

SAN ANTONIO, TEXAS

CONTRACT AND AGREEMENT
FOR

THE CONSTRUCTION

OF AN OFFICE BUILDING

FOR UNDERGROUND CONSTRUCTION STAFF

REQUEST FOR PROPOSAL NO: 7000120162

PURCHASE ORDER NO: _____

ISSUED: _____, 2013

CPS ENERGY

P.O. BOX 1771

SAN ANTONIO, TEXAS 78296-1771

10408230

CPS ENERGY
SAN ANTONIO, TEXAS

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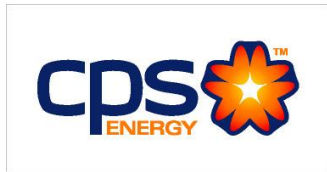
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SAN ANTONIO, TEXAS

THE CONSTRUCTION
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VOLUME I

REQUEST FOR PROPOSAL NO: 7000120162

PURCHASE ORDER NO: _____

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SECTION A

INVITATION FOR PROPOSALS

REQUEST FOR PROPOSAL NO. 7000120162

for

CPS ENERGY

OF

SAN ANTONIO, TEXAS

CPS Energy is interested in acquiring the services of a General Contractor for the construction of an Office Building for Underground Construction Staff located at 2047 W. Malone, San Antonio, Texas 78225 (“Work”). This document provides specifications and design intent requirements to serve as a guide to Offerors for use in formulating their cost and proposal submissions. Also attached are design drawings and specifications for the construction that is to be included in the Scope of Work.

Sealed Proposals will be received at the office of Ms. Pamela J. Williams, Mail Drop: 110901, CPS Energy, Supply Chain, 145 Navarro Street, San Antonio, Texas, 78205, or P.O. Box 2906, San Antonio, Texas 78299-2906, by the date and time stated in the Request for Proposal.

A **mandatory** pre-proposal meeting will be held on the date, and at the time and location specified in the Request for Proposal letter, at which time Offerors may discuss any questions pertaining to the scope of services covered in this Agreement. It shall be mandatory for the Offeror to attend the entire pre-proposal meeting in order for its proposal to be considered responsive. **There shall be no exceptions.**

All Proposals must be submitted on or before the date and time stated in the Request for Proposal letter. Proposals may be mailed, but any Proposal not received in Supply Chain by the date and time stated in the Request for Proposal letter will not be considered and will be returned unopened.

CPS Energy reserves not only the right to reject any and all Proposals and to waive minor formalities and irregularities, but also the right to evaluate the Proposals to determine which, in its judgment, represents the **best value Proposal for the Services requested.** Please also refer to Section C.2 for further understanding of the “Qualifying Factors.” **In evaluating Proposals, at CPS Energy’s sole discretion, CPS Energy will give weight and importance to the following items, which are not listed in order of priority:**

- ◆ *The ability of the Proposal to meet CPS Energy requirements*
- ◆ *Prior project experience*
- ◆ *The reputation of the Offeror*

- ◆ *Warranty*
- ◆ *Pricing*
- ◆ *Compliance with Terms and Specification of this Request for Proposals*
- ◆ *Financial Condition*
- ◆ *Economic Development*

CPS Energy may conduct such investigations as deemed necessary to assist in the evaluation of any Proposal to establish the responsibility, qualifications, and financial ability of the Offerors, proposed Subcontractors, and other persons and organizations to perform and furnish the Services in accordance with the Contract Documents to CPS Energy's satisfaction within the Contract time stated herein. The Offerors shall furnish, upon request and in a timely manner, all such data and information requested for this purpose.

CPS Energy will initially evaluate all Proposals based upon evaluation criteria found in the RFP and as further clarified throughout the evaluation process. Based upon CPS Energy's initial evaluation of Offeror Proposals, CPS Energy may make a final decision for award or may prepare a short list of apparent qualified Offerors who will be asked to conduct initial product overviews and demonstrations for discussion, evaluation, and clarification. Following this evaluation and clarification, CPS Energy will select one or more potential Offerors as candidates for a contract award. During this period, CPS Energy will enter into discussions and negotiations with each short-listed Offeror after which each may be required to prepare a "Best and Final" offer to the Proposal.

From this offer, CPS Energy shall enter into a Contract with the Offeror(s) who, in CPS Energy's sole opinion, provides the Best Value and the most benefit to CPS Energy.

It is agreed that the Contract between CPS Energy and the successful Offeror(s) shall not come into existence until the actual signing of the Contract and issuance of a Purchase Order.

CPS Energy assumes no liability or responsibility for the costs incurred by the Offeror for any materials, efforts or expenses required in the preparation of Proposals or in connection with presentations or demonstrations prior to the issuance of a Contract.

SECTION B

INSTRUCTIONS TO OFFERORS

B.1 GENERAL

These instructions apply to Proposals for the general construction of an Office Building for Underground Construction Staff located at 2047 W. Malone, San Antonio, Texas for City Public Service of San Antonio, Texas, hereinafter referred to as “CPS Energy” or “Owner.”

B.2 GENERAL DESCRIPTION OF WORK

Volume II of these documents includes a complete Project description and defines the Scope of Work required for the Proposal.

B.3 CONTRACT DOCUMENTS

The Contract Documents for the Work proposed in Volume II will include:

- a. The Specifications and documents, including the drawings and appendices included in this Request for Proposal, together with changes, if any, based on the Offeror’s Proposal or other submittals to the extent incorporated in this document prior to its execution.
- b. Drawings and engineering data developed during progress of Work, specifications, maintenance and instruction manuals, and any other documents to be developed with this Agreement.
- c. Offeror’s proposal, inclusive of Subcontractors, engineers and testing companies.
- d. The CPS Energy Purchase Order issued to the successful Offeror.
- e. All addenda, supplemental Purchase Orders, and other supplemental written documents which may be issued as amendments to the Contract.

These documents collectively shall form the Contract between CPS Energy and the successful Offeror for the specified Work.

B.4 DOCUMENTS FOR PROPOSAL

Prospective Offerors invited to make a direct proposal to CPS Energy will be furnished one (1) electronic copy of the Request for Proposal and one (1) electronic set of drawings. Volumes I, II and III together hereinafter will be referred to as the “Specifications.” The successful Offeror will receive additional Specifications and Drawings as outlined in Article E.2 of the Special Conditions.

B.5 PROPOSALS

Offeror shall prepare and **submit two (2) identical Proposals and one (1) soft copy in Word (on a Flash Drive)**. Each Proposal shall be complete, bound and provide for any required supplemental data requested. Proposals which are not prepared and submitted in accordance

with these instructions will be considered irregular and may be rejected at the discretion of CPS Energy.

B.5.1 PREPARATION

Each proposal shall be carefully prepared using identical Proposal forms bound herewith. Entries on the Proposal forms shall be typed, using dark black ink, or legibly written in black ink. All prices shall be stated in words and figures except where the forms provide for figures only.

The Offeror shall not alter any part of the Contract Documents in any way, except by stating any exceptions as requested in Qualifying Factor C.3., item k.

The Offeror shall bind, with each Proposal copy submitted, a signed copy of each addendum issued for the Contract Documents during the Proposal period, if any. The Offeror shall assemble all supplementary information required and shall attach such information to the proposal.

B.5.2 SIGNATURES

Each Offeror shall sign each Proposal with Offeror's usual signature and shall give Offeror's full business address. Proposals by partnerships shall be signed with the partnership name, followed by the signature and designation of one of the partners or other authorized representative.

Proposals by a corporation shall be signed in the name of the corporation, followed by the signature and designation of the president, secretary, or other person authorized to sign the Proposal for the corporation. The names of all persons signing should also be typed or printed below the signature.

A Proposal by a person who affixes to his/her signature the word "president," "secretary," "agent," or other designation, without disclosing his/her principal, will be rejected. When requested, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished. Proposing corporations shall designate the state in which they are incorporated and the address of their principal office.

B.5.3 SUBMITTAL

Proposals shall be submitted in sealed envelopes or packaging, each endorsed on the outside with the Offeror's name, the CPS Energy Request for Proposal Number, and the title of the Project.

Offeror's two (2) signed identical Proposals, complete with two (2) copies of all required supplemental information, shall be submitted at the time and place named in the Request for Proposal notice. These Proposals shall be addressed to CPS Energy, at the address shown on page A-1.

B.5.4 FIRM PROPOSAL

Each Proposal shall be firm, not subject to escalation. Proposals may not be withdrawn for one-hundred twenty (120) days after the date of the public opening.

B.6 TAXES

The City Public Service Board of San Antonio, Texas is a political subdivision of the State of Texas organized pursuant to Texas law codified at Chapter 1502 of the Texas Government Code and, as such, is a TAX-EXEMPT ORGANIZATION. CPS Energy is exempt from certain sales and use taxes with respect to the purchase price of all materials, supplies, equipment and consumables purchased under a separate contract and which are incorporated into the Work. Contractor shall not invoice or charge CPS Energy for such taxes and shall be provided with a Sales Tax-Exemption Certificate upon request. Failure by Contractor to request a Sales Tax-Exemption Certificate shall not mean that CPS Energy waives its tax-exempt status. CPS Energy shall not pay any taxes for which it is exempt.

B.7 TIME OF COMPLETION

The time of completion of the Work is a basic consideration of the Contract. The Proposal shall be based upon completion of the Work **within one hundred twenty (120) calendar days of issuance of a Purchase Order and Notice to Proceed (NTP). It will be necessary that the Offeror satisfy CPS Energy of Offeror's ability to complete the Work within the stipulated time.**

B.8 LOCAL CONDITIONS

It must be understood and agreed that all factors have been properly investigated and considered in the preparation of every Proposal submitted. There will be no subsequent financial adjustment which is based on the lack of such prior information or its effect on the cost of the Work.

CPS Energy makes no warranty, expressed or implied, with respect to the accuracy or sufficiency of the Contract Documents or any interpretation of any facts disclosed by any preliminary investigations which may have been made by CPS Energy. Claims for additional compensation due to variation between conditions actually encountered in construction as to these items and as indicated by the plans will not be allowed.

B.9 INTERPRETATION OF CONTRACT DOCUMENTS

If any prospective Offeror is in doubt as to the true meaning of any part of the proposed Contract Documents, Offeror may submit to CPS Energy a written request for an interpretation thereof. The person submitting the request will be responsible for its prompt delivery, and all requests must be received by CPS Energy as indicated in the mandatory pre-proposal meeting. Any interpretation of the Contract Documents will be made only by duly-issued correspondence, and a copy of such correspondence from Supply Chain will be mailed or delivered to each person attending the mandatory pre-proposal meeting. CPS Energy will not be responsible for any other explanations or interpretations of the proposed documents. It shall be the responsibility of the Offeror to advise CPS Energy of conflicting requirements or omissions of information which are necessary for a clear understanding of the Services, before the date set for opening proposals. Those questions not resolved by addenda shall be listed in the Offeror's proposal, together with statements of the basis upon which the Proposal is made as affected by each question.

All formal contact with CPS Energy prior to Contract award shall be through Ms. Pamela J. Williams, Supply Chain, who may be reached at (210) 353-2399 or by e-mail at PJWilliams@cpsenergy.com.

B.10 OWNERSHIP OF DRAWINGS AND SPECIFICATIONS

Title to all drawings, specifications and other Contract documents is with CPS Energy. All Offerors and the successful Offeror awarded the Contract agree that this material will not be used in any manner other than for the preparation of Proposals and for the construction covered by the Contract Documents. Documents referred to other firms for proposals on subcontracts will be subject to the same provisions.

SECTION C

MINIMUM QUALIFICATIONS FOR RESPONSIBLE OFFERORS

C.1 GENERAL

Each Offeror shall submit information with its Proposal for CPS Energy's use in evaluating the Offeror's Proposal and its ability to satisfactorily perform the Work requested. Proposals submitted by Offerors not meeting the minimum qualifications are subject to rejection.

CPS Energy reserves the right to make any and all of the requested information part of the Contract Documents if the Offeror's Proposal is accepted. Any changes or substitutions shall be made only with the written acceptance of CPS Energy, and such change or substitution shall not be cause for additional financial compensation nor shall it invalidate the Contract in any way.

C.2 QUALIFYING FACTORS

The following factors shall be considered to be the minimum qualifications for Offerors providing a Proposal to CPS Energy:

- a. A description of the firm's operational history which reflects that the Offeror shall have been actively engaged for a **minimum of ten (10) consecutive years** as a general contractor constructing facilities similar to those defined in the plans and Specifications of this Contract.
- b. A minimum of five (5) commercial references which shall include the Company name, address, a contact person's name and phone number, Project cost, and if it was a Leadership in Energy and Environmental Design (LEED) Project or not. A brief description of the work performed by the Offeror as a general contractor constructing facilities similar to those defined in the plans and Specifications for this Contract shall accompany the reference.
- c. The Mechanical, Electrical and Plumbing (MEP) Contractor(s) must have five (5) years of prior experience in the contracting business. **Offeror shall submit evidence and references and show prior experience with similar building-type construction.** All MEP trades must be licensed in San Antonio. Offeror shall provide a list of names and addresses of all Subcontractors and their respective trades. The Subcontractor names must be submitted to CPS Energy in the Proposal and meet the approval of CPS Energy prior to the commencement of this Contract. Upon award of the Contract, the Offeror shall show any and all key licensed individuals who will be working on this CPS Energy Project.
- d. A list of the firm's top three (3) projects (i.e., met schedule, within budget, had minimal change orders, and fulfilled or exceeded customer expectations) in the past five (5) years and provide owner contact name and telephone number.
- e. A description of its organizational set-up and an organizational flowchart reflecting that the Offeror can perform the majority of the Work with the firm's

own forces and equipment under the management of its own organization. Please list employees and their skill sets, and state their roles in the Project.

