

Request for Proposal

Kaw Low Voltage Switchgear

January 26, 2024

The Oklahoma Municipal Power Authority is a governmental agency of the state of Oklahoma and as such is subject to the Oklahoma Open Meetings Act, 25 O.S. §§ 301, et seq., and the Oklahoma Open Records Act, 51 O.S. §§ 24.A.1, et seq.

ADVERTISEMENT FOR BIDS

BID OPENING: (1500 hours) 3:00 PM CENTRAL TIME, February 15th, 2024

The Oklahoma Municipal Power Authority ("OMPA") is requesting Bids in accordance with the terms of this Request for Proposal ("RFP") for:

PROJECT: KAW LOW VOLTAGE SWITCHGEAR

Bids must be delivered to The Oklahoma Municipal Power Authority offices in Ponca City, Oklahoma. Bids will be publicly opened and read aloud at the date and time listed above. Bids received more than ninety-six (96) hours (excluding Saturdays, Sundays, and holidays) before the time set for the opening of the Bids, and Bids received after the time set for the opening of the Bids, will not be considered. All interested parties are invited to attend.

Bids must be submitted in a sealed envelope marked: "Sealed Bid – Contract: Kaw Low Voltage Switchgear" and addressed to:

William M. Ivie, Power Production Engineer
1420 N. Union Street
Ponca City, Oklahoma 74601

OMPA will accept questions regarding this RFP until February 8th, 2024, at (1500 Hours) 3:00 PM Central Time. Responses to all questions posed will be made on the OMPA website.

Each Bid must be submitted in accordance with the "Requirements for Bidding and Instructions to Bidders" contained in this RFP. Each Bid must be accompanied by a certified check, cashier's check, or bid bond equal to five percent (5%) of the Bid. Each Bid must include a completed Non-Collusion Affidavit and other required documents, as stated in the RFP.

If OMPA, in OMPA's sole discretion, elects to award a Contract pursuant to this RFP, the prevailing Bidder will be required to provide acceptable security as required by Oklahoma law, in an amount equal to their bid assuring performance, payment, and warranty of the project.

An electronic copy of this RFP may be found at: www.OMPA.com

All Bidders have a duty to monitor the OMPA website for written addenda to the RFP. Bidders will be bound by the terms of the RFP, as amended.

A complete set of Bid Documents can be found at www.OMPA.com or may be obtained by contacting:

William M. Ivie
Power Production Engineer
PCRP/KAW/CDLEC
1420 N. Union Street
Ponca City, Oklahoma 74601

David W. Huff
Plant Manager,
PCRP/KAW/CDLEC
1420 N. Union Street
Ponca City, Oklahoma 74601

e-mail: wivie@ompa.com
Ph: (405)359-2567
Cell (918)824-5814

e-mail: dhuff@ompa.com
Ph: (405)359-2581
Cell: (580)382-1545

REQUIREMENTS FOR BIDDING AND INSTRUCTIONS TO BIDDERS

Exceptions to Contract Limited to Exceptions Statement: By submitting a Bid, all Bidders acknowledge and agree that all exceptions to the Contract must be specifically listed in the Exception Statement, and that OMPA will not consider any exceptions to the terms of the Contract that are raised by a Bidder after its Bid is submitted, and the Bidder will be deemed to have accepted the Contract as included in this RFP.

DEFINITIONS

1. "Addendum" means any addition, clarification, revision, or change to this RFP, as published on the OMPA website, which may alter the terms of this RFP. "Addendum" includes any response to questions posed to OMPA by prospective Bidders, as published on the OMPA website.
2. "Bid" means the formal proposal submitted by a Bidder in response to this RFP.
3. "Bid Documents" includes the RFP, the Requirements for Bidding and Instructions to Bidders, the Bid forms, the Specifications, the Contract, and any Addenda issued prior to receipt of Bids.
4. "Bidder" means a person or entity that submits a Bid in response to this RFP.
5. "Board of Directors" means the rule-making authority and governing body of OMPA as defined by 11 O.S. § 24-105(b).
6. "Contract" means the contract incorporating the terms attached to this RFP.
7. "OMPA" means the Oklahoma Municipal Power Authority, a governmental agency of the state of Oklahoma, as established by the Oklahoma Municipal Power Authority Act, 11 O.S. §§ 24-101, *et seq.*
8. "Work" means the work that is the subject of this RFP and any Contract resulting from this RFP.

SPECIFIC BID PROCEDURES AND REQUIREMENTS

1. **Sealed Bids** shall be submitted in accordance with the requirements of this RFP, on the attached form titled "PROPOSAL to the Oklahoma Municipal Power Authority for Contract Project: Kaw Low Voltage Switchgear."

2. **Form of Bid Submission.** Bids must be submitted in an individually sealed envelope marked "Sealed Bid Contract: Kaw Low Voltage Switchgear" and addressed to:

**Oklahoma Municipal Power Authority
William M. Ivie, Power Production Engineer
1420 N. Union Street
Ponca City, OK. 74601**

3. **Modification, Withdrawal, or Cancellation of Bids.**

- a. Bidders may withdraw, change, and resubmit their Bids by appearing in person prior to the time designated for the opening of the Bids. Upon presenting proper picture identification to the Plant Manager or an authorized representative, the sealed Bid will be returned to the Bidder. The withdrawn Bid shall not be opened by or otherwise disclosed to OMPA. Withdrawn Bids may be resubmitted prior to the time designated for the opening of Bids provided the resubmitted bid is in complete conformance with these Instructions to Bidders.
- b. A Bid may not be modified, withdrawn, or canceled by the Bidder after the time and date designated for the opening of Bids.
- c. No Bidder may withdraw a Bid for sixty (60) days after the actual date of the Bid Opening.

