

City of Fayetteville Staff Review Form

2019-0148

Legistar File ID

3/19/2019

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Greg Weeks

3/1/2019

WASTEWATER TREATMENT (730)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends a bid waiver with Graybar Electric Company, Inc. to authorize the purchase of spare breakers and motor control centers in the amount of \$57,725.00 plus estimated applicable taxes of \$5,628.19 for a total of \$63,353.19.

Budget Impact:

5400.730.5800-5414.00

Water/ Sewer

Account Number

Fund

02069.1

Plant Pumps and Equipment - WWTP

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 785,080.00

Funds Obligated \$ 359,033.55

Current Balance \$ 426,046.45

Does item have a cost? Yes

Item Cost \$ 63,353.19

Budget Adjustment Attached? No

Budget Adjustment \$ -

Remaining Budget \$ 362,693.26

V20180321

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF MARCH 19, 2019

TO: Mayor and City Council

THRU: Don Marr, Chief of Staff
Water & Sewer Committee
Tim Nyander, Utilities Director

FROM: Greg Weeks, Wastewater Treatment

DATE: March 1, 2019

SUBJECT: **Approval of the purchase of six (6) circuit breakers from Graybar Electric Company, Inc. as critical spares for the West Side Treatment Facility.**

RECOMMENDATION:

Staff recommends purchase of six (6) critical spare breakers for the West Side Treatment Facility from Graybar Electric Company, Inc. in the amount of \$57,725.00 plus applicable taxes.

BACKGROUND:

In 2017, the Water & Sewer Utility initiated a comprehensive electrical-system assessment of the city's two wastewater treatment plants and collection system lift-stations. The evaluation, performed by engineering firm Allgeier, Martin and Associates, Inc., identified points of criticality and provided several recommendations for ensuring continuation of treatment plant operations. A specific recommendation included keeping certain critical spare breakers on-hand in the case of sudden failure. These breakers were identified as being heavily relied upon for operating multiple treatment processes, and they are not readily available having order lead times of 4-6 weeks.

DISCUSSION:

Staff recommends purchase of six (6) Square D brand (by Schneider Electric) breakers as critical spares for the West Side treatment facility. The breakers include one of each - 400A, 500A, 600A, 800A, 2000A and 2500A. The Square D brand breakers will ensure compatibility with existing Motor Control Centers (MCC) and can be used at multiple locations in the case of sudden breaker failure. Three quotes were submitted by local suppliers; Graybar Electric submitted the lowest quote in the amount of \$57,725.00 plus applicable taxes. Graybar is an authorized distributor of Schneider Electric products. This proposal is eligible for purchase through the US Communities Contract.

BUDGET/STAFF IMPACT:

Funds are available in the Wastewater Treatment Plant - Plant Pumps and Equipment project.

Attachments:

Graybar Electric Quote

Schneider Electric Terms and Conditions



516A EAST ROBINSON
SPRINGDALE AR 72764-7132
Phone: 479-872-3400
Fax: 479-872-6680

To: CITY OF FAYETTEVILLE
Attn: Brad Fulmer
113 WEST MOUNTAIN
FAYETTEVILLE AR 72701
Attn: CITY OF FAYETTEVILLE
Phone: 479-521-7700
Fax: 479-575-8250
Email: douglas.tomlinson@graybar.com

Date: 02/28/2019
Proj Name: SQD SERVICES PROPOSAL
GB Quote #: 0232172168
Release Nbr: SQD SERVICES PROPOSAL
Purchase Order Nbr: SQD SERVICES PROPOSAL
Additional Ref#
Valid From: 02/28/2019
Valid To: 03/30/2019
Contact: Douglas Tomlinson
Email: douglas.tomlinson@graybar.com

Proposal

We Appreciate Your Request and Take Pleasure in Responding As Follows

Notes: THIS PROPOSAL IS ELIGIBLE FOR PURCHASE THROUGH US COMMUNITIES CONTRACT NUMBER EV2370 WITH GRAYBAR ELECTRIC AND MUST BE PURCHASED BY A US COMMUNITIES REGISTERED PARTNER (I.E. CITY OF FAYETTEVILLE). NO OTHER AGENCY MAY PURCHASE THIS PROPOSAL AMOUNT ON BEHALF OF THE CITY OF FAYETTEVILLE.

