



Date: December 11, 2024
To: All Vendors
Subject: Addendum #3

REFERENCE: B014-25 Construction of Substation Control House and Relay Panels

This Addendum forms part of the contract and clarifies, corrects or modifies original bid document.

Attached is the draft equipment contract for your reference.

The signature of the company agent, for the acknowledgement of this addendum, shall be required. **Complete information below and return via e-mail to: hlopez@brownsville-pub.com.**

I hereby acknowledge receipt of this addendum.

Company: _____

Agent Name: _____

Agent Signature: _____

Address: _____

City: _____ **State:** _____ **Zip:** _____

Phone Number: _____ **E-mail address:** _____

If you have any further questions about the bid, call 956-983-6375.

BY: Hugo E. López
Purchasing

EQUIPMENT CONTRACT

This AGREEMENT made _____, 20____ between the Public Utilities Board of the City of Brownsville, Texas (hereinafter called the “Purchaser”) and _____ (hereinafter called the “Seller”), a corporation organized and existing under the laws of the State of _____.

WHEREAS, the Purchaser desires to purchase and the Seller desires to sell the equipment described herein for the project designated:

P012-25, 15kV METAL-CLAD/METAL-ENCLOSED SWITCHGEARS FOR THE OCELOT SUBSTATION

NOW THEREFORE, in consideration of the mutual undertakings herein contained, the parties hereto agree as follows:

SECTION 1 - ACCEPTANCE OF BID

(a) The Purchaser accepts the Bid which is attached hereto and by this reference made a part hereof, and the parties hereto agree that the Seller shall sell and deliver to the Purchaser and the Purchaser shall purchase and receive from the Seller the equipment (hereinafter called the “Equipment”) described in the Bid upon the terms and conditions herein stated.

(b) The prices set forth in the Bid include the cost of delivery all Equipment to:

[INSERT ADDRESS FOR DELIVERY] (the “Delivery Location”)

(c) The prices set forth in the Bid do not include any sums which are or may be payable by the Seller on account of taxes imposed by any taxing authority upon the sale, purchase or use of the Equipment.

SECTION 2 - DELIVERY. The Seller shall deliver the Equipment between and including **[INSERT DATE]** and **[INSERT DATE]** (the “Delivery Window”), with delivery as noted on written order or orders of the Purchaser. Timely delivery of the Equipment is of the essence under this Agreement. If Seller fails to deliver the Equipment in full during the Delivery Window, Purchaser may, at Purchaser’s sole option, (i) agree in writing to a delivery date outside of the Delivery Window, or (ii) terminate this Agreement immediately, without liability to Seller, by providing written notice to Seller and Seller shall indemnify Purchaser against any losses, claims, damages, and reasonable costs and expenses attributable to Seller’s failure to comply with full delivery of the Equipment during the Delivery Window. Seller shall in no event deliver any Equipment to Purchaser in partial fulfillment of the quantity purchased under this Agreement except with Purchaser’s prior written consent, which may be withheld in Purchaser’s sole discretion.

SECTION 3 - SHIPPING TERMS. Seller shall pay all costs of carriage and insuring the Equipment in transit to the Delivery Location. Seller shall give written notice of shipment to Purchaser when the Equipment is delivered to the carrier for transportation. Seller shall provide Purchaser a detailed statement of all Equipment shipped and all shipping documents, including, as applicable, the commercial invoice, packing list (including the quantity of goods in the shipment and the number of cartons or containers in the shipment), bill of lading and any other documents necessary to release the Equipment to Purchaser within two (2) business days after Seller delivers the Equipment to the carrier. Seller shall properly pack, mark, and ship Equipment as instructed by Purchaser, if applicable, and otherwise in accordance with applicable law and industry standards.

SECTION 4 - TITLE AND RISK OF LOSS. Title passes to Purchaser upon delivery of the Equipment to the Delivery Location. Seller bears all risk of loss or damage to the Equipment until delivery of the Equipment to the Delivery Location.

SECTION 5 - PAYMENT. The Purchaser shall, within thirty (30) days of the later of (i) full receipt of the Equipment at the Delivery Location and (ii) receipt of the invoice of Seller for the Equipment, pay to the Seller ninety-five percent (95%) of the contract price of the Equipment, subject to the dispute of any amounts by Purchaser in good faith. When the Equipment has been installed, placed in satisfactory operation, tested and accepted by the Purchaser, the Purchaser shall make final payments all remaining amounts to the Seller; provided, however, such final payment shall be made not later than one-hundred eighty (180) days after delivery of the Equipment, unless such acceptance by the Purchaser shall be withheld because of the fault of the Seller.