4. **Early or Late Bids.** Bids received more than ninety-six (96) hours, excluding Saturday, Sunday, and holidays, before the time set for the opening of the Bids and Bids received after the time set for opening of Bids will not be considered and will be returned unopened. The time received shall be determined by the stamp-clock on the desk of the William M. Ivie, Power Production Engineer where all Bids must be received and stamped. OMPA is not responsible for delay of receipt of Bids.

5. **Bid Copies.** Bidder shall submit the original Bid and three (3) complete copies of the Bid for evaluation by OMPA. In addition, Bidder shall submit one electronic copy of the Bid in .pdf format by email addressed to William Ivie at wivie@ompa.com submitted within 12 hours after the time the bids are due but not before February 15th, 2024 (1500 hours) 3:00 PM Central time.

6. **Addenda for and Interpretations of Bid**

- a. All clarifications, revisions, or changes to this RFP or any of the Bid Documents (collectively, "Addenda") will be posted to the OMPA website. All Bidders have a duty to monitor the OMPA website for Addenda. By submitting a Bid, Bidder represents that Bidder has reviewed the most recent version of the RFP and agrees to comply with the RFP and all Addenda.
- b. Questions regarding this RFP may only be submitted in writing to William M. Ivie at wivie@ompa.com on or before (1500 hours) 3:00 PM Central Standard Time on the February 8th, 2024. Responses will only be made in writing, posted to the OMPA website as Addenda. OMPA may or may not respond to any question asked.
- c. All Addenda shall become part of the Bid Documents.

7. **Required Statements from Bidder to be Included in Bid.** Each Bidder shall accompany his Bid with a written statement under oath disclosing the following information:
 - a. The nature of any partnership, joint venture or other business relationships then in effect or which existed within one (1) year prior to the date of such statement with any architect, engineer or other party to the Work;
 - b. Any such business relationship then in effect or which existed within one (1) year prior to the date of such statement between any officer or director of the Bidder company and any officer or director of any architectural or engineering firm or other party to the project; and
 - c. The names of all persons having any such business relationships and the positions they hold with their respective companies or firms. If no such business relationships exist, Bidder shall include a statement to that effect.
8. **Build America Buy America.** This Work may be funded, in part, using funds from the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, thus the Build America Buy America Requirement included in the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 applies to this Request for Proposal and any awarded contract. Each Bidder must certify if the infrastructure product which is the subject of an awarded contract is in compliance with Public Law 117-58 §§ 70901-70952. Pursuant to Section 70914(b) and (c) of the Act, this provision, upon application, may be waived. OMPA strongly suggests that all Bidders familiarize themselves with the Act, including any waiver provisions.
9. **Davis-Bacon Act.** In compliance with any contract issued pursuant to this Request for Proposal, the successful Bidder must comply with the Davis-Bacon Act, 40 U.S.C.A. §§ 3141 – 3144, 3146, 3147.
10. **Community Benefits Plan.** This Work may be funded, in part, using funds from the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, thus the successful bidder may be required to contribute to the development and implementation of a Community Benefits Plan as described on Attachment A.
11. **Bidder's References Must be Included in Bid.** The Bidder is required to be experienced and an expert in the supply of the construction services described in the specifications and other documents attached hereto. Bidder must demonstrate expertise in the field of work described by the RFP. The Bidder shall include with its Bid a listing of at least current customers, comparable in size and scope, where the Bidder has performed similar services in the past 10 years. Bidder must include contact names, telephone numbers, company name, and location on the "Listing of Applicable Experience" form included with this RFP. By submitting this information, Bidder authorizes OMPA to contact any such reference, and to make any such investigations necessary to determine the ability of the Bidder to perform the work. Bidder shall furnish to OMPA all information and data for this purpose as OMPA may request.
12. **Bid Detail Requirements.** The Bid must provide sufficient details for OMPA to perform a complete Bid evaluation. The Bidder shall comply with all requirements in the specification.
13. **Equal Opportunity Employment Requirements.** OMPA is an Equal Opportunity Employer. OMPA does not discriminate in its hiring practices and requires its contractors to abide by all federal law applicable to discrimination. All Bidders shall acknowledge in the Bid Documents that they are Equal Employment Opportunity employers.

14. **Bidder's Representations.** Each Bidder, by making a Bid, represents that:

- a. The Bidder has read and understands the Bid Documents (including all questions and clarifications related thereto) and the Bid is made in accordance with the Bid Documents.
- b. The Bid submitted is based upon the materials, systems, and equipment required by the Bid Documents without exception.

15. **Terms and Condition.** Bidder shall provide a copy of Bidder's terms and conditions. The terms and conditions shall include the following:

- a. Warranty to run from date of delivery for 3 years
- b. Bidder's Compliance with specifications
- c. Performance security equal to the contract price to run through the expiration date of the warranty (unless an unaddressed claim is made)
- d. Contractor's indemnification for Intellectual Property and software licenses
- e. Confidentiality provisions
- f. Dispute resolution
- g. Timely delivery with liquidated damages provision
- h. Compliance with applicable Federal requirements
- i. Insurance requirements
- j. Termination of contract
- k. Indemnity and Liability
- l. Title and Risk of Loss
- m. Miscellaneous Provisions

Suggested language for each required provision is included in the pro forma contract at Attachment B.

