

GPES Terms 2011-03

1. Quoting, offer, and acceptance – Great Plains Energy Services Incorporated (“GPES”) reserves the right to accept all or part at prices quoted or to decline the whole. Materials quoted shall be identical to those requested, and are to be factory new with full warranty. Materials that have been previously sold, rebuilt or used shall be clearly identified as such. Alternate materials of equal or superior quality may be offered with full supporting data. Contractor agrees that all quotations by Contractor to GPES shall remain valid for a period of not less than sixty (60) days. If you are unable to quote, please so indicate and return this form promptly. All information space blocks must be filled in when applicable or noted "N/A." Quotes shall constitute offers by the Contractor to GPES which can be accepted by GPES by issuance of a Purchase Order to the Contractor or its authorized agent or representative. GPES's Purchase Order is an acceptance of an offer by the Contractor. The acceptance is expressly conditioned on Contractor's assent to all terms and conditions contained herein and only those contained herein notwithstanding any different or additional terms or conditions submitted to GPES by Contractor either before or after issuance of this Purchase Order. In the event this Purchase Order is construed as an offer, the offer expressly limits acceptance to the terms and conditions of the offer and constitutes notice of objection to any additional or different terms or conditions in the acceptance so as to preclude the inclusion of any different additional terms or conditions in any resulting contract. In the event this Purchase Order is construed as a confirmation of an existing contract, such confirmation is expressly conditioned on the Contractor's assent to any additional or different terms or conditions contained herein. If Contractor is party to a written agreement with GPES that specifically covers the purchase of goods or services, then the terms of that agreement control the purchase and sale of the goods and services, and these GPES Terms do not apply.
2. Pricing - If price is not stated in any Purchase Order, it is agreed that the goods, materials or merchandise shall be billed at the price last quoted, or billed at the prevailing market price, whichever is lower. No goods, merchandise, or materials shall be sent at a higher price than the last quoted price by Contractor or changed without GPES's written authorization.
3. Purchasing documents and related documents - Send all Bills of Lading and Shipping Notices to Procurement Department. Send original Invoices to GPES Accounts Payable. All invoices should contain a statement indicating compliance with the Fair Labor Standards Act of 1938 as amended. Packing Slips must be included in all shipments and last shipment must state "Order Completed." Packing Slips must include the Purchase Order Number, GPES Item ID and Manufacturer/Catalog Number. Packaging must be limited to material shown on this RFQ or order. Contractor must furnish Material Safety Data Sheets for qualifying material.
4. Taxes - Unless an exemption document accompanies a Purchase Order, bill GPES for any applicable (a) Federal excise tax, (b) Kansas sales or use tax, (c) Missouri sales or use tax.
5. Shipping - Time is of the essence to this contract. Ship according to the instructions on the Purchase Order. Unless explicitly instructed to the contrary in writing, do not send shipments C.O.D. or Shipper's Order.
6. Inspections - If inspection discloses that part of the goods, materials or merchandise received are not in accordance with GPES specification, GPES shall have the right to cancel any unshipped portion of any Purchase Order (contract). Payment for the goods, materials or merchandise prior to inspection shall not constitute acceptance thereof and is without prejudice to any and all claims that GPES may have against Contractor. Defective goods, material or merchandise, or goods, materials or merchandise not in accordance with GPES specifications will be held for Contractor's instruction at Contractor's risk and if Contractor so directs, will be returned at Contractor's expense.
7. Cancellation - GPES may cancel all or any part of a Purchase Order, with or without cause, immediately upon notice to Contractor. Upon receipt of notice of cancellation of a Purchase Order, Contractor must discontinue its performance of such cancelled Purchase Order, preserve and protect materials, work in progress and completed work in accordance with GPES's instructions. Contractor will not be entitled to any damages on account of cancellation. If cancellation is partial, Contractor must continue the performance of the remaining portion of the canceled Purchase Order, as well as all other Purchase Orders which were not canceled. GPES agrees to pay Contractor for goods, materials or merchandise delivered prior to the effective date of cancellation, at the agreed upon rates. Notwithstanding the foregoing, if GPES returns goods, materials or merchandise, GPES will not be liable for restocking fees unless specifically agreed to in a Purchase Order.
8. GPES site work rules - Any deliveries of material or equipment to, or labor or services performed on GPES premises or work site shall be subject to GPES rules and regulations. Non-GPES personnel (including sub-contractors) performing labor or services on GPES premises or work sites may be subject to random alcohol and/or substance abuse screening at GPES's sole discretion in accordance with the current GPES Policy on Alcohol and Substance Abuse Random Testing for Outside Contractors. Contractor's assent to this is an express condition of this agreement. Those non-GPES personnel refusing to participate in an alcohol and/or controlled substance test may be removed from and banned from entry to GPES property. A copy of GPES policy may be provided upon request through the Procurement Department.
9. Assignment - Contractor shall not assign any Purchase Order (contract) without prior written approval of GPES and in no case shall assignment relieve Contractor of any liability.
10. Compliance - Contractor and its subcontractors shall comply with the provisions of all applicable laws and regulations, comply with the provisions of GPES's Federal Contracting Requirements attached hereto as Exhibit A, secure all necessary governmental authorizations and permits, and upon request furnish satisfactory proof of compliance.
11. Governing law - The rights and obligations of GPES and Contractor shall be governed by the laws of the State of Missouri and this Purchase Order shall be interpreted and construed in accordance with the laws of the State of Missouri without regard to the conflict of laws provisions thereof. Contractor agrees that the venue for any action brought pursuant to this Purchase Order shall be in the appropriate court in Jackson County, Missouri.
12. Indemnification
 - a. The Contractor agrees to defend and indemnify GPES against all liability and expense arising out of (a) any injury, death or damage caused by the Contractor or its agents, and (b) failure of the Contractor or its agents to comply with applicable laws or regulations or by failure to perform under any contract.
 - b. Contractor shall, at its own expense, defend any suit or action instituted against GPES and indemnify GPES against any award of damages and costs made against GPES by a final judgment of court based on a claim that any of the goods, materials or merchandise furnished under a Purchase Order infringe any patent or copyright enforceable in the United States or misappropriate any trade secret protected under United States law, provided GPES gives the Contractor timely notice in writing of such claim, permits Contractor to defend the suit and gives Contractor all information, assistance and authority which is reasonably available to aid Contractor in doing so. Contractor shall control the defense of any such suit, including appeals, and all negotiations to effect settlement. If any of the goods, materials or merchandise are, in any such suit, held to infringe or constitute a misappropriation, and its use is enjoined, Contractor shall, at its election and expense, procure for GPES the right to continue using the same; or modify the same, while retaining equivalent functionality, so that it avoids the claim. If neither

