

KCPL Terms 2005-0001

1. KCPL reserves the right to accept all or part at prices quoted or to decline the whole.
2. 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.
3. If you are unable to quote, please so indicate and return this form promptly.
4. All information space blocks must be filled in when applicable or noted "N/A."
5. Send all **Bills of Lading - Shipping Notices** to Purchasing Department.
6. Send original **Invoices** to KCPL Accounts Payable. All invoices should contain a statement indicating compliance with the Fair Labor Standards Act of 1938 as amended.
7. **Packing Slips** must be included in all shipments and last shipment must state "*Order Completed.*"
8. **Packaging** must be limited to material shown on this RFQ or order.
9. Unless an exemption document accompanies a Purchase Order, bill KCPL for any applicable (a) Federal excise tax, (b) Kansas sales or use tax, (c) Missouri sales or use tax.
10. Ship according to the instructions on the Purchase Order.
11. Unless explicitly instructed to the contrary in writing, do not send shipments C.O.D. or Shipper's Order.
12. Quotes shall constitute offers by the Contractor to KCPL which can be accepted by KCPL by issuance of a Purchase Order to the Contractor or its authorized agent or representative. KCPL'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 KCPL 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.

13. Contractor shall: (1) not assign any Purchase Order (contract) without prior written approval of KCPL and in no case shall assignment relieve Contractor of any liability; (2) comply with all applicable laws and regulations and secure all necessary governmental authorizations and permits; and (3) upon request furnish satisfactory proof of compliance with any law or regulation.
14. KCPL reserves the right to cancel all or part of the undelivered portion of any Purchase Order (contract) if Contractor does not make deliveries as specified, time being of the essence to this Contract or if Seller breaches any of the terms hereof including, without limitation, the warranties of Seller.
15. Any deliveries of material or equipment to, or labor or services performed on KCPL premises or work site shall be subject to KCPL rules and regulations. Non-KCPL personnel (including sub-contractors) performing labor or services on KCPL premises or work sites may be subject to random alcohol and/or substance abuse screening at KCPL's sole discretion in accordance with the current KCPL 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-KCPL personnel refusing to participate in an alcohol and/or controlled substance test may be removed from and banned from entry to KCPL property. A copy of KCPL policy may be provided upon request through the Purchasing Department
16. If inspection discloses that part of the goods, materials or merchandise received are not in accordance with KCPL specification, KCPL 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 KCPL may have against Contractor. Defective goods, material or merchandise, or goods, materials or merchandise not in accordance with KCPL specifications will be held for Contractor's instruction at Contractor's risk and if Contractor so directs, will be returned at Contractor's expense.
17. The rights and obligations of KCPL 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.
18. The Contractor agrees to defend and indemnify KCPL against all liability and expense arising out of (a) any injury, death or damage caused by the Contractor or its agents, or caused by the negligence of KCPL or its agents when assisting the Contractor and (b) failure of the Contractor or its agents to comply with applicable laws or regulations or by failure to perform under any contract.
19. 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 KCPL's written authorization.
20. **CONTRACTOR EXPRESSLY WARRANTS THAT ALL THE GOODS, MATERIALS AND MERCHANDISE COVERED BY ANY PURCHASE ORDER OR OTHER DESCRIPTION OR SPECIFICATION FURNISHED BY KCPL WILL BE IN EXACT ACCORDANCE WITH SUCH ORDER, DESCRIPTION OR SPECIFICATION AND FREE FROM DEFECTS IN DESIGN, MATERIALS AND/OR WORKMANSHIP AND THAT KCPL SHALL HAVE AND ENJOY QUIET POSSESSION OF THE GOODS AS AGAINST ANY LAWFUL CLAIMS EXISTING AT THE TIME OF SALE. SUCH WARRANTY SHALL SURVIVE DELIVERY AND SHALL NOT BE DEEMED WAIVED EITHER BY REASON OF KCPL ACCEPTANCE OF SAID GOODS, MATERIALS OR MERCHANDISE OR BY PAYMENT FOR THEM. FOR PURCHASE ORDERS INVOLVING LABOR AND/OR SERVICES, CONTRACTOR EXPRESSLY WARRANTS THAT THE LABOR AND SERVICES PROVIDED SHALL BE IN EXACT ACCORDANCE WITH THE SPECIFICATIONS OR DESCRIPTION OF SERVICES FURNISHED BY KCPL AND THAT THE SERVICES SHALL BE PERFORMED IN A WORKMANLIKE MANNER AND WITH THAT DEGREE OF SKILL, COMPETENCE AND CARE CUSTOMARILY EXERCISED BY A SKILLED SERVICE PROVIDER UNDER SIMILAR CIRCUMSTANCES. SHOULD A CONTRACTOR PROVIDING LABOR AND/OR SERVICES FAIL TO SATISFY THE FOREGOING STANDARD, CONTRACTOR SHALL PROPERLY REPERFORM THE SERVICES IN A TIMELY MANNER AND AT NO COST TO KCPL.**

