety) (corporate seal)</i></p>
<p>By: _____ <i>(Signature)</i></p>	<p>By: _____ <i>(Signature)(Attach Power of Attorney)</i></p>
<p>Name: _____ <i>(Printed or typed)</i></p>	<p>Name: _____ <i>(Printed or typed)</i></p>
<p>Title: _____</p>	<p>Title: _____</p>
<p>Attest: _____ <i>(Signature)</i></p>	<p>Attest: _____ <i>(Signature)</i></p>
<p>Name: _____ <i>(Printed or typed)</i></p>	<p>Name: _____ <i>(Printed or typed)</i></p>
<p>Title: _____</p>	<p>Title: _____</p>
<p><i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Seller, Surety, Buyer, or other party is considered plural where applicable.</i></p>	

1. The Seller and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Buyer to pay for labor, materials, and equipment furnished for use in the performance of the Procurement Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Seller promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Buyer from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Procurement Contract, then the Surety and the Seller shall have no obligation under this Bond.
3. If there is no Buyer Default under the Procurement Contract, the Surety's obligation to the Buyer under this Bond will arise after the Buyer has promptly notified the Seller and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Buyer or the Buyer's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Procurement Contract, and tendered defense of such claims, demands, liens, or suits to the Seller and the Surety.
4. When the Buyer has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Buyer against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond will arise after the following:
 - 5.1. Claimants who do not have a direct contract with the Seller
 - 5.1.1. have furnished a written notice of non-payment to the Seller, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2. have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2. Claimants who are employed by or have a direct contract with the Seller have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Buyer to the Seller, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1. Send an answer to the Claimant, with a copy to the Buyer, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2. Pay or arrange for payment of any undisputed amounts.
 - 7.3. The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 will not be deemed to constitute a waiver of defenses the Surety or Seller may have or acquire as to

a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

8. The Surety's total obligation will not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond will be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Buyer to the Seller under the Procurement Contract will be used for the performance of the Procurement Contract and to satisfy claims, if any, under any procurement performance bond. By the Seller furnishing and the Buyer accepting this Bond, they agree that all funds earned by the Seller in the performance of the Procurement Contract are dedicated to satisfying obligations of the Seller and Surety under this Bond, subject to the Buyer's priority to use the funds for the completion of the Goods.
10. The Surety shall not be liable to the Buyer, Claimants, or others for obligations of the Seller that are unrelated to the Procurement Contract. The Buyer shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Procurement Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action will be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the Point of Destination is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Procurement Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit will be applicable.
13. Notice and Claims to the Surety, the Buyer, or the Seller must be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, will be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement where the Point of Destination is located, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Seller and Buyer shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. Definitions

- 16.1. *Buyer Default*—Failure of the Buyer, which has not been remedied or waived, to pay the Seller as required under the Procurement Contract or to perform and complete or comply with the other material terms of the Procurement Contract.
- 16.2. *Claim*—A written statement by the Claimant including at a minimum:
- 16.2.1. The name of the Claimant;
 - 16.2.2. The name of the person for whom the labor was done, or materials or equipment furnished;
 - 16.2.3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Procurement Contract;
 - 16.2.4. A brief description of the labor, materials, or equipment furnished;
 - 16.2.5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Procurement Contract;
 - 16.2.6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
 - 16.2.7. The total amount of previous payments received by the Claimant; and
 - 16.2.8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.
- 16.3. *Claimant*—An individual or entity having a direct contract with the Seller or with a subcontractor of the Seller to furnish labor, materials, or equipment for use in the performance of the Procurement Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic’s lien or similar statute against the real property upon which the Point of Destination is located or where the Goods are to be installed or furnished. The intent of this Bond is to include without limitation in the terms of “labor, materials, or equipment” that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Procurement Contract, architectural and engineering services required for performance of the work of the Seller and the Seller’s subcontractors, and all other items for which a mechanic’s lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
- 16.4. *Goods*—The full scope of materials, equipment, other items, and services to be furnished by Seller, as defined in the Procurement Contract.
- 16.5. *Point of Destination*—The location where delivery of the Goods shall be made, as stated in the Procurement Contract.
- 16.6. *Procurement Contract*—The contractual agreement between the Buyer and Seller identified on the cover page, including all Procurement Contract Documents and all changes made to the Procurement Contract.

16.7. *Procurement Contract Documents*—All the documents that comprise the contractual agreement between the Buyer and Seller.

17. Modifications to this Bond are as follows: **None**

STANDARD GENERAL CONDITIONS OF THE PROCUREMENT CONTRACT

Prepared By



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ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

- A. Whenever used in the Procurement Bidding Requirements or Procurement Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated, which are applicable to the singular or plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Procurement Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Procurement Contract Documents.
 2. *Application for Payment*—The document prepared by Seller, in a form acceptable to Buyer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Procurement Contract Documents.
 3. *Bid*—An offer or proposal of a prospective Seller submitted on the prescribed form setting forth the prices for the Goods to be provided.
 4. *Bidder*—An individual or entity that, as a prospective Seller, submits a Bid to Buyer.
 5. *Buyer*—The individual or entity purchasing the Goods.
 6. *Change Directive*—A written directive from Buyer to Seller issued on or after the Effective Date of the Procurement Contract, ordering an addition, deletion, or revision in the Goods.
 7. *Change Order*—A document which is signed by Seller and Buyer and authorizes an addition, deletion, or revision to the Procurement Contract Documents or an adjustment in the Procurement Contract Price or the Procurement Contract Times, issued on or after the Effective Date of the Procurement Contract. Change Orders may be the result of mutual agreement by Buyer and Seller, or of resolution of a Claim.
 8. *Claim*—A demand or assertion by Buyer or Seller seeking an adjustment of Procurement Contract Price or Procurement Contract Times, or both, or other relief with respect to the terms of the Procurement Contract. A demand for money or services by a third party is not a Claim.
 9. *Contractor/Assignee*—A construction contractor with which Project Owner enters into a construction contract, and to which Project Owner, as initial Buyer, assigns this Procurement Contract.

10. *Effective Date of the Procurement Contract*—The date indicated in the Procurement Agreement on which the Procurement Contract becomes effective.
11. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
12. *Electronic Means*—Electronic mail (e-mail), upload/download from a secure Project website, or other communications methods that allow: the transmission or communication of Electronic Documents; the documentation of transmissions, including sending and receipt; printing of the transmitted Electronic Document by the recipient; the storage and archiving of the Electronic Document by sender and recipient; and the use by recipient of the Electronic Document for purposes permitted by this Procurement Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
13. *Engineer*—The individual or entity designated as such in the Procurement Agreement.
14. *Field Order*—A written order issued by Engineer which requires minor changes in the Goods or Special Services, but which does not involve a change in the Procurement Contract Price or Procurement Contract Times.
15. *Goods*—The tangible and movable personal property that is described in the Procurement Contract Documents, regardless of whether the property is to be later attached to realty.
16. *Goods*—The full scope of materials, equipment, other items, and services to be furnished by Seller, including Goods, as defined herein, and Special Services, if any, as defined herein. This term refers to both the Goods and the Special Services, or to either the Goods or the Special Services, and to any portion of the Goods or the Special Services, as the context requires.
17. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
18. *Milestone*—A principal event specified in the Procurement Contract that Seller must attain by the date or within the number of days indicated, including but not limited to the delivery of the Goods and the furnishing of Special Services.
19. *Notice of Award*—The written notice, by Buyer to a Bidder, of Buyer’s acceptance of the Bid.
20. *Point of Destination*—The specific address of the location where delivery of the Goods will be made, as stated in the Procurement Agreement.

21. *Procurement Agreement*—The written instrument, executed by Buyer and Seller, that sets forth the Procurement Contract Price and Procurement Contract Times, identifies the parties and the Engineer, and designates the specific items that are Procurement Contract Documents.
22. *Procurement Bidding Documents*—The Procurement Bidding Requirements and the proposed Procurement Contract Documents (including all Addenda).
23. *Procurement Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and Bid Form with any supplements.
- 24.
25. *Procurement Contract*—The entire and integrated written agreement between Buyer and Seller concerning the Goods.
26. *Procurement Contract Documents*—Those items so designated in the Procurement Agreement, and which together comprise the Procurement Contract. Shop Drawings and other Seller submittals are not Procurement Contract Documents, even if accepted, reviewed, or approved by Engineer or Buyer.
27. *Procurement Contract Price*—The money that Buyer has agreed to pay Seller for furnishing the Goods in accordance with the Procurement Contract Documents.
28. *Procurement Contract Times*—The times stated in the Procurement Agreement by which the Goods must be delivered, Special Services must be furnished, and other Milestones must be attained.
29. *Procurement Drawings*—That part of the Procurement Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Goods to be furnished by Seller. Shop Drawings and other Seller submittals are not Procurement Drawings as so defined.
30. *Procurement Specifications*—That part of the Procurement Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the furnishing of the Goods, and certain administrative requirements and procedural matters applicable thereto.
31. *Project*—The total undertaking to be accomplished for Project Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Goods are a part.
32. *Project Owner*—The entity that has retained (or will retain) engineers, contractors, and others for the planning, study, design, construction, testing, commissioning, and start-up of facilities and improvements. As of the Effective Date of the Procurement Contract, the Project Owner is the Buyer.

33. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Goods and which establish the standards by which such portion of the Goods will be judged.
34. *Schedule of Submittals*—A schedule, prepared and maintained by Seller, of required Submittals and the time requirements for Engineer’s review of the Submittals.
35. *Seller*—The individual or entity furnishing the Goods.
36. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Seller and submitted by Seller to illustrate some portion of the Goods. Shop Drawings, whether approved or not, are not Procurement Drawings and are not Procurement Contract Documents.
37. *Special Services*—Services to be performed by Seller (or its agents or subcontractors) in association with the Goods to be furnished by Seller, as required by the Procurement Contract Documents.
38. *Submittal*—A written or graphic document, prepared by or for Seller, which the Procurement Contract Documents require Seller to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or site quality-control testing and inspections; warranties and certifications; suppliers’ instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; record documents; and other such documents required by the Procurement Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Procurement Contract Documents. Change proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
39. *Successful Bidder*—The Bidder whose Bid the Buyer accepts, and to which Buyer makes an award of the Procurement Contract.
40. *Supplementary Conditions*—The part of the Procurement Contract that amends or supplements these General Conditions.
41. *Unit Price Goods*—Goods to be paid for on the basis of unit prices (if any).

1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B and 1.02.C are not defined, but have the indicated meanings when used in the Bidding Requirements or Procurement Contract Documents.
- B. *Intent of Certain Terms or Adjectives*

1. The Procurement Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Goods. It is intended that such exercise of professional judgment, action, or determination will be commercially reasonable and will be solely to evaluate, in general, the Goods for compliance with the requirements of and information in the Procurement Contract Documents and conformance with the design concept of the completed Project as a functioning whole, as shown or indicated in the Procurement Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective will not be effective to assign to Engineer any duty or authority to supervise or direct the furnishing of Goods or Special Services or any duty or authority to undertake responsibility contrary to any other provision of the Procurement Contract Documents.
 2. The word “non-conforming” when modifying the words “Goods,” “Goods,” or “Special Services,” refers to Goods that are unsatisfactory, faulty, or deficient in that they:
 - a. do not conform to or comply with the requirements of the Procurement Contract Documents;
 - b. do not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Procurement Contract Documents; or
 - c. in the case of Special Services, have not been completed.
 3. The word “receipt” when referring to the Goods, means the physical taking and possession by the Buyer under the conditions specified in Paragraph 9.02.B.2.
 4. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
 5. The word "furnish," when used in connection with the Goods means to supply and deliver said Goods to the Point of Destination (or some other specified location) and to perform said Special Services fully, all in accordance with the Procurement Contract Documents.
- C. *Procurement Contract Price or Procurement Contract Times*: References to a change in “Procurement Contract Price or Procurement Contract Times” or “Procurement Contract Times or Procurement Contract Price” or similar, indicate that such change applies to (1) Procurement Contract Price, (2) Procurement Contract Times, or (3) both Procurement Contract Price and Procurement Contract Times, as warranted, even if the term “or both” is not expressed.

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

ARTICLE 2—PRELIMINARY MATTERS

2.01 Delivery of Bonds and Evidence of Insurance

- A. When Seller delivers the executed counterparts of the Procurement Agreement to Buyer, the Seller also shall deliver to Buyer the performance bond and payment bond (if the Procurement Contract requires Seller to furnish such bonds).
- B. *Evidence of Seller's Insurance:* When Seller delivers the signed counterparts of the Procurement Agreement to Buyer, the Seller also shall deliver to Buyer, with copies to each additional insured (as identified in the Procurement Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Seller in accordance with Article 5. Evidence of insurance to be obtained at a later date, such as insurance relating to transit or storage of the Goods, will be provided to Buyer at the time of such insurance is obtained.
- C. *Evidence of Buyer's Insurance:* After receipt of the signed counterparts of the Procurement Agreement and all required bonds and insurance documentation, Buyer shall promptly deliver to Seller, with copies to each additional insured (as identified in the Procurement Contract), certificates and other evidence of insurance (if any) required to be provided by Buyer.

2.02 Copies of Documents

- A. ~~Buyer shall furnish to Seller four printed copies of the Procurement Contract (including one fully executed counterpart of the Procurement Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.~~ Buyer shall furnish to Seller one printed copy of the Procurement Contract Documents (including one fully signed counterpart of the Procurement Agreement), and one in electronic portable document format (PDF).