alternative is available on commercially reasonable terms, then, in the case of such goods, materials or merchandise (and all such goods, materials or merchandise furnished under a Purchase Order which become effectively inoperable as a result thereof) Contractor will refund the price paid for such goods, materials or merchandise.

13. Warranty

- a. Contractor warrants that the Goods and any materials will be (a) newly manufactured, unless expressly agreed to otherwise in a writing signed by both parties, (b) conform to the specifications in the Purchase Order, (c) be free from defects and all liens, security interests, claims and encumbrances and (d) be merchantable and fit for their intended purpose. For a period of one year after GPES's acceptance of the Goods or materials, Contractor will repair or replace any defective Goods or materials at its expense after GPES's notice to Contractor. Any Goods or materials that are repaired or replaced hereunder shall have a one year warranty from the date of repair or replacement. If Contractor fails to promptly repair or replace a defect, GPES may cause the defect to be corrected at the expense of Contractor. If Contractor is not the manufacturer of the Goods, Contractor will pass through to GPES any additional manufacturer warranties, and at the request of GPES, make warranty claims against the manufacturer on GPES's behalf. This provision shall not be construed as disclaiming or limiting any other express or implied warranty or guarantee made by Contractor.

If a defect exists in the Goods or materials that was not and normally would not be revealed, discovered or located before the end of a warranty period by any reasonably careful inspection (hereinafter "Latent Defect"), GPES will promptly notify Contractor when such Latent Defect becomes apparent and Contractor shall repair or replace the Goods or materials at its expense.