16. **List of Documents to be Submitted with Bid:** All Bids must contain complete and executed originals of the following documents, in the form included in this RFP, and in the following order:

- a. COVER LETTER (identifying the project and contract number)
- b. BID PROPOSAL FOR CONTRACT: Kaw Low Voltage Switchgear
- c. BID SECURITY in the amount of 5% of the Bid, in the form of a Bid Bond or Cashier's Check, Certified Check, or Irrevocable Letter of Credit

- d. EXCEPTION STATEMENT
- e. BIDDER'S DOCUMENTATION OF EXPERIENCE
- f. NON-COLLUSION AFFIDAVIT
- g. BUSINESS RELATIONSHIPS AFFIDAVIT
- h. BIDDERS TERMS AND CONDITIONS

BID OPENING AND PRELIMINARY REVIEW

1. **Bid Receipt and Opening.** All Bids that have been completed, submitted, and received in accordance with these instructions will be publicly opened and read aloud at Oklahoma Municipal Power Authority Office, 1420 N. Union Street, Ponca City, OK, at (1500 hours) 3:00 PM on the February 15th, 2024. Bids will be opened by David W. Huff and recorded by Tina Chamberlain, Administrative Assistant. Bids may be examined by the public after the Bid opening upon request to Plant Manager. At the public Bid opening, the Bidders' names, location, and Bid prices shall be read aloud by the Plant Manager.

Preliminary Review. The Bids shall be initially reviewed for completeness and correctness. Any deficiency may be grounds for disqualifying the Bid. OMPA's review may include, but is not limited to, verifying that:

- a. each of the Addenda is acknowledged in the Bid; and
- b. each required document is included, properly signed, and if applicable, notarized.

2. **OMPA Rejection of Incomplete Bids.**

- a. OMPA may reject any bid that OMPA considers to be incomplete.
- b. OMPA will reject any Bid that is not signed by the authorized representative of the Bidder, and/or does not contain the required documents, properly signed, and if necessary notarized, as required by the Bidding Documents.
- c. Bids will become the property of OMPA upon submission.

BID EVALUATION

1. **Bid Evaluation by OMPA.** After the preliminary review, the Bids will be reviewed and evaluated by the appropriate OMPA management and staff. The following items shall be reviewed:
 - a. **Bond Compliance.** If a surety company is used to issue bonds, the company must be authorized and registered to do business in Oklahoma and listed in Federal Circular 570. When a bid bond is required and the bond submitted is from a company not authorized and registered in Oklahoma, or if the company is not listed in Federal Circular 570, the Bid shall be disqualified.

- b. **Unit Price Compliance.** If the RFP requires Bidder to submit unit prices, Bidder's failure to submit unit prices for any requested work item may cause the Bid to be disqualified.
 - c. **Materially Unbalanced Prices.** OMPA may reject a Bid as nonresponsive if OMPA determines that the Bid prices are materially unbalanced between line items and subline items. A Bid may be materially unbalanced if it is based on prices significantly less than the cost for some work and prices which are significantly overstated in relation to the cost for other work, and OMPA has reasonable doubt that the Bid will result in the lowest overall cost to OMPA.
2. **Technical and Commercial Qualifications.** Bids will be evaluated based on technical and commercial criteria applicable to the scope of work specified. The evaluation criteria will include, but not be limited to, the Bid's
- a. Conformance to technical specifications;
 - b. Evaluated price;
 - c. Demonstration of project experience; and
 - d. Conformance to commercial terms.
3. **Bidder's Performance Capability.** OMPA may consider the Bidder's demonstrated ability to perform the required work.
4. **Disqualification of the Bidder.** Any of the following may be grounds for disqualifying the Bidder:
- a. More than one (1) Bid for the same work from an individual, firm, partnership, joint venture, or corporation under the same or different names.
 - b. Evidence of collusion among Bidders, subcontractors, or material suppliers.
 - c. Lack of responsibility as shown by past work for OMPA judged from the standpoint of workmanship and progress.
 - d. Uncompleted work under any Contract with OMPA or any other entity.
 - e. Being in arrears on existing Contracts with the state of Oklahoma or OMPA, having defaulted or failed to comply with a previous State or OMPA Contract, or any other just and reasonable cause.
 - f. Certificate by the Oklahoma Human Rights Commission that the Bidder has engaged or is engaging in a discriminatory practice.
 - g. Any violation of OMPA or state of Oklahoma rules, or other information indicating that the Bidder is no longer responsible nor qualified to do business with the State.
5. **Bid Comparisons.** In comparing Bids, OMPA may consider not only the Bid prices, but also other factors that impact whether a Bidder is the lowest responsible bidder, including, but not limited to, efficiency, reliability, durability, economy of operation and maintenance, accessibility for repairs, cost of

special construction made necessary by the equipment offered, experience, safety and performance record of the Bidder, relative risk associated with the Bidder, and any guarantees associated with the Work.