2.03 Electronic Transmittals

- A. Except as otherwise stated elsewhere in the Procurement Contract, the Buyer, Seller, and Engineer may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Procurement Contract does not establish protocols for Electronic Means, then Buyer, Seller, and Engineer shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the

Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

2.04 Preliminary Schedules

- A. Within 15 days after the Effective Date of the Procurement Contract, Seller shall submit to Buyer and Engineer for timely review:
 - 1. a progress schedule of activities, consistent with the Procurement Contract Times, including at a minimum, Shop Drawing and Sample submittals, tests, and deliveries as required by the Procurement Contract Documents.
 - a. The progress schedule will be acceptable to Buyer and Engineer if it provides an orderly progression of the Submittals, tests, and deliveries to completion within the specified Milestones of the Procurement Contract Times.
 - b. Such acceptance will not impose on Buyer or Engineer responsibility for the progress schedule, for sequencing, scheduling, or progress of Seller's performance of its obligations under the Procurement Contract, nor interfere with or relieve Seller from Seller's full responsibility therefor.
 - c. Such acceptance will not be deemed as an acknowledgment of the reasonableness and attainability of the schedule.
 - 2. a preliminary schedule of Submittals.
- B. No progress payment will be made to Seller until an acceptable progress schedule and acceptable schedule of Submittals are submitted to Buyer and Engineer (and other conditions applicable to progress payments are met).

2.05 Preliminary Conference

- A. Within 20 days after the Procurement Contract Times start to run, a conference attended by Seller, Buyer, Engineer and others as appropriate will be held to establish a working understanding among the parties as to the Goods and to discuss the schedules referred to in Paragraph 2.04.A, procedures for handling Shop Drawings and other Submittals, processing Applications for Payment, and maintaining required records.

2.06 Safety

- A. Buyer and Seller shall comply with all applicable Laws and Regulations relating to the safety of persons or property, and to the protection of persons or property from damage, injury, or loss.
- B. When Seller's personnel, or the personnel of any subcontractor to Seller, are present at the Point of Destination or any work area or site controlled by Buyer, the Seller shall be responsible for the compliance by such personnel with any applicable requirements of Buyer's safety programs that are made known to Seller.

- C. If Buyer or its representatives visit the Seller's manufacturing or storage facilities, for testing, inspection, or other purposes, Seller shall inform Buyer in advance of any safety preparations, standards, or programs with which Buyer and its representatives must comply.

ARTICLE 3—PROCUREMENT CONTRACT DOCUMENTS

3.01 Intent

- A. The Procurement Contract Documents are complementary; what is called for by one is as binding as if called for by all.
- B. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Procurement Contract Documents or from prevailing custom or trade usage as being required to produce or furnish the indicated Goods will be provided, whether or not specifically called for, at no additional cost to Buyer.
- C. Unless otherwise stated in the Procurement Contract Documents, if there is a discrepancy between the electronic or digital versions of the Procurement Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version will govern.
- D. The Procurement Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Procurement Contract Documents, as provided in Paragraph 3.04.
- F. Any provision or part of the Procurement Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Buyer and Seller.

3.02 Reference Standards

- A. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws and Regulations, whether such reference be specific or by implication, means the standard, specification, manual, code, or Laws and Regulations in effect at the time of opening of Bids (or on the Effective Date of the Procurement Agreement if there were no Bids), except as may be otherwise specifically stated in the Procurement Contract Documents.
- B. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a supplier, will be effective to change the duties or responsibilities of Buyer, Seller, or Engineer from those set forth in the part of the Procurement Contract Documents prepared by or for Engineer. No such provision or instruction will be effective to assign to Buyer or Engineer any duty or authority to supervise or direct the performance of Seller's obligations, or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Procurement Contract Documents prepared by or for Engineer.

3.03 Reporting and Resolving Discrepancies

A. *Reporting Discrepancies*

1. *Seller's Review of Procurement Contract Documents:* If, before or during the performance of Seller's obligations, Seller discovers any conflict, error, ambiguity, or discrepancy within the Procurement Contract Documents, or between the Procurement Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any supplier to Seller, then Seller shall promptly report it to Engineer (or if the Procurement Contract is assigned, then directly to Contractor/Assignee) in writing. Seller shall not proceed with the Goods affected thereby until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer (or if the Procurement Contract is assigned, then by Contractor/Assignee) or by an amendment or supplement to the Procurement Contract Documents issued pursuant to Article 11.
2. Seller shall not be liable to Buyer or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Procurement Contract Documents unless Seller had actual knowledge thereof.

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

1. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Procurement Contract Documents); or
2. the provisions of any Laws or Regulations applicable to the furnishing of the Goods (unless such an interpretation of the provisions of the Procurement Contract Documents would result in violation of such Law or Regulation).

3.04 Requirements of the Procurement Drawings and Procurement Specifications

- #### A. During the performance of Seller's obligations and until final payment, Seller and Buyer shall submit to the Engineer all matters in question concerning the requirements of the Procurement Drawings and Procurement Specifications (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Goods, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Procurement Drawings and Procurement Specifications, and judge of the acceptability of the Goods thereunder.
1. After assignment (if any) Seller shall submit such matters directly to Contractor/Assignee for response or administration, and the Procurement Contract provisions in Paragraphs 3.04.B and C will not apply.

- B. Engineer will issue with reasonable promptness a written clarification, interpretation, or decision on the issue submitted, and if necessary, initiate an amendment or supplement to the Procurement Drawings or Procurement Specifications. Engineer’s written clarification, interpretation, or decision will be consistent with the overall intent of the Procurement Contract Documents, and will be final and binding on Seller and Buyer. If either Buyer or Seller believes that a written clarification or interpretation justifies an adjustment in the Procurement Contract Price or Procurement Contract Times, either may make a Claim for such adjustment as provided in Article 12.
- C. If a submitted matter in question concerns terms and conditions of the Procurement Contract Documents that do not involve (1) the performance or acceptability of the Goods and Services, (2) the design (as set forth in the Procurement Drawings, Procurement Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Buyer and Seller that Engineer is unable to provide a decision or interpretation.

3.05 Reuse of Documents

- A. Seller and its subcontractors and suppliers shall not:
 - 1. have or acquire any title to or ownership rights in any of the Procurement Drawings, Procurement Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions, or reuse any such Procurement Drawings, Procurement Specifications, other documents, or copies thereof, on extensions of the Project or any other project, without written consent of Buyer and Engineer and specific written verification or adaptation by Engineer; or
 - 2. have or acquire any title or ownership rights in any other Procurement Contract Documents, reuse any such Procurement Contract Documents for any purpose without Buyer’s express written consent, or violate any copyrights pertaining to such Procurement Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Procurement Contract. Nothing herein precludes Seller from retaining copies of the Procurement Contract Documents for record purposes.

ARTICLE 4—COMMENCEMENT AND SCHEDULE

4.01 Commencement of Procurement Contract Times

- A. The Procurement Contract Times will commence to run on the Effective Date of the Procurement Contract.

4.02 Continuing Performance

- A. Seller shall adhere to the progress schedule established in accordance with Paragraph 2.04.A., as duly adjusted, and the Goods will be delivered and the Special Services furnished within the Procurement Contract Times.
- B. Seller shall carry on furnishing of the Goods and adhere to the progress schedule during all disputes or disagreements with Buyer. No furnishing of Goods will be delayed or postponed pending resolution of any disputes or disagreements, except as expressly permitted herein, or as Buyer and Seller may otherwise agree in writing.

4.03 Adjustments to Progress Schedule

- A. The progress schedule established in accordance with Paragraph 2.04 may be adjusted from time to time as provided below.
 - 1. Seller shall submit to Buyer for acceptance (to the extent indicated in Paragraph 2.04) proposed adjustments in the progress schedule that will not result in changing the Procurement Contract Times. Such adjustments will comply with any applicable provisions of the Procurement Specifications.
 - 2. Proposed adjustments in the progress schedule that will change the Procurement Contract Times must be submitted in accordance with the requirements of Article 11. Adjustments in Procurement Contract Times may only be made by a Change Order.

4.04 Delays

- A. If Buyer, Engineer, or anyone for whom Buyer is responsible, delays, disrupts, or interferes with Seller's performance or progress, then Seller shall be entitled to an equitable adjustment in Procurement Contract Price or Procurement Contract Times.
- B. Seller shall not be entitled to an adjustment in Procurement Contract Price or Procurement Contract Times for delay, disruption, or interference caused by or within the control of Seller or anyone for whom Seller is responsible.
- C. If Seller's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Buyer, Seller, and those for which they are responsible, then Seller shall be entitled to an equitable adjustment in Procurement Contract Times. Such an adjustment will be Seller's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Procurement Contract Times under this paragraph include but are not limited to the following:
 - 1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 - 2. abnormal weather conditions;
 - 3. inspection delays by governmental authorities, and custom delays;

4. international shipping delays;
 5. acts or failures to act of third-party entities; and
 6. acts of war or terrorism.
- D. *Adjustments of Procurement Contract Times or Procurement Contract Price—General Provisions:* Seller’s entitlement to an adjustment of Procurement Contract Times or Procurement Contract Price is limited as follows:
1. Seller’s entitlement to an adjustment of the Procurement Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of Seller’s obligations, as of the time of the delay, disruption, or interference.
 2. Seller shall not be entitled to an adjustment in Procurement Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Seller. Such a concurrent delay by Seller does not preclude an adjustment of Procurement Contract Times to which Seller is otherwise entitled.
 3. Adjustments of Procurement Contract Times or Procurement Contract Price are subject to the provisions of Articles 11 and 12.
- E. Each Seller request seeking a delay-related increase in Procurement Contract Times or Procurement Contract Price must be supplemented by supporting data that sets forth in detail the following: (1) the circumstances that form the basis for the requested adjustment; (2) the date upon which each cause of delay, disruption, or interference began to affect Seller’s progress; (3) the date upon which each cause of delay, disruption, or interference ceased to affect Seller’s progress; (4) the number of days’ increase in Procurement Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and (5) the impact on Procurement Contract Price. Seller shall also furnish such additional supporting documentation as Buyer or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion.

ARTICLE 5—BONDS AND INSURANCE

5.01 Performance, Payment, and Other Bonds

- A. Seller shall furnish a performance bond and a payment bond, each in an amount at least equal to the Procurement Contract Price, as security for the faithful performance and payment of Seller’s obligations under the Procurement Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 9.04, whichever is later, except as provided otherwise by Laws or

Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Procurement Contract.

1. Required Performance Bond Form: The performance bond that Seller furnishes will be in the form of EJCDC® P-610, Performance Bond (2010 or 2019 edition).
 2. Required Payment Bond Form: The payment bond that Contractor furnishes will be in the form of EJCDC® P-615, Payment Bond (2010 or 2019 edition).
- B. Seller shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Procurement Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Buyer prior to execution of the Procurement Contract, except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- D. Seller shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Seller is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Seller shall promptly notify Buyer and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements of this Procurement Contract.
- F. If Seller has failed to obtain a required bond, Buyer may exercise Buyer’s termination rights under Article 14.
- G. Upon request to Buyer from any subcontractor, supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of Seller’s obligations, Buyer shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Seller from any subcontractor, supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of Seller’s obligations, Seller shall provide a copy of the payment bond to such person or entity.

5.02 Insurance

- A. Seller shall provide insurance of the types and coverages and in the amounts stipulated in the Supplementary Conditions.

- B. Failure of Buyer to demand certificates of insurance or other evidence of Seller's full compliance with these insurance requirements or failure of Buyer to identify a deficiency in compliance from the evidence provided will not be construed as a waiver of Seller's obligation to maintain such insurance.
- C. Upon assignment of this Procurement Contract, Seller shall name the Contractor/Assignee as an additional insured and comply with the written request of Contractor/Assignee to provide evidence of insurance.
- D. Buyer does not represent that insurance coverage and limits established in this Procurement Contract necessarily will be adequate to protect Seller.
- E. The insurance and insurance limits required herein will not be deemed as a limitation on Seller's liability under the indemnities and other rights granted to Buyer in the Procurement Contract.
- F. Seller shall purchase and maintain such liability and other insurance as is appropriate for the furnishing of Goods and as will provide protection from claims set forth below which may arise out of or result from Seller's furnishing of the Goods or Special Services and Seller's other obligations under the Procurement Contract Documents, whether the furnishing of Goods or other obligations are to be performed by Seller, any subcontractor or supplier, or by anyone directly or indirectly employed by any of them to furnish the Goods, or by anyone for whose acts any of them may be liable:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 - 2. claims for damages because of bodily injury, occupational sickness or disease, or death of Seller's employees;
 - 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Seller's employees;
 - 4. claims for damages insured by reasonably available personal injury liability coverage which are sustained: (a) by any person as a result of an offense directly or indirectly related to the employment of such person by Seller, or (b) by any other person for any other reason;
 - 5. claims for damages, other than to the Goods, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
 - 6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- G. The policies of insurance so required by this Paragraph 5.02 to be purchased and maintained must:

1. with respect to insurance required by Paragraphs SC-5.02.F.3 through SC-5.02.F.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) Buyer, Engineer, their consultants, and all of whom must be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds must provide primary coverage for all claims covered thereby;
 2. include at least the specific coverages and be written for not less than the limits of liability provided below or required by Laws or Regulations, whichever is greater;
 3. include completed operations insurance;
 4. include contractual liability insurance covering Seller's indemnity obligations under Paragraph 7.07;
 5. contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder will provide a copy of the notice to the other party, each other insured, and Engineer;
 6. remain in effect at least until final payment and at all times thereafter when Seller may be correcting, removing, or replacing non-conforming Goods in accordance with Paragraph 9.03 and 9.04; and
 7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and Seller shall furnish Buyer and each other additional insured identified in these Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Buyer and any such additional insured of continuation of such insurance at final payment and one year thereafter).
- H. The limits of liability for the insurance required by Paragraph SC-5.02.F must provide coverage for not less than the following amounts or greater where required by Laws and Regulations:
1. Workers' Compensation, and related coverages under Paragraphs SC-5.02.F.1 and F.2:

<u>Workers' Compensation and Related Policies</u>	<u>Policy limits of not less than</u>
<u>Workers' Compensation</u>	
<u>State</u>	<u>Statutory</u>

<u>Workers' Compensation and Related Policies</u>	<u>Policy limits of not less than</u>
<u>Applicable Federal</u>	<u>Statutory</u>
<u>Each accident</u>	<u>\$1,000,000</u>
<u>Each employee</u>	<u>\$1,000,000</u>
<u>Policy limit</u>	<u>\$1,000,000</u>

2. Seller's General Liability under Paragraphs SC-5.02.F.3 through F.6 which must include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Seller:

<u>Commercial General Liability</u>	<u>Policy limits of not less than</u>
<u>General Aggregate</u>	<u>\$3,000,000</u>
<u>Products—Completed Operations Aggregate</u>	<u>\$1,000,000</u>
<u>Personal and Advertising Injury</u>	<u>\$1,000,000</u>
<u>Bodily Injury and Property Damage—Each Occurrence</u>	<u>\$1,000,000</u>

3. Automobile Liability under Paragraph SC-5.02.F.6:

<u>Automobile Liability</u>	<u>Policy limits of not less than</u>
<u>Bodily Injury</u>	
<u>Each Person</u>	<u>\$1,000,000</u>
<u>Each Accident</u>	<u>\$1,000,000</u>
<u>Combined Single Limit (Bodily Injury and Property Damage)</u>	<u>\$3,000,000</u>

- I. Seller shall deliver to Buyer, with copies to each additional insured identified in these Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Buyer or any other additional insured) which Seller is required to purchase and maintain.