21. **CONTRACTOR AGREES THAT NO EXPRESS WARRANTY OR CONDITION SHALL NEGATE OR LIMIT ANY IMPLIED WARRANTY OR CONDITION, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NOR IN ANY WAY LIMIT KCPL'S REMEDIES, NOR IN ANY WAY LIMIT CONTRACTOR'S LIABILITY FOR DAMAGES OF ANY TYPE AND THAT FURNISHING GOODS PURSUANT TO ANY PURCHASE ORDER WAIVES ANY RIGHT TO NOTICE OF BREACH OF ANY WARRANTY OR AGREEMENT.**
22. 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, and 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 KCPL, evidencing compliance by Contractor with insurance coverage requirements as provided herein shall be submitted to KCPL, and Contractor shall not begin the labor or services to be performed until such certificates of insurance shall have been furnished. KCPL 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 KCPL 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 KCPL 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 \$500,000.
 - (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 KCPL.
 - (e) **Unemployment Insurance.** Contractor shall as a condition hereof, upon request, provide KCPL 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. KCPL 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, Vendor must maintain the policy for a minimum period of five years after the completion of the work.
 - (h) **Coverage for Work:** Vendor shall insure all equipment, materials and work against casualty loss until official acceptance by KCPL. Vendor shall be responsible for repair or replacement of all equipment, materials or work damaged by casualty.
 - (i) **Waiver of Subrogation:** The Vendor and its agents shall require their insurance carriers, with respect to all insurance policies, to waive all rights of subrogation against KCPL, its directors, officers, employees and agents.
23. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability or national origin. The Contractor shall at all times fully comply with all applicable equal opportunity and affirmative action laws, regulations, statutes, ordinances and orders including (but not limited to) Executive Order 11246, Equal Opportunity Clause, as amended, and the rules, regulations and orders of the United States Department of Labor. For contracts or purchase orders of \$10,000 or more, Contractor agrees to include the Equal Opportunity Clause by reference in every contract, agreement and purchase order entered into with subcontractors or suppliers as required by 41 C.F.R. § 60-1.4(d). The Contractor agrees and certifies that, if the value of any contract or purchase order is \$50,000 or more and the Contractor has 50 or more employees, Contractor will file a complete and accurate report on Standard Form 100 (EEO-1) with the Joint Reporting Committee at the appropriate address per the current instructions within thirty (30) days of the contract award and otherwise comply with and file such other compliance reports as may be required under Executive Order 11246, as amended, and Rules and Regulations adopted thereunder. The Contractor hereby certifies that he will not maintain any facilities he provides for his employees in a segregated manner nor permit his employees to perform their services at any location under his control where segregated facilities are maintained. The Contractor agrees and certifies that if the value of any contract or purchase order is \$50,000 or more and Contractor has 50 or more employees, Contractor will develop a written affirmative action program for each of its establishments as required by Title 41, C.F.R. §§ 60-1.40, 60-2, 60-250 and 60-741. The Contractor agrees that if the value of any contract or purchase order is \$10,000 or more, Contractor will abide by and comply with the provisions of the Affirmative Action Clause for Disabled Veterans and Veterans of the Vietnam Era, 41 C.F.R. § 60-250.4 unless exempted as therein provided and which provisions are incorporated herein by reference to the same extent as though set forth herein in full. The Contractor agrees that if the value of any contract or purchase order is \$10,000 or more, Contractor will abide by and comply with the provisions of the Affirmative Action Clause, Executive Order 11758, 41 C.F.R. § 60-741.4 (41 Fed. Reg. 16150, April 16, 1976), Affirmative Action for Disabled Workers, which provisions are incorporated herein by reference to the same extent as though set forth herein in full.
24. Contractor shall make a good faith effort to use qualified minority subcontractors for all work. A good faith effort shall require, as a minimum, contractor to obtain a quote for all subcontracted work from at least one qualified minority contractor. KCPL shall have the right and power to audit contractor's compliance with this provision and contractor will cooperate with such an audit.
25. Supplier must furnish Material Safety Data Sheets for qualifying material.
26. This Purchase Order shall inure to the benefit of KCPL and any successor organizations.
27. Supplier agrees that all quotations by seller to KCPL shall remain valid for a period of not less than sixty (60) days.
28. Utilization of Small Business Concerns:

(a) It is the policy of the United States that small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by veterans, and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by veterans, and small business concerns owned and controlled by women.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) *Definitions.* As used in this contract--

"Small business concern" means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

"HUBZone small business concern" means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

"Small business concern owned and controlled by socially and economically disadvantaged individuals" and "small disadvantaged business concern" mean a small business concern that represents, as part of its offer that—

It has received certification as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B;

No material change in disadvantaged ownership and control has occurred since its certification;

Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

"Small business concern owned and controlled by women" means a small business concern—

Which is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

Whose management and daily business operations are controlled by one or more women.

"Small business concern owned and owned and controlled by veterans" means a small business concern—

Which is at least 51 percent owned by one or more veteran, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more veteran; and

Whose management and daily business operations are controlled by one or more veteran.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a HUBZone small business concern, a small business concern owned and controlled by socially and economically disadvantaged individuals, a small business concern owned and controlled by a veteran, or a small business concern owned and controlled by women.