SECTION 6 - DEFECTIVE MATERIAL AND WORKMANSHIP

- (a) All Equipment furnished hereunder shall be subject to the inspection, tests, and approval of the Purchaser, and the Seller shall furnish all information required concerning the nature of the source of any Equipment and provide adequate facilities for testing and inspecting the Equipment at the plant of the Seller.
- (b) Purchaser has the right to inspect the Equipment on or after the date of delivery of the Equipment to the Purchaser (the “Delivery Date”) for a period equal to (i) one year after the Delivery Date or (ii) the expiration of any guarantee or general warranty of the Equipment, whichever is longer (the “Inspection Period”). During the Inspection Period, Purchaser may reject all or any portion of the Equipment which is defective, damaged, or otherwise does not conform with the Specifications attached hereto and made a part hereof or with the guarantees, if any, of the Seller and the manufacturer. If Purchaser rejects any portion of the Equipment, Purchaser has the right, at its sole option and effective upon written notice to Seller, to: (a) terminate this Agreement in its entirety, without liability to Seller; or (b) require repair or replacement of the rejected Equipment. If applicable, Purchaser shall ship the rejected Equipment to Seller at Seller’s risk and expense. If Purchaser requires repair or replacement of the rejected Equipment, Seller shall, at its risk and expense, promptly repair or replace such Equipment and pay for all related expenses, including, but not limited to, the transportation charges for the return of the rejected Equipment and the delivery of repaired or replacement Equipment. Any exercise by Purchaser of its rights and remedies under this Section 4 shall not reduce Seller’s obligations or Purchaser’s rights and remedies under this Agreement or applicable law, and Purchaser shall have the right to conduct further inspections after Seller has carried out any remedial actions.

SECTION 7 - INDEMNIFICATION. Seller shall indemnify, defend, and hold harmless Purchaser and its officers, directors, managers, advisors, employees, agents, affiliates, successors, and permitted assigns (collectively, “Indemnified Party”) against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys’ fees, fees and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers, incurred by Indemnified Party, relating to any claim of a third party arising out of or occurring in connection with the Equipment or Seller’s negligence, willful misconduct, or breach of this Agreement. Seller shall not enter into any settlement without Purchaser’s or, as applicable, another Indemnified Party’s prior written consent.

SECTION 8 - TERMINATION. In addition to any other remedies that may be provided under this Agreement or otherwise, Purchaser may terminate this Agreement with immediate effect upon written notice to Seller if Seller has not performed or complied with any of the terms and conditions of this Agreement, in whole or in part. If Seller becomes insolvent, is generally unable to pay, or fails to pay, its debts as they become due, files a petition for bankruptcy, or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of

creditors, then Buyer may terminate this Agreement upon written notice to Seller. Termination due to a Force Majeure Event is subject to the provisions of Section 9. If Purchaser terminates this Agreement for any reason hereunder, Seller's sole and exclusive remedy is payment for Equipment received and accepted by Buyer prior to the termination.

SECTION 9 – FORCE MAJEURE.

- (a) Neither party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such Party's (the "Impacted Party") failure or delay is caused by or results from the following force majeure events ("Force Majeure Event(s)"): (i) acts of God; (ii) flood, fire, earthquake, or explosion; (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (iv) government order, law, or action; (v) embargoes or blockades in effect on or after the date of this Agreement; (vi) national or regional emergency; (vii) strikes, labor stoppages or slowdowns or other industrial disturbances; and (viii) telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials.
- (b) The Impacted Party shall give notice within five (5) days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of thirty (30) consecutive days following written notice given by it under this Section 9(b), the other party may thereafter terminate this Agreement upon five (5) days' written notice.

SECTION 10 - MISCELLANEOUS

- (a) **Governing Law.** This Agreement shall be governed by the applicable law of the State of Texas and due performance by each Party or any action arising under this Agreement shall lie in Cameron County, Texas. Jurisdiction and venue shall be in Cameron County, Texas, and each of the Parties submit to personal jurisdiction in the state district courts in such county.
- (b) **Counterparts.** The Parties may execute this Agreement in counterparts, all of which when taken together shall comprise one agreement, and each counterpart, when executed, shall have the efficacy of a signed original. Signatures for this Agreement and/or any of the transaction documents contemplated herein that are transmitted electronically or by facsimile, including emailed PDF signatures, shall be valid as originals.
- (c) **Verifications.**
 - i. **No Boycott of Israel.** To the extent this Agreement constitutes an agreement for goods or services for which a written verification is required under Texas law, Seller hereby verifies that it, its wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott the State of Israel ("Israel") and Seller represents that it will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Chapter 2271, Texas Government Code, to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or

with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. "Affiliate" includes an entity that controls, is controlled by, or is under common control with Seller and exists to make a profit.

- ii. Seller is not a Terrorist Organization. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Seller represents that neither it nor any of its wholly- or majority-owned subsidiaries and other affiliates is a company identified as a terrorist or similar organization or nation-state on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>;

<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>; or

<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

- iii. The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, to the extent such Section does not contravene applicable Federal law, and excludes Seller and each of its wholly- or majority-owned subsidiaries and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. "Affiliate" includes any entity that controls, is controlled by, or is under common control with Seller and exists to make a profit.