CONTRACT AWARD

1. **Anticipated Contract Award.** OMPA anticipates that, if a Contract is awarded pursuant to this RFP, the award will be made on or after March 14th, 2024.
2. **Contract Award, Bonding, Insurance, and Execution.**
 - a. **Contract Award.** The Contract, if any, shall be awarded to the lowest responsible Bidder as determined by the review of the Bids. Within five (5) business days after approval by the OMPA Board of Directors, the successful Bidder will be notified by OMPA of its selection and will be provided copies of the Contract to execute. The OMPA Board of Directors may grant a reasonable extension of the awarding period, by formal recorded action for good cause shown. The successful Bidder must execute the Contract and obtain the required bonds or letter of credit, and insurance, within sixty (60) days of notification by OMPA. No Bidder shall obtain any property right in a Contract awarded under these provisions until the Contract has been fully executed by both the Bidder and OMPA.
 - b. **Contract Bonding.** The prevailing Bidder must provide security assuring the warranty as described in the Contract. The security provided shall be in a form and with terms approved by OMPA and issued by an institution acceptable to OMPA.
 - c. **Contract Insurance.** The prevailing Bidder must provide proof of insurance with terms approved by OMPA, as described in the Contract.
 - d. **Failure to Execute Contract.** If the prevailing Bidder fails to execute the Contract within sixty (60) days and/or provide the required security and insurance to OMPA, the Bidder will be deemed to have abandoned the Contract, and the cost of republication of the Notice to Bidders, actual expenses incurred by reason of the Bidder's default, and the difference between the low Bid of the defaulting Bidder and the amount of the Bid of the Bidder to whom the Contract is subsequently awarded, but not to exceed the amount of the Bid Security may, at the discretion of OMPA, be forfeited to OMPA.
 - e. **Return of Bid Security upon Contract Execution.** The Bid Security posted by the prevailing Bidder and the next two lowest responsible Bidders will be returned to those Bidders upon the prevailing Bidder's execution and delivery of the Contract and required bonds or irrevocable letters of credit, and insurance.

OTHER PROVISIONS

1. **Bid Ambiguities and Discrepancies.** If the total price of the Bid is inconsistent with the unit price times number of units to be delivered, the unit price shall govern. If there is a variance between the amount in words and the figures, the amount in words shall govern.
2. **Bid Protests.** Bidder protests must be submitted in writing to OMPA within ten (10) days of OMPA's award of a contract or purchase order. Any Bidder who does not timely protest waives all claims arising from or related to the contract or purchase order, and the RFP process.

3. **Tax Exempt Status.** OMPA is exempt from the payment of any Sales Taxes, pursuant to 68 O.S. § 1356, and Article 10, Section 6 of the Oklahoma Constitution.
4. **Applicable Laws.** By submitting a Bid, the Bidder acknowledges that all applicable state laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over performance of the project (in force and effect now, and as amended) shall apply to the Contract throughout, and they will be deemed to be included in the Contract. The laws of the state of Oklahoma shall apply to any dispute arising from or related to this Bid. The District Court of Oklahoma County, Oklahoma shall have exclusive jurisdiction to adjudicate any such disputes.
5. **Drug Free Workplace.** OMPA seeks to provide a drug free workplace for all of its employees. All contractors working on an OMPA facility shall comply with OMPA's drug free workplace policies.
6. **OMPA Reservation of Rights.** OMPA reserves the right to reject any or all Bids, to waive any and all informalities, to evaluate Bids, and to disregard all nonconforming, nonresponsive, and/or conditional Bids.

PROPOSAL TO THE OKLAHOMA MUNICIPAL POWER AUTHORITY
FOR CONTRACT PROJECT:
KAW LOW VOLTAGE SWITCHGEAR

MADE BY: _____
Business Address: _____
City: _____
Telephone-Number: _____ State: ____ Zip Code: _____
Fax Number: _____
E-Mail: _____

The Bidder named above hereby tenders its Bid and declares that the only person(s) or entity(ies)-interested in this proposal is or are named above; that the Bid is made without collusion with any other Bidder and is in all respects without collusion or fraud. The Bidder further declares it has examined the pro forma contract, the specifications and the contract drawings referred to, all Bidding Documents, and has read the attached "REQUEST FOR PROPOSAL, REQUIREMENTS FOR BIDDING AND INSTRUCTIONS TO BIDDERS"; and agrees to furnish all the materials necessary or proper to carry out such contract in the manner, on the terms, and under the conditions set forth therein and in the specifications, and to perform all work in accordance with the terms of this Contract, at Contractor's bid price, with a total lump sum bid price, including delivery, of:

Accompanying this proposal is a certified check, cashier's check or bid bond in the amount of five percent (5%) of Bidder's bid price; in the amount of _____ Dollars (\$ _____) payable to the Oklahoma Municipal Power Authority, as called for in the REQUEST FOR PROPOSAL, and it is hereby agreed that in case of failure on the part of the undersigned to execute the Contract within sixty (60) days from the date that notice of the acceptance of this proposal is given the undersigned in writing by certified mail with return receipt requested, the undersigned will be deemed to have abandoned the Contract, and thereupon the five percent (5%) Bid security shall be due and payable thereunder to OMPA as liquidated damages for such failure and not as a forfeiture.

Note: If this Bid is made by an individual, it shall be signed with his/her usual business signature, with his/her business address and place of residence; if by a firm, the co-partnership name shall be signed by a member of the firm and the name and address of each member shall be given; and if by a corporation, it shall be signed by a duly authorized officer, with the corporate name attested by the corporate seal, and the business address of the corporation shall be given.

Signed: _____

(Seal)

If this proposal is accepted by OMPA, the following surety company, or, if applicable, bank, namely, _____, has agreed to provide the required bonds or irrevocable letters of credit for performance, warranty and payment guarantees.

Signed: _____

LISTING OF APPLICABLE EXPERIENCE

EXCEPETION STATEMENT CONTRACT PROJECT: KAW LOW VOLTAGE SWITCHGEAR

This part of the proposal must be completed even if no exceptions are stated. Attach additional pages if required. If no exceptions, state "NONE".