Item	Item/Type	Quantity	Supplier	Catalog Nbr	Description	Price	Unit	Ext.Price
100		1 EA	SQUARE D CO.	LOT PER ATTACHED SE PROPOSAL		\$57,725.00	1	\$57,725.00

Total in USD (Tax not included): \$57,725.00

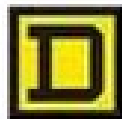
This equipment and associated installation charges may be financed for a low monthly payment through Graybar Financial Services (subject to credit approval). For more information call 1-800-241-7408 to speak with a leasing specialist.

To learn more about Graybar, visit our website at www.graybar.com

24-Hour Emergency Phone#: 1-800-GRAYBAR

Subject to the standard terms and conditions set forth in this document. Unless otherwise noted, freight terms are F.O.B. shipping point prepaid and bill.
Unless noted the estimated ship date will be determined at the time of order placement.

Graybar



SQUARE D

by **Schneider** Electric

Proposal by:

Eric Foster
Services Sales Engineer

02-21-2019

Schneider Electric Services Negotiation

1650 West Crosby Rd
Carrollton, TX 75006

Company	Graybar	Date	02-21-2019
Attention	Doug Tomlinson	Negotiation #	EF18_205_Graybar_Marr_Spare_2000A_and_2500A_Rev2
Project	City of Fayetteville – Spare NW Breakers		

Schneider Electric (SE), Square D Services is pleased to offer the following proposal for your consideration. We look forward to working with you and your team to make your plant more safe and reliable. Schneider Electric is a global specialists in energy management, helping customers make the most of their energy.

Why Use SE....

While many of our competitors compete on the basis of price, we compete based on providing the best value to our customers. Our 100+ years of experience building electrical equipment, switchgear and components has given us a unique insight into both predictive and preventive maintenance. While many third-party vendors may provide a low price, they typically look for any reason to issue a change order request. As a major manufacturer with the nation's largest field service organization, we live and die by our reputation. We look forward to partnering with you on this project as well as growing our relationship for tomorrow.

You deserve the confidence of having a strong partner, especially when it comes to the safety and reliability of your electrical infrastructure

Scope of Work

Provide the following items:

- 1 each WL3FFR44A9SXXXXXX – 2000A NW Breaker
- 1 each WL3GFR44A9SXXXXXX – 2500A NW Breaker
- 1 each 800A breaker in Model 6 MCC bucket
- 1 each 600A breaker in Model 6 MCC bucket
- 1 each 500A breaker in Model 6 MCC bucket
- 1 each 400A breaker in Model 6 MCC bucket

Delivery

4-6 weeks out

Qualifications

- Price quoted does not include any state, federal, or local taxes
- If tax exempt, exempt certificate must accompany purchase order.
- Parts will not ship until after a Purchase Order has been received.
- Payment is due upon receipt of invoice.

Schneider Electric Services Negotiation

Payment Schedule

All invoices are net 30 days.

Proposal Acceptance

This proposal is valid for thirty (30) days from date of issue. Any changes to the scope of work or Bill of Material will require a revised quotation which may result in a price change. To accept this proposal, please issue a Purchase Order to:

eric.foster.us@schneider-electric.com

Attention: Eric Foster

Reference: EF18_205_Graybar_Marr_Spare_2000A_and_2500A_Rev2

Terms and Conditions

This work scope is subject to the existing terms and conditions between your company and SE Services. If no agreement is in place, the work described in this proposal will be performed in accordance with the Schneider Electric USA, Inc. – Services Terms and Conditions of Supply and Performance (attached). No other terms and conditions shall apply and Schneider Electric specifically rejects any preprinted terms and conditions on customer's purchase order. Please note that taxes, if applicable, are not included.

Thank you for allowing Schneider Electric the opportunity to provide this proposal.

If you have questions regarding the contents of this proposal or need additional information, contact me at (870) 552-0583 or Eric.Foster.US@schneider-electric.com. I look forward to the possibility of working with you in the near future.

Sincerely,

Eric Foster
Services Sales Executive
Schneider Electric Services USA, Inc.

[Attachments: Schneider Electric USA, Inc. - Services Terms and Conditions](#)

Confidential: This quotation is for the exclusive use of the above mentioned company and is not intended for distribution to an outside party.