5.03 Surety or Insurance Companies

- A. All bonds and insurance required by the Procurement Contract Documents to be purchased and maintained by Buyer or Seller 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. Such surety and insurance companies must also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

ARTICLE 6—LICENSES AND FEES

6.01 Intellectual Property and License Fees

- A. Except to the extent stated elsewhere in the Procurement Contract Documents, Seller is not transferring any patent rights, copyrights, or other intellectual property rights for the Goods delivered.
- B. To the extent Seller is manufacturing to Buyer's design, Buyer retains all patent rights, copyrights, and other intellectual property rights in such design.
- C. If an invention, design, process, product, or device is specified in the Procurement Contract Documents for incorporation in the Goods or for the performance of Special Services, and if, to the actual knowledge of Buyer or Engineer, its use is subject to patent rights, copyrights, or other intellectual property rights calling for the payment of a license fee or royalty to others, then the existence of such rights and payment obligations will be disclosed to Seller in the Procurement Contract Documents.
- D. Seller shall pay all license fees and royalties and assume all costs incident to the use or the furnishing of the Goods, unless specified otherwise by the Procurement Contract Documents.

6.02 Seller's Infringement

- A. Subject to Paragraph 6.01, to the fullest extent permitted by Laws and Regulations, Seller shall indemnify and hold harmless Buyer, Engineer, and their officers, directors, members, partners, employees, agents, consultants, contractors, and subcontractors, from and against all claims, costs, losses, damages, and judgments (including but not limited to all reasonable fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement or alleged infringement of any patent, copyright, or other intellectual property right by any of the Goods as delivered or Special Services as performed.
- B. Buyer will promptly notify Seller in writing of any claim, suit, or threat of suit by a third party for any infringement or alleged infringement of any patent, copyright, or other intellectual property right with respect to the Goods as delivered or Special Services as performed.
- C. Seller shall promptly defend or settle the claim or suit. Seller shall have control over such claim or suit, bear all expenses, and satisfy any adverse judgment.
 1. If Seller fails to defend such suit or claim after written notice by Buyer, Seller will be bound, in any subsequent suit or claim against Seller by Buyer, by any factual determination in the prior suit or claim.
 2. If Buyer fails to provide Seller the opportunity to defend such suit or claim, Buyer shall be barred from any remedy against Seller for such suit or claim.

- D. If a determination is made that Seller has infringed upon the intellectual property rights of another, Seller may, at Seller's own expense, obtain the necessary licenses for Buyer's benefit, or replace the Goods and provide related design and construction, consistent with the requirements of the Procurement Contract Documents, to avoid the infringement.

6.03 Buyer's Infringement

- A. Subject to Paragraph 6.01, and to the fullest extent permitted by Laws and Regulations, Buyer shall be responsible to Seller for any infringement or alleged infringement of any patent, copyright, or other intellectual property right caused by Seller's compliance with the Procurement Drawings or Procurement Specifications, and will reimburse Seller for any license fee or royalties paid by Seller to others if such payment resulted from any invention, design, process, product, or device specified to be furnished or performed in the Procurement Drawings or Procurement Specifications, but not identified as being subject to payment of such license fee or royalty.
- B. Seller will promptly notify Buyer in writing of any claim, suit, or threat of suit by a third party for intellectual property infringement arising from Seller's compliance with the Procurement Drawings or Procurement Specifications.
- C. Buyer shall defend or settle the claim or suit. Buyer shall have control over such claim or suit, bear all expenses, and satisfy any adverse judgment.
 - 1. If Buyer fails to defend such suit or claim after written notice by Seller, Buyer will be bound, in any subsequent suit or claim against Buyer by Seller, by any factual determination in the prior suit or claim.
 - 2. If Seller fails to provide Buyer the opportunity to defend such suit or claim, Seller shall be barred from any remedy against Buyer for such suit or claim.

ARTICLE 7—SELLER'S RESPONSIBILITIES

7.01 Performance of Obligations

- A. Seller shall be solely responsible for the means, methods, techniques, sequences, and procedures necessary to perform its obligations in accordance with the Procurement Contract Documents.
- B. Seller shall supervise, inspect, and direct the furnishing of the Goods competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform its obligations in accordance with the Procurement Contract Documents.
- C. Seller shall coordinate the provision of Special Services to avoid or limit interference or disruption of other activities at the location where the Special Services are to occur, including but not limited to ongoing facility operations and construction activities.

7.02 Labor, Materials and Equipment

- A. Seller shall provide competent, qualified and trained personnel in all aspects of its performance of the Procurement Contract.
- B. All Goods, and all equipment and material incorporated into the Goods, must be as specified, and unless specified otherwise in the Procurement Contract Documents, must be:
 - 1. new, and of good quality;
 - 2. protected, assembled, connected, cleaned, and conditioned in accordance with the original manufacturer's instructions; and
 - 3. shop-assembled to the greatest extent practicable.

7.03 Laws and Regulations

- A. Seller shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of its obligations in accordance with the Procurement Contract Documents. Except where otherwise expressly required by such Laws and Regulations, neither Buyer nor Engineer shall be responsible for monitoring Seller's compliance with any Laws or Regulations.
- B. If Seller furnishes Goods knowing or having reason to know that such furnishing is contrary to Laws or Regulations, Seller 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 performance. It will not be Seller's responsibility to make certain that the Procurement Specifications and Procurement Drawings are in accordance with Laws and Regulations, but this provision will not relieve Seller of Seller's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Procurement Contract if there were no Bids) that have a direct effect on the cost or time of Seller's performance will be the subject of an adjustment in Procurement Contract Price or Procurement Contract Times. If Buyer and Seller are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Article 12.

7.04 "Or Equals"

- A. Whenever an item of material or equipment to be incorporated into the Goods is specified or described in the Procurement Contract Documents by using the names of one or more proprietary items or specific suppliers or manufacturers, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, other items of material or equipment or material or equipment of other suppliers or manufacturers may be submitted to Buyer for Engineer's review.

1. If in Engineer's sole discretion, such an item of material or equipment proposed by Seller 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.
 2. For the purposes of this paragraph, a proposed item of material or equipment may be considered functionally equal to an item so named only if in the exercise of reasonable judgment, Engineer determines that: 1) it is at least equal in quality, durability, appearance, strength, and design characteristics; 2) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole; 3) it has an acceptable record of performance and availability of responsive service; and (4) Seller certifies that if approved: a) there will be no increase in any cost, including capital, installation or operating costs, to Buyer; and b) the proposed item will conform substantially to the detailed requirements of the item named in the Procurement Contract Documents.
- B. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or Submittal made pursuant to Paragraph 7.04.A. Engineer will be the sole judge of whether to accept or reject such a proposal or Submittal. No "or equal" will be ordered, manufactured or utilized until Engineer's review is complete, which will be evidenced by an approved Shop Drawing. Engineer will advise Buyer and Seller in writing of any negative determination. Notwithstanding Engineer's approval of an "or-equal" item, Seller shall remain obligated to comply with the requirements of the Procurement Contract Documents.
- C. *Special Guarantee:* Buyer may require Seller to furnish at Seller's expense a special performance guarantee or other surety with respect to any such proposed "or-equal."
- D. *Data:* Seller shall provide all data in support of any such proposed "or equal" at Seller's expense.

7.05 Taxes

- A. Seller shall pay all taxes and duties arising out of the sale of the Goods and the performance of Special Services. All taxes and duties are included in the Procurement Contract Price, except as noted in the Supplementary Conditions.
- B. Buyer is exempt from payment of sales and compensating use taxes of the State of Kentucky and of cities and counties thereof on all materials and equipment to be incorporated into the Project facilities.
1. Buyer will furnish the required certificates of tax exemption to Seller with respect to materials and equipment to be incorporated into the Project facilities.
 2. Buyer's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Seller, or to supplies or materials not incorporated into the Project facilities.

3. The Procurement Contract Price does not include the cost of sales or compensating use taxes to the extent such are exempted by this paragraph.

7.06 Submittals

A. *Shop Drawing and Sample Requirements*

1. Before submitting a Shop Drawing or Sample, Seller shall:
 - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Procurement Contract Documents;
 - b. determine and verify:
 - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal; and
 - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of Seller's obligations.
 - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Seller has satisfied its obligations under the Procurement Contract Documents with respect to Seller's review of that Submittal, and that Seller approves the Submittal.
3. With each Shop Drawing or Sample, Seller shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Procurement Contract Documents. This notice will be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.

B. *Submittal Procedures for Shop Drawings and Samples:* Seller shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.

1. *Shop Drawings*

- a. Seller shall submit the number of copies required in the Procurement Specifications.
- b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment

Seller proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.06.C.

2. *Samples*

- a. Seller shall submit the number of Samples required in the Procurement Specifications.
 - b. Seller shall clearly identify each Sample as to material, supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.06.C.
3. Where a Shop Drawing or Sample is required by the Procurement Contract Documents or the Schedule of Submittals, any related work performed by Seller prior to Engineer's review and approval of the pertinent Submittal will be at the sole expense and responsibility of Seller.

C. *Engineer's Review of Shop Drawings and Samples*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Goods, comply with the requirements of the Procurement Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Procurement Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, manufacturing, fabrication, installation, or shipping, or to safety precautions or programs incident thereto.
3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Seller from responsibility for any variation from the requirements of the Procurement Contract Documents unless Seller has complied with the requirements of Paragraph 7.06.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Procurement Contract Documents in a Field Order or other appropriate Procurement Contract modification.
5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Seller from responsibility for complying with the requirements of Paragraphs 7.06.A and B.

6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Procurement Contract Documents, will not, under any circumstances, change the Procurement Contract Times or Procurement Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing or Sample will result in such item becoming a Procurement Contract Document.
8. Seller shall furnish Goods that comply with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.06.C.4.

D. *Resubmittal Procedures for Shop Drawings and Samples*

1. Seller 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 and approval. Seller shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.
2. Seller shall furnish required Shop Drawing and Sample Submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Seller shall be responsible for Engineer's charges to Buyer for such time. Buyer may impose a set-off against payments due Seller to secure reimbursement for such charges.
3. If Seller requests a change of a previously approved Shop Drawing or Sample, Seller shall be responsible for Engineer's charges to Buyer for its review time, and Buyer may impose a set-off against payments due Seller to secure reimbursement for such charges, unless the need for such change is beyond the control of Seller.

E. *Submittals Other than Shop Drawings and Samples*

1. The following provisions apply to all Submittals other than Shop Drawings and Samples:
 - a. Seller shall submit all such Submittals to the Engineer in accordance with the schedule of Submittals and pursuant to the applicable terms of the Procurement Contract Documents.
 - b. Engineer will provide timely review of all such Submittals in accordance with the schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the schedule of Submittals will be deemed accepted.

- c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Procurement Contract Documents as to general form and content of the Submittal.
 - d. If any such Submittal is not accepted, Seller shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.04 and 2.05.

7.07 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, Seller shall indemnify and hold harmless Buyer, Engineer, Project Owner, and any assignee of Buyer, including Contractor/Assignee, and their officers, directors, members, partners, employees, agents, consultants, contractors, and subcontractors, 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 Seller's obligations under the Procurement Contract.
- B. In any and all claims against Buyer, Engineer, Project Owner, or any assignee of Buyer, including Contractor/Assignee, or their officers, directors, members, partners, employees, agents, consultants, contractors, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Seller, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to furnish any of the Goods, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.07.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Seller or any such subcontractor, supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.08 Concerning Subcontractors and Suppliers

- A. Seller may retain subcontractors and suppliers for the performance of parts of the furnishing of the Goods. The Seller's retention of a subcontractor or supplier will not relieve Seller's obligation to Buyer to perform and complete the furnishing the Goods in accordance with the Procurement Contract Documents.

ARTICLE 8—SHIPPING AND DELIVERY

8.01 Shipping

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

8.02 Delivery

- A. Seller shall deliver the Goods free on board (FOB) to the Point of Destination, freight prepaid, in accordance with the Procurement Contract Times set forth in the Procurement Agreement, or other date agreed to by Buyer and Seller.
- B. At least 10 days before shipment, Seller shall provide written notice to Buyer of the manner of shipment and the anticipated delivery date. The notice must also include any instructions concerning special equipment or services required at the Point of Destination to unload and care for the Goods. Seller shall also require the carrier to give Buyer at least 24 hours' notice by telephone prior to the anticipated time of delivery.
- C. Buyer will be responsible and bear all costs for unloading the Goods from carrier.
- D. Buyer will assure that adequate facilities are available to receive delivery of the Goods at the time established for delivery, or on another date agreed to by Buyer and Seller.
- E. No partial deliveries will be allowed, unless permitted or required by the Procurement Contract Documents or agreed to in writing by Buyer.
- F. Provisions governing inspection on delivery are set forth in Paragraph 9.02.