NOTICE OF SPECIFICATIONS CONTRACT PROJECT: KAW LOW VOLTAGE SWITCHGEAR

The binding and mandatory Specifications applicable to this RFP are attached to the RFP as Attachment A and are hereby fully incorporated by reference.

By executing this form, Bidder acknowledges that Bidder has fully and completely examined the Specifications, the Bidding Documents, and any questions or clarifications related thereto, and agrees that any work arising from or related to this Contract must be performed in full compliance with each of these terms.

Signed: _____

Attachment A
Kaw Low Voltage Switchgear
Community Benefit Plan

This project may be funded, in part, by a funding through the U.S. Department of Energy (DOE), using monies from the Infrastructure Investment and Jobs Act, and the Inflation Reduction Act. DOE funding requires the applicant (OMPA) to include a Community Benefits Plan (CBP). In consideration of this potential DOE funding, OMPA's evaluation and award process will include the assessment of the Bidder's strategy to assist OMPA in fulfillment of OMPA's obligations under the CBP. OMPA encourages all Bidders to familiarize themselves with the DOE's Section 247 Guidance, including the CBP under Section VIII(b)(13). Should OMPA receive federal funding, OMPA would be the participant in the CBP, and OMPA fulfillment of its obligations under the CBP would be evidenced, in part, by the contracts awarded by OMPA.

In addition to what has already been published in the RFP, OMPA may also consider the following in awarding the Contract:

1. Whether the Bidder seeks to hire from the local community by: a) advertising jobs in local publications, at community colleges and vocational/technical schools, and at local universities, b) supporting the local community-based workforce development organizations, and c) identifying and partnering with workforce training organizations serving underrepresented individuals.
2. Whether the Bidder has actively solicited women, veteran, and/or minority owned subcontractors and suppliers.
3. Whether the Bidder 1) has no restrictions on workers' ability to join a union, 2) maintains equitable job design, classification, and compensation practices and 3) is committed to equitable and fair labor.
4. Whether the Bidder 1) has robust anti-harassment, anti-discrimination, whistle blower, and safety policies or will agree to abide by OMPA's anti-discrimination policies, anti-harassment policies, safety policies, and is an Equal Opportunity Employer; and 2) will agree to promote the OMPA hotline to the Bidder's employees.

OMPA will also consider any additional Bidder actions that support a Community Benefits Plan.

Attachment B

SUGGESTED CONTRACT PROVISIONS

WARRANTY

Base Warranty Period: the period commencing with the delivery of the equipment ending 36 months thereafter.

General Warranty. Contractor warrants that the Project, including all equipment and work to be provided, will conform to all specifications which are part of the Contract Documents, will be free of defects in workmanship or material, and will be designed for the purposes stated in the Contract Documents for a Base Warranty Period of 3 years commencing from the date of delivery.

Warranty Claims and Corrections. If OMPA discovers any failure to conform to the foregoing warranties within one (1) year after completion of installation, and OMPA gives Contractor written notice within thirty (30) days after the expiration of such warranty period, then Contractor will promptly correct such nonconformity at Contractor's sole cost and expense.

Warranty on Corrected Claims. The warranty on the repaired or replaced equipment, or the correction of defective workmanship will be for one (1) year commencing from the date of repair, replacement and/or rework.

OMPA's Correction of Warranty Claims. If Contractor fails to correct any defective or non-conforming portion of the Project within a reasonable time, OMPA may, upon written notice to Contractor, proceed to accomplish the redesign, repair, rework, or replacement of the non-conforming portion of the Project in OMPA's discretion, and charge Contractor for all costs arising from or related to such redesign, repair, rework, or replacement. This cost may include labor, materials, and other direct costs. OMPA may, at OMPA's discretion, separately invoice or deduct from payments otherwise due to Contractor the costs as provided herein. OMPA's right to charge Contractor these costs is in addition to any and all other rights and remedies available to OMPA.

COMPLIANCE WITH SPECIFICATIONS

The Parties agree that the Project must be completed in accordance with the following terms and conditions, plans and technical specifications, blueprints, drawings, and any addenda made a part of this Contract.

PERFORMANCE SECURITY

Bonds Provided by Contractor. Contractor will furnish a surety bond or bonds, or an irrevocable letter of credit, in the amount of 100% of the total Contract price prior to the execution of this Contract. Such bonds or irrevocable letter of credit will be valid until the end of the Base Warranty Period as defined in Article 1.4 of the Contract, and will be a guarantee to OMPA of the following:

- That all material liens, subcontractor liens, and/or any other legal encumbrances arising from or related to this Contract are fully paid and satisfied; and
- Proper and prompt completion of the Project in accordance with the provisions of the Contract Documents; and
- Proper and prompt correction of any defects of workmanship or materials discovered during the warranty period.

Form of Bonds. All bonds will be in a form approved by OMPA with terms acceptable to OMPA. All bond submittals will contain all terms and conditions that are applicable to the bonds. The bonds will have as surety thereon a surety company authorized and registered to do business in Oklahoma and listed in Federal Circular 570. The Federal Circular may be found at <https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/e570 a-z.htm>.