To: CITY OF FAYETTEVILLE
Attn; Brad Fulmer
113 WEST MOUNTAIN
FAYETTEVILLE AR 72701
Attn: CITY OF FAYETTEVILLE

Date: 02/28/2019
Proj Name: SQD SERVICES PROPOSAL
GB Quote #: 0232172168

Proposal

We Appreciate Your Request and Take Pleasure in Responding As Follows

GRAYBAR ELECTRIC COMPANY, INC. TERMS AND CONDITIONS OF SALE

1. ACCEPTANCE OF ORDER; TERMINATION - Acceptance of any order is subject to credit approval and acceptance of order by Graybar Electric Company, Inc. ("Graybar") and, when applicable, Graybar's suppliers. If credit of the buyer of the goods ("Buyer") becomes unsatisfactory to Graybar, Graybar reserves the right to terminate upon notice to Buyer and without liability to Graybar.

2. PRICES AND SHIPMENTS - Unless otherwise quoted, prices shall be those in effect at time of shipment, which shall be made F.O.B. shipping point, prepaid and bill.

3. RETURN OF GOODS - Credit may be allowed for goods returned with prior approval. A deduction may be made from credits issued to cover cost of handling.

4. TAXES - Prices shown do not include sales or other taxes imposed on the sale of goods. Taxes now or hereafter imposed upon sales or shipments will be added to the purchase price. Buyer agrees to reimburse Graybar for any such tax or provide Graybar with acceptable tax exemption certificate.

5. DELAY IN DELIVERY - Graybar is not to be accountable for delays in delivery occasioned by acts of God, failure of its suppliers to ship or deliver on time, or other circumstances beyond Graybar's reasonable control. Factory shipment or delivery dates are the best estimates of our suppliers, and in no case shall Graybar be liable for any consequential or special damages arising from any delay in shipment or delivery.

6. LIMITED WARRANTIES - Graybar warrants that all goods sold are free of any security interest and will make available to Buyer all transferable warranties (including without limitation warranties with respect to intellectual property infringement) made to Graybar by the manufacturer of the goods. GRAYBAR MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE. UNLESS OTHERWISE AGREED IN WRITING BY AN AUTHORIZED REPRESENTATIVE OF GRAYBAR, PRODUCTS SOLD HEREUNDER ARE NOT INTENDED FOR USE IN OR IN CONNECTION WITH (1) ANY SAFETY APPLICATION OR THE CONTAINMENT AREA OF A NUCLEAR FACILITY, OR (2) IN A HEALTHCARE APPLICATION, WHERE THE GOODS HAVE POTENTIAL FOR DIRECT PATIENT CONTACT OR WHERE A SIX (6) FOOT CLEARANCE FROM A PATIENT CANNOT BE MAINTAINED AT ALL TIMES.

7. LIMITATION OF LIABILITY - Buyer's remedies under this agreement are subject to any limitations contained in manufacturer's terms and conditions to Graybar, a copy of which will be furnished upon written request. Furthermore, Graybar's liability shall be limited to either repair or replacement of the goods or refund of the purchase price, all at Graybar's option, and IN NO CASE SHALL GRAYBAR BE LIABLE FOR INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES. In addition, claims for shortages, other than loss in transit, must be made in writing not more than five (5) days after receipt of shipment.

8. WAIVER - The failure of Graybar to insist upon the performance of any of the terms or conditions of this agreement or to exercise any right hereunder shall not be deemed to be a waiver of such terms, conditions, or rights in the future, nor shall it be deemed to be a waiver of any other term, condition, or right under this agreement.

9. MODIFICATION OF TERMS AND CONDITIONS - These terms and conditions supersede all other communications, negotiations, and prior oral or written statements regarding the subject matter of these terms and conditions. No change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon Graybar unless made in writing and signed on its behalf by a duly authorized representative of Graybar. No conditions, usage of trade, course of dealing or performance, understanding or agreement, purporting to modify, vary, explain, or supplement these terms and conditions shall be binding unless hereafter made in writing and signed by the party to be bound. Any proposed modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document shall be deemed an acceptance of a prior offer by Buyer, such acceptance is expressly conditional upon Buyer's assent to any additional or different terms set forth herein.

10. REELS - When Graybar ships returnable reels, a reel deposit may be included in the invoice. The Buyer should contact the nearest Graybar service location to return reels.