8.03 Risk of Loss

- A. Risk of loss and insurable interests transfer from Seller to Buyer upon Buyer's receipt of the Goods.
- B. Notwithstanding the provisions of Paragraph 8.03.A, if Buyer rejects the Goods as non-conforming, the risk of loss on such Goods will remain with Seller until Seller corrects the non-conformity or Buyer accepts the Goods. If rejected Goods remain at the Point of Destination pending modification and acceptance, then Seller shall be responsible for arranging adequate protection and maintenance of the Goods at Seller's expense.

ARTICLE 9—BUYER'S RIGHTS

9.01 Seller's Warranties and Guarantees

- A. Seller warrants and guarantees to Buyer that the title to the Goods conveyed will be proper, its transfer rightful, and free from any security interest, lien, or other

encumbrance. Seller shall defend, indemnify, and hold Buyer harmless against any liens, claims, or demands contesting or affecting title of the Goods conveyed.

- B. Seller warrants and guarantees to Buyer that all Goods will conform with the Procurement Contract Documents, and with the standards established by any Samples approved by Engineer. Engineer shall be entitled to rely on Seller's warranty and guarantee. If the Procurement Contract Documents do not otherwise specify the characteristics or the quality of the Goods, the Goods must comply with the requirements of Paragraph 7.02.B.
- C. Seller's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, improper modification, improper maintenance, or improper operation by persons other than Seller;
 - 2. excessive corrosion or chemical attack, unless corrosive or chemically-damaging conditions were disclosed by Buyer in the Procurement Contract Documents and the Procurement Contract Documents required the Goods to withstand such conditions;
 - 3. use in a manner contrary to Seller's written instructions for installation, operation, and maintenance; or
 - 4. normal wear and tear under normal usage.
- D. Seller's obligation to furnish the Goods in accordance with the Procurement Contract Documents will be absolute. None of the following will constitute an acceptance of Goods that are non-conforming, or a release of Seller's obligation to furnish the Goods in accordance with the Procurement Contract Documents:
 - 1. observations by Buyer, Engineer, or Project Owner;
 - 2. recommendation by Engineer or payment by Buyer of any progress or final payment;
 - 3. use of the Goods by Buyer or Project Owner;
 - 4. any acceptance by Buyer, Engineer, or Project Owner, or any failure to do so;
 - 5. the end of the correction period established in Paragraph 9.04;
 - 6. the issuance of a notice of acceptance;
 - 7. any inspection, test or approval by others; or
 - 8. any correction of non-conforming Goods by Buyer or Project Owner.
- E. Buyer shall promptly notify Seller of any breach of Seller's warranties or guarantees.

9.02 Inspections and Testing

A. *General Provisions*

1. The Procurement Contract Documents specify required inspections and tests. Buyer shall have the right to perform, or cause to be performed, reasonable inspections and require reasonable tests of the Goods at Seller's facility, and at the Point of Destination. Seller shall allow Buyer a reasonable time to perform such inspections or tests.
2. Seller shall reimburse Buyer for all expenses, except for travel, lodging, and subsistence expenses of Buyer's and Engineer's representatives, for inspections and tests specified in the Procurement Contract Documents. If as the result of any such specified testing the Goods are determined to be non-conforming, then Seller shall also bear the travel, lodging, and subsistence expenses of Buyer's and Engineer's representatives, and all expenses of re-inspection or retesting.
3. Buyer shall bear all expenses of inspections and tests that are not specified in the Procurement Contract Documents (other than any re-inspection or retesting resulting from a determination of non-conformity, as set forth in Paragraph 9.03); provided, however, that if as the result of any such non-specified inspections or testing the Goods are determined to be non-conforming, then Seller shall bear all expenses of such inspections and testing, and of any necessary re-inspection and retesting.
4. Seller shall provide Buyer timely written notice of the readiness of the Goods for all inspections, tests, or approvals which the Procurement Contract Documents specify are to be observed by Buyer prior to shipment.
5. Buyer will give Seller timely notice of all specified tests, inspections, and approvals of the Goods which are to be conducted at the Point of Destination, and a representative of Seller will attend such tests, inspections, and approvals.
6. If, on the basis of inspections or testing, the Goods appear to be conforming, Buyer will give Seller prompt notice thereof. If on the basis of inspections or testing, the Goods appear to be non-conforming, Buyer will give Seller prompt notice thereof and will advise Seller of the remedy Buyer elects under the provisions of Paragraph 9.03.
7. Neither payments made by Buyer to Seller prior to any tests or inspections, nor any tests or inspections, will constitute acceptance of non-conforming Goods, or prejudice Buyer's rights under the Procurement Contract.

B. *Visual Inspection on Delivery*

1. Buyer will visually inspect the Goods upon delivery solely for purposes of identifying the Goods, general verification of quantities, and observation of apparent condition. Such visual inspection will not be construed as final or as receipt of any Goods that, as a result of subsequent inspections and tests, are determined to be non-conforming.
2. If, on the basis of the visual inspection specified in Paragraph 9.02.B.1, the Goods appear to comply with the requirements of the Procurement Contract Documents

as to quantities and condition, then within 10 days of delivery Buyer shall issue to Seller Buyer's acknowledgment of the receipt of Goods.

C. *Final Inspection*

1. After all of the Goods have been incorporated into the Project, tested in accordance with such testing requirements as are specified, and are functioning as required, and Seller has performed and completed all Special Services, Buyer will make a final inspection.
2. If, on the basis of the final inspection, Buyer determines that the Goods are conforming, Buyer's notice thereof will constitute Buyer's acceptance of the Goods, subject to any limitations stated in the notice.
3. If, on the basis of the final inspection, the Goods are non-conforming, Buyer will identify the non-conformity in writing.

9.03 Non-Conforming Goods

A. If, on the basis of inspections and testing prior to delivery, the Goods are found to be non-conforming, or if at any time after Buyer has acknowledged receipt of delivery and before the expiration of the correction period described in Paragraph 9.04, Buyer determines that the Goods are non-conforming, then Seller shall promptly, without cost to Buyer and in response to written instructions from Buyer, either correct such non-conforming Goods, or, if Goods are rejected by Buyer, remove and replace the non-conforming Goods with conforming Goods, including all work required for reinstallation.

B. *Buyer's Rejection of Non-Conforming Goods*

1. If Buyer elects to reject the Goods in whole or in part, Buyer's notice to Seller will describe in sufficient detail the non-conforming aspect of the Goods. If Goods have been delivered to Buyer, Seller shall promptly, and within the Procurement Contract Times, remove and replace the rejected Goods.
2. Seller shall bear all costs, losses and damages attributable to the removal, replacement, reinspection, and retesting of the non-conforming Goods.
3. Upon rejection of the Goods, Buyer retains a security interest in the Goods to the extent of any payments made and expenses incurred in their testing and inspection.

C. *Buyer's Rejection of Non-Conforming Special Services*

1. If at any time Buyer elects to reject the Special Services in whole or in part, Buyer's notice to Seller will describe in sufficient detail the non-conforming aspect of the Special Services.
2. Seller shall promptly provide conforming Special Services acceptable to Buyer.

3. If Seller fails to provide conforming Special Services, Buyer may remove the Special Services from the scope of the Procurement Contract, and equitably reduce the Procurement Contract Price.
- D. *Remedying Non-Conforming Goods*: If Buyer elects to permit the Seller to modify the Goods to correct the non-conformance, then Seller shall promptly provide a schedule for such modifications and shall make the Goods conforming within a reasonable time.
- E. *Buyer's Acceptance of Non-Conforming Goods*: Instead of requiring correction or removal and replacement of non-conforming Goods discovered either before or after final payment, Buyer may accept the non-conforming Goods. Seller shall bear all reasonable costs, losses, and damages attributable to Buyer's evaluation of and determination to accept such non-conforming Goods.
- F. *Seller Obligations*: Seller shall pay all claims, costs, losses, and damages, including but not limited to all fees and charges for re-inspection, retesting and for any engineers, architects, attorneys and other professionals, and all court or arbitration or other dispute resolution costs arising out of or relating to the non-conforming Goods. Seller's obligations will include the costs of the correction or removal and replacement of the non-conforming Goods and the replacement of property of Buyer and others destroyed by the correction or removal and replacement of the non-conforming Goods, and obtaining conforming Special Services from others.
- G. *Buyer's Rejection of Conforming Goods*: If Buyer asserts that Goods are non-conforming and such Goods are determined to be conforming, or if Buyer rejects as non-conforming Goods that are later determined to be conforming, then Seller shall be entitled to reimbursement from Buyer of costs incurred by Seller in inspecting, testing, correcting, removing, or replacing the conforming Goods, including but not limited to fees and charges of engineers, architects, attorneys and other professionals, and all court or arbitration or other dispute resolution costs associated with the incorrect assertion of non-conformance or rejection of conforming Goods.

9.04 Correction Period

- A. Seller's responsibility for correcting all non-conformities in the Goods will extend for a period of one year after the acceptance of the Goods in accordance with Paragraph 9.02.C.2.
- B. Where non-conforming Goods and Services (and damage to other work resulting therefrom) have been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Goods and Services will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- C. Seller's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph may not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 10—ENGINEER’S STATUS

10.01 Engineer’s Role Defined

- A. Engineer will be Buyer’s representative until assignment (if any) of the Procurement Contract.
- B. The duties and responsibilities and the limitations of authority of Engineer prior to assignment, if any, of the Procurement Contract, are set forth in the Procurement Contract Documents.
- C. Engineer’s responsibilities, if any, after an assignment (if any) of the Procurement Contract, are set forth in the Procurement Agreement.

10.02 Duties and Responsibilities; Authority; Limitations

- A. As set forth in Article 3, Engineer will be the initial interpreter of the Procurement Contract Documents and judge of the acceptability of the Goods, and will issue clarifications, interpretations, and decisions regarding such issues.
- B. Acting on behalf of Buyer under the provisions of Article 9, Engineer has the authority to disapprove or reject Goods that Engineer believes to be non-conforming. Engineer also has the authority to require special inspection or testing of the Goods or Special Services as provided in Paragraph 9.02, whether or not the Goods are fabricated or installed, or the Special Services are completed.
- C. Engineer may authorize minor deviations or variations in the Procurement Contract Documents by: 1) written approval of specific variations set forth in Shop Drawings when Seller has duly noted such variations as required in Paragraph 7.06.A.3, or 2) a Field Order.
- D. As set forth in Article 12, Engineer will review Claims, and render decisions on Claims.
- E. In rendering any interpretations, clarifications, reviews, decisions, disapprovals, acceptances, rejections, authorizations, and judgments, Engineer will not show partiality to Buyer or Seller. Engineer will not be liable to Buyer, Seller, or others in connection with any interpretations, clarifications, reviews, decisions, disapprovals, acceptances, rejections, authorizations, or judgments conducted or rendered by Engineer in good faith.
- F. Engineer will not supervise, direct, control, or have authority over or be responsible for the means, methods, techniques, sequences, or procedures used by Seller to perform its obligations under this Procurement Contract, or the safety precautions and programs incident thereto, or for any failure of Seller to comply with Laws and Regulations applicable to the performance of its obligations. Engineer will not be responsible for Seller’s failure to furnish the Goods in accordance with the Procurement Contract Documents.

ARTICLE 11—CHANGES

11.01 Amending and Supplementing the Procurement Contract

- A. The Procurement Contract may be amended or supplemented by a Change Order, a Change Directive, or a Field Order.
- B. If an amendment or supplement to the Procurement Contract includes a change in the Procurement Contract Price or the Procurement Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Procurement Contract that involve (1) the conformance or acceptability of the Goods, (2) the design (as set forth in the Procurement Drawings, Procurement Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Buyer and Seller may amend other terms and conditions of the Procurement Contract without the recommendation of the Engineer.

11.02 Change Orders

- A. Buyer and Seller shall execute appropriate Change Orders covering:
 1. Changes in Procurement Contract Price or Procurement Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Goods furnished in accordance with a Change Directive;
 2. Changes in Procurement Contract Price resulting from a Buyer set-off, unless Seller has duly contested such set-off;
 3. Changes in the Goods which are: (a) ordered by Buyer pursuant to Paragraph 11.05, (b) required because of Buyer's acceptance of non-conforming Goods and Services under Paragraph 9.03 or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Goods involves the design (as set forth in the Procurement Drawings, Procurement Specifications, or otherwise) or other engineering or technical matters; and
 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Change Directive; Article 12, Claims; and similar provisions.
- B. If Buyer or Seller refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 Change Directives

- A. A Change Directive will not change the Procurement Contract Price or the Procurement Contract Times but is evidence that the parties expect that the modification ordered or documented by a Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Change Directive's effect, if any, on the Procurement Contract Price and

Procurement Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Procurement Contract Documents governing adjustments, expressly including Paragraph 11.08 regarding change of Procurement Contract Price.

- B. If Buyer has issued a Change Directive and Buyer or Seller believes that an adjustment in Procurement Contract Times or Procurement Contract Price is necessary, then such party shall submit a Claim seeking such an adjustment no later than 30 days after the completion of the Goods and Services set out in the Change Directive.

11.04 Field Orders

- A. Engineer may authorize minor changes in the Goods and Services if the changes do not involve an adjustment in the Procurement Contract Price or the Procurement Contract Times and are compatible with the design concept as indicated by the Procurement Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Buyer and also on Seller, which shall perform the Goods involved promptly.
- B. If Seller believes that a Field Order justifies an adjustment in the Procurement Contract Price or Procurement Contract Times, then before proceeding with the Goods at issue, Seller shall submit a Claim as provided herein.

11.05 Buyer-Authorized Changes in the Goods

- A. Without invalidating the Procurement Contract and without notice to any surety, Buyer may, at any time or from time to time, order additions, deletions, or revisions in the Goods. Changes involving the design (as set forth in the Procurement Drawings, Procurement Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Goods may be accomplished by a Change Order, if Buyer and Seller have agreed as to the effect, if any, of the changes on Procurement Contract Times or Procurement Contract Price; or by a Change Directive. Upon receipt of any such document, Seller shall promptly proceed with the Goods involved; or, in the case of a deletion in the Goods, promptly cease activities with respect to such deletion. Added or revised Goods must be performed under the applicable conditions of the Procurement Contract Documents.