CONTRACTOR'S INDEMNIFICATION FOR INTELLECTUAL PROPERTY AND SOFTWARE LICENSES

Intellectual Property Indemnification. Contractor will, at its own expense, defend, indemnify, and hold harmless OMPA from and against any claim that any equipment, work, material, or process furnished and/or used by Contractor arising from or related to the Project constitutes an infringement of any patent, copyright, trade secret, or other intellectual property. If OMPA receives notice of any such claim, OMPA will promptly notify Contractor in writing, and will provide other information that is reasonably necessary in order for Contractor to defend such claim. Contractor will notify OMPA regarding Contractor's choice of intended legal counsel to defend the claim. Legal counsel must be approved in advance by OMPA. In case the equipment, work, material, or process, as a result of any suit or proceeding so defended, is held to constitute infringement of any patent, copyright, or trade secret, or its use by OMPA is enjoined, Contractor will, at its option and its own expense, either (i) procure for OMPA the right to continue using the equipment, work, material, or process; or (ii) replace the equipment, work, material, or process with a substantially equivalent non-infringing equipment, work, material, or process, subject to pre-approval by OMPA; or (iii) modify the equipment, work, material, or process so it becomes non-infringing, subject to pre-approval by OMPA.

License. Contractor hereby grants to OMPA a nonexclusive, royalty-free license to use any of Contractor's intellectual property used in the performance of the Project, including, but not limited to, the design and construction related documents, blueprints, drawings, and computer programs including, but not limited to, machine readable object code, flow charts, logic diagrams, listings, and any listing generated therefrom (referred to herein as the "Software"), for use by OMPA in operating or in connection with the equipment. Any Software updates will also be covered by the provisions of this Agreement.

CONFIDENTIALITY

Contractor Confidentiality. Contractor agrees to accept and hold drawings, specifications, identified computer software, materials, and information furnished by OMPA in complete confidence, and further agrees not to divulge such to any third party or use the same for its own benefit. Contractor agrees to return all originals and copies of such data and all ancillary information derived therefrom to OMPA promptly upon OMPA's request, or termination of this Contract, whichever occurs first.

OMPA Confidentiality. Contractor understands and acknowledges that OMPA is a governmental agency of the state of Oklahoma and is subject to the Oklahoma Open Records Act, 51 O.S. §§ 24A.1, et seq., and the Oklahoma Open Meetings Act, 25 O.S. §§ 301, et seq. To the extent permitted by applicable law, OMPA will not disclose (except to officers, employees, and contractors of OMPA) information which is specifically designated in writing by Contractor as being proprietary and confidential. General statements (including generally applicable headers or footers) stating that all information is proprietary and confidential are insufficient to confer confidential status on information Contractor seeks to designate as confidential or proprietary. The provisions of this paragraph will not apply to information, notwithstanding any confidential designation thereof, which (a) is previously known to OMPA without any restriction as to disclosure or use at the time it is furnished, (b) is or becomes generally available to the public without breach of any agreement, (c) is independently developed by OMPA, or (d) is received from a third party without limitation or restriction on the third party or OMPA at the time of disclosure. Contractor understands and acknowledges that OMPA's duties under the Oklahoma Open Records Act, 51 O.S.

§ 24A.1, et seq., and/or other law applicable to governmental entities may require OMPA to disclose information which has been designated by Contractor as proprietary and confidential. If OMPA receives a request to disclose information which has been designated by Contractor to be confidential or proprietary, before disclosing the information, OMPA will provide Contractor with advance notice of the information requested and OMPA's intent to disclose.

DISPUTE RESOLUTION

Jurisdiction and Applicable Law. This Contract will be interpreted and construed in accordance with the laws of the state of Oklahoma. The Parties agree that jurisdiction and venue for any disputes will be in a court of competent jurisdiction located in Oklahoma County, Oklahoma.

TIMELY COMPLETION OF CONTRACT

Timely Completion. Contractor will, in a good and workmanlike manner, perform and complete the Project as required by this Contract, within the time specified for each separate task associated with the Project, in accordance with the provisions of the Contract Documents.

TIME IS OF THE ESSENCE FOR EACH AND EVERY PORTION OF THIS CONTRACT.

COMPLIANCE WITH APPLICABLE FEDERAL REQUIREMENTS

DAVIS-BACON ACT. Contractor agrees to comply, and to ensure compliance by any of Contractor's Subcontractors, with the Davis-Bacon Act, 40 U.S.C.A. §§ 3141 – 3144, 3146, 3147. Exhibit A to this Contract describes the requirements for the Contractor and all Subcontractors, and its terms are fully incorporated into this Contract.

The Build America Buy America Requirement included in the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 applies to this Contract. Contractor certifies that the infrastructure product which is the subject of the Contract is in compliance with Public Law 117-58 §§ 70901-70952, including any waiver pursuant to Section 70914(b) and (c) of the Act.

INSURANCE REQUIREMENTS

While on OMPA property:

Insurance. Contractor, at its own expense, will carry, with reliable insurance companies that are acceptable to OMPA, the following types of insurance with limits not less than shown in the respective amounts:

Commercial General Liability Insurance. Contractor will maintain for the duration of this Agreement a commercial general liability insurance policy covering all work and operations by or on behalf of Contractor, including but not limited to coverage for bodily injury, wrongful death, personal injury, property damage, premises and/or operations hazards, products and completed operations, and contractual liability insuring the obligations assumed by Contractor in this Agreement. The commercial general liability insurance policy cannot exclude the perils of explosion, collapse, and underground hazards. The commercial general liability insurance policy will be written on an occurrence basis. The limits of liability will be not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate. If defense costs are included in the limits of liability, then the required limits of liability referenced above will each be increased by One Million Dollars (\$1,000,000). If the commercial general liability insurance policy utilizes a general aggregate limit, then the general aggregate limit will apply separately to the work and operations for the Project performed by or on behalf of Contractor, or alternatively Contractor may obtain separate insurance to provide the required limits which will not be subject to depletion because of claims arising out of any other project or activity of Contractor.