C.3 ADDITIONAL INFORMATION TO BE SUBMITTED

The Offeror shall also submit the following information with its Proposal:

- a. Pricing schedule for the Project (Total Cost to CPS Energy).
- b. A list of any citations, notices of violation, legal proceedings, or Project terminations that any Federal, State, or local regulatory agency or department, or corporation or individual, has issued to the firm, or any employee of the firm while that employee was performing work for the firm, in the past three (3) years. **If there are no violations, Offeror shall provide a statement of such. In the event there are citations, notices of violation, legal proceedings, or any Project terminations filed against the Offeror, CPS Energy reserves the right to reject the Offeror's Proposal.**
- c. A Project schedule similar to a Gantt chart titled, Attachment 3, "Contractor's Construction Schedule," indicating that the Offeror can meet the Project timeline. **This detailed work schedule shall indicate start and end dates for various activities to be accomplished. This Project must be completed within one hundred twenty (120) calendar days (or less) from issuance of a Purchase Order (PO) and a Notice to Proceed (NTP). Offeror selection will be partly based upon the Offeror's ability to complete the Project within the time period specified.** The detailed schedule must accompany the Offeror's proposal for CPS Energy's consideration
- d. Offeror's warranty for labor for the Project must be for a minimum time period of one (1) year for labor, and five (5) years for materials. A sample of the Contractor's certificate of warranty shall accompany the Proposal. The sample copy of the Contractor's warranty and any key manufacturer's warranty must state the obligations, remedies, limitations, and exclusions of the warranty.
- e. A letter of certification from a surety company to confirm that the Offeror is qualified to execute a valid performance bond and a valid payment bond for the estimated value herein.
- f. **Only after the selected Offeror has been awarded a Contract by CPS Energy shall it provide the following for ensuring compliance with the regulations promulgated by the Department of Transportation (DOT), Federal Motor Carrier Safety Administration (FMCSA) and/or Pipeline and Hazardous Material Safety Administration (PHMSA) which relate to the illegal use of alcohol and controlled substances:**
 1. **A Notarized Affidavit** – that states the company placing the Proposal, and its Subcontractors, are in compliance with the Department of

Transportation's Drug and Alcohol Regulations for FMCSA and/or PHMSA.

2. A completed and signed Contractor DOT Compliance Document form and Contractor Anti-Drug/Alcohol Program Information DOT Compliance form.
3. A current copy of Contractor's Anti-Drug and Alcohol Plan for Testing. Contractor may call (210) 353-2120 to determine if the plan is on file and approved by CPS Energy Human Resources.
4. Proof of Supervisor's Training for compliance with DOT Drug and Alcohol Regulations. Training should include the following: Pre-Employment/Placement Testing, Reasonable-Suspicion Testing, Post-Accident Testing, Return-to-Duty Testing, and Random Testing.
5. A chain of custody form provided by the lab conducting the testing.
6. A statistical report on the latest drug and alcohol analysis from the lab conducting Contractor's testing.

CPS Energy Human Resources requires a letter acknowledging that service(s) provided to CPS Energy does (do) not require compliance with DOT regulations.

- g. After award of the Contract, Offeror shall submit a list of persons for the following trades, as applicable, who will be performing Work hereunder, number of times they have worked on similar-type buildings, and number of years they have worked with the firm. These persons must be able to demonstrate that their capabilities and experience match that required for this Project and with a record of successful in-service performance:
1. Hot-mix asphalt paving installer
 2. Sheet-metal flashing, trim-work installer, roofer
 3. Paint applicator
 4. Structural steel installer
 5. Foundation/Pier concrete installer
 6. Electrical installer
 7. HVAC Installer
 8. Plumbing Installer
 9. Carpet/Flooring Installer
 10. Sheetrock Installer
 11. Concrete installer
 12. Site Work Contractor
- h. A completed Volume III, Proposal.

- i. A completed CPS Energy Business Questionnaire, attached as Exhibit G, with Offeror's Proposal **only** if their business classification is expired or not listed within the CPS Energy's supplier database.

If Offeror has provided goods or performed services for CPS Energy in the two (2) years preceding the Proposal due date and completed a Business Questionnaire at that time, Offeror shall access the website noted below to determine whether Offeror's business classification is current or needs updating.

[http://www.cpsenergy.com/About CPS Energy/Vendors Suppliers/Contract Services/Economic Development/index.asp](http://www.cpsenergy.com/About_CPS_Energy/Vendors_Suppliers/Contract_Services/Economic_Development/index.asp)

Business Questionnaires shall only be considered valid for two (2) years from classification date and must be updated with a new Business Questionnaire beyond such two (2)-year period.

The Business Questionnaire assists CPS Energy, who is a federal contractor for reporting its contracting activity to the federal government, in identifying an Offeror's business, if applicable, as (A) Local, (B) Small and/or (C) Diverse in accordance with the definitions/descriptions below:

Local - Any business located in the San Antonio eight-county metropolitan area as defined by the Office of Management and Budget (OMB). The metropolitan area is colloquially referred to as "Greater San Antonio" and is situated in South-Central Texas. The counties included are Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina, and Wilson Counties.

Small - A business that does not exceed the Small Business Administration's size standards, which vary by work category. Information about each category and size standard can be located by going to <http://www.sba.gov/size/indextableofsize.html>

Diverse - Any Businesses which meets one of the following classifications, Women, Minority, Veteran, Historically Underutilized Business (HUB) Zone, or Service-disabled Veteran.

- j. Provide a copy of the firm's last fiscal year's financial statements (audited preferred), and the most recent quarter's financial statements. Financial statements should include the balance sheet, income statement, cash flow statement, statement of shareholder equity and comprehensive income, and all related notes. Company and industry information will be evaluated using financial information that may be provided and/or obtained from Dun & Bradstreet and similar financial information providers.

- k. **A list of any exceptions to the specifications, requirements or the terms and conditions of this Contract must be clearly acknowledged and inserted in tracked-change (red-lined) format to a soft copy (Word) of the CPS Energy Contract, and must accompany the Proposal. If there are no exceptions, the words “NO EXCEPTIONS” must be stated.**
- l. Any other documents as required in this Proposal.

C.4 ACCEPTANCE AND REJECTION OF PROPOSAL

Failure to submit information detailed in *Section C.2 QUALIFYING FACTORS*, and *Section C.3 ADDITIONAL INFORMATION TO BE SUBMITTED*, may be used, at the sole discretion of CPS Energy, in determining whether the Offeror’s Proposal is accepted or rejected. **It is agreed that the Contract between CPS Energy and the successful Offeror shall not come into existence until the actual signing of the Contract and issuance of a Purchase Order.**

SECTION D

GENERAL CONDITIONS

D.1 GENERAL

These GENERAL CONDITIONS are applicable to the Contract awarded by City Public Service of San Antonio, Texas (“CPS Energy”) for Work associated with CPS Energy Request for Proposal (RFP) Number 7000120162.

D.1.1 CONTRACT DOCUMENTS

The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intention of the Contract Documents is to cover all labor and materials, equipment and transportation necessary for the proper execution of the Work.

Unless directed otherwise by CPS Energy, if conflicting information exists in the Contract documents, the more stringent code compliant guidelines will rule over the non-code compliant wording.

D.2 DEFINITIONS

Words, phrases, or other expressions used in these Contract Documents shall have meanings as follows:

- a. “Contract” or “Contract Documents” shall include all documents enumerated under Article D.3 of these General Conditions.
- b. “Owner,” “Board,” or “CPS Energy” shall mean the City of San Antonio, acting through the City Public Service of San Antonio, Texas, a Municipal Board of the City of San Antonio, Texas, named and designated in the Contract as “Party of the First Part,” and its duly authorized agents. All notices, letters, and other communication directed to CPS Energy after the award of the Contract shall be addressed and delivered to CPS Energy, P.O. Box 1771, San Antonio, Texas 78296, Attention: Ms. Pamela J. Williams, Mail Drop: 110901.
- c. “Engineer” or “Architect” shall mean the architectural firm which is **assisting** in overseeing this Project. It can also mean Owner’s Architect or Owner’s Engineer.
- d. **“CPS Energy Engineer” or “Field Representative” shall be Mr. Jack A. Smith, P.E. (210-353-3349) or Mr. Keith Wiatrek (210-353-3772), who shall be in charge of the Project oversight and the performance of Work under this Contract.**
- e. “Contractor” shall mean the corporation, company, partnership, firm, or individual named and designated in the Contract as the “Party of the Second Part,” who has entered into this Contract for the performance of the Work covered thereby, and its, his, hers, or their duly authorized representatives.

- f. "Subcontractor" shall mean and refer only to a corporation, partnership, or individual having a direct contract with the Contractor to furnish installation labor, or labor and materials, required for a particular segment of the Work.
- g. "Field Representative" or "Inspector" shall refer to a CPS Energy employee or a contracted inspector representing the Owner at the Project site, designated, appointed, or otherwise employed or delegated by CPS Energy to be in charge of field administration and field management of this Project (**refer to section D.2 item d**).
- h. "Date of Contract," or equivalent words, shall mean the date written in the first paragraph of the Agreement after the selection of a Contractor.
- i. "Day" or "Days," unless herein otherwise expressly defined, shall mean a calendar day or days of twenty-four (24) hours each.
- j. The "Work" shall mean the equipment, supplies, materials, labor and services to be furnished under the Contract and the carrying out of all obligations imposed by the Contract Documents.
- k. "Plans" or "drawings" shall mean all (a) drawings furnished by CPS Energy as a basis for Proposals, (b) supplementary drawings furnished by CPS Energy to clarify and to define in greater detail the intent of the Contract drawings and specifications, (c) drawings submitted by the Contractor to CPS Energy, and (d) drawings submitted by CPS Energy to the Contractor during the progress of the Work as provided for herein.
- l. Whenever in these Contract Documents the words "as ordered," "as directed," "as required," "as permitted," "as allowed," or words or phrases of like import are used, it shall be understood that the order, direction, requirement, permission, or allowance of CPS Energy is intended only to the extent of judging compliance with the terms of the Contract; none of these terms shall imply CPS Energy has any authority or responsibility for supervision of the Contractor's forces or construction operations, such supervision and the sole responsibility therefore being strictly reserved for the Contractor.
- m. Similarly, the words "approved," "reasonable," "suitable," "acceptable," "proper," "satisfactory," or words of like effect and import, unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper, or satisfactory in the judgment of CPS Energy to the extent provided in "l" above.
- n. Whenever in these Contract Documents the expression, "it is understood and agreed," or an expression of like import is used, such expression means the mutual understanding and agreement of the parties executing the Contract.
- o. "Jobsite" or "Work Jobsite" shall mean the CPS Energy 2047 W. Malone, San Antonio, Texas 78225 location, where the Work is performed and the Contractor's construction office is located.

- p. "Project" is the total construction Work performed under the Contract Documents which may be the whole or a part and which may include construction by the Owner or by separate contractors.
- q. "Substantial Completion" when a Certificate of Occupancy is obtained.
- r. "Final Acceptance" release of retainage.

D.3 THE CONTRACT

This Contract represents the entire and integrated agreement between the parties hereto, and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract shall prevail over conflicting statements in any related Purchase Order and any other document related to the Scope of Work covered by this Contract. The Contract may be modified only by Amendment or Change Order provided in these General Conditions.

Any changes in the terms and conditions of the Contract Documents shall be mutually agreed to by the parties and incorporated in an Amendment. If such an Amendment entails a change in Contract Price or Contract Time, such change shall also be reflected in a Supplemental Purchase Order issued as provided in Article D.13, *MODIFICATIONS*.

D.4 ORAL STATEMENTS

It is understood and agreed that the written terms and provisions of the Agreement shall supersede all oral statements of representatives of CPS Energy, and oral statements shall not be effective or be construed as being a part of this Contract.

D.5 STANDARD SPECIFICATIONS

Reference to standard specifications of any technical society, organization, or association, or to codes of local or state authorities, shall mean the latest standard, code specification, or tentative specification adopted and published at the date of taking Proposals, unless specifically stated otherwise.

D.6 SCOPE, NATURE, AND INTENT OF CONTRACT DOCUMENTS

The Contract Documents are intended to supplement, but not necessarily duplicate, each other. Any Work exhibited in any one of the Contract Documents and not in the others shall be executed just as if it has been set forth in all, so that the Work will be configured according to the complete design. In interpreting the Contract Documents, their true meaning shall be determined by reference to the applicable provisions of all the Contract Documents.

Should anything necessary for clear understanding of the Work be omitted from the specifications and drawings, or should the requirements appear to be in conflict, the Contractor shall secure written instructions from CPS Energy before proceeding with the Work affected thereby. It is understood and agreed that the Work shall be performed according to the true intent of the Contract Documents.

D.7 FIGURED DIMENSIONS TO GOVERN

Dimensions and elevations shown on the drawings shall be accurately followed even though they differ from scaled measurements. No Work shown on the drawings, the dimensions of which are not indicated, shall be executed until necessary dimensions have been obtained from CPS Energy.

D.8 LEGAL ADDRESSES

Either the business address of the Contractor given in the Proposal or the Contractor's office in the vicinity of the Work is hereby designated as the place to which all notices, letters, and other communication to the Contractor will be mailed or delivered. The address of CPS Energy appearing in D.2. item b is hereby designated as the place to which all notices, letters, and other communication to CPS Energy shall be mailed or delivered. Either party may change its address at any time by an instrument in writing delivered to the other party.

D.9 PATENTS

Royalties and fees for patents covering materials, articles, apparatus, devices, equipment or processes used in the Work shall be included in the Contract amount. The Contractor shall satisfy all demands that may be made at any time for such royalties and fees, and Contractor shall be liable for any damages or claims for patent infringements. The Contractor shall, at Contractor's own cost and expense, defend all suits or proceedings that may be instituted against CPS Energy for infringement or alleged infringement of any patents involved in the Work and, in case of an award of damages, the Contractor shall pay such award. Final payment to the Contractor by CPS Energy will not be made while any suit or claim remains unsettled, provided, however, that this provision is not applicable to material furnished by CPS Energy to Contractor.

D.10 INDEPENDENT CONTRACTOR

Contractor's relationship to CPS Energy in the performance of this Contract is that of an Independent Contractor. The personnel performing Work under this Contract shall at all times be under Contractor's exclusive direction and control and shall be employees of Contractor and not employees of CPS Energy. Contractor shall be fully liable for all acts and omissions of its employees, Subcontractors, and their suppliers and shall be specifically responsible for sufficient supervision and examination to assure compliance in every respect with Contract requirements. There shall be no contractual relationship between any Subcontractor or supplier of Contractor and CPS Energy by virtue of this Contract. No provision of this Contract shall be for the benefit of any party except CPS Energy and Contractor. Contractor shall pay all wages, salaries and other amounts due its employees in connection with this Contract and shall be responsible for all reports and obligations respecting them, such as Social Security, income tax withholding, unemployment compensation, workers' compensation and similar matters.

D.11 RELATIONS WITH SUBCONTRACTORS AND CPS ENERGY

The Contractor shall hire any Subcontractors that are necessary to complete the Project that are approved by CPS Energy. The Contractor shall cooperate with the subcontractors and employees of CPS Energy, and conduct Contractor's operations so as to interfere to the least possible extent with the works of such subcontractors and employees of CPS Energy.