11.06 Buyer's Contingency Allowance

- A. The Buyer's Contingency Allowance, if any such is set forth in the Procurement Agreement, is for the sole use of Buyer to cover unanticipated costs.
- B. If Buyer exercises its unilateral right to use all or a portion of the Buyer's Contingency Allowance, Buyer will issue a written directive that documents the costs to which the allowance is applied, Seller's entitlement to compensation, and the consequent reduction in such allowance.

- C. Prior to final payment, the Total Price, as set forth in the Procurement Agreement, will be duly adjusted to account for any unused portion of the Buyer's Contingency Allowance.
- D. The Procurement Agreement, Article 5, addresses the impact on Buyer's Contingency Allowance of an assignment of the Procurement Contract.

11.07 Unauthorized Changes in the Goods

- A. Seller shall not be entitled to an increase in the Procurement Contract Price or an extension of the Procurement Contract Times with respect to any work performed that is not required by the Procurement Contract Documents, as amended, modified, or supplemented.

11.08 Change of Procurement Contract Price

- A. The Procurement Contract Price may only be changed by a Change Order. Any Claim for an adjustment of Procurement Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Procurement Contract Price will be determined as follows:
 - 1. For changes in Unit Price Goods, by application of the unit prices to the quantities of the items involved;
 - 2. To the extent the cost of the change is not covered by unit prices, then by a mutually agreed lump sum; or
 - 3. To the extent the cost of the change is not covered by unit prices and the parties do not reach mutual agreement to a lump sum, then on the basis of documented costs plus a Seller's fee for overhead and profit of 15%.

11.09 Change of Procurement Contract Times

- A. The Procurement Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Procurement Contract Times must comply with the provisions of Article 12.

11.10 Notification to Surety

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Goods or the provisions of the Procurement Contract (including, but not limited to, Procurement Contract Price or Procurement Contract Times), the giving of any such notice will be Seller's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12—CLAIMS, DISPUTES, AND DISPUTE RESOLUTION

12.01 Claims, Disputes, and Dispute Resolution

- A. The parties agree to endeavor to avoid or resolve Claims through direct, good faith discussions and negotiations whenever practicable. Thereafter, the parties agree that mediation is a condition precedent prior to filing any lawsuit. Mediators must be licensed engineers, contractors, attorneys, or construction managers.

ARTICLE 13—PAYMENT

13.01 Applications for Progress Payments

- A. Seller shall submit to Buyer for Engineer's review Applications for Payment filled out and signed by Seller and accompanied by such supporting documentation as is required by the Procurement Contract Documents and also as Buyer or Engineer may reasonably require.
- B. The timing and amounts of progress payments will be as stipulated in the Procurement Agreement.
- C. Any Application for Payment that is based in whole or in part on the delivery of Goods must be accompanied by a bill of sale, invoice, or other documentation reasonably satisfactory to Buyer warranting that Buyer has rightfully received good title to the Goods from Seller and that, upon payment, the Goods will be free and clear of all liens. Such documentation will include releases and waivers from all parties with viable lien rights.
- D. Buyer shall notify Seller promptly of any deficiency in the required documentation.

13.02 Review of Applications for Progress Payments

- A. *Review of Applications*
 1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Buyer, or return the Application to Seller indicating in writing Engineer's reasons for refusing to recommend payment.
 2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Buyer, based on Engineer's observations of Seller's progress, as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Goods or other obligations of Seller have progressed to the point indicated;

- b. the quality of the Goods or other obligations of Seller are generally in accordance with the Procurement Contract Documents; and
 - c. the conditions precedent to Seller being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Seller's progress.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
- a. inspections made to check the quality or the quantity of the Goods or other obligations of Seller have been exhaustive, extended to every aspect of the Goods or other obligations of Seller in progress, or involved detailed inspections of the Goods or other obligations of Seller beyond the responsibilities specifically assigned to Engineer in the Procurement Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Seller to be paid additionally by Buyer, or entitle Buyer to withhold payment to Seller.
4. Neither Engineer's review of Seller's progress for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
- a. to supervise, direct, or control the Seller's performance or furnishing of Goods or other obligations of Seller; or
 - b. for the means, methods, techniques, sequences, or procedures of construction, manufacturing, fabrication, installation, or shipping, or the safety precautions and programs incident thereto; or
 - c. for Seller's failure to comply with Laws and Regulations applicable to Seller's performance under the Procurement Contract; or
 - d. to make any examination to ascertain how or for what purposes Seller has used the money paid for the Procurement Contract Price; or
 - e. to determine that title to any of the Goods or component parts have passed to Buyer free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Buyer stated in Paragraph 13.02.A.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Buyer from loss because:
- a. the Goods and Services are non-conforming, requiring correction or replacement;
 - b. the Procurement Contract Price has been reduced by Change Orders;

- c. Buyer has been required to correct non-conforming Goods in accordance with Paragraph 9.03.C, or has accepted non-conforming Goods pursuant to Paragraph 9.03.E; or
- d. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Seller and therefore justify termination for cause under the Procurement Contract Documents.

13.03 Basis and Amount of Progress Payments

- A. The basis and amounts of the progress payments will be as provided in the Procurement Agreement, subject to the provisions of this Article 13 regarding reductions in payment.

13.04 Suspension of or Reduction in Payment

- A. Buyer may temporarily cease making progress payments, or reduce the amount of a progress payment, even though recommended for payment by Engineer, under the following circumstances:
 - 1. Buyer has reasonable grounds to conclude that Seller will not furnish the Goods or the Special Services in accordance with the Procurement Contract Documents, and
 - 2. Buyer has requested in writing assurances from Seller that the Goods will be delivered or furnished in accordance with the Procurement Contract Documents, and Seller has failed to provide adequate assurances within ten days of Buyer's written request.
 - 3. In addition to any reductions in payment (set-offs) recommended by Engineer, Buyer is entitled to impose a set-off against payment based on any of the following:
 - a. claims have been made against Buyer based on Seller's conduct in the performance or furnishing of the Goods, or has incurred costs, losses, or damages resulting from Seller's conduct in the performance or furnishing of the Goods, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. Seller has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Point of Destination or the worksite;
 - c. Seller has failed to provide and maintain required bonds or insurance;
 - d. Buyer has incurred extra charges or engineering costs related to Submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - e. the Goods are non-conforming, requiring correction or replacement;

- f. Buyer has been required to correct non-conforming Goods, in accordance with Paragraph 9.03.C, or has accepted non-conforming Goods pursuant to Paragraph 9.03.E;
 - g. the Procurement Contract Price has been reduced by Change Orders;
 - h. an event that would constitute a default by Seller and therefore justify a termination for cause has occurred;
 - i. liquidated or other damages have accrued as a result of Seller's failure to achieve Milestones, Substantial Completion, or final completion of the Goods; or
 - j. liens have been filed in connection with the Procurement Contract, except where Seller has delivered a specific bond satisfactory to Buyer to secure the satisfaction and discharge of such liens.
- B. If Buyer refuses to make payment of the full amount recommended by Engineer, Buyer will provide Seller and Engineer immediate written notice stating the reason for such action and promptly pay Seller any amount remaining after deduction of the amount withheld. Buyer shall promptly pay Seller the amount withheld when Seller corrects the reason for such action to Buyer's satisfaction.

13.05 Final Payment

- A. After Seller has corrected all non-conformities to the reasonable satisfaction of Buyer and Engineer and furnished all Special Services, Seller may submit its final Application for Payment following the procedures for progress payments.
- B. The final Application for Payment will be accompanied by all documentation called for in the Procurement Contract Documents (including but not limited to all final operations and maintenance manuals, and any special warranties), a list of all unsettled Claims, and the written consent of surety to the making of final payment.
- C. If, on the basis of final inspection and the review of the final Application for Payment and accompanying documentation, Engineer is reasonably satisfied that Seller has furnished the Goods in accordance with the Procurement Contract Documents, and that Seller has fulfilled all other obligations under the Procurement Contract Documents, then Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment subject to the provisions of Paragraph 13.02, and present the final Application for Payment to Buyer. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Buyer from loss for the reasons stated in Paragraph 13.02.
- D. If Engineer does not recommend final payment, Engineer will return the final Application for Payment to Seller, indicating the reasons for refusing to recommend final payment, in which case Seller shall make the necessary corrections and resubmit the final Application for Payment.

- E. In support of its recommendation of final payment Engineer will also give written notice to Buyer and Seller that the Goods are acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 13.06.
- F. If the final Application for Payment and accompanying documentation are appropriate as to form and substance, Buyer shall, within 30 days after receipt thereof, pay Seller the amount recommended by Engineer, less any sum Buyer is entitled to set off against Engineer's recommendation, pursuant to the provisions of Paragraph 13.04.
- G. Buyer will not make final payment, or return or release included retainage (if any) at any time, unless Seller submits written consent of the surety to such payment, return, or release.

13.06 Waiver of Claims

- A. By making final payment, Buyer waives its claim or right to liquidated damages or other damages for late completion by Seller, except as set forth in an outstanding Claim, appeal, set-off, or express reservation of rights by Buyer. Buyer reserves all other claims or rights after final payment.
- B. The acceptance of final payment by Seller will constitute a waiver by Seller of all claims and rights against Buyer other than those pending matters that have been duly submitted or appealed under the provisions of Article 12.

ARTICLE 14—CANCELLATION, SUSPENSION, AND TERMINATION

14.01 Cancellation

- A. Buyer has the right to cancel the Procurement Contract, without cause, at any time prior to delivery of the Goods by written notice. Cancellation pursuant to the terms of this paragraph will not constitute a breach of contract by Buyer. Upon cancellation:
 - 1. Buyer shall pay Seller for the direct costs incurred in producing any Goods that Seller has specially manufactured for the Project, plus a fair and reasonable amount for overhead and profit.
 - 2. For Goods that are not specially manufactured for the Project, Seller shall be entitled to a restocking charge of 10 percent of the unpaid Procurement Contract Price of such Goods.

14.02 Suspension of Performance by Buyer

- A. Buyer has the right to suspend performance of the Procurement Contract for up to 90 days, without cause, by written notice. Upon suspension under this paragraph, Seller shall be entitled to an increase in the Procurement Contract Times and Procurement Contract Price caused by the suspension, provided that performance would not have been suspended or delayed for causes attributable to Seller.

14.03 Suspension of Performance by Seller

A. Seller may suspend the furnishing of the Goods only under the following circumstance:

1. Seller has reasonable grounds to conclude that Buyer will not perform its future payment obligations under the Procurement Contract; and
2. Seller has requested in writing assurances from Buyer that future payments will be made in accordance with the Procurement Contract, and Buyer has failed to provide such assurances within ten days of Seller's written request.

14.04 Breach and Termination

A. *Buyer's Breach*

1. Seller shall have the right to terminate the Procurement Contract for cause by declaring a breach if Buyer fails to comply with any material provision of the Procurement Contract. Upon termination, Seller shall be entitled to all remedies provided by Laws and Regulations.
2. If Seller believes Buyer is in breach of its obligations under the Procurement Contract, Seller shall provide Buyer with reasonably prompt written notice setting forth in sufficient detail the reasons for declaring that it believes a breach has occurred. Buyer shall have 7 days from receipt of the written notice declaring the breach (or such longer period of time as Seller may grant in writing) within which to cure or to proceed diligently to cure such alleged breach.

B. *Seller's Breach*

1. Buyer may terminate Seller's right to perform the Procurement Contract for cause by declaring a breach should Seller fail to comply with any material provision of the Procurement Contract Documents. Upon termination, Buyer shall be entitled to all remedies provided by Laws and Regulations.
2. In the event Buyer believes Seller is in breach of its obligations under the Procurement Contract, Buyer shall provide Seller with reasonably prompt written notice setting forth in sufficient detail the reasons for declaring that it believes a breach has occurred. Seller shall have 7 days from receipt of the written notice declaring the breach (or such longer period of time as Buyer may grant in writing) within which to cure or to proceed diligently to cure such alleged breach.
3. If and to the extent that Seller has provided a performance bond under the provisions of Paragraph 5.01, the notice and cure procedures of that bond, if any, will supersede the notice and cure procedures of Paragraph 14.04.B.2.

ARTICLE 15—MISCELLANEOUS

15.01 Giving Notice

- A. Whenever any provision of the Procurement Contract requires the giving of written notice to Buyer, Seller, or Engineer, it will be deemed to have been validly given if delivered:
 - 1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
 - 2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
 - 3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

15.02 Controlling Law and Consent to Jurisdiction and Venue

- A. This Procurement Contract is to be governed by the law of the state in which the Goods are to be installed. The parties consent to the jurisdiction of the Franklin County Circuit Court.
- B. In the case of any conflict between the express terms of this Procurement Contract and the Uniform Commercial Code, as adopted in the state whose law governs, it is the intent of the parties that the express terms of this Procurement Contract will apply.

15.03 Computation of Time

- A. When any period of time is referred to in the Procurement Contract by number of 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.

15.04 Cumulative Remedies

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Procurement Contract, and the provisions of this paragraph will be as effective as if repeated specifically in the Procurement Contract in connection with each particular duty, obligation, right, and remedy to which they apply.

15.05 Survival of Obligations

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Procurement Contract, as well as all continuing

obligations indicated in the Procurement Contract, will survive final payment, completion, and acceptance of the Goods or termination or completion of the Procurement Contract or of the services of Seller.

15.06 Entire Agreement

- A. Buyer and Seller agree that this Procurement Contract is the complete and final agreement between them, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Procurement Contract may not be altered, modified, or amended except in writing signed by an authorized representative of both parties.

15.07 No Waiver

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Procurement Contract.

15.08 Headings

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

15.09 Successors and Assigns

- A. Buyer and Seller each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Procurement Contract.