- b. Contractor warrants that it will perform all Services in a workmanlike manner in accordance with good industry practices and with the degree of skill, competence and care customarily exercised by a skilled service provider under similar circumstances. The Services will also be free from defects and conform to the established specifications set forth in the Purchase Order. For a period of one year after GPES's acceptance of the Services, Contractor will promptly correct defects or deficiencies in the Services at its expense after GPES's notice to Contractor. Any defects or deficiencies that are corrected hereunder shall have a one year warranty from the date of correction. If Contractor fails to promptly correct a defect or deficiency, GPES may cause the defect or deficiency to be corrected at the expense of Contractor. This provision shall not be construed as disclaiming or limiting any other express or implied warranty or guarantee made by Contractor.

14. Independent contractor - If any labor or services are to be performed pursuant to any purchase order upon premises other than the premises of Contractor, all such labor and services shall be performed by Contractor as an independent contractor.

15. Insurance requirements - If any labor or services are to be performed pursuant to any purchase order upon premises other than the premises of Contractor, Contractor shall comply with the following insurance conditions and requirements:

- a. Certificates of Insurance. Certificate(s) from insurance carrier(s) with a Best rating of at least B+ and acceptable to GPES, evidencing compliance by Contractor with insurance coverage requirements as provided herein shall be submitted to GPES, and Contractor shall not begin the labor or services to be performed until such certificates of insurance shall have been furnished. GPES shall not be liable for delays occasioned due to, or in connection with, furnishing such certificates.
- b. Notice of Cancellation or Change. Contractor shall have an endorsement attached to the policy or policies of insurance which shall provide that at least ten (10) days prior to the termination of the policy or policies the insurance carrier shall notify GPES of such termination and that at least ten (10) days prior to the effective date of any change in such policy or policies. If such change restricts or reduces the amount of insurance or insurance coverage provided therein, or changes the name or names of the insured(s), the insurance carrier shall notify GPES in writing of the nature of such change. The certificates of insurance required under a. above shall evidence this endorsement.
- c. Workers' Compensation or Employer's Liability. Contractor shall comply with all provision of all Workers' Compensation laws of the State or States having jurisdiction over the labor or services to be performed hereunder by the Contractor and will carry full insurance coverage or be authorized to self-insure liability to its employees under such Laws or Acts. Contractor shall maintain employer's Liability Insurance in amounts not less than \$1,000,000.
- d. Public Liability and Property Damage. Except as may otherwise be required herein or by separate instrument, Contractor shall carry public liability and property damage insurance, including automobile coverage in amounts not less than \$1,000,000 public liability and \$1,000,000 property damage with responsible insurance companies having a Best's rating of B+ or better and acceptable to GPES.
- e. Unemployment Insurance. Contractor shall as a condition hereof, upon request, provide GPES with proof of compliance throughout the term of the contract with the Federal Insurance Contributions Act and the Federal Unemployment Tax Act and an affidavit showing compliance with the Unemployment Compensation Act of the State or States having jurisdiction over the labor or services to be performed hereunder.
- f. Cross Liability: All policies required by this contract shall contain a "cross liability" or "severability of interest" clause or endorsement. Notwithstanding any other provision of these policies, the insurance afforded shall apply separately to each insured, named insured or additional insured with respect to any claim, suit or judgment made or brought by or for any other insured, named insured or additional insured as though a separate policy had been issued to each, except the insurer's liability shall not be greater than the amount or amounts for which the insured would have been liable had only one insured been named. GPES shall not by reason of its inclusion under these policies incur liability to the insurance carrier for payment of premium for these policies.
- g. Claims Made Policy: If any insurance coverage is provided under a "claims made" policy, Contractor must maintain the policy for a minimum period of five years after the completion of the work.
- h. Contractor shall insure all equipment, materials and work against casualty loss until official acceptance by GPES. Contractor shall be responsible for repair or replacement of all equipment, materials or work damaged by casualty. Contractor and its agents shall require their insurance carriers, with respect to all insurance policies, to waive all rights of subrogation against GPES, its directors, officers, employees and agents.