11. CERTIFICATION - Graybar hereby certifies that these goods were produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the United States Department of Labor issued under Section 14 thereof. This agreement is subject to Executive Order 11246, as amended, the Rehabilitation Act of 1973, as amended, the Vietnam Veterans' Readjustment Assistance Act of 1974, as amended, E.O. 13496, 29 CFR Part 471, Appendix A to Subpart A, and the corresponding regulations, to the extent required by law. 41 CFR 60-1.4, 60-741.5, and 60-250.5 are incorporated herein by reference, to the extent legally required.

12. FOREIGN CORRUPT PRACTICES ACT - Buyer shall comply with applicable laws and regulations relating to anti-corruption, including, without limitation, (i) the United States Foreign Corrupt Practices Act (FCPA) (15 U.S.C. §§78dd-1, et. seq.) irrespective of the place of performance, and (ii) laws and regulations implementing the Organization for Economic Cooperation and Development's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the U.N. Convention Against Corruption, and the Inter-American Convention Against Corruption in Buyer's country or any country where performance of this agreement or delivery of goods will occur.

13. ASSIGNMENT - Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Graybar, and any such assignment, without such consent, shall be void.

14. GENERAL PROVISIONS - All typographical or clerical errors made by Graybar in any quotation, acknowledgment or publication are subject to correction. This agreement shall be governed by the laws of the State of Missouri applicable to contracts to be formed and fully performed within the State of Missouri, without giving effect to the choice or conflicts of law provisions thereof. All suits arising from or concerning this agreement shall be filed in the Circuit Court of St. Louis County, Missouri, or the United States District Court for the Eastern District of Missouri, and no other place unless otherwise determined in Graybar's sole discretion. Buyer hereby irrevocably consents to the jurisdiction of such court or courts and agrees to appear in any such action upon written notice thereof.

15. PAYMENT TERMS - Payment terms shall be as stated on Graybar's invoice or as otherwise mutually agreed. As a condition of the sales agreement, a monthly service charge of the lesser of 1-1/2% or the maximum permitted by law may be added to all accounts not paid by net due date. Visa, MasterCard, American Express, and Discover credit cards are accepted at point of purchase only.

16. EXPORTING - Buyer acknowledges that this order and the performance thereof are subject to compliance with any and all applicable United States laws, regulations, or orders. Buyer agrees to comply with all such laws, regulations, and orders, including, if applicable, all requirements of the International Traffic in Arms Regulations and/or the Export Administration Act, as may be amended. Buyer further agrees that if the export laws are applicable, it will not disclose or re-export any technical data received under this order to any countries for which the United States government requires an export license or other supporting documentation at the time of export or transfer, unless Buyer has obtained prior written authorization from the United States Office of Export Control or other authority responsible for such matters.

This equipment and associated installation charges may be financed for a low monthly payment through Graybar Financial Services (subject to credit approval). For more information call 1-800-241-7408 to speak with a leasing specialist.

To learn more about Graybar, visit our website at www.graybar.com

24-Hour Emergency Phone#: 1-800-GRAYBAR

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Unless noted the estimated ship date will be determined at the time of order placement.

TERMS AND CONDITIONS OF SUPPLY AND PERFORMANCE

1.0 DEFINITIONS

- 1.1 Schneider Electric USA, Inc. - Services shall be known and referred to herein as "SEUSA".
- 1.2 The term "Quotation" shall be employed herein to refer to the complete offer of SEUSA, including commercial and technical section, and shall be subject to these Terms and Conditions of Supply and Performance, which are deemed incorporated unless specifically stated otherwise.
- 1.3 The term "Equipment" shall be applied to any equipment, materials, parts or supplies that shall be provided by SEUSA as a part of the Quotation.

2.0 TERMS AND CONDITIONS OF SALE

- 2.1 SEUSA hereby gives notice of its objection to any different or additional terms and conditions, except for any such terms and conditions as may be expressly accepted in writing.
- 2.2 Unless different or additional terms and conditions are stated or referred to in the Quotation, in which event such different or additional terms and conditions shall be exclusive to the particular subject covered, these terms and conditions supersede any prior or contemporaneous agreements or correspondence between the parties. No form provision of purchaser shall be of any force or effect.