QUALITY REQUIREMENTS

ARTICLE 1—SELLER'S QUALIFICATIONS

- 1.01 Meet the following criteria in connection with the Goods.
- A. Seller
 - 1. Experience in supply or manufacturing of equipment comparable to that required by the Contract Documents as a prime manufacturer, as a component manufacturer, or as an equipment supplier.
- 1.02 MANUFACTURER'S FIELD SERVICES (SPECIAL SERVICES)
- A. Manufacturer's field service engineers
 - 1. Trained field service personnel who are thoroughly familiar, in detail, with all of the Goods to be furnished, capable of directing any major or minor repair work which may be required on the Goods, and who have had experience in the repair of comparable equipment over a period of time.
 - B. Arrange and pay for manufacturer's field service engineers to provide Special Services at the Project site under the supervision and direction of Buyer's construction contractor. Upon written notice from the Buyer in accordance with the Agreement, provide manufacturer's field service engineer to perform Special Services as specified and confirm to Buyer and Engineer five days in advance of scheduled arrival of manufacturer's field service engineer.
 - C. Manufacturer's Field Service Engineer's General Responsibilities under the supervision and direction of the Buyer's construction contractor.
 - 1. Perform services typically provided for the type of equipment purchased.
 - 2. Assist as required with field assembly and supervise field repairs before acceptance of Goods
 - 3. Instruct operating personnel in proper use of the Goods.
 - 4. Field Testing
 - a. Furnish, set up and operate test equipment and facilities at no additional cost to the Buyer. Perform checks and test in accordance with the Specifications, manufacturer's recommendations and referenced testing standards.
 - b. Evaluate the test result and advise the Engineer immediately of any discrepancy between test results and test limits or the failure of any device or system under test. Include test limits for acceptability

applicable to each test on the certified test records. Record test in formation, including the evaluation of testing results, on forms approved by the Engineer.

- c. Assume responsibility for loss or damage to the Goods as a result of testing and for replacing damaged Goods including removal of damaged Goods, furnishing transportation, unloading and installation of replacement Goods.

1.03 SOURCE QUALITY CONTROL PROCEDURES

- A. Subject the Goods furnished under these Contract Documents to a complete factory-testing program.
- B. Do not initiate testing program prior to approval of key Shop Drawings by Engineer.
- C. Perform checks and tests in accordance with Specifications, manufacturer's recommendations, and referenced standards.
- D. Record and evaluate test results and advise Engineer immediately of any discrepancy between test results and test limits or the failure of any device or system under test. Include test limits for acceptability applicable to each test on the certified test records.
- E. If required by Specifications, furnish certificates from an independent testing agency which shall certify that the Goods have been examined and tested and are in conformance with the Specifications.
- F. Take samples in accordance with the Specifications as selected by Engineer or independent testing agency. Furnish and ship at no additional cost to Buyer.
- G. Factory Testing
 - 1. Give notice and coordinate with the requirements of **paragraph 9.01 of the General Conditions**. If failure to give proper written notice results in the Goods being assembled or covered before a factory inspection or test, make the Goods ready for inspection or test and reassemble or recover at no additional cost to Buyer.
 - 2. Furnish, set up and operate test equipment and facilities. If facilities for conducting required tests are unavailable to the manufacturer, conduct tests elsewhere or have them performed by an independent agency approved by Engineer.
 - 3. Assume responsibility for protection of the Goods and safety of all personnel during factory testing program.
 - 4. Grounds for rejection:
 - a. failure to withstand tests
 - b. failure to meet ratings
 - c. failure to meet applicable standards

5. In the event of failure
 - a. Submit revisions of documents requiring approval for changes required for rectification and obtain Engineer's approval before making such changes. Provide written details of any changes to be made not requiring approval. Notify Buyer and Engineer in writing before retesting.
 - b. Retest after rectification in presence of Buyer or Engineer.
 - c. Furnish new Goods which meet requirements of the Specifications if rejected Goods cannot be rectified to satisfaction of Buyer.
6. Assume responsibility for all costs associated with any failure, including, but not limited to
 - a. loss or damage to the Goods resulting from testing;
 - b. retesting;
 - c. rectification;
 - d. new Goods to replace damaged or non-rectifiable Goods;
 - e. removal, furnishing, transportation, unloading, and installation of replacement Goods; and
 - f. witness of retesting by Buyer and Engineer including travel, lodging, meals, and payroll.
- H. Protect the Goods after testing and checking to provide that subsequent testing of other equipment or systems does not disturb, damage, or otherwise interfere with functional capability of the Goods.
- I. Submit certified test reports which define tests, list results, and are signed by Seller's representative. Furnish copies of raw data collected during tests when requested by Engineer

SECTION 33 73 14
SUBSTATION POWER TRANSFORMER WITH LTC

ARTICLE 1—SUMMARY OF WORK

1.01 Design, manufacture, test, deliver, and unload power transformer at State Farm Substation.

ARTICLE 2—REFERENCES

- 2.01 ANSI B16.5, Slip-on Welding Flanges
- 2.02 ANSI C80.1, Standard Specifications for Rigid Steel Conduit
- 2.03 IEEE C57.12.10, Requirements for Transformers 230-kV and Below, 833/958 through 8,333/10,417-kVA Single-Phase and 750/862 through 60,000/ 80,000/100,000-kVA Three-Phase
- 2.04 IEEE C57.12.70, Terminal Markings and Connections for Distribution and Power Transformers
- 2.05 IEEE C57.91, Guide for Loading Mineral-Oil Immersed Power Transformers
- 2.06 IEEE C57.12.00, General Requirements for Liquid-Immersed Distribution, Power and Regulating Transformers
- 2.07 IEEE C57.12.11, Guide for Installation of Oil-Immersed Transformers (10 MVA and Larger, and 69-kV to 287-kV Ratings)
- 2.08 IEEE C57.12.80, Terminology for Power and Distribution Transformers
- 2.09 IEEE C57.12.90, Test Code for Liquid-Immersed Distribution, Power and Regulating Transformers and Guide for Short-Circuit Testing of Distribution and Power Transformers
- 2.10 IEEE C57.13, Standard Requirements for Instrument Transformers
- 2.11 IEEE C57.13.1, Guide for Field Testing of Relaying Current Transformers
- 2.12 IEEE C57.13.3, Guide for the Grounding of Instrument Transformer Secondary Circuits and Cases
- 2.13 IEEE C57.19.00, Standard General Requirements and Test Procedures for Outdoor Power Apparatus Bushings
- 2.14 IEEE C57.19.01, Standard Performance Characteristics and Dimensions for Outdoor Apparatus Bushings
- 2.15 IEEE C57.19.100, Guide for Application of Power Apparatus Bushings
- 2.16 IEEE C57.93, Guide for Installation of Liquid-Immersed Power Transformers
- 2.17 IEEE C57.98, Guide for Transformer Impulse Tests (Appendix to ANSI/IEEE C57.12.90)
- 2.18 IEEE C57.120, Loss Evaluation Guide for Power Transformers and Reactors
- 2.19 IEEE C62.11, Standard for Metal-Oxide Surge Arresters for Alternating Current Systems
- 2.20 IEEE C62.33, Guide for the Application of Metal-Oxide Surge Arresters for Alternating Current Systems
- 2.21 IEEE Std 693, IEEE Recommended Practice for Seismic Design of Substations

- 2.22 ASCE 7, Minimum Design Loads for Buildings and other Structures
- 2.23 ASTM B3-74, Specification for Soft or Annealed Copper Wire
- 2.24 ASTM B48-68, Specification for Soft Rectangular and Square Bare Copper Wire for Electrical Conductors
- 2.25 ASTM B187-83, Specification for Copper Bus Bar, Rod, and Shapes
- 2.26 ASTM D-3487, Mineral Insulating Oil Used in Electrical Apparatus
- 2.27 NEMA ICS-1, Industrial Control and Systems: General Requirements
- 2.28 NEMA TR-1, Transformer, Regulators and Reactors
- 2.29 NEMA WC5, Thermoplastic insulated Wire and Cable for the Transmission and Distribution of Electrical Energy
- 2.30 NEMA WC7, Cross-linked Thermosetting-Polyethylene-Insulated Wire and Cable for the Transmission and Distribution of Electrical Energy
- 2.31 NEMA WC8, Ethylene-Propylene-Rubber-Insulated Wire and Cable for the Transmission and Distribution of Electrical Energy
- 2.32 NFPA 70, National Electrical Code (NEC), Current Rating of Control Wiring

ARTICLE 3—DESIGN AND PERFORMANCE REQUIREMENTS

3.01 Design Requirements

- A. Furnish oil-immersed, 3-phase power transformers applied as distribution substation step-down and step-up transformers.
- B. Design and manufacture: Standard design with components by same Manufacturer.
- C. Design equipment, accessories, and supporting structures to meet requirements of project site conditions.
- D. Design transformer to operate in parallel under normal conditions with second transformer of like rating.

3.02 Performance Requirements

- A. Loss Evaluation: In accordance with the Procurement Agreement and General Conditions
- B. Audible Sound Level: Average A-weighted, measured in accordance with ANSI C57.12.90:
 - 1. 15 MVA: 70 db
 - 2. 20 MVA: 72 db
 - 3. 25 MVA: 73 db
- C. Overload Capabilities
 - 1. In accordance with ANSI/IEEE C57.91

- a. Design bushings, connectors, leads, and all auxiliary equipment for continuous full load duty and for emergency service at 1.4 times the transformer full load current at the ONAF, ONAF rating for a period of eight hours.

D. Seismic Performance

1. The transformer shall be seismically qualified to moderate seismic qualification.
2. Transformer shall be designed so there will be neither structural damage nor loss of function immediately after an earthquake when subject to design seismic loads occurring simultaneously with dead and normal operation loads.
3. The following methods shall be used for the qualification:
 - a. The transformer (transformer tank, core, coils, anchorage, and other components) except the bushings and surge arresters shall be qualified by static analysis.
 - b. The high side bushings shall be qualified by time history shake table tests. The low side bushings are inherently acceptable.
 - c. The high side surge arresters:
 - 1) shall maintain correct operational state during seismic event
 - 2) shall be qualified by time history shake table tests
 - d. The low side surge arresters are inherently acceptable.
4. Static Analysis
 - a. Static analysis calculations shall include verification of the load path from the core, coils, tank and base to the anchorage for all three orthogonal axes. All components of the load path shall have sufficient rigidity to restrain the core and coil and coil from shifting. Sketches shall be provided with the analysis that clearly shows a complete load path to the anchorage. Load path parts and member shall be clearly labeled and dimensioned. Section properties, calculated stresses and allowables of all load path parts and members shall be provided.
 - b. Appendages, such as radiators and control cabinets, shall be qualified by static analysis, where acceleration is multiplied by 3.
 - c. Static analysis shall be per IEEE 693, A.1.3.1 Static analysis.
5. Time History Test shall be per IEEE 693, A.1.2.2 Time history shake table test, specifically A.1.2.5 composite insulator and bushing test.
6. Acceptance criteria shall be per IEEE 693, A.2 and D.5, Acceptance criteria.
7. Anchorage welds: All transformers shall be designed to be field welded to embedded plates or beams. The outline drawings shall include locations, size and length of field welds.
8. Report. For components qualified by testing, the report shall meet the requirements of IEEE 693, A.5, Static test qualification report. For components

qualified by analysis, the report shall meet the requirements of IEEE 693, A.6, Analysis report.

9. A seismic identification plate shall be attached to transformer as specified in IEEE 693, A.8, Seismic qualification identification plate.

ARTICLE 4—PROJECT/SITE CONDITIONS

- 4.01 Altitude: Less than 3,300 feet above mean sea level
- 4.02 Ambient temperature: -20° Fahrenheit to $+110^{\circ}$ Fahrenheit
- 4.03 Seismic: loading per ASCE 7.05, $S_s = 1.5$ g, Importance Factor 1.5, site class D
- 4.04 Keraunic level: 60 thunderstorm days per year
- 4.05 Extreme wind loading per ASCE 7.05, basic wind speed of 90 mph, importance factor 1.15, exposure category C
- 4.06 Combined ice and wind loading district: NESC Medium
- 4.07 Site Address: Frankfort Plant Board State Farm Substation located near 1215 Glens Creek Rd, Frankfort, KY 40601, Frankfort, KY 40601.

ARTICLE 5—SUBMITTALS

- 5.01 Submittals shall be in accordance with paragraph 7.06 of the General Conditions.
- 5.02 Schedule submittals to expedite furnishing the Goods and coordinate submission of related items. Deliver each submittal to Engineer with copy to Buyer at following addresses:

- A. Address correspondence to Engineer as follows:

Power Centric Solutions, LLC

PO Box 247 Gallatin, TN 37066

Attention: Adam Stevenson, Project Manager

Phone: (615) 218-5813 Email: astevenson@pwrcentric.com

- B. Address correspondence to Buyer as follows:

Frankfort Plant Board

305 Hickory Drive

Frankfort, KY 40601

Attention: Eli Adamson

5.03 Submit the following quantities:

- A. Shop drawings - One electronic copy (in PDF format) and two 11x17 paper copies including pre-printed manufacturers' data, brochures, suppliers' information, testing reports, certifications, and manufacturer's installation and testing instructions.
- B. Catalogs and cut sheets - One electronic copy (in PDF format) and two paper copies including pre-printed manufacturers' data, brochures, suppliers' information, testing reports, certifications, and manufacturer's installation and testing instructions.
- C. Operation, maintenance, and instruction manuals - One electronic copy (in PDF format) and two paper copies.
- D. Submit the following:
 - 1. Product data: Catalogs and cut sheets
 - 2. Shop Drawings:
 - a. Outline showing general arrangement, legend, plan, elevation, base details, weights, dimensions, and gallons of oil with location of center of gravity with and without oil on outline
 - b. Connection, alarm, control, current, voltage, and auxiliary schematic diagrams
 - c. Internal wiring and connection diagrams (tabular format is not acceptable)
 - d. Bushing current transformers:
 - 1) Excitation and ratio correction factor curves for each secondary ratio
 - 2) Resistance of current transformer secondary and connecting leads for each ratio
 - 3) Actual current ratio and turn ratio for each tap
 - 4) Mechanical and thermal short time (one-second) rating
 - e. Nameplate data, including all current transformer taps. Resubmit nameplate drawing after factory tests with all test data completed
 - f. Physical drawings showing equipment arrangement, terminal block locations, cable entrance, and panel layout
 - g. Terminal block connections
 - h. Bushing lifting accessories and ground pad outlines
 - i. Notes and symbols
 - j. Bill of material
 - k. Detailed description of procedure for vacuum filling of transformers with insulating oil
 - 3. Quality Assurance/Control Submittals
 - a. Design Data:

- 1) Certified seismic qualification tests and analyses, in accordance with IEEE Std. 693.
 - 2) Certified short circuit withstand test results on units of comparable rating and design.
- b. Test Reports
 - c. Manufacturer's instructions
 - d. Manufacturer's field reports

ARTICLE 6—DELIVERY, STORAGE, AND HANDLING

- 6.01 Attach impact recorder to the transformers during transportation periods. Unseal impact recorder only in presence of Buyer or Engineer.
- 6.02 Deliver transformer oil to Buyer's site including all necessary equipment for the oil filling operation.