Any differences or conflicts that may arise between the Contractor, subcontractors, or workmen of CPS Energy with regard to the Work shall be adjusted and determined by CPS Energy. The Contractor shall make good, at Contractor's own expense, any injury or damage that may be sustained by subcontractors or employees of the Owner at Contractor's hands. In no case shall the Contractor have a claim against CPS Energy because of any act of omission of any Subcontractor.

D.12 PROTECTION OF PROPERTY AND PUBLIC LIABILITY

The Contractor shall be fully responsible for the protection of all persons, including members of the public, employees of CPS Energy, and employees of other contractors or subcontractors, and all public and private property, including all existing property of CPS Energy, created under or affected by this Contract.

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

- a. All employees performing the Work and all other persons who may be affected thereby;
- b. All the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of its Subcontractors or Sub-subcontractors; and
- c. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

The Contractor shall give reasonable notice to CPS Energy of public or private property and utilities when such property and utilities are liable to injury or damage through the performance of the Work, and shall make all necessary arrangements with such owners relative to the removal and replacement or protection of such property or utilities.

The Contractor shall promptly remedy all damage or loss to any property, including, but not limited to, existing CPS Energy property and/or equipment, caused in whole or in part by the Contractor, any Subcontractor, and Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible. All such repair Work must be acceptable to CPS Energy.

D.13 MODIFICATIONS

Changes or Modifications in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order and/or by Supplemental Purchase Order subject to the limitations stated in this Article 13 and elsewhere in the Contract Documents. A Change Order shall be based upon agreement among the Owner, Contractor and Architect. The Contractor shall modify the Work whenever ordered by CPS Energy.

Modifications may involve increases or decreases in the amount of the Work for which appropriate compensation adjustments will be made. The Contractor shall prepare a response to a Proposal Request by CPS Energy for the requested change in scope, including a detailed cost breakdown to substantiate the amount of any price increase necessitated by the proposed Modification. Authorization to proceed with this type of Modification shall be by the issuance of a properly authorized Supplemental Purchase Order issued by Supply Chain of CPS Energy and by Change Order. Authorized Modifications in the Work shall in no way serve to release the Contractor from any guarantees given by Contractor pursuant to the Contract provisions. All modification in the Work shall be executed under the conditions and provisions of the Contract and in conformance with the Drawings and Specifications as if originally included therein unless otherwise provided in the Change Order, Construction Change Directive, or Supplemental Purchase Order.

Upon completion of the Modification, the Contractor shall request final inspection by the CPS Energy Field Representative. The Contractor shall submit on a monthly basis, and by the 15th of the month following the month that the modification was completed, an invoice for each Modification. The invoice shall show the Supplemental Purchase Order number, and/or Change Order number, on each invoice that pertains to it,. The remaining ten percent five (5%) shall be retained by CPS Energy pending acceptance of the Work and may be released in whole or in part at CPS Energy's discretion.

D.14 EMERGENCY PROTECTION

Whenever, in the opinion of CPS Energy, the Contractor has not taken sufficient precaution for the safety of the public, the protection of the Work to be constructed under this Contract, or for adjacent structures or property, and whenever, in the opinion of CPS Energy, an emergency has arisen and immediate action is considered necessary, then CPS Energy, with or without prior notice to the Contractor, may in its sole discretion, take such actions such as terminating the Agreement and or causing Work to be done and material to be furnished and placed. The cost (labor, material, equipment and overhead) of such Work shall be borne by the Contractor and if the same is not paid on presentation of the bills, such costs may be deducted from any amounts due or to become due the Contractor. The performance of such emergency Work shall not relieve the Contractor of responsibility for any damage that may occur. The provisions of this Article D.14 shall not relieve the Contractor of Contractor's responsibility to take proper and adequate safety precautions in all phases of the Work nor shall it relieve Contractor of the liability assumed by Contractor under Article D.31, *INDEMNIFICATION*.

D.15 ASSIGNMENT

The Contractor shall not assign any part of the Work, unless so specified in this Agreement, without the previous written consent of CPS Energy, nor shall Contractor assign, by power of attorney or otherwise, any of the money payable under this Contract unless written consent of CPS Energy has been obtained. No right under this Contract, nor claim for any money due or to become due hereunder, shall be asserted against CPS Energy, or persons acting for CPS Energy, by reason of any so-called assignment which has not been authorized by the written consent of CPS Energy. In case the Contractor is permitted to assign moneys due or to become due under this Contract, the instrument of assignment shall contain a clause subordinating the claim of the

assignee to all prior liens for service rendered or materials supplied for the performance of the Work.

D.16 SUBCONTRACTING

It is the intent of these specifications that the Contractor shall perform the majority of the Work with Contractor's own forces and under the management of its own organization. Contractor shall secure CPS Energy's written approval before subcontracting any portion of the Work and shall obtain CPS Energy's written approval of all subcontracts let. No such approval shall relieve the Contractor from any of the obligations of the Contract with CPS Energy. Contracts with Subcontractors shall contain necessary clauses whereby the Subcontractors shall comply with all provisions of the Contract agreed upon by the Contractor. This shall be inclusive of prevailing wage rates and right-to-audit provisions. The award of such a subcontract by Contractor, approved by CPS Energy, in no manner limits or lessens the full responsibility of Contractor to complete the Work as provided under the terms and conditions of this Contract. Contractor shall submit Subcontractor's details and keep such records and furnish reports and information relative to the Subcontractor as CPS Energy may request. CPS Energy reserves the right to reject any Subcontractor or subcontract.

All Subcontractors shall be directly responsible to the Contractor and shall be under Contractor's general supervision. Should any Subcontractor fail to perform in a satisfactory manner the Work undertaken by Subcontractor, Subcontractor's contract shall be immediately terminated by the Contractor upon notice from CPS Energy. The Contractor shall be as fully responsible and accountable to CPS Energy for the acts and omissions of Contractor's Subcontractors, and of persons either directly or indirectly employed by them, as Contractor is responsible for the acts and omissions of persons directly employed by Contractor. Nothing contained in this Contract shall create any contractual relationship between any Subcontractor and CPS Energy. Said Contractor shall hold CPS Energy harmless and indemnify CPS Energy from any loss or damages resulting from said Subcontractor's activity.

D.17 RIGHT OF CPS ENERGY TO TERMINATE CONTRACT

Should conditions arise which, in the opinion of CPS Energy, make it advisable or necessary to cease Work, CPS Energy may terminate the Contract, upon written notice to Contractor, effective immediately, unless otherwise provided in the notice. Upon such termination without fault of the Contractor, the Contractor shall be paid the earned portion of the total cost of the Work completed, together with payment for any authorized commitments on behalf of CPS Energy at the date of termination except that retainage sums shall not be paid prior to thirty (30) days following the date of termination. In this event, CPS Energy or its authorized representative shall have the right to access the Contractor's books to check the amount claimed by the Contractor.

In addition, if the Work to be performed under this Contract is abandoned by the Contractor; or if this Contract is assigned by Contractor without the written consent of CPS Energy; or if the Contractor seeks relief under any law for the benefit of insolvents or is adjudged bankrupt; or if a general assignment of Contractor's assets is made for the benefit of Contractor's creditors; or if a receiver is appointed for the Contractor of any of Contractor's property; or at any time it is the opinion of CPS Energy that the performance of the Work under this Contract is being

unnecessarily delayed, that the Contractor is violating any of the conditions of this Contract, or that Contractor is executing the same in bad faith or otherwise not in accordance with the terms of said Contract; or if the Work is not substantially completed within the time named for its completion or within the time of which such completion date may be extended; then CPS Energy may serve written notice upon the Contractor and Contractor's surety of CPS Energy's intention to terminate this Contract. Unless within three (3) days after the serving of such notice, a satisfactory arrangement is made for continuance, this Contract shall terminate and Contractor shall discontinue the Work. In the event of such termination, the surety shall have the right to take over and complete the Work, provided that if the surety does not commence performance within thirty (30) days, CPS Energy may take over and prosecute the Work to completion, or such part thereof as it may deem expedient, by Contract or otherwise. In either case, the Contractor shall not be entitled to receive any further payments under the Contract for Work performed until all the Work, or as much as is contemplated by CPS Energy, is completed and accepted. The Contractor and Contractor's surety shall be liable to CPS Energy for all excess costs sustained by CPS Energy by reason of such prosecution and completion. CPS Energy may take possession of, and utilize in completing the Work, all materials, equipment and tools on the jobsite.

D.18 SUSPENSION OF WORK

CPS Energy reserves the right to suspend and reinstate execution of the whole or any part of the Work without invalidating the provisions of the Contract. CPS Energy will issue orders for suspension or reinstatement of Work to the Contractor in writing. The time for completion of the Work will be extended for a period equal to the time lost by reason of the suspension.

D.19 LOSSES FROM NATURAL CAUSES

All loss or damage arising out of the nature of the Work, or from the action of the elements, or from floods or overflows, or from ground water, or from any unusual obstruction or difficulty, or any other natural or existing circumstance, either known or unforeseen, which may be encountered in the prosecution of the Work, shall be sustained and borne by the Contractor at its own cost and expense.

D.20 LAWS AND REGULATIONS

a. The Contractor shall observe and comply with all ordinances, laws, requirements and regulations of all units of government and governmental agencies having jurisdiction over any aspect of the services, including, but not limited to, those listed in (b) below and as amended by the Federal Motor Carrier Safety Administration. The Contractor shall protect and indemnify CPS Energy and CPS Energy's employees, officers, trustees and agents against any loss, claim, expense or liability arising from or based on any violation of the same.

b. This Contract requires Contractor's employee(s) to obtain a commercial driver's license in order to perform services hereunder; therefore, the Contractor shall abide by the regulations promulgated by the Department of Transportation (DOT), Federal Motor Carrier Safety Administration (FMCSA), which states that contractors subject to FMCSA mandates shall be in compliance with those parts of 49 Code of Federal Regulations (CFR) which relate to the illegal use of alcohol and controlled substances. CPS Energy will require such compliance to be a part of this Contract and will immediately terminate this Contract if Contractor is found to not be in

compliance with said regulations. Contractor shall indemnify CPS Energy against any fines, penalties, damages, costs or attorney fees based upon any violation by Contractor of the same.

The Contractor agrees to provide CPS Energy with an affidavit prior to the date of execution of the Contract which states that Contractor and its employees have complied with all applicable laws, statutes, and regulations pertaining to ensuring an alcohol- and drug-free workplace, including, but not limited to, the requirements found in parts of 49 CFR as amended by FMCSA. Contractor also agrees to submit a copy of the Contractor's anti-drug and alcohol plan for drug and alcohol testing prior to the date of Contract execution. Furthermore, the Contractor agrees to allow CPS Energy Human Resources' Drug and Alcohol Program Administrator and/or representative(s) periodic on-site access to Contractor's records documenting compliance with the same. Contractor will provide the name and contact person for the agency or consortium used by the Contractor to comply with this requirement prior to the date of execution of the Contract.

D.21 TAXES

The City Public Service Board of San Antonio, Texas is a political subdivision of the State of Texas organized pursuant to Texas law codified at Chapter 1502 of the Texas Government Code and, as such, is a TAX-EXEMPT ORGANIZATION. CPS Energy is exempt from certain sales and use taxes with respect to the purchase price of all materials, supplies, equipment and consumables purchased under a separate contract and which are incorporated into the Work. Contractor shall not invoice or charge CPS Energy for such taxes and shall be provided with a Sales Tax-Exemption Certificate, upon request. Failure by Contractor to request a Sales Tax-Exemption Certificate shall not mean that CPS Energy waives its tax-exempt status. CPS Energy shall not pay any taxes for which it is exempt.

D.22 UTILIZATION OF SMALL BUSINESS CONCERNS

If this Contract bids subcontracting opportunities, both parties to this Contract [Purchase Order] agree to comply with 48 CFR 52.219-8, Utilization of Small, Service-Disabled Veteran-Owned Small Business, HUBZone Small Business, Small Disadvantaged Business and Woman-Owned Small Business Concerns and 48 CFR 52.219-9, Small Service-Disabled Veteran-Owned Small Business, HUBZone Small Business, Small Disadvantaged Business and Woman-Owned Small Business Subcontracting Plan.

Contractors classified by CPS Energy as a large business will be required to furnish the subcontracting documents for any contract expected to meet or exceed \$650,000 (\$1,500,000 for construction) at the time the bid is awarded. Failure to provide these documents may result in the award being cancelled.

The Contractor shall adopt and deliver to CPS Energy the Subcontracting Plan for both large and small, non-minority, minority, HUBZone, service-disabled veteran and/or woman-owned businesses with the agreement that the Contractor will prepare and submit the Summary Subcontract Report Standard Form 294 or 295, in accordance with the instructions on the form and all supporting documentation as required by governmental directives in the terms of the contract between CPS Energy and the U. S. Government. The aforementioned documentation should be submitted to the CPS Energy Supplier Diversity Office, Mail Drop: 110901, P.O. Box 1771, San Antonio, Texas 78296-1771, Attn: Supplier

Diversity Coordinator. The Contractor may be required to submit a copy to the Director of Small and Disadvantaged Business Utilization, General Services Administration, 18th & F Streets NW, Washington, DC 20405, upon his/her request.

D.23 PERMITS AND LICENSES

Contractor shall obtain all necessary permits, including the Texas Commission on Environmental Quality (TCEQ), Texas Pollution Discharge Elimination System (TPDES) General Permit for Storm Water Discharges from Construction Sites, and inclusive of all licenses, inspections and any other forms of documentation required relating to the services provided hereunder at its sole cost unless the law or regulation governing such permitting or licensing requires that CPS Energy do so. Upon request, the Contractor shall promptly furnish CPS Energy copies of all permits, licenses or other documentation applicable to this Agreement.

This Project requires the Contractor to operate under the conditions set forth in the TCEQ TPDES General Permit for Storm Water Discharges from Construction Sites. In accordance with such TPDES General Permit, the Contractor shall fill out a Notice of Intent (NOI) on a form provided by the TCEQ Administration in order for storm-water discharges from construction sites to be authorized under the General Permit. The Contractor shall return the completed form to CPS Energy. Submission of the NOI constitutes notice that the Contractor intends to be authorized by a TPDES permit issued for storm-water discharges. Becoming a permittee obligates the Contractor to comply with the terms and conditions of the permit.

In compliance with the TPDES General Permit, a Storm Water Pollution Prevention Plan (SWPPP) has been prepared to guide all permittees. Included in the SWPPP is a PLAN IMPLEMENTATION CHECKLIST. The checklist instructs the Contractor to submit a NOI to CPS Energy.