- iv. **Verification Regarding Energy Company Boycotts.** To the extent this Agreement constitutes an agreement for goods or services for which a written verification is required under Texas law, Seller hereby verifies that it and its wholly- or majority- owned subsidiaries and other affiliates, if any, do not boycott energy companies and Seller represents that it will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to comply with Section 2276.002, Texas Government Code, as amended, to the extent Section 2276.002, Texas Government Code does not contravene applicable Texas or Federal law. As used in the foregoing verification, "boycott energy companies" shall have the meaning assigned to the term in Section 809.001(1), Texas Government Code. "Affiliate" includes an entity that controls, is controlled by, or is under common control with Seller and exists to make a profit.

- v. **Verification Regarding Discrimination Against Firearm Entity or Trade Association.** To the extent this Agreement constitutes an agreement for the purchase of goods or services for which a written verification is required under Texas law, Seller hereby verifies that it and its wholly- or majority- owned subsidiaries and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and Seller represents that it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code to the extent Section 2274.002, Texas Government Code does not contravene applicable Texas or Federal law. As used in the foregoing verification, "discriminate against a firearm entity or firearm trade association" shall have the meaning assigned to such term in Section 2274.001(3), Texas Government Code.

“Affiliate” includes an entity that controls, is controlled by, or is under common control with Seller and exists to make a profit.

- vi. **HB 1295 Compliance.** Seller will comply with Section 2252.908 of the Texas Government Code, which requires Seller to fill out a conflict-of-interest form (“Disclosure of Interested Parties”) and file it with the City of Brownsville at the time the signed Agreement is submitted. The City of Brownsville will file it with the Texas Ethics Commission. For further information please go to the Texas Ethics Commission website via the following link:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm.

- (d) All manufacturers’ guarantees of Equipment, if any, shall be transferred and assigned to the Purchaser upon delivery of any Equipment and before final payment is made for such Equipment. Such guarantees shall be in addition to those required of the Seller by other provisions of this Agreement.
- (e) Each and all of the covenants and agreements herein contained shall extend to and be binding upon the successors and assigns of the parties hereto provided, however, that the Seller shall not assign this contract or any part hereof without approval in writing of the Purchaser, and further that the Seller shall not enter into any contract with any person, firm, corporation, or other entity for the performance of the Seller’s obligations hereunder, or any part thereof, without the approval in writing of the Purchaser.
- (f) The Seller agrees to pay liquidated damages, not as a penalty, the amount of \$500.00 per day per transformer, if power transformers are not delivered within the delivery time specified in Section 2 of this contract.
- (g) The Seller agrees to furnish a **Material Supply Bond** in the amount of the bid.
- (h) **Compliance with Law.** Seller is in compliance with and shall comply with all applicable laws, regulations, and ordinances. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement.
- (i) **Setoff.** Without prejudice to any other right or remedy it may have, Purchaser reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Purchaser to Seller under this Agreement.
- (j) **Third Parties.** The parties agree that there are no third-party beneficiaries to this Agreement. This Agreement shall not be construed as creating any rights in any third party or any duty to any third party. Affiliates of Seller do not constitute a third party.
- (k) **Entire Agreement.** This Agreement, including and together with any related exhibits, schedules, attachments, and appendices, constitutes the sole and entire agreement of the parties with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter.
- (l) **Survival.** Subject to the limitations and other provisions of this Agreement: (a) the representations and warranties of the parties contained herein shall survive the expiration or earlier termination of this Agreement; and (b) Section 7 of this Agreement, as well as any other provision that, in order to give proper effect to its

intent, should survive such expiration or termination, shall survive the expiration or earlier termination of this Agreement.

- (m) **Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal, or unenforceable, the parties shall negotiate in good faith to modify this Agreement to effect the original intent of the parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- (n) **Waiver.** No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- (o) **Cumulative Remedies.** All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the parties, or otherwise. Notwithstanding the foregoing, the parties intend that, if Purchaser terminates the Agreement in accordance with Section 8, Seller's sole and exclusive remedy is the right to payment for the Equipment received and accepted.
- (p) **Amendments.** No amendment to, or modification of, this Agreement is effective unless it is in writing and signed by each party.
- (q) **Authority.** The respective signatories to this Agreement covenant that they are fully authorized to sign and execute this Agreement on behalf of their respective party, and by such signature each such person represents that they have obtained all the necessary authority and approval to execute the Agreement.

‘IN WITNESS WHEREOF, the parties hereto have caused this contract to be signed in their respective corporate names by their presidents and their corporate seals to be hereunto affixed and attested by their secretaries, all as of the day and year first above written.

[VENDOR’S NAME]

By: _____
[Authorized signature]
[Title]

PUBLIC UTILITIES BOARD OF THE
CITY OF BROWNSVILLE, TEXAS

By: _____
Marilyn D. Gilbert, MBA
General Manager and CEO