ARTICLE 7—MAINTENANCE MATERIALS

- 7.01 Make interchangeable with, and same material and workmanship as, corresponding original parts.
- 7.02 Furnish and deliver with units to project storage facilities.
- 7.03 Required Materials or Parts:
 - A. Touch-up paint: ANSI No. 70 (Light Gray), three 1-quart containers
- 7.04 Other parts recommended: at Buyer's option

ARTICLE 8—WARRANTY

- 8.01 Provide five-year manufacturer's warranty on Goods and Services provided.

ARTICLE 9—POWER TRANSFORMER

- 9.01 Principal ratings and electrical characteristics:
 - A. Overload capabilities: In accordance with ANSI C57.91 and the requirements specified in Article 3 of this specification.
 1. Continuous Ratings:
 - a. ONAN, 55° Celsius rise: 15 MVA
 - b. ONAF, 55° Celsius rise, first stage forced cooling: 20 MVA
 - c. ONAF, 55° Celsius rise, second stage forced cooling: 25 MVA
 - d. ONAF, 65° Celsius rise, second stage forced cooling: 28 MVA
 2. Number of phases: 3
 3. Frequency: 60 Hz

4. Cooling class: ONAN, ONAF, ONAF
5. Primary to secondary impedance: ANSI Standard
6. Primary winding:
 - a. Rated voltage: 69-kV
 - b. Connection: Delta
 - c. No-load tap changer: ± 5 -percent in four 2.5-percent steps
7. Secondary winding:
 - a. Rated voltage: 13.8-kV
 - b. Connection: Wye with neutral brought out
8. Basic Impulse Level (BIL)
 - a. H winding: 350-kV
 - b. X winding: 110-kV
9. Maximum Temperature Rise
 - a. By resistance: 65° Celsius
 - b. By hot spot: 80° Celsius
10. Duty: Continuous
11. Angular phase displacement: Per ANSI C57.12.00, Primary to Secondary: (30 degrees with the low voltage lagging the high voltage)

ARTICLE 10—COMPONENTS

10.01 Transformer Tank:

- A. Construction: Welded steel plate, liquid tight, with bolted and gasketed manhole on top of tank, mounted on steel skid base, and suitable for skidding in any direction.
- B. Provide with jacking lugs and pulling eyes for lifting or moving along either axis when completely assembled and oil filled.
- C. Mount a fall control ring on the top of each transformer tank to accommodate worker safety device attachment. Form 4-inch rings from $\frac{1}{2}$ inch diameter rod. Locate so that a worker wearing a 6.5-foot safety tether can work anywhere on top of the transformer, including the bushings, while hooked into the fall control ring.
- D. Provide with two copper faced ground pads at diagonal corners near base, with two bolt terminal connectors.
- E. Mount separate blocks on both corners of the tank on the high voltage and low voltage sides, in a vertical line spaced no more than 3' apart to support the ground cable loop when connected to the high voltage surge arresters.
- F. Maintain positive pressure continually to prevent ingress of moisture during shipping.

10.02 Core:

- A. Material: Highest quality, non-aging, cold rolled, grain oriented, stress free, thin silicon steel laminations, with high permeability and low hysteresis loss.
- B. Properly anneal with smooth surfaces at edges.
- C. Provide each sheet with an insulated surface treatment impervious to hot transformer oil.
- D. Carefully assemble, rigidly clamp, and block to prevent deteriorating vibrations, interference with oil circulation, objectionable noise conditions, and distortions due to short circuit and shipment.
- E. Securely ground to the tank at the top of each transformer in a location accessible from manhole so grounding device can be unbolted without lowering transformer oil level or losing nitrogen pressure.
- F. Provide with means for properly lifting and moving core assembly when untanked.

10.03 Windings:

- A. Material: Electrolytic copper with high conductivity characteristics, conforming to ASTM B3-74 or B48-68.
- B. Provide with thermally upgraded paper insulation system of high dielectric and mechanical strength, arranged to permit free circulation of oil.
- C. Make up, shape, and brace to provide for expansion and contraction due to temperature changes and to avoid abrasion of insulation.
- D. Adequately clamp and brace to prevent distortion or increase in noise above specified limits due to aging in continuous service at rated operating conditions.
- E. Circular helical. Rectangular windings will not be acceptable.

10.04 Cooling Equipment

- A. Type: Two-stage ONAF/ONAF, conforming to ratings previously specified.
- B. Radiators:
 - 1. Nominal dimensions and interchangeable
 - 2. Welded construction, with flanged connections and provisions for draining and venting
 - 3. Provided with lifting eyes or lugs
 - 4. Furnished with oil tight valves at all connections to main tank that will allow removal of radiators without taking transformers out of service
 - 5. Locate on sidewall of Segment 3
- C. Fans:
 - 1. Power supply volts: 240 VAC, single-phase, 60 Hz.

2. Provide magnetic motor starter, and protective devices and manual/automatic selector switch.
 3. Provide individual thermal protection for each fan motor.
 4. Provide individual disconnecting means for each fan motor in the form of a weatherproof, locking plug for each.
 5. Fan impellers one-piece construction
 6. Fan meets OSHA safety requirements
 7. Automatic and manual switch
- D. Controls:
1. Automatically controlled by the winding temperature device, provided with air circuit breaker of suitable rating, automatic starting switches, auxiliary relays, alarm contacts, select switch for AUTOMATIC/OFF/MANUAL operation and any other necessary devices.
 2. Include provisions for SCADA control and status indication of all stages of cooling equipment.
 3. Mounted in main transformer control cabinet
 4. Designed so either stage of cooling equipment can be selected for operation with first stage forced cooling.
- E. Transformer Oil:
1. Pure mineral oil obtained by fractional distillation, unmixed with other substances, meeting the requirements of ASTM D3487
 2. Prepared and refined especially for transformer use; free of moisture, acid, alkali, PCBs, and injurious sulfur compounds
 3. Free of deposit formation under normal operating temperatures
 4. Dielectric strength: Not less than 26,000 volts between 1" discs spaced 1/10" apart
 5. Oil shall be tested for corrosive sulfur according to ASTM D1275 extended test
- F. Oil Preservation System: Positive pressure nitrogen:
1. Include adequate amount of bottled nitrogen to place transformers in service.
 2. Nitrogen control equipment: Mounted in easily accessible, weatherproof, lockable enclosure with adequate space for nitrogen bottles mounted on the transformer tank. Enclosure shall include stainless steel, 3-point latching system.
 3. Nitrogen leads: Soft drawn copper tubing
 4. Provide a certificate of ownership with nitrogen tank.
- G. Bushings:
1. Bushing studs: Threaded, stud type, silver plated
 2. Porcelain: Manufactured by the wet process

3. Glazing: Free of imperfections
 4. Color: ANSI No. 70, Light Gray
 5. High Voltage Bushings:
 - a. Type: Interchangeable
 - b. BIL rating: 350-kV
 - c. Creepage distance: Standard
 - d. Mounting: On tank cover Segment 3
 - e. Tap: Capacitive, for bushing potential device
 - f. Connectors: Stud to flat, tinned NEMA 4-hole pad
 - g. Material: Porcelain manufactured by Wet Process
 6. Low Voltage Bushings:
 - a. BIL rating: 110-kV
 - b. Creepage distance: Standard
 - c. Mounting: On tank cover Segment 1
 - d. Connectors: Stud to flat, tinned NEMA 4-hole pad
 7. Neutral Bushings:
 - a. BIL rating: 110-kV
 - b. Creepage distance: Standard
 - c. Mounting: On tank cover Segment 1
 - d. Connectors: Stud to flat, tinned NEMA 4-hole pad
- H. Bushing Current Transformers (BCT):
1. Windings: Fully distributed
 2. Leads:
 - a. Terminate at 6-point short-circuiting type terminal blocks in control housing.
 - b. Terminate each BCT on separate block.
 - c. Mark leads with permanent sleeve markers to indicate taps and polarity.
 - d. Use No. 10 AWG stranded copper with oil proof insulation.
 3. Relaying Current Transformers:
 - a. Type: Multi-ratio, 5 lead, bushing type
 - b. Accuracy Class: C400
 - c. Rating Factor: 2
 - d. Number and Ratio:
 - 1) Two 600:5 on each high voltage bushing

- 2) Two 1200:5 on each low voltage bushing
- 3) Two 600:5 on neutral bushing

I. No-Load Tap Changer (NLTC):

1. Provide for external operation when transformers are de-energized.
2. Provide with indicating pointer, dial, and means for locking in any position.
3. Mount on sidewall approximately 5' above the base of the transformer.
4. Provide for capability of withstanding full transformer short circuit current without damage.
5. Configure to prevent leaving a winding open or short circuited when operating handle is in locked position.
6. Provide with two 2½-percent taps above and two 2½-percent taps below rated voltage.

J. Automatic Load Tap Changer (LTC)

1. Location: Low voltage winding
2. Type: Reinhausen Type RMVII complete with tank and motor operator. No substitution allowed.
3. Regulating range: 10-percent above to 10-percent below rated voltage in thirty-two ⅝-percent steps, with a total of 33 positions.
4. Rating: Deliver full-kVA capacity for normal and emergency ratings at all LTC positions and at all combinations of LTC and NLTC positions.
5. Tap Selector Switch and Mechanism
 - a. Mount in oil-filled compartment separate from main transformer tank.
 - b. Mount on sidewall of Segment 1.
 - c. Maintain physical isolation so it is not necessary to drain oil or break seal of main transformer tank when servicing LTC.
 - d. Type: Vacuum
 - e. Tap Step Changes:
 - 1) Smooth transition with no low voltage circuit interruption due to contact bounce or failure to maintain contact bypass bridging.
 - 2) Phase-to-phase and phase-to-neutral transient voltage dip (flicker) during any step transition: Maximum 2-percent of nominal voltage.
 - f. Replacement Ratings:
 - 1) Contacts: Capable of 500,000 operations without contact replacement.
 - 2) Mechanical Rating: Capable of 1,000,000 operations.
 - g. Tank Accessories:

- 1) Hinged maintenance door with oil-resistant gasket
 - 2) Drain, filter, and sampling valves
 - 3) Magnetic liquid level indicator with low level alarm contacts at 125 VDC
 - 4) Breather
 - 5) Manhole for inspection of contacts without lowering oil level
 - h. Tap switch, motor drive mechanism, control devices, position indicator, and operation counter, in accordance with ANSI C57.12.10.
6. Controls:
- a. Type: Automatic, microprocessor-based, Beckwith model M-2001-D-6L4S20C0S00 with Beckwith Adaptor Panel Option and DNP3.0 communications protocol.
 - b. Features:
 - 1) Controls for parallel operation by the circulating current method
 - 2) All controls to facilitate independent or parallel operation with an identical unit purchased under this contract, including parallel balancing module, and AC current relay
 - 3) USB interface on front of control and 10/100 base-T Ethernet and fiber optic serial interface on back of control, DNP 3.0 Protocol
 - 4) Include SEL-2725 (2725#2KJK)) ethernet switch in transformer cabinet,
 - c. Equipment:
 - 1) Voltage reduction control switch with three positions, off, step one, and step two
 - 2) Provisions for testing control mechanism
 - 3) One Raise-Lower control switch
 - 4) One Auto-Manual switch
 - 5) Provision for manual operation
 - 6) Overcurrent relay for inhibit of LTC
 - 7) All indication lamps shall be LED type
 - 8) Current transformer for line drop compensation
 - 9) Position indicator with upper and lower drag hands to indicate maximum travel and electrical reset button mounted in the control cabinet.
 - 10) Limit switches and stops to prevent travel beyond extreme tap position
 - 11) Crank or handwheel for manual operation during maintenance
 - 12) Position indication to LTC control using Beckwith Electric M-2948 Tap Position Sensor and M-2025D Current Loop Interface

- 13) Positioning devices and OFF-position contacts
 - 14) Operations counter
 - 15) Form B dry contacts wired to local annunciator for lower limit, upper limit, and hung-up alarms
 - 16) Control circuit protective devices
 - 17) OFF-position contact: Wired to indicating light in main cabinet
 - d. Mounting: In easily accessible control cabinet
 - e. Wiring: Extended to main terminal cabinet and connected to terminal blocks. Wire power supply switch, light and convenience outlet, space heater, and switch to main terminal cabinet.
 - f. All control switches shall be located near LTC control device.
- K. Surge Arresters:
- 1. Polymer, station class, metal-oxide type, Ohio Brass Dynavar PVN or approved equal
 - 2. Ratings:
 - a. Primary voltage: 54-kV duty cycle (42-kV MCOV)
 - b. Secondary voltage: 10-kV duty cycle (8.4-kV MCOV)
 - 3. Mount 3 arresters on the high voltage side of the tank and 3 arresters on the low voltage side of the tank.
- L. Wire and Terminal Blocks:
- 1. Wiring:
 - a. 600 volt insulated copper, Class B stranding, 90° Celsius rating
 - b. No. 12 AWG minimum for current transformer and branch circuits
 - c. No. 14 AWG minimum for control
 - d. All external wiring shall be run in rigid galvanized steel conduits painted to match the transformer tank.
 - e. Terminated with crimp type, ring tongue connectors with non-insulated short shanks; maximum of two terminations per terminal point
 - f. Connected to separate power terminal blocks for power circuits
 - g. Clearly identified with permanent sleeve markers at all terminations
 - h. All wiring originating within transformer shall be color-coded
 - i. Internal device and terminal block identification shall be based on the functional device code and not the physical location of the device. Both may be used, but functional identification must be present.
 - 2. Terminal Blocks:

- a. Provided with bases and barriers molded integrally with brass inserts
- b. Rated at 600 volts
- c. Able to accommodate up to two No. 10 AWG wires per terminal
- d. Provided with marking strips
- e. Installed in sufficient quantity to provide 20-percent minimum spares for each type of block
- f. Short circuiting type for current transformers
- g. Marked to identify source and function
- h. Manufacturer: General Electric Type EB25 and EB27

M. Control Cabinet:

- 1. Provide weatherproof cabinet.
- 2. Mount on sidewall of Segment 1.
- 3. Fasten securely to each transformer tank. Stand control cabinet 18" off tank.
- 4. Doors: Vertically hinged with locking provisions, stainless steel, single-handle, 3-point latching system
- 5. All external hardware and fasteners shall be stainless steel
- 6. Conduit entrance: Removable, gasketed bottom plate, field drilled
- 7. Mount terminal blocks and equipment at least 6" above bottom plate.
- 8. Provide space heaters, partly or totally controlled by thermostat.
- 9. Provide a copper ground bus inside the cabinet suitable for connecting a 2/0 copper cable to external ground. Ground bus shall be accessible from the front door without disassembly of components. All connections to ground shall be through the ground bus.