The Contractor is also required to submit a Notice of Termination (NOT) to CPS Energy upon completion of the Work.

CPS Energy will furnish the Contractor with a NOI form, a NOT form, and sufficient copies of the SWPPP. The Contractor shall be required to conform its activities to the requirements in these documents.

Also, in accordance with the TPDES General Permit, the Contractor must perform certain inspections to ensure permit compliance. The Contractor is also required to comply with OSHA requirements and local codes.

The TCEQ requires that the Contractor post a signed copy of the “NOI for Storm Water Discharges Associated with Construction Activity Under the TPDES General Permit” in a prominent place for public viewing, along with a copy of the “Storm Water Pollution Prevention Plan (SWPPP).” The Contractor shall post copies of these at the job site entrance. A copy of the SWPPP must be kept on the construction site. A copy of each Inspection Form filed during the course of the Work must also be kept on the construction site.

D.24 UNFAVORABLE CONSTRUCTION CONDITIONS

During unfavorable weather, wet ground, or other unsuitable construction conditions, the Contractor shall confine its operations to Work which will not be affected adversely thereby. No portion of the Work shall be performed under conditions that would affect adversely the quality or efficiency thereof, unless special means or precautions are taken by the Contractor to perform the Work in a proper and satisfactory manner.

D.25 HINDRANCES AND DELAYS

The Contractor expressly agrees that the construction period named in the Contract includes allowances for all hindrances and delays incident to the Work, including delays resulting from the need to re-do Work unacceptable to CPS Energy and caused by Contractor's default. No claim shall be made by the Contractor for hindrances or delays from any cause during the progress of the Work, except as provided under Articles D.18, *SUSPENSION OF WORK*, and D.26, *EXTENSIONS OF TIME*.

D.26 EXTENSIONS OF TIME

Contractor expressly agrees that the Contract time shall not be changed, nor an allowance be made by CPS Energy, for delays in the Work that are due to causes within the control of Contractor, including, but not limited to, failure of the Contractor to obtain delivery of equipment or materials, inadequate construction force, weather, or unsuitable ground conditions normally incidental to this type of Work. Except as provided above, the time of completion of the Work shall be extended for that portion of any period of delay which is due to unforeseeable causes beyond the control of or without the fault or negligence of the Contractor, provided, however, no such extension shall be granted the Contractor unless Contractor provides CPS Energy written notice of such request within fifteen (15) days after the start of the alleged delay. Such request shall contain documentation of the need for such extension, together with supporting data for the entire adjustment, and shall demonstrate that Contractor has used all reasonable means to minimize the delay. If requested by CPS Energy, Contractor shall work such overtime and utilize such additional equipment as may be necessary to eliminate the delay in final completion of the Work.

No additional compensation shall be due Contractor for any said extension of time unless CPS Energy requests the Contractor to work overtime or schedule increased resources in order to compensate for causes beyond the control of both parties.

Apart from extensions of time and compensation as provided for above, Contractor shall be entitled to additional compensation or remedies in connection with delay only if a delay is caused by acts constituting interference by CPS Energy with Contractor's performance of the Work, and then only to the extent that such acts continue after Contractor's notice to CPS Energy of such interference. CPS Energy's exercise of any of its rights under Article D.13, *MODIFICATIONS*, regardless of the extent or number of such modifications, or CPS Energy's exercise of any of its remedies of suspension of the Work or termination of this Agreement, or requirement of correction or re-execution of any defective Work, shall not under any circumstances be construed as interference with Contractor's performance of the Work.

Article D.13, *MODIFICATIONS*, shall be used as a guide in the determination of the amount of such extra compensation.

D.27 GUARANTEE

The Contractor warrants to CPS Energy that the Work will be of good quality and free from defects in design, materials, and workmanship and in accordance with the Contract Documents. The Contractor guarantees the materials and workmanship furnished under this Contract to be as specified and to be free from defects for a period of five (5) years for materials and one (1) year for labor after the date of Final Acceptance of the Work as defined in Article D.36, *ACCEPTANCE OF THE WORK AND FINAL PAYMENT*, and as determined by CPS Energy.

Upon notification, the Contractor shall promptly make all needed adjustments, repairs, and replacements which, in the opinion of CPS Energy, arose out of defects and became necessary during the guarantee period. The cost of all materials, parts, labor, transportation, supervision, special tools, and supplies required for replacement or repair of parts and for correction of defects shall be paid by the Contractor, or by the surety.

This guarantee shall be extended to cover all repairs and replacements furnished under the guarantee, and the period of the guarantee for each such repair or replacement shall be two (2) year(s) after installation of such repair or replacement, but not greater than five (5) years from installation. If within ten (10) days after CPS Energy has notified the Contractor of a defect, failure, or abnormality in the Work the Contractor has not started to make the repairs or adjustments, CPS Energy is hereby authorized to make the repairs or adjustments or to order the Work to be performed by a third party, with the cost of the Work to be paid by the Contractor. The cost of such will include labor, materials, equipment, and overhead. If this cost is not paid upon presentation of an invoice, such cost may be deducted from any amount due the Contractor.

In the event of an emergency where, in the judgment of CPS Energy, delay would cause serious loss or damage, repairs or adjustments may be made by CPS Energy, or a third party chosen by CPS Energy, without giving prior notice to the Contractor, and the cost of the Work shall be paid by the Contractor, or by the surety.

D.28 CLAIMS FOR LABOR AND MATERIALS

The Contractor shall indemnify and save harmless CPS Energy from all claims for labor, services, or materials furnished under this Contract. When requested by CPS Energy, the Contractor shall submit satisfactory evidence that all persons, firms or corporations who have performed Work or furnished materials under this Contract, for which CPS Energy may become legally liable, have been fully paid or satisfactorily secured.

In case such evidence is not furnished or is not satisfactory, an amount will be retained from money due to the Contractor which, in addition to any other sums that may be retained, will be sufficient, in the opinion of CPS Energy, to liquidate all claims. Such sum will be retained without interest until the claims as aforesaid are fully settled or satisfactorily secured. In the event such cost shall exceed the balance of the compensation due, or in the event final payment has been made, Contractor and Contractor's sureties, if any, shall be liable for and shall pay the difference to CPS Energy.

D.29 RELEASE OF LIABILITY

The acceptance by the Contractor of the last payment shall be a release to CPS Energy, and every officer and agent thereof, from all claims and liability hereunder for anything done or furnished for, or relating to the Work, or for any act of neglect of CPS Energy or of any person relating to or affecting the Work. Whether this Contract is completed or terminated as provided for herein, CPS Energy shall in no case be liable to Contractor or its Subcontractors for lost profits or for indirect, consequential, or special damages.

D.30 INSURANCE REQUIREMENTS

During the course of operations under this Contract, until the Work is finally accepted by CPS Energy, and until Contractor has finally vacated the site or until sooner if authorized by CPS Energy in writing, Contractor agrees to carry and keep in full force during the performance of Work hereunder insurance sufficient to fully protect CPS Energy from all damages, claims, suits, and/or judgments, to include errors, omissions, violations, fees and penalties caused or claimed to have been caused by, or in connection with, the performance or failure to perform any Work undertaken by the Contractor, its Subcontractor, or their agents, or employees. The minimum coverages and corresponding amounts of insurance shall be in accordance with Exhibit A, "Minimum Insurance Requirements."

Should the minimum insurance requirements of CPS Energy change, the Contractor shall be notified in writing, and Contractor shall meet the new requirements. Should the new requirements add materially to the Contractor's costs, Contractor should notify CPS Energy and request adjustment in Contractor's compensation. Contractor shall comply with all insurance requirements of Exhibit A and provisions set forth herein for the duration of the term of the Contract. Contractor's insurance shall be primary of any self-insurance and/or insurance maintained by CPS Energy. Failure of the Contractor to meet the insurance requirements set forth in this section and Exhibit A during the contract period may result in the Contract being immediately terminated.

Prospective Contractors, to whom award of Contract is under consideration, shall submit to CPS Energy a properly executed Certificate of Insurance, or upon request of CPS Energy, true copies of policies from the insurance agent or carrier of such insurance coverages in accordance with requirements set forth in the Contract Documents prior to award of a Contract and before starting any Work. Failure of a Prospective Contractor to provide proof of insurance will result in the Prospective Contractor not being awarded the Contract.

Contractor undertakes to permit no Subcontractor to enter upon or continue the performance of Work unless such Subcontractor is and remains insured in accordance with the herein stated requirements. Contractor shall indemnify CPS Energy for any loss suffered by the failure of any Subcontractor to be so insured.

Contractor agrees that it and all its Subcontractors will comply with all applicable Worker's Compensation laws and that it will from time to time, at the request of CPS Energy, furnish evidence to CPS Energy that all payments required by such laws have been and are being made.

D.31 INDEMNIFICATION

Contractor shall defend, indemnify, protect, and hold harmless CPS Energy, its subcontractors, officers, agents, and employees from and against all claims, demands for damage suits (including punitive, special, indirect or consequential damages), judgments, liabilities, payments under workers' compensation law or any plan for employee's disability or death benefits, losses and/or court costs and expenses of any kind (including attorney's fees) which are brought by any person to the extent such claims or liabilities are for:

- a. **Property and Bodily Injury Claims - Claims for damage to or destruction of property or injury to or death of any person or persons, and/or**
- b. **Intellectual Property and Related Claims - Claims for infringement of copyrights, patents or trademarks arising out of the processes, information, materials, or data used or incorporated into the Work by Contractor, or the improper or unauthorized use of these rights by Contractor, which arise from the sole, joint or concurrent negligence, strict liability, or willful malfeasance of Contractor or its agents, Subcontractors or employers,**

It is the expressed intention that when liability is attributable to the joint negligence or fault of Contractor and any other person (including CPS Energy), Contractor's duty to indemnify shall be limited to Contractor's allocable share of such joint negligence or fault and shall not apply to liability attributable to CPS Energy's sole or concurrent negligent acts, omissions or strict liability.

THIS INDEMNITY SHALL CONTROL OVER ANY OTHER INDEMNITY IN THE AGREEMENT AND SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

D.32 ENGINEERING EXAMINATION

CPS Energy may appoint its Field Representative(s) and/or Engineer(s) as appropriate, and such assistants as it deems proper, to examine the equipment and materials furnished and the Work performed for compliance with the Drawings and Specifications. The Contractor shall furnish all reasonable assistance required by these individuals for the proper examination of the Work.

The Contractor shall obey the directions and instructions of the Field Representative or contracted inspectors when they are consistent with the obligations of this Contract. It is the intent of this Contract that all Work shall be in strict accordance with the drawings and specifications and good construction practice. If the Field Representative discovers Work incompatible with the Drawings and Specifications, the Field Representative will report the condition to the Contractor's construction superintendent or other appropriate supervisory official. The Contractor shall immediately remove such substandard Work or take other appropriate actions as directed to correct unacceptable conditions. The provisions of this paragraph shall apply to all phases of the Work of this Contract.

The Field Representative and other authorized representatives of CPS Energy shall be free at all times to perform their duties and shall have free access to all areas of the jobsite, including the

warehouses and offices of the Contractor. Any attempted intimidation of one of them by the Contractor or Contractor's employees shall be sufficient reason for the immediate and permanent removal of the offending party from the job, or at the option of CPS Energy, termination of the Contract.

Such examination shall not relieve the Contractor from any obligation to construct the Work strictly in accordance with the Drawings and Specifications. Work not so constructed shall be removed and replaced by the Contractor at Contractor's own expense.

D.33 NO WAIVER OF RIGHTS

Neither the examination by CPS Energy or any of its officials, employees, or agents, nor any order by CPS Energy for payment of money, or any payment for, or acceptance of, whole or any part of the Work by CPS Energy or its Representative, nor any extension of time, nor any possession taken by CPS Energy or its employee, shall operate as a waiver of any provision of this Contract, or of any power herein reserved to CPS Energy, or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.

D.34 MATERIALS

Unless specifically provided otherwise in each case, all materials furnished under this Contract shall conform to applicable standard specifications and the latest proven industry practices, shall be from a reputable manufacturer currently engaged in production of such materials, and shall be new, unused, and undamaged.

D.35 PAYMENTS

Contractor shall submit all invoices to the CPS Energy Accounts Payable Section, P.O. Box 2921, San Antonio, Texas 78299-2921, for services completed hereunder in accordance with the appropriate Attachment 4, "Contractor's Progress Billing Form," line item. CPS Energy shall pay Contractor **ninety-five percent (95%)** of the properly approved invoice thirty (30) days after receipt of said invoice. Payment will not be made for Work or materials in advance, nor for Work **not** completed prior to the date listed in the Progress Billing Form unless approved in advance by CPS Energy. A separate invoice shall be prepared for any additional services authorized in accordance with Section D.13. All invoices shall include any supporting documentation necessary to verify the charges billed such as, but not limited to, personnel time sheets, Subcontractor services, materials and equipment, mileage and lodging, and shall correspond to the specific task being billed.

Subject to CPS Energy's approval, the invoice shall be paid thirty (30) days from the receipt of invoice. Payment for amount due Contractor shall be construed as the date check is deposited in the United States mail. Unless required under any applicable state law or regulation, CPS Energy shall not pay any late fees, service charges or penalties attributable to late or delayed payment by CPS Energy.

Invoices for payments and correspondence for this Agreement must reference the CPS Energy Purchase Order Number. Invoices which do not reference the CPS Energy Purchase Order Number will be returned unpaid.

The payment by CPS Energy of the services covered by each such invoice shall constitute full payment for all such services, including additional services, and shall constitute a full release, accord and satisfaction and waiver of all known claims of the Contractor for or arising out of any such services performed.

D.35.1 WITHHOLDING PAYMENTS

CPS Energy may withhold payments due the Contractor to the extent necessary to protect itself against loss including, but not limited to, the following:

- a. Defective Work not remedied.
- b. Claims filed or reasonable evidence indicating probable filing of claims.
- c. Failure of the Contractor to make payments properly to Subcontractors for material or labor.
- d. Damage to another Contractor.
- e. Any other violation or failure to comply with the provisions of this Contract.

When the above conditions are removed, payment shall be made for the amount withheld because of the specific conditions.

D.36 ACCEPTANCE OF THE WORK AND FINAL PAYMENT

Acceptance of the Work and final payment shall be subject to the requirements stated herein.

D.36.1 ACCEPTANCE OF THE WORK

Final Acceptance of the Work under these specifications will not be made until:

- a. The Contractor has completed all Work required under this Contract, including final clean-up of the Work area and removal of the Contractor's temporary facilities, temporary foundations, construction equipment, and personnel from the job site
- b. All third-party and warranty claims outstanding against the Contractor have been resolved.
- c. The Owner has verified that the Work has been completed in accordance with the specifications.