3.0 QUOTATIONS

- 3.1 The Quotation shall be valid for thirty (30) days from the date of issue, unless specifically stated otherwise in the Quotation.
- 3.2 The Quotation shall be based solely on the bid documents. The bid documents are the drawings, specifications and/or instructions of the purchaser, as modified by agreement or SEUSA objection. Significant deviations between the actual conditions and circumstances of the work and those specified in the bid documents shall be just cause for an appropriate adjustment in work scope, price and time allowed for performance.

4.0 INVOICING, PAYMENT AND CANCELLATION

- 4.1 Unless specifically noted otherwise in the Quotation, all prices quoted are "NET", without any discount, and are firm for the period through the completion of the work.
- 4.2 SEUSA may invoice purchaser monthly for all work performed, and for all equipment delivered to the job site or to an off-site storage facility. Purchaser may delay the work, for a period not to exceed 60 days, by giving notice to SEUSA, and purchaser shall pay for all work prior to the delay, and will pay all costs incurred by SEUSA as a result of such delay. SEUSA will be entitled to an increase in the time of performance equal to the delay and a reasonable time necessary to accommodate conditions created by the delay. If such delay results in increased costs to SEUSA, or a general price increase of SEUSA occurs during the delay, SEUSA shall be entitled to an adjustment in the contract price.
- 4.3 Terms of payment are net upon receipt of invoice. All past due accounts will be charged interest at the rate of 1% per month, until paid.
- 4.4 If, in the opinion of SEUSA, the financial condition of the purchaser at the time the work is ready to be performed, or the equipment is ready for shipment does not justify the terms of payment specified, SEUSA may require payment in advance or other adequate assurance of performance.
- 4.6 In the event of the insolvency, bankruptcy or default of the purchaser, SEUSA shall be entitled to cancel any outstanding contract, to receive reimbursement for its reasonable and proper cancellation charges, and to retain possession of equipment repaired or serviced under the contract until the charges for the services have been paid. If the charges are not paid within ninety (90) days of the completion of the work and invoicing to purchaser, SEUSA shall be entitled to sell the repaired or serviced equipment at a public or private sale, upon written notice to the purchaser.
- 4.7 Purchaser agrees to pay and reimburse SEUSA for any and all attorneys' and or collection fees that are incurred by SEUSA in the collection of amounts due and payable hereunder.

- 4.8 Purchaser shall not back charge SEUSA, or offset against SEUSA invoices, for any costs or expenses, without the express written consent of SEUSA.
- 4.9 Customer may terminate any purchase order on 20 days written notice to SEUSA and payment of reasonable cancellation charges of SEUSA. Cancellation charges shall include time and expenses incurred at applicable rates, charges incurred from third parties as a result of such termination, and equipment re-stocking charges equal to Square D usual and customary re-stocking charges to its distributors. A \$450 minimum charge will apply to any services cancelled within 48 hours of the date service was scheduled to commence.
- 4.10 SEUSA shall have the right to suspend affected services pending resolution of disputes. All remedies of SEUSA are cumulative, and in addition to remedies available at law or in equity.

5.0 PRICE POLICY

- 5.1 Prices are subject to change without notice. Price adjustment clauses will be stated at the time of quotation and a copy will be included as part of the Quotation.

6.0 MINIMUM BILLING

- 6.1 The minimum billing for services performed on a single order will be four (4) hours charged at the applicable rate, but not less than \$450. The minimum billing for equipment supplied on a single order will be \$100, or such larger amount required by any affected third party vendor.

7.0 DELIVERY - RISK OF LOSS

- 7.1 Unless otherwise stated in the Quotation, all transportation costs shall be for the account of the purchaser and shall be added to the invoice. Equipment furnished by SEUSA, and purchaser's equipment repaired by SEUSA, shall be delivered to the purchaser F.O.B. SEUSA's Service Center. The purchaser shall deliver equipment to be repaired F.O.B. SEUSA's Service Center. Title to and risk of loss or damage to any equipment furnished by SEUSA under the contract shall pass to the purchaser F.O.B. SEUSA's Service Center.

8.0 LAWS, REGULATIONS, PERMITS, LICENSES AND LOCAL ORDINANCES

- 8.1 The purchaser shall inform SEUSA of any special laws, regulations, or ordinances that the purchaser may be aware of and which shall affect the performance of the work or the supply of the equipment.
- 8.2 Unless specifically noted elsewhere in the Quotation, the purchaser shall be responsible for securing any and all licenses and/or permits, whether temporary or permanent in nature, required for the performance of the work.
- 8.3 SEUSA will be entitled to a reasonable adjustment in the contract price or time of performance for significant changes in any of the laws, regulations, or ordinances governing the work or the equipment, which shall occur after the issuance of the Quotation and affect the time or cost of performance.