16. Supplier diversity - Contractor, when utilizing subcontractors, shall proactively pursue Diverse Supplier participation. "Diverse Suppliers" will be defined as those subcontractors of Contractor that are included in the following qualified business categories: Small Business, Minority-owned Business Enterprise, Woman-owned Business Enterprise, Disabled Business Enterprise, Veteran Owned Business Enterprise, Disabled Veteran Owned Business Enterprise, Service Disabled Veteran Business Enterprise, HUBZone Small Business, 8(a) and Small Disadvantaged Business. GPES has a corporate goal of a minimum of 10% participation. Contractor shall make a good faith effort to achieve this level of participation. Upon a minimum of five days' notice, GPES shall have the right to inspect all Contractor records relating to its attempts to achieve this goal.

17. Inuring of PO - This Purchase Order shall inure to the benefit of GPES and any successor organizations.

18. Materials and equipment - Contractor shall retain an insurable interest in the materials and equipment and shall assume all risk of loss or damage to the equipment and material until official acceptance of the Purchase Order work by GPES. Risk of loss for items removed from the site by Contractor shall pass to Contractor upon removal from each item's installed location. Title for items removed or to be removed from the site by Contractor as required by this Purchase Order shall pass to Contractor upon removal from each item's installed location.
19. Lien waivers and releases - Upon completion of any job, Contractor shall obtain and furnish to GPES:
- executed lien waivers, under oath, from all persons supplying materials in excess of TEN THOUSAND and 00/100 DOLLARS, (\$10,000.00) and any subcontracted services for such job, and
 - a completed and executed Contractor's Release of Lien and General Release, the form of which shall be supplied by GPES.

Contractor shall, upon request by GPES, obtain executed lien waivers from all persons supplying materials and/or services for such job. Contractor shall not permit a lien to be placed on any GPES property by Contractor's subcontractors, agents, employees, or suppliers. Should GPES receive notice of an intent to file a lien from any of Contractor's agents, employees, or suppliers, GPES will notify Contractor. Upon receipt of notice from GPES of the intent of one of Contractor's agents, employees, or suppliers to file a lien, Contractor shall immediately take any and all steps necessary, including paying an amount in dispute to the party intending to file such lien, to prevent the filing of such lien. If Contractor fails to prevent the filing of such lien, Contractor shall be responsible and liable for and shall indemnify GPES for all of GPES's costs, expenses (including attorneys' fees), liabilities, damages, fees, penalties, judgments and settlement costs arising either directly or indirectly from the placement of such lien. Notwithstanding any contrary provisions of this Purchase Order, the foregoing liabilities of the Contractor for the placement of a lien shall include consequential, indirect and incidental damages

20. Affiliates - GPES's affiliates may directly purchase any of the goods or services available from Contractor at the same terms and conditions contained herein by issuing a Purchase Order. An "affiliate" will be defined as any entity that directly or indirectly controls, is controlled by, or is in common control with GPES.
21. Safety - Supplier is responsible for the safe performance of the Services. Supplier is also responsible for (1) the safety of Supplier's employees, agents and subcontractors, (2) the safety of the employees, agents and invitees of GPES, its parent company and any affiliated companies that are on the job site and (3) the safety of the general public in the vicinity of the work site. GPES, without assuming any responsibility for the safe prosecution of the Services, reserves the right to interrupt or suspend the Services if, in the sole reasonable judgment of GPES, its parent company or any affiliated company, the Services are being performed in a manner which endangers the safety of any individual. In the event that Services are suspended or terminated for this reason, Supplier agrees to promptly remedy the problems and work methods which occasioned the Services suspension. If Supplier fails to remedy the problems and work methods within a reasonable time, GPES, its parent company or any affiliated company, as applicable, may at its sole discretion, terminate the Purchase Order and cause the Services to be completed by GPES its parent company or any affiliated company or another contractor. In the event that this cover incurs costs in excess of those shown on the Purchase Order, Supplier shall promptly reimburse GPES, its parent company or any affiliated company, as applicable, for the overage. Supplier shall be paid for its actual out-of-pocket costs incurred through the time of termination. If Services are to be performed at any of the Generation Plant locations, all Services are to be performed in accordance with the approved "Contractor Safety Requirements" applicable to all Suppliers and their subcontractors entering the property of GPES, its parent company or any affiliated company for the purpose of delivering goods and services. A copy of the "Contractor Safety Requirements" may be obtained from the following website: <http://www.kcpl.com/business/suppliers.html>. Questions regarding the Contractor Safety Requirements should be addressed to the Safety Training Coordinator at CONTRACTORSAFETY@KCPL.COM
22. Background Checks – Supplier agrees to conduct reasonable background checks on each of Supplier's employees, agents, representatives and contractors ("Supplier Personnel") that will perform Services on GPES's property, GPES's "rights of way", the property of GPES's customers, or any aspect of GPES's computer systems. Supplier acknowledges and agrees that only those persons who have successfully passed these background checks will perform such Services.