CPS Energy reserves the right to use completed segments of the Work prior to completion of the Work under this Contract.

D.36.2 FINAL EXAMINATION

After the Contractor has completed the Work under this Contract, the Contractor shall notify CPS Energy and request that CPS Energy make a final examination of the Work. Within ten (10) days after receipt of such request for final examination, the **CPS Energy Representative**

will examine the entire Work and prepare and deliver to the Contractor an itemized list of all Work, if any, which he finds to be incomplete or defective.

The Contractor shall promptly complete and correct any incomplete or defective Work shown on said list at Contractor's sole cost. Certification by the CPS Energy Engineer that the Work has been performed according to the Specifications will be required.

When all Work has been completed to the satisfaction of CPS Energy, CPS Energy will notify the Contractor of CPS Energy's acceptance of the Work. Acceptance by CPS Energy will be by formal letter and the date of such letter shall be the start date of the warranty period, if applicable. Upon receipt of CPS Energy's Final Acceptance, Contractor shall prepare a final invoice in accordance with Article D.36.3.

D.36.3 FINAL PAYMENT

Upon completion of all Work covered by this Agreement in a good and workmanlike manner and after formal written acceptance of the Work by CPS Energy, the Contractor shall prepare and submit a separate final invoice for the **five (5%)** retainage due under this Contract. With the final invoice for retainage, the Contractor shall submit a notarized affidavit attached as Exhibit F, "Final Payment Affidavit," stating that all claims for damages of any kind and all vendors, persons, or firms who have furnished labor, materials, or equipment for the Work have been fully paid and that all other obligations associated with the Work have been paid.

CPS Energy will, within thirty (30) days after the receipt of the final invoice, complete with the required notarized affidavit, pay the sum due.

D.37 TITLE

The title to all Work completed and all Work in the course of construction shall belong to CPS Energy and shall not be sold or otherwise distributed by Contractor without written approval from CPS Energy. Additionally, all materials furnished by CPS Energy or by Contractor, irrespective of location thereof, shall belong to CPS Energy, but the ownership thereof by CPS Energy shall not absolve Contractor from liability for loss or damage to same, nor from any other duty or responsibility for same as provided in the Contract Documents.

D.38 RIGHT TO AUDIT

Contractor's and Subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Contract (all the foregoing hereinafter referred to as "Records") shall be open to examination and subject to audit and/or reproduction, during normal working hours, by CPS Energy or its authorized representative to the extent necessary to adequately permit evaluation and verification of any invoices, payments or claims based on Contractor's or Subcontractor's actual costs (including direct and indirect costs, and overhead allocations) incurred, or units expended, directly in the performance of Work under this Contract to determine compliance to terms and conditions of the Contract, or ascertain any facts relative to any claim against Contractor which may become a charge against CPS Energy. For this purpose of evaluating or verifying such actual or claimed costs or units expended, CPS Energy or its authorized representative shall have access to said Records from

the effective date of this Contract, for the duration of the Work, and until two (2) years after the date of final payment by CPS Energy to Contractor pursuant to this Contract.

CPS Energy or its authorized representative shall have access, during normal working hours, to all necessary Contractor and Subcontractor facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this Article. CPS Energy shall give Contractor or Subcontractor reasonable advance notice of intended audits.

Contractor shall require Subcontractors to comply with the provisions of this Article by insertion of the requirements hereof in any subcontract pursuant to this Contract.

D.39 RIGHT OF ACCESS

CPS Energy or its authorized representative shall have access, during normal working hours, to all necessary Contractor and Subcontractor facilities, in order to ensure that CPS Energy materials handled, stored, and/or disposed of onsite are managed in an appropriate manner and that relevant on-site activities are in apparent compliance with all local, State, and Federal environmental regulations. CPS Energy is hereby authorized to conduct such site visits on Contractor's facilities. Contractor shall make available all Subcontractor facilities for such site visits under the same terms and conditions that Contractor's facilities are available for such visits. **Site visits contemplated by this paragraph may include environmental audits to the degree deemed necessary by the CPS Energy Representative to satisfy the purposes of this paragraph.** No finding or conclusion reached during such visit, nor any absence of a finding or conclusion, shall in any way relieve Contractor or its Subcontractor of the duty to comply with all applicable environmental statutes and regulations relative to the goods and services provided to CPS Energy.

D.40 EQUAL EMPLOYMENT OPPORTUNITY

The Contractor or subcontractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, disability, or political belief or affiliation, and will comply with all federal and state statutes applicable to Contractor, such as affirmative action plans and reporting requirements.

D.41 SEVERABILITY OF PROVISIONS

If any provision of this Contract is held invalid, illegal, or unenforceable, the remainder of the Contract shall remain valid and enforceable and shall be construed to conform to the intent of the parties.

D.42 PERFORMANCE OF CONTRACT AND CHOICE OF LAW

THIS CONTRACT IS PERFORMABLE IN SAN ANTONIO, BEXAR COUNTY, TEXAS AND IS GOVERNED BY THE LAWS OF THE STATE OF TEXAS.

D.43 CONFLICTS OF INTEREST

Contractor represents that it has advised CPS Energy in writing of any relationship with third parties, including competitors of CPS Energy, which could present a "Conflict of Interest" with the rendering of Services under this Agreement. During the period covered by this Agreement,

Contractor shall not undertake any new relationships with parties that could give rise to a "Conflict of Interest" without the written consent of CPS Energy. A "Conflict of Interest" includes, but is not limited to, those conflicts which prevent Contractor from professionally and ethically carrying out all terms of this Agreement with its sole duty or obligation owing to CPS Energy, or which present the appearance of a disclosure of "Confidential Information" by Contractor to some third party. A Conflict of Interest includes an organizational Conflict of Interest, which exists when, because of other activities or relationships with third parties, Contractor is unable or potentially unable to render impartial assistance, advice, or Services to CPS Energy, or the Contractor's objectivity in performing the Services is or might be otherwise impaired, or Contractor gains an unfair competitive advantage as a result of performance under the Agreement.

Contractor represents that it will not divulge any "Confidential Information" to any third parties. Such Confidential Information includes all information, materials or products developed at CPS Energy's expense which are the subject matter of this Agreement ("Matter"), and as otherwise defined in this Agreement. Contractor is not permitted to reveal Confidential Information related to the Matter to a subsequent client or customer without written consent from an authorized CPS Energy representative.

Contractor shall advise CPS Energy of any relationships creating a Conflict of Interest that arise during the term of this Agreement. If CPS Energy becomes aware of any such relationships, through Contractor's disclosure or otherwise, CPS Energy has the option to terminate this Agreement without further liability to Contractor, except to pay for Services actually rendered. In CPS Energy's sole discretion: (1) if it chooses to terminate this Agreement, CPS Energy may cancel this Agreement in whole, or any divisible portion thereof, without penalty or further obligation; and (2) if CPS Energy decides to continue the Contractor's performance under the Agreement, CPS Energy may limit the scope of Contractor's performance as it determines appropriate in light of the Conflict of Interest.

If CPS Energy decides to continue the Contractor's performance under the Agreement, Contractor shall create internal procedures adequate to ensure that the personnel working on the CPS Energy Matter do not work on matters for the third party creating the conflict or, in the alternative, the Contractor shall terminate its relationship with the third party creating the conflict with respect to the Matter. Under any circumstance, CPS Energy will have exclusive rights to the Matter as provided under this Agreement and Contractor shall provide adequate assurances to CPS Energy that Confidential Information will not be disclosed to the third party or any Contractor employees working for the third party without CPS Energy's consent. Notwithstanding any other provision in this Agreement limiting CPS Energy's legal remedies, CPS Energy reserves its rights to all legal remedies permitted by law to enforce this provision, including through specific performance, and reserves the right to seek any damages permitted by law for breach of the terms of this Conflicts of Interest provision.

D.44 PERFORMANCE AND PAYMENT BONDS

For Contractor(s) performing the majority of the consistent Work under this Contract, and coincident with execution of the Contract, Contractor shall furnish a good and sufficient Payment Bond and a good and sufficient Performance Bond for the Work projects covered by this

Contract. Each bond will be for an amount not less than one hundred percent (100%) of the estimated value of the Contract, and each bond shall be in force until the Contractor has fulfilled its obligations under the Contract.

For Contractor(s) performing Work that is sent out for Mini-Bid(s) and coincident with execution of the Contract, Contractor shall furnish a good and sufficient Payment Bond covering all Work required for performance of the Project covered by this Contract in which the estimated value is over Twenty-Five Thousand dollars (\$25,000.00). In addition, Contractor shall furnish a good and sufficient Performance Bond covering all Work required for performance of the Project in which the estimated value is over One Hundred Thousand dollars (\$100,000.00). Each bond will be for an amount not less than one hundred percent (100%) of the estimated value of the Project and each shall be in force until the Contractor has fulfilled its obligations under the Contract.

All provisions of the bonds shall be complete and in full accordance with the statutory requirements of VERNONS Texas Government Code Ann. Title 10, Chapter 2253, Subchapter 2253.021. Each bond shall be executed with the proper surety through a company licensed and qualified to operate in the State of Texas and listed with the U.S. Dept. of the Treasury Federal Register. Such bond shall not be for an amount greater than the surety's approved limit as referenced in the Current Federal Register, all still subject to the final approval of CPS Energy. Each bond shall be signed by an agent resident in the State of Texas, shall be accompanied by a certified power-of-attorney document, and shall include the date of the policy.

If at any time during the continuance of the Contract the surety becomes irresponsible, CPS Energy shall have the right to require additional and sufficient sureties, which the Contractor shall furnish to the satisfaction of CPS Energy within ten (10) days after notice to do so. In default thereof, the Contract may be suspended and all payments or monies due to the Contractor withheld.

The Performance Bond shall guarantee the faithful performance of all covenants, stipulations, and conditions of the Contract. The Payment Bond shall guarantee the faithful payment of all obligations that may arise under the Contract.

Contractor costs for Payment and Performance Bonds associated with the Work hereunder shall be included within the Proposal, attached herein as Section G.

SECTION E

SPECIAL CONDITIONS

E.1 GENERAL

These Special Conditions are non-technical in nature and shall supplement the General Conditions in the administration and regulation of field construction Work performed under this Contract.

E.2 DRAWINGS AND SPECIFICATIONS

The Contractor will be furnished two (2) sets of all drawings, including revisions thereto, and two (2) copies of the specifications without charge. Additional sets of drawings and revisions thereto, and additional copies of specifications, are the responsibility of the Contractor and may be made from the furnished copies. All drawings and specifications shall be returned to CPS Energy upon completion of the Work.

E.3 PROJECT MANAGEMENT

The coordination of all field construction will be under the direction of CPS Energy, acting through its **Field Representative(s) and Engineer**.

The time of completion is of the essence of this Contract, and the Contractor shall be responsible for performing its Work in accordance with the proposed schedule in Attachment 3, "Contractor's Construction Schedule." If at any time the Contractor's Work is behind schedule, the Contractor shall increase its forces, work overtime, or otherwise accelerate its operation to comply with the schedule, and shall put into effect definite procedures that shall be subject to CPS Energy's approval or modification subject to the provisions in Article D.26, *EXTENSIONS OF TIME*.

CPS Energy will not be responsible for the assignment of personnel, or arranging CPS Energy service operations, or obtaining supplies, or for any other services to the Contractor.

E.4 CONTRACTOR'S FIELD OFFICE

During the performance of this Contract, the Contractor shall maintain a suitable field office on site, which shall be the headquarters of a representative authorized to receive drawings, instructions, or other communication articles. Any communication given to the said representative, or delivered at the Contractor's field office at the site of the Work in Contractor's absence, shall be deemed to have been delivered to the Contractor.

Copies of items listed under E.5, *FIELD RECORDS*, shall be kept at the Contractor's field office at the site of the Work, available for use at all times.

The exact location of the Contractor's field office at the site shall be coordinated with the CPS Energy Representative.

The cost of maintaining and staffing said site office(s) and equipment, including the costs of office fixtures, furniture, supplies and telephone expenses, shall be borne by the Contractor as part of Contractor's administrative overhead expenses.

E.5 FIELD RECORDS

The Contractor shall maintain at Contractor's site office up-to-date copies of all drawings, specifications, and other Contract Documents and supplementary data, complete with the latest revisions thereto. In addition, the Contractor shall maintain a continuous record of all field changes and, at the conclusion of the Work, shall incorporate all such changes on the drawings and other engineering data and shall submit the required number of copies thereof to CPS Energy.

CPS Energy personnel shall be allowed to examine field records upon request; review of these records is not an endorsement or approval by CPS Energy as to adequacy or composition. Furthermore, such review shall not be considered as an assumption of any risk or liability by CPS Energy or any officer, agent or employee thereof.

The Contractor shall also maintain at the Contractor's site office copies of current safety-related documentation and records that include, but are not limited to: Contractor's training and safety program and manuals; and Contractor's training program schedule consisting of dates, times and personnel attending.

The Contractor shall maintain at the Contractor's field office a record of equipment used in performance of the Work herein requiring certification (i.e., cranes, aerial lifts, personnel platforms, etc.). This record shall contain a listing of the certifying agency, whether Federal (which has U.S. Department of Labor certification), State, local or private, by name, address, and phone number.

E.6 CONTRACTOR'S SUPERVISION AT THE SITE

The Contractor shall furnish adequate management, supervisory, and technical personnel on the site to ensure expeditious and competent performance of the Work.

A superintendent experienced in major construction of the type specified, and who is a permanent member of the Contractor's organization, shall be assigned to the Project throughout the construction. The superintendent shall be fully authorized to act for the Contractor and to receive whatever orders or notices may be given for the proper prosecution of the Work.

The Contractor shall be responsible for complete supervision and control of Contractor's Subcontractors as though they were Contractor's own forces. Notice to the Contractor shall be considered notice to any affected Subcontractor.

E.7 METHOD OF FIELD OPERATION

The Contractor shall inform CPS Energy in advance concerning Contractor's plans for carrying out each part of the field Work, and shall submit, at such times as may reasonably be requested by CPS Energy, updated schedules showing the starting and estimated completion dates of relevant portions of the Work. Such schedules shall be subject to acceptance and modification

by CPS Energy. Review by CPS Energy of any plan or method of Work proposed by the Contractor shall not relieve the Contractor of any responsibility therefore, and such review shall not be considered as an assumption of any risk or liability by CPS Energy or any officer, agent or employee thereof. The Contractor shall have no claim because of the failure or inefficiency of any plan or method so reviewed.