OMPA, its officers, directors, employees, representatives, and agents will be expressly named as additional insureds on the commercial general liability insurance policy with respect to liability arising out of work and operations performed by or on behalf of Contractor. The commercial general liability insurance policy will stipulate that the insurance afforded to the additional insureds will apply on a primary and non-contributory basis and that any other insurance carried by the additional insureds will be excess only and will not contribute with this insurance.

Automobile Liability Insurance. Contractor will maintain for the duration of this Agreement an automobile liability insurance policy insuring against claims for bodily injury and property damage and covering liability arising out of all motor vehicles, including owned, leased/hired, and non-owned motor vehicles. The limit of liability will not be less than One Million Dollars (\$1,000,000) per accident for bodily injury and property damages. The automobile liability insurance policy will be written on an occurrence basis.

Workers' Compensation and Employer's Liability Insurance. For the duration of this Agreement, Contractor will provide workers' compensation insurance sufficient to meet its obligations under the laws of the state of Oklahoma. Further, Contractor will provide employer liability insurance covering its legal obligation to pay damages because of bodily injury or occupational disease (including resulting death) sustained by an employee. The employer liability insurance will contain a liability limit of no less than One Hundred Thousand Dollars (\$100,000) per accident for bodily injury or disease.

Excess/Umbrella Insurance. Contractor will provide Excess/Umbrella insurance coverage of not less than Two Million Dollars (\$2,000,000) to follow form on the employer's liability, general liability, and auto insurance described in this Article.

Waiver of Subrogation. Contractor grants to OMPA a waiver of Contractor's rights to subrogation against OMPA. Further, Contractor grants to OMPA a waiver of all rights to subrogation which any insurer of Contractor may acquire against the OMPA by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. Contractor understands and acknowledges that this waiver of subrogation provision applies regardless of whether Contractor has received a waiver of subrogation endorsement from its insurer.

Certificates of Insurance. Contractor must mail a certificate of all such insurance to the Legal Department, Oklahoma Municipal Power Authority, P.O. Box 1960, Edmond, OK 73083-1960. The certificate(s) must show the name and address of the insured, particular work covered, limits of coverage, policy number, effective and expiration dates and cancellation requirements. If Contractor changes insurers during Contractor's performance of this Contract, Contractor will ensure that there are no lapses in coverage and will notify OMPA prior to any modification to the above-described policies. In the event that Contractor fails to maintain insurance as provided by this paragraph, Contractor is in default under this Contract.

TERM AND TERMINATION OF CONTRACT

Term. The period of performance under this Contract will be as provided in the specifications and Contractor's Bid Proposal from the effective date of this Contract unless sooner terminated as provided for herein.

Termination for Convenience. OMPA may terminate this Contract for any reason upon thirty (30) days prior written notice to Contractor. If OMPA terminates the Contract under this paragraph, OMPA will pay Contractor the portion of the Contract amount reflecting the amount of work successfully completed and approved by OMPA at the time of termination. All termination charges will be due and payable thirty (30) days from the date of receipt of Contractor's final invoice, which will be delivered to OMPA no more than thirty (30) days after OMPA delivers Contractor such notice of termination.

Termination for Cause. If (i) Contractor's work on the Project is delayed for a period in excess of ninety (90) days due to a force majeure condition; or (ii) Contractor fails, at any time during the performance of the Project, to provide the necessary crews, tools, and equipment for the performance of the Project, or fails to perform any of its obligations described in the Contract, or (iii) fails to conform to any applicable safety statutes, rules, regulations, or generally accepted safety practices, and in any of the causes, fails to substantially cure the non-conforming action within five (5) days of receiving notice, OMPA may, at its election, and without prejudice to other remedies it may have, either: (i) cancel this Contract in its entirety and pay to Contractor a portion of the Contract amount reflecting the amount of work successfully completed and approved by OMPA prior to the time of cancellation; or (ii) utilize another contractor to perform any portion of the work at the expense of Contractor. OMPA's remedies in the event of termination for cause, as described in this paragraph, will not be construed as a waiver of any other rights or remedies available to OMPA under applicable law.

Release upon Termination. Upon termination of the Contract by OMPA, OMPA will be released from further liability to Contractor or Surety Company. If Contractor cannot be located, the payment for any amount owed to Contractor for work performed will be held by OMPA for the Contractor for Thirty-Six (36) months, at which time payment will be deemed waived by the Contractor and OMPA will be released from any further liability to Contractor or Surety Company.

Suspension of Project. Contractor may not suspend performance of any part of the Project except as directed and authorized by OMPA. OMPA may, at any time and in its sole discretion, suspend performance of all or part of the Project, as follows:

OMPA will notify Contractor about any Project suspension and identify the scope and effective date of the suspension. Contractor will suspend performance of the Project in accordance with OMPA's notice but will continue to perform the portion of the Project not suspended. Upon receipt of OMPA's notice, Contractor will protect and preserve items committed to or purchased for the suspended portion of the Project and will take commercially reasonable steps to minimize the financial consequences of the suspension.

If the suspension is unrelated to Contractor's failure to comply with this Contract, OMPA will adjust the schedule to reflect the reasonable delay due to the suspension and will reimburse Contractor for the reasonable and direct additional costs incurred by Contractor due solely to the safeguarding or storage of Project materials in accordance with OMPA's instructions. Provided, the aggregate sum of such costs may not exceed the Change Order limits listed in Article 3.6. This schedule adjustment and reimbursement will be Contractor's sole and exclusive remedies for an OMPA-directed suspension.