9.0 WARRANTIES

- 9.1 SEUSA warrants, to the extent to which any of the same may be applicable, that (a) any equipment furnished by it or any work done by it on the purchaser's equipment or both shall be free of defects in workmanship and materials, (b) any specialized tools, equipment and instruments for the use of which a charge is made to the purchaser shall be adequate for the work to be performed and (c) the engineering services performed by it will be competent and any recommendations of its representatives shall reflect their best professional knowledge or judgment.
- 9.2 SEUSA shall, upon prompt written notice from purchaser, correct any failure to conform to any of the applicable foregoing warranties that may appear with a period of one (1) year after completion of the work, or shipment of the equipment, requiring correction under this warranty. Such correction may, in the case of Item 9.1 above and the election of SEUSA, be limited to the repair or replacement F.O.B. SEUSA's Service Center, of the defective equipment

furnished by it. In the case of any other breach of the foregoing warranty, SEUSA shall furnish services or specialized tools, equipment and instruments, to the same extent as on the original work. It is understood and agreed that unless otherwise agreed to in writing by SEUSA, SEUSA assumes no responsibility with respect to the suitability of purchaser's equipment or with respect to any latent defects in the same. In no event shall SEUSA be responsible for providing working access to the defect, parts resulting in part from improper maintenance or operation of the equipment in a deteriorated condition. The condition of any tests shall be mutually agreed upon and SEUSA shall be notified of, and may be present at all tests that may be made.

9.3 The above warranties do not apply to equipment that has a life, under normal use, inherently shorter than the one (1) year period indicated above. On equipment not manufactured by Square D Company, SEUSA only extends the same warranty it receives from its supplier. SEUSA makes no warranties, express or implied with respect to such equipment and purchaser will look solely to the manufacturer for resolution of warranty issues.

9.4 SEUSA warrants that any engineering studies performed by it will conform to high professional standards. Any portion of the study that does not so conform shall be corrected by SEUSA upon notification in writing by purchaser within six (6) months after completion of the study, as purchaser's sole remedy.

9.5 All warranty work shall be performed on a single shift straight time basis Monday through Friday. In the event that the product requires correction of warranty items on an overtime schedule, the premium portion of such overtime shall be for the purchaser's account.

9.6 **THE FOREGOING WARRANTIES AND ANY ADDITIONAL WARRANTIES PROVIDED IN THE QUOTATION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE), EXCEPT OF TITLE AND AGAINST PATENT INFRINGEMENT.**

9.7 The remedies provided above are the purchaser's sole remedies for any failure of SEUSA to comply with its obligations. Correction of any nonconformity in the manner and for the period of time provided above shall constitute complete fulfillment of all liabilities of SEUSA whether the claims of the purchaser are based in contract, in tort (including negligence) or otherwise with respect to or arising out of the work performed hereunder. **IN NO EVENT SHALL SEUSA, BY REASON OF ITS WARRANTY OBLIGATIONS OR OTHERWISE, BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND FROM ANY CAUSE, REGARDLESS OF THE BASIS OR FORM OF THE ACTION.**

10.0 LIABILITY

10.1 Neither party shall be liable or responsible for loss, damage, injury, or delay caused by conditions beyond that party's reasonable control, including but not limited to a) acts of God, b) acts of government agencies, c) strikes, d) labor disputes, e) fire, explosions or other casualties [unless caused or contributed to by the negligence or willful act of the party otherwise intended to be excused by this paragraph], f) thefts, g) riots, h) war, i) malicious mischief, or j) unavailability of repair material.

10.2 SEUSA shall have no liability under the Quotation for any injury, loss or damage caused directly or indirectly by any equipment or system not specifically covered by the Quotation.

10.3 Notwithstanding anything to the contrary contained herein, the maximum liability of SEUSA to the purchaser for any claim, loss, damage or injury for which SEUSA may be liable pursuant to the terms and conditions of the Quotation or the work performed by SEUSA or the materials supplied by SEUSA, shall not exceed the price of the equipment or work on which such liability is based.