Any method of work suggested by CPS Energy, but not specified, shall be used at the risk and responsibility of the Contractor, and CPS Energy will assume no responsibility therefore. The Contractor alone shall be responsible for the safety, adequacy, and efficiency of Contractor's plant, equipment, and methods.

The Contractor shall be solely and completely responsible for conditions at the jobsite, including safety of all persons and property during performance of the Work. This requirement will apply continuously and not be limited to normal working hours. CPS Energy's construction review of the Contractor's performance is intended to include review of the adequacy of the Contractor's safety measures in, on, or near the construction site. Review of the Contractor's safety program is not an endorsement or approval by CPS Energy as to adequacy or composition; furthermore, such review shall not be considered as an assumption of any risk or liability by CPS Energy or any officer, agent or employee thereof.

E.8 LINES AND GRADES

All Work shall be done to the lines, grades, and elevations indicated on the drawings.

The Contractor shall keep CPS Energy informed, a reasonable time in advance, of the times and places at which Contractor wishes to do Work, so that any checking deemed necessary may be done with minimum inconvenience to CPS Energy and minimum delay to the Contractor.

Any Work done without being properly located may be ordered, removed and replaced at the Contractor's expense.

E.9 PRESERVATION OF MONUMENTS AND STAKES

The Contractor shall carefully preserve all monuments, benchmarks, reference points, and stakes. The Contractor will be charged with the expense of replacement of any such items destroyed, and shall be responsible for any mistake or loss of time that may be caused. Permanent monuments or benchmarks that must be removed or disturbed shall be protected until they can be properly referenced for relocation. The Contractor shall furnish materials and assistance for the proper replacement of such monuments or benchmarks.

E.10 CHARACTER OF WORKMEN

The Contractor shall employ only workmen who are competent to perform the Work assigned to them and, in the case of skilled labor, who are adequately trained and experienced in their respective trades and who do satisfactory work. Contractor is encouraged to use local labor for its Subcontractors, if applicable. CPS Energy has the right to require Contractor to remove any employee of Contractor or of Subcontractors from the Project who, in the CPS Energy Representative's opinion, may be incompetent or unqualified to perform services assigned to him/her.

E.11 SATURDAY, SUNDAY, HOLIDAY, AND NIGHT WORK

CPS Energy shall be notified by the Contractor when Contractor plans to work between 4:30 P.M. and 6:30 A.M. or on Saturdays, Sundays or CPS Energy legal holidays. The Contractor shall give CPS Energy twenty-four (24)-hour notification of such Work except for emergency Work, which may be done without prior notification.

CPS Energy's legal holidays are as follows:

- New Year's Day
- Martin Luther King Day
- San Antonio Fiesta (Battle of the Flowers)
- Memorial Day
- Independence Day
- Labor Day
- Thanksgiving Day
- Friday after Thanksgiving Day
- Christmas Eve
- Christmas Day
- New Year's Eve

E.12 REJECTED WORK AND MATERIALS

The Contractor, upon written notice from CPS Energy, shall remove from the premises all Work and materials rejected as defective, unsound, improper, or in any way failing to conform to the requirements of the Contract Documents. The Contractor shall, at Contractor's sole expense, make good all Work damaged by such removal and shall promptly replace materials damaged or improperly worked by Contractor and re-execute Contractor's own Work or Work of any other Contractor that is in any way affected by the removal of the defective Work. The obligations of the Contractor under this section shall not extend to defective materials or equipment supplied by CPS Energy. If the Contractor does not remove Contractor's rejected Work and materials within ten (10) days after written notice, CPS Energy may remove and replace such Work and materials at the expense of the Contractor.

E.13 CLEANLINESS

Promptly upon the completion of the construction Work, all scrap, trash, excavated materials, waste materials, and debris resulting from Work under the Contract shall be removed from the site. All Contractor-owned facilities, materials, and equipment shall be removed from the site.

E.14 FIRE PROTECTION

Only work procedures which minimize fire hazards to the extent practicable shall be used. Good housekeeping shall prevail throughout the construction period. The Contractor shall follow the recommendations of the Association of General Contractors' "Manual of Accident Prevention in Construction" regarding fire hazards and prevention. The Contractor shall provide adequate fire-protection equipment in each warehouse, office, and other temporary structures, and in each Work area Contractor is occupying.

The Contractor alone shall be responsible for providing adequate fire protection. Failure of the Contractor to comply with, or CPS Energy to enforce, the above requirements shall not relieve the Contractor from any other responsibility or obligation under this Contract.

Burning of any material on site is prohibited in performance of the Work.

E.15 SECURITY

The Contractor shall be responsible for all its materials and equipment and for material issued to Contractor and placed in its custody, or placed in construction by Contractor. Security methods shall be employed by the Contractor as required to ensure the protection of all materials, equipment, and construction Work from theft, vandalism, fire, and all other damage and loss.

All Contractor employees and Contractor vehicular traffic shall enter and leave the construction site by routes approved by Owner. It will be the Contractor's responsibility to limit traffic on the right of way to only such vehicles as may be necessary for construction. Only material or equipment which has been authorized in writing by the Contractor will be permitted to leave the site.

The Contractor shall be responsible for keeping gates closed at all times during performance of Work, shall prevent livestock from entering or leaving properties, and shall furnish a watchman, if necessary, to enforce compliance with this requirement. All gates, gaps and other openings in any fence that must be crossed shall remain open when found open and shall be closed again after passage through when they are found to be closed. If existing fencing must be taken down and left down for any reason during the performance of the Work, the Contractor shall furnish, install, maintain and remove temporary fencing as required to the satisfaction of the property owner.

The Contractor shall be responsible for authorizing only those employees who are employed at the site access to the property. All Contractor employees shall not be authorized in any other area except where authorized to park and the Work site. Security ingress and egress will be controlled by the Owner. The Contractor is advised that no specific coverage will be provided for equipment the Contractor may leave unattended at the Work site.

The Contractor shall furnish all locks necessary for his or his Subcontractor's ingress and egress to the Work area. These locks shall be removed by the Contractor upon job completion. Locks shall be interlocked to allow opening by CPS Energy.

E.16 MANAGEMENT OF ACCIDENTAL SPILLS

The use of Contractor equipment could involve incidental or accidental spills, and leaks or releases of hydrocarbons and petroleum products during the course of the Work from that equipment or other materials (drums, other containers, etc.). Contractor is, and shall be, responsible for the containment of any such spills and shall be responsible for the clean-up and the proper disposal of all such spilled material, including hydrocarbon-contaminated materials from Contractor-owned equipment and materials. The clean-up and disposal of all such contaminated materials shall be handled in accordance with local, State, and Federal requirements, and shall be to the satisfaction of the CPS Energy Field Representative. In

addition, Contractor shall promptly submit, to CPS Energy, documentation verifying that any such contaminated media was sent to a proper disposal facility (i.e., manifest or other documentation provided by the disposal facility). The CPS Energy Field Representative shall be notified by the Contractor as soon as possible after the occurrence of any such spill or release, and the Contractor shall be responsible for reporting the spill to the appropriate agencies if a reportable quantity is released. Contractor shall provide to the CPS Energy Field Representative, upon request, any information requested by CPS Energy concerning any such spill report.

E.17 CONSTRUCTION AREA LIMITS AND RESTRICTIONS

CPS Energy will designate the boundary limits of access roads and construction areas, and the Contractor shall be responsible for keeping all of its personnel out of areas not designated for the Contractor's use.

No employee of the Contractor is to have firearms on its person or in any vehicle while on CPS Energy property. Contractor's employees shall properly conduct themselves at all times during Work on this job.

E.18 SAFETY AND PROTECTION OF WORK AND PROPERTY

The Contractor shall be solely responsible for the protection of Contractor's Work until its Final Acceptance by CPS Energy.

CPS Energy will issue to the Contractor CPS Energy security badges at the beginning of the Project and all badges are to be returned to CPS Energy Security upon completion of the Project or be subject to replacement costs, which can be deducted from Contractor's Contract amount.

In the event of early morning concrete pours or weekend work, or late night work by and under the direction of the Contractor, it is the responsibility of the Contractor to keep the construction site under security control and safe from unauthorized persons as well as from the public accessing at any times.

In the likelihood that vehicles can block public roadways and cause a back-up of traffic, the Contractor is responsible for employing an off-duty San Antonio police officer or Bexar County officer for safe traffic control measures to be in place prior to the work event. The site and roads are to be kept clean and clear of all construction materials daily.

The Contractor shall have no claim against CPS Energy because of any damage or loss to the Contractor's Work, and shall be responsible for the complete restoration of damaged Work to its original condition, complying with the specifications and drawings.

In the event the Contractor's Work is damaged by another party not under its supervision or control, the Contractor shall make a claim directly with the party involved. If a conflict or disagreement develops between the Contractor and a subcontractor concerning the responsibility for damage or loss to the Contractor's Work, the conflict shall be resolved by CPS Energy. Such conflict shall not be cause for delay in the restoration of the damaged Work. The Contractor shall restore the Work immediately and the cost thereof will be assigned pending the resolution of the conflict.

E.19 REPAIR OF DAMAGES

The Contractor shall immediately repair any damage which results from this construction or abnormal use, including damage done to the existing facilities such as bridges, roads, buildings, fences, gates, or other improvements. All such repair Work must meet CPS Energy's approval.

E.20 INDEPENDENT TESTING LABORATORY

Field inspection and testing associated with all foundation/pier construction and structural steel erection will be the responsibility of the Contractor to perform, with results provided to CPS Energy. All other field and laboratory testing required to ensure compliance with the technical requirements of the Contract Documents shall be performed by an independent commercial construction material testing laboratory employed by the Contractor. The Contractor is responsible for all fees for the Field Inspection and Testing services.

A written report stating the results of the field and laboratory test will be submitted to the Contractor and CPS Energy Engineer within three days after each test is performed.

E.21 COOPERATION WITH CPS ENERGY

The performance of construction Work that affects the operation of CPS Energy's system facilities shall be scheduled to be performed only at times acceptable to CPS Energy.

The Contractor shall be responsible for paying all regular and premium-time labor costs arising from the necessity to perform Work which affects CPS Energy's system facilities at times other than regular working hours.

E.22 CONSTRUCTION PLANT AND TEMPORARY FACILITIES

The Contractor shall furnish all construction plant, utilities and temporary facilities, and all materials, equipment and supplies which are required for prosecution of the Work but which will not be incorporated in the completed Work. The cost of maintaining such facilities shall be included in the prices quoted in the Contractor's proposal.

Detailed instructions covering construction services to be provided by the Contractor and/or CPS Energy are included in Section F, *CONSTRUCTION SERVICES*.

E.23 RECEIVING, HANDLING, AND STORAGE

The Contractor shall receive and check materials furnished by CPS Energy. Materials will be transferred from the designated storage areas by the Contractor. The Contractor will need a receipt for these materials and will then be fully responsible for them. A CPS Energy "Requisition on Stores Form" will be used when withdrawing material from CPS Energy stock.

Additional materials required during construction will be delivered to the designated storage areas. The Contractor shall be responsible for the prompt unloading of these additional materials.

E.24 BLASTING

Blasting will not be allowed during the performance of this Contract.

E.25 CONSTRUCTION WASTE/DEBRIS MANAGEMENT

Construction debris is a type of waste that includes, but is not limited to: asphalt, concrete, soil/rock, scrap lumber, wooden pallets, cardboard, paper, plastic, metal and empty cartons. All waste generated in connection with the Work and Services contemplated by this Contract must be properly managed (legitimately recycled and disposed of) by Contractor. To the extent practical, Contractor shall use practices to minimize the generation of waste resulting from the Work. Contractor shall transport and recycle or dispose of all materials listed above at its cost or for revenue. When recycling or disposing of construction debris, Contractor shall provide the CPS Energy Inspector/Field Representative with a copy of the corresponding weight ticket. The ticket shall have the Contractor's name and vehicle license number on it.

Contractor shall transport concrete, asphalt, uncontaminated soil/rock and other miscellaneous masonry products to the following designated facility or other CPS Energy-approved facility for recycling/reuse. CPS Energy currently has negotiated rates with the following facility:

San Antonio Aggregates Recyclers LLC
12025 State Highway 16 South
San Antonio, TX 78224
(210) 628-4764

Contractor should notify the above facility that the material is from CPS Energy.

Waste to be disposed of must be transported to the following CPS Energy-designated facility:

Tessman Road Landfill
7000 I-10 E
San Antonio, TX 78219
(210) 661-4104

Licensed recycling facilities are to be utilized for materials such as cardboard, metal, and wooden pallets and is highly encouraged. The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

E.26 RECYCLING/DISPOSAL OF EXCAVATED MATERIAL

The Contractor shall be responsible for the removal, transportation, and management of all excavated materials that are generated by the Work. Construction debris generated by the Work shall be handled per Section E.25, *CONSTRUCTION WASTE/DEBRIS MANAGEMENT*. Uncontaminated soil and rock and/or concrete with no exposed rebar may be placed in an offsite fill area or landfill under the following conditions: 1) no waste materials are already located at the off-site fill area; and 2) the use of any offsite fill area is first approved by CPS Energy's Field Representative prior to a Contractor transporting the material.

NOTE: All other uncontaminated soil, rock, asphalt, concrete and other miscellaneous masonry products shall be recycled at the following facility or other CPS Energy-approved facility:

San Antonio Aggregates Recyclers LLC
12025 State Highway 16 South
San Antonio, Texas 78224
(210) 628-4764

Contractor shall give a copy of the receipt to the CPS Energy Inspector/Field Representative. The receipt shall have the Contractor's name on it. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

E.27 OTHER WASTES

If any of the waste generated by the Work includes waste solvents, sealants, coating materials, or any liquid hazardous waste, they shall be collected in Contractor-provided 55-gallon drums and transported by the Contractor to a CPS Energy-designated facility for disposal at Contractor's cost.

Each drum shall be as full as practical and shall not contain a mixture of different types of waste. For example, a drum of sealant-contaminated waste shall contain only sealant-contaminated waste, and shall not contain coating materials in the same drum. Prior to delivery of the waste to a CPS Energy-designated location, Contractor shall keep the drummed waste material in a secure location and shall ensure that only the waste generated by the Work is delivered to the CPS Energy-designated facility. By use of labeling, Contractor shall advise the CPS Energy Representative of the type of waste that is in each drum.