Contractor will promptly resume performance of the suspended portion of the Project when so directed by OMPA. Contractor must present all claims for schedule adjustment and/or reimbursement, including any supporting materials, within ten calendar days after OMPA instructs Contractor to resume the suspended Project, or Contractor will have waived such claims.

Obligations Surviving Termination. Contractor's contractual obligations pertaining to warranty, indemnification, confidentiality, insurance, choice of law, jurisdiction, and audit rights will survive termination.

INDEMNITY AND LIABILITY.

Tort Claims Liability. The Parties intend that each will be responsible for its own acts or omissions to act. OMPA will be responsible for any damages or injuries caused by the acts or omissions to act of its officers and employees while acting within the scope of their employment according to the Governmental Tort Claims Act, Title 51 O.S. §§ 151, et seq. Contractor will be responsible for any damages or injuries caused by the acts or omissions to act of its officers, employees, or agents. Contractor agrees to hold harmless OMPA of any claims, demands, and

liabilities resulting from any act or omission on the part of Contractor and/or its officers, employees, or agents arising from or related to the performance of the Contract. OMPA does not waive any rights or protections it has under any applicable law.

No Partnership or Joint Venture. This agreement will not be construed as, nor given the effect of, creating a joint venture, partnership, affiliation, or association that would otherwise render the Parties liable as partners, agents, or employer-employee or otherwise create any joint and several liability.

No Special Damages. To the fullest extent allowed by applicable law, in no event will OMPA be liable for any special, indirect, or consequential damages including, without limitation, damages, or losses in the nature of increased Project costs, loss of revenue or profit, lost production, or governmental fines or penalties.

TITLE AND RISK OF LOSS

Title and Risk of Loss. Title to all materials and Work furnished by the Contractor hereunder will pass to OMPA, free and clear of any liens, encumbrances, qualifications, or defects of any nature, upon Contractor's receipt of payment as provided in Article 3. Contractor will retain all liability for, and risk of loss or injury to all materials and Work to be furnished by Contractor until final approval and acceptance of complete performance of this Contract.

MISCELLANEOUS PROVISIONS

No Assignment. Contractor will not assign or otherwise transfer any Work under this Contract without the prior written consent of OMPA. Even if agreed to by OMPA, any assignment by Contractor will not relieve Contractor of its obligations under this Contract.

Amendment. This Contract may be amended only by a written instrument signed by both Contractor and OMPA.

OMPA Not Liable for Taxes. The prices herein are inclusive of all costs, including any applicable taxes. OMPA will have no liability to Contractor to pay taxes incurred by Contractor.

Access to Work and Right of Inspection by OMPA. OMPA will have reasonable access to the areas where the work under this Contract is being performed to enable OMPA to observe the work. Contractor, if requested, will inform OMPA of those tests and procedures which can be witnessed, whether performed at Contractor's facilities or at the Site, and the schedule for those test and procedures. If OMPA wishes to witness a test or procedure, OMPA will notify Contractor of its interest. No rescheduling of tests or delays in manufacturing or shipment will be made to accommodate OMPA's attendance to witness a test or procedure. Contractor will exercise reasonable efforts to secure similar rights with respect to the inspection of the work at Contractor's premises or elsewhere.

CERTIFICATION

Name of Bidder: _____

Address of Bidder: _____

SECTION I: _____ (Bidder's initials)

A. For purposes of this bid,

1. I am the duly authorized agent of the above-named bidder, for the purpose of certifying the facts pertaining to the existence of collusion among and between bidders and suppliers and state officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in connection with the prospective acquisition;
2. I am fully aware of the facts and circumstances surrounding the acquisition or making of the bid to which this statement relates and have been personally and directly involved in the events leading to the acquisition or submission of such bid; and
3. Neither the business entity that I represent in this certification nor anyone subject to the business entity's direction or control has been a party:
 - a. to any collusion among bidders or suppliers in restraint of freedom of competition by agreement to bid or contract at a fixed price or to refrain from bidding or contracting,
 - b. to any collusion with any state official or employee as to quantity, quality or price in the prospective contract, or as to any other terms of such prospective contract, nor
 - c. to any discussions between bidders or suppliers and any state official concerning exchange of money or other thing of value for special consideration in connection with the prospective contract.

B. I certify, if awarded the contract, whether competitively bid or not, neither the business entity I represent nor anyone subject to the business entity's direction or control has paid, given or donated or agreed to pay, give or donate to any officer or employee of this state any money or other thing of value, either directly or indirectly, in procuring the contract to which this statement relates.

SECTION II: _____ (Bidder's initials)

For the purpose of a contract for services, the supplier also certifies that no person who has been involved in any manner in the development of this contract while employed by the Oklahoma Municipal Power Authority or the state of Oklahoma shall be employed by the supplier to fulfill any of the services provided for under said contract.

SECTION III: _____ (Bidder's initials)

For the purpose of a contract for goods or services, the supplier also certifies that it is not currently engaged in a boycott of goods or services from Israel that constitutes an integral part of business conducted or sought to be conducted with the state.

SECTION IV: _____ (Bidder's initials)

The successful bidder may be required to provide a certification in accordance with 74 O.S. § 12005 that the bidder does not at the time the response is submitted and will not, during the term of the contract, boycott energy companies.

The undersigned, duly authorized agent for the above-named bidder or supplier, by signing below acknowledges this certification statement is executed for the purposes of the competitive bid attached herewith and contract, if awarded to said supplier.

Bidder's Authorized Signature

Certified This Date

Printed Name

Title

Phone Number

Email

Fax Number