N. Nitrogen Cabinet:

- 1. Provide weatherproof cabinet.
- 2. Fasten securely to each transformer tank
- 3. Doors: Vertically hinged with locking provisions and single-handle, 3-point latching system
- 4. All external hardware and fasteners shall be stainless steel.

O. Auxiliary and Control Power:

- 1. 120/240 VAC single-phase for fans, space heaters, and other accessories
- 2. 125 VDC for control functions

ARTICLE 11—ACCESSORIES

11.01 Provide power transformers with the following accessories:

- A. Sudden pressure relay device 63 Qualitrol model 900 wired to a Qualitrol model 909 seal-in relay (Device 63x): 125 VDC control voltage, with separate, isolated alarm and trip contacts. All items needed for testing the relay mechanism shall be provided with the unit. Provide two (2) alarm contacts and two (2) trip contacts.
- B. Oil level indicator: Magnetic type with low level nonadjustable two (2) 125 VDC alarm contacts
- C. Oil temperature indicator: Dial type with adjustable, separate, two (2) 125 VDC isolated alarm and trip contacts
- D. Winding temperature indicator: Four sequential operating contacts, operating from a current transformer in one phase of the low voltage winding (two contacts for the operation of cooling equipment, two (2) contacts for alarm, and two (2) contacts for tripping). Indicator shall be located not less than 5' or more than 6' above the base of the transformer and shall not be obstructed.
- E. Cover-mounted, automatic reseal, shielded pressure relief valve device with spring loaded visual signal flag and two (2) 125 VDC alarm contacts, Qualitrol XPRD. Pipe discharge to level of transformer base
- F. High inert gas-pressure and vacuum gauge with two (2) alarm contacts
- G. Low inert gas pressure gauge: Two (2) alarm contacts for nitrogen supply cylinder with contacts set to activate when cylinder pressure drops below 200 psi
- H. Furnish a 120 volt, 1635 Lumen LED light fixture with SPST switch and a 120 volt, 20 ampere single phase duplex GFI type receptacle, complete with protective circuit breaker.
- I. Gas sampling valve
- J. Other standard accessories: Per ANSI C57.12.10.
- K. Transformer alarm monitor. SEL Model 241421A3A3A2X2X1130
- L. All indicators shall be located not less than 5' or more than 6' above the base of the transformer and shall not be obstructed. Liquid temperature and winding temperature indicators shall be mounted within 1' of each other.

ARTICLE 12—FINISHES

- 12.01 All external hardware shall be stainless steel.
- 12.02 Clean and treat tank interior and exterior surfaces according to manufacturer's standards.
- 12.03 Apply one prime coat to the exterior surface.
- 12.04 Apply two finish coats, ANSI Color No. 70, Light Gray, to the exterior surface. Minimum paint thickness: 6 mils.
- 12.05 Apply non-skid coating to top of transformer tank.
- 12.06 Paint interior of cabinets white.
- 12.07 Paint interior of transformer tank white.

ARTICLE 13—SOURCE QUALITY CONTROL

- 13.01 Assemble, adjust, and complete manufacturer's standard production tests in accordance with Table 14 of ANSI C57.12.00, C57.12.90; NEMA TR-1 and the following:
 - A. Impulse Test:
 - 1. Perform on terminals of high voltage winding as specified ANSI C57.12.90, Items 10.3. and 10.5. (Front of wave test not required.)
 - 2. Use voltage oscillograms and ground current oscillograms taken simultaneously as specified in ANSI C57.12.90, Items 10.3.1.6 and 10.3.4.1, respectively, for one method of detecting insulation failure. The height of each individual trace at maximum deflection is 30 millimeters minimum.
 - 3. Do not perform additional impulse tests after the tests have been accepted.
 - 4. After impulse tests are completed, use the average absolute voltage voltmeter method to measure excitation loss.
 - B. Winding Impedance:
 - 1. Provide impedance test results for positive and zero sequence values of Z_{ps} .
 - C. Induced Voltage Test:
 - 1. Use test equipment and general method in accordance with IEEE C57.12.90, Item 10.8.
 - 2. Test at full induced-test voltage level.
 - 3. Apparent charge: Maximum 300 picocoulombs (pc), Maximum charge for 1 hour: 100 pc
 - 4. Include results of corona test and measured apparent charge level in certified test report.
 - D. Insulation Resistance Test
 - E. Insulation Power Factor Test:

1. Use test procedure in accordance with ANSI C57.12.90, Item 10.10.
 2. Include results of insulation power factor test in certified test report.
- F. Short-circuit capability: Warrant that the transformers will meet requirements of ANSI C57.12.00.
- G. Pressure test tank with nitrogen tubing installed
- H. Noise tests for each stage of cooling
- I. Temperature rise test for ONAN and maximum load, test shall be conducted on both units.
- J. Dielectric tests on control devices and wiring per NEMA ICS-1.
- K. Current Transformer:
1. Low frequency, one minute 2,500 volts to ground dielectric test on secondaries.
 2. Proper nameplate and polarity markings check.
 3. Polarity and ammeter ratio check after installation of bushing.
- L. Core ground megger test

ARTICLE 14—MANUFACTURER’S SERVICE ENGINEER (SPECIAL SERVICES)

- 14.01 Visually inspect Goods upon delivery. Prior to the Buyer accepting delivery, provide a written report to the Buyer and the Engineer itemizing any damage incurred.
- 14.02 Unseal impact recorders and inspect impact recorder tapes in the presence of Buyer and Engineer immediately upon delivery. Ensure that impact recorders are reinstalled prior to placement on foundations.
- 14.03 Perform the following under the direction of Buyer’s construction contractor:
- A. Perform unloading and re-inspect each impact recorder readings after placement onto foundations.
 - B. Perform transformer field assembly under direction of Buyer’s construction contractor. Record shipping gas pressure prior to assembly.
 - C. Thoroughly inspect all visible assembled parts and connections.
 - D. Check all gages and relays to ensure proper working condition.
 - E. Check and operate all cooling equipment.
 - F. Thoroughly search for leaks.
 - G. Test oil prior to filling and prior to energizing to determine if the dielectric strength is acceptable. Filter the oil, if necessary. Testing shall be done by an Independent Testing Laboratory. Results shall be immediately sent to Buyer and Engineer for approval.
 - H. Visually inspect and operate tap changers to verify satisfactory operation.
 - I. Test all wiring and components for continuity and megger for insulation resistance.

- J. Verify operation of heater, auxiliary, convenience outlet, and light circuits.
- K. Verify operation of LTC, LTC controls, and position indicators, including automatic tap changing with Seller-supplied input voltage.
- L. Provide equipment for and perform vacuum filling of transformer with insulating oil in accordance with ANSI C57.12.11.
- M. Disconnect the main core ground and megger the core insulation resistance. Reconnect the ground upon completion of the test.
- N. Perform manufacturer's standard and optional field tests and field test in accordance with ANSI C57 12.11.8-1980, and submit written results of tests performed, including the following:
 - 1. Insulation power factor test on all windings and bushings.
 - 2. Turn ratio test.
 - 3. Insulation and winding resistance test.
 - 4. Dielectric absorption test.
 - 5. Megger, Ratio, and Polarity test all CT's.
 - 6. SFRA.
 - 7. Additional tests as determined by the manufacturer.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE CERTIFICATE

A. Has your company filed the required Employer Information Report, EEO-1 (Standard Form 100) with the Secretary of Labor's Joint Reporting Committee for the prior period ending March 31?

YES

NO

If your answer to Question A above is "NO", check the following appropriate reasons for not filing:

1. Employ less than one hundred people company-wide.
2. Have specific exemption from Secretary of Labor as provided in Section 20 of Executive Order 11246, as amended.

Within Thirty (30) days after receipt of any order from the **Frankfort Electric and Water Plant Board** and prior to each March 31 thereafter, during the performance of work under said order, the undersigned firm agrees to file Standard Form 100, entitled "Equal Employment Opportunity Information Report EEO-1" in accordance with instructions contained therein, unless such firm has either filed such report within twelve months preceding the date of the award or is not otherwise required by law or regulations to file such a report.

B. In consideration of the undersigned being placed in the **Frankfort Electric and Water Plant Board's** "Supplier Document" for the year ending March 31 next, the undersigned certifies that he does not and will not maintain or provide for his employees any segregated facilities at any of his establishments and that he does not and will not permit his employees to perform their services at any location under his control where segregated facilities are maintained. The undersigned agrees that a breach of this certification is a violation of the Equal Opportunity Clause in any subcontract, contract, purchase order, or agreement that the undersigned may receive from the **Frankfort Electric and Water Plant Board**.

As used in this certification, the term "Segregated facilities" means any waiting room, work areas, rest room, and washrooms, restaurants and other eating areas, time clocks, 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 on the basis of race, creed, color or national origin, because of habit, local custom or otherwise.

The undersigned further agrees that he 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; that he will retain such certification in his files and that he will forward the following notice to his proposed subcontractors (except when the proposed subcontractors have submitted identical certification for specific time periods).

"NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES"

"A certification of Nonsegregated Facilities, as required by the May 9, 1967 order on Elimination of Segregated Facilities, by the Secretary of Labor (32 Fed. Reg. 7439, May 19, 1967) must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification for all subcontractors during a period (i.e., quarterly, semi-annually, or annually).

(Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.)"

C. Do you have at each of your facilities a current written Affirmative Action Compliance Program as required by Title 41 of the Code of Federal Regulations (CFR) 60-1.40; and current written Affirmative Action Programs for disabled veteran, veterans of the Vietnam Era and Handicapped workers as required by CFR 60-250.4 and CFR 60-741.4?

YES

NO

If "NO" within 120 days after receipt of any order resulting from attached quotation, the undersigned firm agrees to develop and maintain written Affirmative Action Compliance Programs as required. (Current law requires the contractor to develop a written Affirmative Action Compliance Programs in those cases where the contractor has received prime contract or subcontracts for \$50,000 or more and employs fifty (50) or more people).

CONTRACTOR (SELLER/SUPPLIER): _____

MAILING ADDRESS / PHONE: _____

Authorized Representative's
NAME (PRINT OR TYPE): _____

Authorized Representative TITLE: _____

Dated Signature of Authorized Representative: _____

[Type here]

“NOTICE TO PROSPECTIVE CONTRACTORS OF REQUIREMENT OF GENERAL SAFETY PROGRAM”

The Frankfort Plant Board requires that all contractors operate in compliance with standards set forth by federal, state, and local regulatory agencies, including but not limited to the Occupational Safety and Health Administration, Environmental Protection Agency and Department of Transportation. To comply with the regulations set forth by these agencies it is necessary for each contractor to operate under an established safety program pertaining to the contractor’s specific line of business.

The primary goal of a safety program is to protect the health and safety of employees and the public. Our goals are also to conserve and protect property and the environment. **IT IS OUR ABSOLUTE CONVICTION THAT:**

- This is a moral responsibility of each firm and worker involved.
- Safe and healthful work is more efficient, effective and inseparable from how we perform our work.
- Accidents and injuries are unnecessary costs

We accomplish work which is free from accident and injury by providing vigorous leadership that is visible through the organization.

How well we conduct our work in a hazard-free manner, according to the direction provided, is a key factor in our performance for which we are each accountable.

There are certain basic elements that are incorporated into the safety program:

- Effective management leadership from each contractor;
- Organization of a **General Safety Program**;
- On-site supervisor with authority to carry out their responsibilities including suspension of work to correct unsafe conditions;
- Proper training and supervision; and
- Employee participation

[Type here]

Does your organization operate under an established safety program that is in compliance with all applicable federal, state and local regulations and does this program embody the philosophies described above?

YES

NO

CONTRACTOR (SELLER/SUPPLIER): _____

MAILING ADDRESS / PHONE: _____

Authorized Representative's
NAME (PRINT OR TYPE): _____

Authorized Representative TITLE: _____

Dated Signature of Authorized Representative:

[Type here]

Frankfort Electric and Water Plant Board
PO Box 308, Frankfort KY 40602

DRUGFREE WORKPLACE COMPLIANCE CERTIFICATE

PLEASE SIGN BELOW TO INDICATE: 1) Contractor is in compliance with any applicable local, state or federal laws concerning mandatory Drug and Alcohol Testing Programs; and 2) AS a term of any contract, the Contractor agrees to comply with any such drug and/or alcohol testing that may be required by law.

CONTRACTOR : _____
MAILING ADDRESS/PHONE: _____

Authorized Representative's
NAME (Print or Type): _____
Authorized Representative's TITLE: _____
SIGNATURE & DATE: _____

[Type here]