Prior to commencement of the Work, Contractor shall supply to the CPS Energy Field Representative a copy of a Material Safety Data Sheet (MSDS) for every material that is to be used on-site in connection with the Work and that has had an MSDS issued for it. The MSDS will help CPS Energy properly characterize any waste that results from the use of that material, and will save time in arriving at the necessary characterization.

E.28 CONTAMINATED AREAS

Despite any provision in E.25, E.26 or E.27 that might be read to the contrary, Contractor is not responsible under this Contract for the management or disposal of any contaminated media that may exist at the respective job site prior to commencement of the Work. However, CPS Energy does not believe that any condition of contamination exists at the job site, and Contractor shall immediately notify the CPS Energy Representative of any such condition of contamination that is discovered by Contractor or its agents during the course of the Work.

SECTION F

CONSTRUCTION SERVICES

F.1 GENERAL

This section covers the requirements for construction services which the Contractor shall provide and those services which will be furnished by CPS Energy. The cost for these services will be included in the Contractor's proposal, and no additional compensation will be made by CPS Energy.

F.2 CONSTRUCTION PLANT AND TEMPORARY FACILITIES

Unless otherwise specified, the Contractor shall furnish all construction plant and temporary facilities and all equipment, materials, and supplies which are required for prosecution of the Work but which will not be incorporated in the completed Work.

All temporary structures and facilities furnished by the Contractor shall remain the property of the Contractor. When the Work is completed, all such temporary structures and facilities shall be removed from the site, and the area shall be restored to its original condition.

All construction plant and facilities shall be in sound condition and shall be of the proper type and size to adequately perform the Work. The plant and facilities shall be regularly and systematically maintained throughout the Work to ensure proper, efficient operation. Plant and facilities which are inadequate or improperly maintained shall be promptly modified, repaired, or removed from the site and replaced.

F.2.1 TEMPORARY STRUCTURES

Temporary structures for offices, change houses, warehouses, and other uses for the Contractor or Contractor's Subcontractors shall be provided by the Contractor using materials, design, and construction acceptable to CPS Energy. Suitable construction trailers may be used in lieu of temporary structures. Such structures or trailers shall be placed only in locations assigned by CPS Energy.

F.3 CONSTRUCTION UTILITIES

The Contractor shall furnish all construction utilities and related equipment, materials, and supplies required for prosecution of the Work under these specifications but not incorporated in the completed Work.

All construction utilities shall be of the proper type and size to adequately perform the Work. All construction utilities shall be regularly and systematically maintained throughout the Work to ensure proper and efficient operation. Construction utilities which are inadequate or improperly maintained shall be promptly modified, repaired, or removed from the site and replaced to the satisfaction of CPS Energy.

All temporary construction utilities furnished by the Contractor shall remain the property of the Contractor and, when the construction is completed, all such temporary construction utilities shall be removed from the site and the area shall be restored to its original condition.

All construction utility equipment furnished by the Contractor for use on the Work shall be of the type and size required to perform the Work in a safe and satisfactory manner. All equipment shall be in first-class condition when delivered to the jobsite and shall be maintained in this condition throughout the construction period. Any equipment which is not suitable or which is not in first-class operating condition shall immediately be repaired or replaced with acceptable equipment. CPS Energy will not furnish construction power.

F.3.1 TELEPHONE

The Contractor shall provide its own telephone service.

F.3.2 SANITARY FACILITIES

The Contractor shall furnish and maintain sanitary facilities, including a system of chemical toilets, for the use of Contractor's forces and those of Contractor's Subcontractors. The number and location of chemical toilets shall be as required to adequately and conveniently serve the need of these persons.

Contractor and Subcontractor forces shall not use existing sanitary facilities at CPS Energy facilities.

The Contractor shall enforce strict observance of sanitary and health regulations by Contractor's employees and Contractor's Subcontractor's employees on the construction site.

The chemical toilets and their maintenance shall meet the requirements of the Texas State Board of Health. Any such facilities or maintenance methods failing to meet these requirements shall be corrected immediately.

F.3.3 WATER

Water for construction purposes as well as drinking water will **not** be available for Contractor's use. The Contractor shall be responsible to supply, transport, and store water as required.

EXHIBIT A

MINIMUM INSURANCE REQUIREMENTS

CLASS 4 JOBS

MOD

<u>I. Coverage Required</u>	<u>Limits of Liability</u>
A. Workers' Compensation Employers Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
Waiver of Subrogation	Required
B. Commercial General Liability to include coverage where the exposure exists:	- Occurrence Basis
1. Bodily Injury	\$2,000,000/occurrence } Combined \$5,000,000/aggregate } Single Limits
2. Property Damage	
Additional coverages/ Endorsements Required: <u>Products/Completed</u> <u>Operations & XCU</u>	Same As Above
CPS Energy as an Additional Insured	Required
C. Business Automobile Liability to include coverage where the exposure exists:	
1. Any Auto	Combined Single Limit for Bodily Injury and Property Damage \$1,000,000
2. All Owned Autos	
3. Scheduled Autos	
4. Hired Autos	
5. Non-Owned Auto	
6. Garage Liability	
CPS Energy as an Additional Insured	Required
D. Umbrella Liability To include: Employers Liability, And Business Automobile Liability	\$2,000,000
E. Other Coverages: _____ _____	

II. Additional Provisions

- A. Commercial General Liability Contractual coverage must be provided for the hold-harmless provision contained in the Injuries and Damages or Indemnification paragraph within the contract.
- B. Details of coverage and other necessary information must be provided on Certificates of Insurance.
- C. A statement that thirty day notice of policy cancellation or material change must be given to CPS Energy.
- D. Renewal Certificates of Insurance must be submitted to CPS Energy for review and approval a minimum of 30 days prior to expiration.
- E. All coverages must be with companies licensed or qualified to do business in the State of Texas, listed in the current Bests' Key Rating Guide (National or International), and be acceptable to CPS Energy.
- F. The above requirements only represent the minimum insurance acceptable to CPS Energy and are not intended to represent the maximum risk involved or the maximum liability.

EXHIBIT A-1

WORKERS' COMPENSATION INSURANCE COVERAGE

- A)** Definitions: Certificate of Coverage ("certificate") A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project. Duration of the project includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity. Persons providing services on the project ("subcontractor" in §406.096) -includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other services related to a project.
- B)** The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, §401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.
- C)** The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- D)** If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- E)** The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
- i) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing service on the project; and
 - ii) no later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- F)** The Contractor shall retain all required certificates of coverage for the duration of the project and for three (3) years thereafter.
- G)** The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

- H)** The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- I)** The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:
- i) provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets that statutory requirements of Texas Labor Code, §401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - ii) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - iii) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - iv) obtain from each other person with whom it contracts, and provide to the Contractor.
 - I) a certificate of coverage showing extension of coverage, prior to the other person beginning work on the project; and
 - II) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - v) retain all required certificates of coverage on file for the duration of the project and for three (3) years thereafter;
 - vi) notify the governmental entity in writing by certified mail or personal delivery within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - vii) contractually require each person with whom it contracts, to perform as required by clauses (i)-(vii) of this subparagraph, with the certificates of coverage to be provided to the person for whom they are providing services.
- J)** The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the governmental entity.

EXHIBIT B
GENERAL PREVAILING WAGE RATES

1. GENERAL. Laborers, Workmen, and mechanics employed by the Contractor or its Subcontractors in the execution of this Contract shall be paid not less than the general prevailing rate of per diem wages for work or a similar character in the locality in which the work is performed, and not less than the general prevailing rate of per diem wages for legal holidays and overtime work.

Contractor shall comply with all requirements of the prevailing wage law of the State of Texas, Texas Revised Civil Statutes, Article 5159A, including the latest Amendments, thereof.

The prevailing wage law does not prohibit payment of more than the general prevailing rate of per diem wages.

2. PENALTY. The Contractor and any Subcontractor shall forfeit as a penalty to CPS Energy, Sixty Dollars (\$60.00) for each calendar day, or portion thereof for each laborer, workman, or mechanic paid less than the stipulated prevailing wage rate.

3. RECORDS. The Contractor and each Subcontractor shall keep an accurate record showing the names and occupations of all laborers, workmen and mechanics employed by him/her and the actual per diem wages paid to each. Said records shall be open to CPS Energy's inspection or its officers and agents, during normal working hours.

BUILDING CONSTRUCTION PROJECTS

GENERAL PREVAILING RATES

<u>CLASSIFICATION</u>	<u>RATES</u>	<u>FRINGES</u>
Asbestos/Insulator Worker (Includes application of all insulating materials, protective coverings, coatings, and finishings to all types of mechanical systems).	21.87	8.07
Bricklayer	24.50	1.97
Cable Splicer	25.20	3.75+12%
Electrician	25.60	4.65+8%
Electrician (Low Voltage including pulling and installing cable through conduit)	19.51	8%+4.92
Elevator Constructor: Mechanic	35.89	25.185+a
Footnote; A . 6% under 5 years employment based on regular hourly rate for all hours worked. 8% over 5 years employment based on regular hourly rate for all hours worked. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Friday after Thanksgiving Day and Christmas Day, and Veterans Day.		
Power Equipment Operators: Cranes	29.75	8.75
Ironworker (Excluding metal building erectors): Structural	19.00	5.95
Tile Setter	18.50	6.10
Plumbers & Pipefitters (Including HVAC Work)	29.78	9.35
Sprinkler Fitter, (Fire Sprinklers)	26.36	16.62
Sheet Metal Worker (Including HVAC Duct Work)	25.18	10.75
Acoustical Ceiling Installer	12.26	
Carpenter (Excluding Acoustical Ceiling Installer & Drywall Hanger)	10.64	

BUILDING CONSTRUCTION PROJECTS

GENERAL PREVAILING RATES

(Continued)

<u>CLASSIFICATION</u>	<u>RATES</u>	<u>FRINGES</u>
Cement Mason/Concrete Finisher	11.46	
Drywall Hanger	11.88	
Glazier	10.78	1.40
Ironworker (Excluding Metal Building Assemblers): Reinforcing	10.19	3.57
Laborers:		
Mason Tenders	8.36	1.78
Mortar Mixers	8.99	
Plasterer's Tenders	8.68	
Unskilled	7.25	
Lathers	15.25	
Painters (Excluding Tapers/Finishers)	8.01	
Plasterers	15.25	
Power Equipment Operators:		
Front End Loader	7.36	
Roofers:		
Kettlemen	8.85	
Roofers	8.14	
Waterproofers	7.25	
Sheet Metal Worker:		
Other Work	11.62	
Taper/Finisher	7.99	
Truck Driver	7.25	

Welders - Receive rate prescribed for craft performing operation to which welding is incidental.

EXHIBIT C

STATUTORY PERFORMANCE BOND PURSUANT TO

VERNONS TEXAS GOVERNMENT CODE ANN.

TITLE 10 CHAPTER 2253, SUBCHAPTER 2253.021

(Penalty of this Bond must be 100% of Contract Award)

KNOWN ALL MEN BY THESE PRESENTS:

That, _____
(hereinafter called the Principal), as Principal, and _____,
a corporation organized and existing under the laws of the State of _____
with its principal office in the City of _____, (hereinafter call the
Surety), as Surety, are held and firmly bound unto CITY OF SAN ANTONIO ACTING
THROUGH THE CITY PUBLIC SERVICE OF SAN ANTONIO, TEXAS, A MUNICIPAL
BOARD OF THE CITY OF SAN ANTONIO, TEXAS (hereinafter called the Obligee), in the
amount of _____
_____ Dollars (\$_____), for the payment whereof, the said Principal and
Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly
and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee,
dated the _____ day of _____, 20____, to _____

_____ which contract is hereby referred to and made a part hereof as fully and to the same extent as if
copied at length herein.

NOW, THEREFORE, THE CONDITION OF THE OBLIGATION IS SUCH, that if the
said Principal shall faithfully perform the work in accordance with the plans, Specifications and
Contract Documents, then this obligation shall be void; otherwise to remain in full force and
effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of
VERNONS TEXAS GOVERNMENT CODE ANN. Title 10 Chapter 2253, subchapter 2253.021
and all liabilities on this bond shall be determined in accordance with the provisions of said
Article to the same extent as if it were copied at length herein.

No extension of time or other waiver or amendment of the terms of the said contract nor
any change in the method or amount of payments stipulated to be made by Obligee under the
Contract shall relieve the Surety of its obligations hereunder, and the Surety waives notice of any
such extension, waiver, amendment, or change. The bond shall be automatically extended in

time without formal and separate amendment to cover full and faithful performance of the Contract modifications, regardless of the amount of time involved.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this _____ day of _____, 20_____.

WITNESS

_____ (SEAL)
By: _____ (SEAL)
_____ (SEAL)

ATTEST:

_____ (SEAL)
(If Corporation)
By: _____ (SEAL)
(Principal)
_____ (SEAL)
Surety
By: _____ (SEAL)

EXHIBIT D

STATUTORY PAYMENT BOND PURSUANT TO

VERNONS TEXAS GOVERNMENT CODE ANN.

TITLE 10 CHAPTER 2253, SUBCHAPTER 2253.021

(Penalty of this Bond must be 100% of Contract Award)

KNOWN ALL MEN BY THESE PRESENTS:

That, _____
(hereinafter called the Principal), as Principal, and _____,
a corporation organized and existing under the laws of the State of _____
with its principal office in the City of _____, (hereinafter call the Surety),
as Surety, are held and firmly bound unto CITY OF SAN ANTONIO ACTING THROUGH
THE CITY PUBLIC SERVICE OF SAN ANTONIO, TEXAS, A MUNICIPAL BOARD OF
THE CITY OF SAN ANTONIO, TEXAS (hereinafter called the Obligee), in the amount of

Dollars (\$ _____), for the payment whereof, the said Principal and Surety bind themselves,
and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by
these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee,
dated the ____ day of _____, 20____, to _____
_____ which contract is hereby referred to and made a part hereof as fully and to the same extent as if
copied at length herein.

NOW, THEREFORE, THE CONDITION OF THE OBLIGATION IS SUCH, that if the
said Principal shall pay all claimants supplying labor and material to him or a subcontractor in
the prosecution of the work provided for in the contract, then, this obligation shall be void;
otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of
VERNONS TEXAS GOVERNMENT CODE ANN. Title 10 Chapter 2253, subchapter 2253.021
and all liabilities on this bond shall be determined in accordance with the provisions of said
Article to the same extent as if it were copied at length herein.

No extension of time or other waiver or amendment of the terms of the said contract nor
any change in the method or amount of payments stipulated to be made by Obligee under the
Contract shall relieve the Surety of its obligations hereunder, and the Surety waives notice of any
such extension, waiver, amendment, or change. The bond shall be automatically extended in

time without formal and separate amendment to cover full and faithful performance of the Contract modifications, regardless of the amount of time involved.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this _____ day of _____, 20_____.