At a minimum, Supplier will confirm and verify each Supplier Personnel's social security number, identity, authorization to work and county level criminal record check. Supplier Personnel who will have access to GPES's computer systems or areas critical to the support of the electricity infrastructure will check the preceding items, as well as residence and employment check, drivers license history, drug screening, verification of highest level of education or professional certification and United States government terrorist list check.

Supplier is responsible for all costs related to such background checks and agrees to maintain accurate records pertaining to such background checks for a minimum of five (5) years after termination of this Agreement, unless limited by law.

Exhibit A - FEDERAL CONTRACTING REQUIREMENTS

These Terms and Conditions incorporate one or more of the following clauses by reference, which shall have the same force and effect as if they were given in full text. Upon request, GPES will make their full text available. Also, the full text of a clause may be accessed electronically at these web address(es): <http://www.arnet.gov>; <http://acquisition.gov/comp/far/index.html>. (FAR 52.252-2 Clauses Incorporated by Reference. (FEB 1998)).

<u>FAR Reference</u>	<u>Prescribed In</u>	<u>Federal Acquisition Regulation</u>
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1. Clauses applicable to these Terms and Conditions or any Purchase Order:

(1)	52.202-1	2.201	Definitions (JUL 2004)
(2)	52.219-8	19.708-(a)	Utilization of Small Business Concerns (MAY 2004)
(18)	52.222-26	22.810(e)	Equal Opportunity (APR 2002)
(23)	52.222-39	22.1605	Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)
(24)	52.223-6	23.505	Drug-Free Workplace (MAY 2001)

2. Clauses applicable to these Terms and Conditions or any Purchase Order that Equals or Exceeds \$10,000:

(20)	52.222-36	22.1408(a)	Affirmative Action for Workers with Disabilities (JUNE 1998)
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3. Clauses applicable to these Terms and Conditions or any Purchase Order that Equals or Exceeds of \$30,000 or more:

(12)	52.209-6	9.409(b)	Protecting the government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (SEPT 2006)
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4. Clauses applicable to these Terms and Conditions or any Purchase Order that Equals or Exceeds \$100,000:

(4)	52.203-6	3.503-2	Restrictions on Subcontractor Sales to the Government (SEPT 2006)
(5)	52.203-7	3.502-3	Anti-Kickback Procedures (JUL 1995)
(8)	52.203-12	3.808(b)	Limitation on Payments to Influence Certain Federal Transactions (SEPT 2005)
(19)	52.222-35	22.1310(A)(1)	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEPT 2006)
(21)	52.222-37	22.1310(b)(3)	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEPT 2006)

5. Clauses applicable to these Terms and Conditions or any Purchase Order that Equals or Exceeds \$550,000:

(15)	52.219-9	19.708(b)	Small Business Subcontracting Plan (SEPT 2006)
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FERC

GPES requires compliance with Federal Energy Regulatory Commission (FERC) Order 717 and all orders supplementary thereto.

Repeal of Clauses During Term of Contract.

If, during the term of these Terms and Conditions, any of the clauses contained in this Exhibit are repealed, revoked, or dissolved by the Government, then such clauses shall no longer be part of this contract as of the date of such repeal, revocation, or dissolution. The elimination of these clauses by reason of such repeal, revocation, or dissolution shall not affect the continuing validity and effectiveness of the remainder of the contract or other clauses referenced in this Article.

In the event that the Contractor does not comply with any of the requirements set forth in this Exhibit, these Terms and Conditions or Purchase Order may be cancelled, terminated, or suspended in whole or in part.