10.4 Unless otherwise agreed to in writing by a fully authorized representative of SEUSA, services and equipment proposed in the Quotation are not intended for use in, or connection with, a nuclear facility or activity. If so used, for whatever reason, SEUSA shall not be liable for any damage, injury or contamination arising out of the supply of any products hereunder or the providing of any services hereunder, and purchaser shall indemnify SEUSA against any such liability, whether as a result of breach of contract, warranty, tort [including negligence] or otherwise.

10.5 Notwithstanding anything to the contrary contained herein, SEUSA, its contractors and suppliers of any tier, shall not be liable in contract, for loss of profits or revenue, loss of use of equipment or power system, cost of capital, cost of purchased or replacement power or temporary equipment (including additional expenses incurred in using existing facilities), claims of customers of the purchaser, or for any special, indirect, incidental, or consequential damages whether based in contract or in tort, including negligence or strict liability.

11.0 TIME ALLOWED FOR PERFORMANCE

11.1 The time allowed for performance of the work shall be as specified in the Quotation. It shall commence upon the execution of the contract by the purchaser and SEUSA, and shall be deemed duly met if the work is substantially completed within the time allowed within the Quotation.

11.2 If the equipment to be furnished by SEUSA under the terms of the proposal shall become temporarily or permanently unavailable for reasons beyond the control and without the fault of SEUSA, then in the case of such temporary unavailability, the time for performance of the work shall be extended to the extent, thereof. In the case of permanent unavailability, SEUSA shall at purchaser's option either: (a) be excused from furnishing said equipment, or (b) be reimbursed by purchaser for the difference between the cost of the equipment unavailable and the cost of a reasonably available substitute thereof.

11.3 SEUSA shall not be liable for any delay in the performance of the work resulting from or attributed to acts or circumstances beyond SEUSA's reasonable control, including, but not limited to embargo or other governmental act, regulation, or request; accident; strike; slowdown; war; riot; delay in transportation; inability to obtain necessary labor, materials, or manufacturing facilities; acts of God; fire; and acts or omissions of the purchaser, owner or other contractors or subcontractors, or delays caused by the suppliers or subcontractors of SEUSA.

12.0 TAXES

12.1 The price listed in the Quotation does not include any duties, levies, sales, use, excise, or other similar taxes, unless specifically noted otherwise within the Quotation.

12.2 Purchaser shall pay, in addition to the stated price, all taxes legally required to be paid by purchaser or, alternatively, shall provide SEUSA with valid tax exemption certificates.

13.0 INSURANCE

13.1 Insurance coverages in excess of SEUSA's standard coverages and limits will only be furnished when specifically requested by purchaser and when detailed within the Quotation.

13.2 No credit will be given or premium paid by SEUSA for insurance afforded by others.

14.0 OCCUPATIONAL SAFETY AND HEALTH

14.1 The parties hereto [SEUSA and purchaser, owners, representatives, employees, agents, contractors, subcontractors, heirs, and assigns] agree to notify each other immediately upon becoming aware of an inspection under, or any alleged violation of the Occupational Safety and Health Act, relating in any way to the project or project site.

15.0 ENTIRE AGREEMENT

15.1 The Quotation, complete with these Terms and Conditions of Supply and Performance, shall, upon acceptance, constitute the only and entire agreement between the parties, and supersedes any prior representations or understandings. Purchaser specifically acknowledges and agrees that any purchase order issued by Purchaser pursuant to the Quotation shall operate only to establish payment authority for Purchaser's internal accounting purposes. Any such purchase order issued by Purchaser shall not be considered as a counteroffer, addition, amendment, modification or other revision to the terms of the Quotation, and any terms or conditions contained in Purchaser's purchase order shall be of no force and effect in connection with the Quotation.

15.2 If any part, paragraph or portion of the Quotation, these Terms and Conditions of Supply and Performance, or the subsequent contract shall be found to be invalid by virtue of law or legal decision, the remainder of these terms and conditions shall not be affected, and shall remain fully in force, while the purchaser and SEUSA shall jointly seek to replace the invalid part, paragraph, or portion with an agreement having a legal, commercial, and economic effect as similar as possible to the invalid part, paragraph, or portion.

16.0 CHANGES

16.1 No change or modifications of any of the terms and conditions of supply and performance shall be binding upon SEUSA unless specifically accepted by SEUSA in writing. Change requests will be resolved and recorded on a Change Order signed by both parties prior to implementation.

Rev. Jan-2010