WITNESS

_____ (SEAL)
By: _____ (SEAL)
_____ (SEAL)

ATTEST:

_____ (SEAL)
(If Corporation)
By: _____ (SEAL)
(Principal)
_____ (SEAL)
Surety
By: _____ (SEAL)

EXHIBIT E

STATEMENT FROM SURETY

§ CONSENT & RELEASE

Date:

Project: _____

Bond No.: _____

CPS Energy P.O. No.: _____

CPS Energy
Attn: Accounts Payable Section
P.O. Box 2921
San Antonio, TX 78299-2921

Contract for the construction of an Underground Construction Office Building located at 2047 W. Malone, San Antonio by and between _____, Contractor, and CPS Energy acknowledged on _____, 20__.

In accordance with the Contract between CPS Energy and _____ as indicated above, _____ Surety Company holding _____ for _____ Contractor, hereby consents to Final Payment of _____ dollars (\$_____) and agrees that the release of said Final Payment does not in any way relieve _____ Surety Company from its obligations, guarantees or provisions to CPS Energy as Owner of the work as set forth in the Surety Company's Bond.

Surety

Signature of Authorized Rep

Title

State of _____ §
County of _____ §

BEFORE ME, the undersigned, Notary Public, on this day personally appeared _____
_____. Known to me to be the person and officer
whose name is subscribed to the foregoing instrument and acknowledged to me that the same
was the act of the said _____, and that (he/she) has executed the same as
the act of such corporation for the purposes and consideration therein expressed, and in the
capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this _____ day of
_____, 20_____.

Notary Public, State of _____

My commission expires _____.

EXHIBIT F

FINAL PAYMENT AFFIDAVIT

State of _____ §
County of _____ §

Date: _____
Project: _____
CPS Energy P.O. No.: _____

CPS Energy
Attn: Accounts Payable
P.O. Box 2921
San Antonio, Texas 78299-2921

Contract for the construction of an Underground Staff Office Building located at 2047 W. Malone, San Antonio, Texas, by and between _____, Contractor, and CPS Energy acknowledged on _____, 20_____.

The undersigned pursuant to the term of the above stated Contract hereby certifies that except as set forth below, all obligations and indebtedness for materials and equipment furnished, for all work, labor, and services performed, and all known claims against Contractor for damages arising and in connection with the performance or non-performance of the Contract have been satisfied and paid in full.

I(We) further guarantee and certify that to the best of my(our) knowledge, information, and belief, except as listed below, the Release or Waivers of Lien attached hereto, if applicable, include all Subcontractors, suppliers of materials and equipment, and all performers of work, labor or services who may or might have had liens against the property of CPS Energy arising in any manner out of the performance of the Contract as specified above.

Exceptions:

Contractor

Signature of Authorized Rep

Title

State of _____ §

§

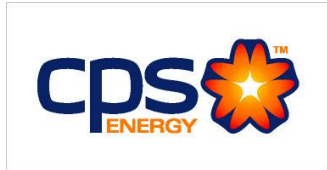
County of _____ §

BEFORE ME, the undersigned, Notary Public, on this day personally appeared _____.
Known to me to be the person and officer whose name is subscribed to the foregoing instrument
and acknowledged to me that the same was the act of the said _____,
and that (he/she) has executed the same as the act of such corporation for the purposes and
consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this _____ day of
_____, 20_____.

Notary Public, State of _____

My commission expires _____.



SAN ANTONIO, TEXAS

THE CONSTRUCTION
OF AN OFFICE BUILDING
FOR UNDERGROUND CONSTRUCTION STAFF

VOLUME II

REQUEST FOR PROPOSAL NO: 7000120162

PURCHASE ORDER NO: _____

ISSUED: _____

CPS ENERGY

P.O. BOX 1771

SAN ANTONIO, TEXAS 78296-1771

10408230

EXHIBIT G

LISTING OF CONSTRUCTION DRAWINGS

(COPIES TO BE PROVIDED TO OFFERORS)

EXHIBIT H

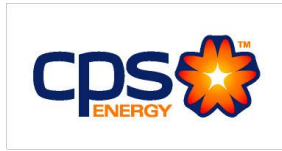
**CPS ENERGY UNDERGROUND CONSTRUCTION
STAFF OFFICE BUILDING SPECIFICATIONS**

(COPIES TO BE PROVIDED TO OFFERORS)

EXHIBIT I

GEOTECHNICAL REPORT

(COPIES TO BE PROVIDED TO OFFERORS)



SAN ANTONIO, TEXAS

THE CONSTRUCTION
OF AN OFFICE BUILDING
FOR UNDERGROUND CONSTRUCTION STAFF

VOLUME III

REQUEST FOR PROPOSAL NO: 7000120162

PURCHASE ORDER NO: _____

ISSUED: _____, 2013

CPS ENERGY

P.O. BOX 1771

SAN ANTONIO, TEXAS 78296-1771

10408230

SECTION G

PROPOSAL

CPS Energy
P.O. Box 2906
San Antonio, Texas 78299-2906

Attention: Ms. Pamela J. Williams, Mail Drop: 110901
Supply Chain

RE: The Construction of an Office Building for Underground Construction Staff located at 2047 W. Malone, San Antonio, Texas 78225.

Request for Proposal No. 7000120162

Ladies and Gentlemen:

The undersigned Offeror, having read and examined the Specifications and associated Contract Documents for the above-designated Work of the proposed construction and thoroughly familiarized itself with the factors which will affect the execution of the Work and the cost thereof, does hereby propose to perform all the Work as set forth in this Proposal. All prices stated herein are firm and shall not be subject to escalation provided this Proposal is accepted within one-hundred twenty (120) days after the date and time for proposal submission stated in the Request for Proposal.

The undersigned hereby declares that any and **all variations** from and **exceptions** to the **specifications, requirements or the terms and conditions** of the Contract Documents shall be as requested in Additional Information to be Submitted C.3 item k. and that, otherwise, it is the intent of this Proposal that the Work will be performed in strict accordance with the Contract Documents.

The Undersigned Offeror, in accordance with the Texas Tax Code Section 151.311, and all amendments thereto, and Volume 34 Texas Administrative Code Section 3.291 (Supp.1994) and all amendments thereto, hereby proposes to perform all Work required to complete the general construction in accordance with the Design and Specifications and associated Contract Documents, for the following Separated Contract Price for materials and for skill or labor:

I. CONTRACT PRICE

A. Allowance No. 1: Total \$7,000.00

Allow Five-Thousand and no/100 Dollars (\$5,000.00) for material testing.

Allow Two-Thousand and no/100 Dollars (\$2,000.00) for special inspections.

SECTION G

PROPOSAL

Materials – Concrete Foundation Only _____ dollars
(price in words) (\$_____)

Materials – All Except Concrete _____ dollars
(price in words) (\$_____)

Skill or labor _____ dollars
(price in words) (\$_____)

Cost of Bonds _____ dollars
(price in words) (\$_____)

Other _____ dollars
(price in words) (\$_____)

Total _____ dollars
(price in words) (\$_____)

TIME FOR COMPLETION

Structural Steel Delivered to Site Provide Calendar Days from NTP _____ Days

Pour Concrete Provide Calendar Days from NTP _____ Days

Erect All Structural Steel Provide Calendar Days from NTP _____ Days

Building Complete Provide Calendar Days from NTP _____ Days

Total Project Time Provide Calendar Days from NTP _____ Days
(120 day project duration is specified)

The undersigned Offeror represents that it has inspected the location or locations of the Work and has satisfied itself as to the condition thereof and that the Grand Total Contract Price is just and reasonable compensation for all completed units of Work, including all foreseen or foreseeable risks, hazards, and difficulties in connection therewith. It is understood and agreed by both CPS Energy and undersigned Offeror that the Grand Total Contract Price for this Contract will be the sum of Item I, and or any Alternate selected from above.

SECTION G

PROPOSAL

If this Proposal is accepted, the undersigned Offeror agrees to start construction and to complete the Work in accordance with the schedule set forth in these Contract Documents. It is understood that all construction shall be complete and all construction plant and facilities shall be removed from CPS Energy property as scheduled. The undersigned fully understands that the time of completion is of the essence of the Contract.

If written notice of the acceptance of this Proposal is mailed, facsimiled, or delivered to the undersigned within ten (10) days after the date of opening of proposals, or any time thereafter before this Proposal is withdrawn by the Offeror, the undersigned will, within ten (10) days after the date of mailing, facsimileing, or delivering of such notice, execute and deliver a Contract in the form of the Contract attached, complete with acceptable Performance and Payment Bonds, if applicable.

Dated this _____ day of _____, _____.

Offeror _____

By _____

Title _____

ATTEST:

Business Address of Offeror _____

State of Incorporation _____

Address of Principal Office _____

EXHIBIT J

(FOR OFFICE USE ONLY)
V#:

NAICS CODES:

ID CODE:



CPS ENERGY BUSINESS QUESTIONNAIRE

Phone: (210) 353-2474 Fax: (210) 353-3021 Internet address: www.cpsenergy.com

Questions about this document should be directed to the phone number listed above, or e-mailed to supplierdiversity@cpsenergy.com

1. Name of business: _____

Doing business as: _____
(Other business name, if applicable)

Contact person and title: _____

2. Business mailing address: _____

City: _____ State: _____ Zip Code: ____/____ ____

3. Business telephone number: () ____-____ Fax number: () ____-____

Business e-mail address (if applicable): _____

4. Is the above business name and mailing address considered the home office? ___ Yes ___ No

Please see following page for Definitions for the following questions:

5. Size/Type: (check one of the following) ___ Small Business* or ___ Large Business*

___ Non-Profit Organization ___ Chambers ___ Federal/State/City Agency ___ Municipality

___ College/University/Institution ___ Historically Black College/University or Minority Institution

(If you are having difficulty determining your size status, please call SBA at 1-800-U-ASK-SBA or (202) 205-6618 for assistance.)

6. Small/ Large Business, identify primary owner's ethnicity: ___ Black American, ___ Hispanic American,
___ Asian Pacific American, ___ Subcontinent Asian American, ___ Native American, ___ Caucasian American,
___ Other: Specify _____

7. Is your company certified by the SBA? ___ Yes ___ No
If certified by another agency please provide the name of that agency: _____

8. What is the gender of the majority owner (owns at least 51% of company): ___ Male ___ Female

9. Please check the following applicable boxes and attach all corresponding certification:

Veteran Owned Service Disabled Veteran HUB (Historically Underutilized Business)

HUB Zone(Historically Underutilized Business Zone)

10. Number of Employees: _____

11. Primary NAICS Code: _____

If the NAICS Code is unknown, please refer to www.sba.gov/size or provide a description of your materials and/or services so that we may provide the appropriate code for you: _____

Under 15 U.S.C. 645(d), any person who misrepresents its size status shall (1) be punished by a fine, imprisonment, or both; (2) be subject to administrative remedies; and (3) be ineligible for participation in programs conducted under the authority of the Small Business Act.

Printed name and Title: _____ Signature: _____

Date: _____

GOOD FOR TWO YEAR PERIOD. IT IS YOUR RESPONSIBILITY TO NOTIFY US IF YOUR SIZE OR OWNERSHIP STATUS CHANGES DURING THIS PERIOD. PLEASE LIST, ON THE BACK OF THIS FORM, OR AN ATTACHED SHEET, ALL OTHER BUSINESS NAMES AND LOCATIONS THAT ARE AFFILIATED WITH YOUR FIRM, E.G., BRANCH LOCATIONS, ETC.

Revised 12/22/2011

CPS ENERGY
BUSINESS QUESTIONNAIRE DEFINITIONS

AS STATED ON FEDERAL ACQUISITION REGULATION (FAR) PART 19 – **SMALL BUSINESS PROGRAMS**

DISADVANTAGED BUSINESS CONCERN: Businesses which is unconditionally owned and controlled by one or more socially and economically disadvantaged individuals who are of good character and citizens of the United States, and which demonstrates potential for success.

1. WHO IS SOCIALLY DISADVANTAGED?

- a) *General.* Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. The social disadvantage must stem from circumstances beyond their control.
- b) *Members of designated groups.* 1) There is a rebuttable presumption that the following individuals are socially disadvantaged: Black Americans, Hispanic Americans, Native Americans (American Indians, Eskimos, Aleuts or Native Hawaiians), Asian Pacific Americans (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, (including Hong Kong), Taiwan, Laos, Cambodia (Kampuchea), the Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands, or Northern Mariana Islands) and Subcontinent Asian Americans (with origins from India, Sri Lanka, Pakistan, the Maldives, Bhutan, Nepal and Bangladesh) are presumed to be disadvantaged by ethnicity.
- c) *Those who meet all of the requirements of 13 C.F.R. Part 124.*

2. WHO IS ECONOMICALLY DISADVANTAGED?

- a) *General.* Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.
- b) *Those who meet all the requirements of 13 C.F.R. Part 124.*

WOMEN-OWNED SMALL BUSINESS CONCERN: means a small business concern--

- a) Which is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- b) Whose management and daily business operations are controlled by one or more women.

HUBZONE SMALL BUSINESS CONCERN: Means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the SBA.

*HUBZone means a historically underutilized business zone, which is an area located within one or more qualified census tracts, qualified nonmetropolitan counties, or lands within the external boundaries of an Indian reservation.

VETERAN-OWNED SMALL BUSINESS CONCERN: means a small business concern—

- a) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101 (2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans, and
- b) The management and daily business operations of which are controlled by one or more veterans.

SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS CONCERN:

1.) Means a small business concern—

- a) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans, and
- b) The management and daily business operations of which are controlled by one or more service-disabled veterans, or in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

2.) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101 (2), with a disability that is service-connected, as defined in 38 U.S.C. 101 (16).

THE NORTHAMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

(Please visit the U.S. SBA web site www.sba.gov/r)

ATTACHMENT 1

CONTRACTOR'S AFFIDAVIT STATING COMPLIANCE WITH 49 CFR

(TO BE SUBMITTED BY OFFEROR)

ATTACHMENT 2
CONTRACTOR'S ANTI-DRUG AND ALCOHOL PLAN
(TO BE SUBMITTED BY OFFEROR)

ATTACHMENT 3
CONTRACTOR'S CONSTRUCTION SCHEDULE
(TO BE SUBMITTED BY OFFEROR)

ATTACHMENT 4
CONTRACTOR'S SAFETY RECORD
(TO BE SUBMITTED BY OFFEROR)