29. All contracts and purchase orders, which exceed \$500,000 in value (\$1,000,000 for construction of any public facility).

Small Business Subcontracting Plan

This clause does not apply to small business concerns.

Definitions. As used in this clause—

"Commercial item" means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

"Commercial plan" means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

"Individual contract plan" means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

"Master plan" means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

"Subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, HUBZone small business concerns, small disadvantaged business, veteran-owned business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, HUBZone small business, small disadvantaged business, veteran-owned business, and women-owned small business concerns, with a separate part for

the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

The offeror's subcontracting plan shall include the following:

Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, HUBZone small business, small disadvantaged business, veteran-owned business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

A statement of--

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns;

(iii) Total dollars planned to be subcontracted to HUBZone small business concerns;

(iv) Total dollars planned to be subcontracted to small disadvantaged business concerns;

(v) Total dollars planned to be subcontracted to veteran-owned small business concerns; and

(vi) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to--

Small business concerns;

HUBZone small business concerns;

Small disadvantaged business concerns;

Veteran-owned small business concerns; and

Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, small veteran-owned, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, HUBZone, small disadvantaged, small veteran-owned, and women-owned small business source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

Small business concerns;

HUBZone small business concerns;

Small disadvantaged business concerns;

Veteran-owned business concerns; and

Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, HUBZone small business, small disadvantaged business, small veteran-owned business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will--

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with the instructions on the forms or as provided in agency regulations and in paragraph (j) of this clause; and

(iv) Ensure that its subcontractors agree to submit SF 294 and SF 295.

A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, HUBZone small business, small disadvantaged business, small veteran-owned business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., PRO-Net), guides, and other data that identify small business, HUBZone small business, small disadvantaged business, small veteran-owned business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, HUBZone small business, small disadvantaged business, small veteran-owned business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating--

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether HUBZone small business concerns were solicited and, if not, why not;

(C) Whether small disadvantaged business concerns were solicited and, if not, why not;

(D) Whether small veteran-owned business concerns were solicited and, if not, why not;

(E) Whether women-owned small business concerns were solicited and, if not, why not; and

(F) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact--

(A) Trade associations;

(B) Business development organizations; and

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, small veteran-owned, and women-owned small business sources.

(v) Records of internal guidance and encouragement provided to buyers through--

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(A) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, HUBZone small business, small disadvantaged business, small veteran-owned, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, HUBZone small business, small disadvantaged business, small veteran-owned business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, HUBZone small business, small disadvantaged business, small veteran-owned business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, HUBZone small business, small disadvantaged business, small veteran-owned, and women-owned small business firms.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, HUBZone small, small disadvantaged, small veteran-owned, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided--

(1) The master plan has been approved;

(2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Commercial plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) The failure of the Contractor or subcontractor to comply in good faith with--

(1) The clause of this contract entitled "Utilization Of Small Business Concerns"; or

(2) An approved plan required by this clause, shall be a material breach of the contract.

The Contractor shall submit the following reports:

(1) *Standard Form 294, Subcontracting Report for Individual Contracts*. This report shall be submitted to the Contracting Officer semiannually and at contract completion. The report covers subcontract award data related to this contract. This report is not required for commercial plans.

(2) *Standard Form 295, Summary Subcontract Report*. This report encompasses all the contracts with the awarding agency. It must be submitted semi-annually for contracts with the Department of Defense and annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Contractor's format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by Standard Industrial Classification (SIC) Major Group. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant SIC Major Group and report all awards to that subcontractor under its predominant SIC Major Group.

When contracting by sealed bidding rather than by negotiation, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, that separately addresses subcontracting with small business, HUBZone small business, small disadvantaged business, small veteran-owned business, and women-owned small business concerns. If the bidder is submitting an individual contract plan, the plan must separately address subcontracting with small business, HUBZone small business, small disadvantaged business, small veteran-owned, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be submitted within the time specified by the Contracting Officer. Failure to submit the subcontracting plan shall make the bidder ineligible for the award of a contract.

30. Contractor warrants that the equipment, any embedded processor or firmware and software (collectively "Software") is "Millennium Compliant" (defined below). This warranty shall be perpetual and survive any other expiration of warranty period or the termination of this Agreement. For the purposes of this Agreement "Millennium Compliant" means:

(a) the functions, calculations, and other computing processes of the Software (collectively, "Processes") perform in a consistent manner regardless of the date in time on which the Processes are actually performed and regardless of the date input to the Software, whether before, on, or after January 1, 2000 and whether or not the dates are affected by leap years;

(b) the Software accepts, calculates, compares, sorts, extracts, sequences, and otherwise processes date and time inputs and date and time values, and returns and displays date and time values, in a consistent manner regardless of the dates used, whether before, on, or after January 1, 2000;

(c) the Software will function without interruptions caused by the date in time on which the Processes are actually performed or by the date input to the Software, whether before, on, or after January 1, 2000;

(d) the Software accepts and responds to two-digit year-date input in a manner that resolves any ambiguities as to the century in a defined, predetermined and appropriate manner; and

(e) the Software stores and displays date information in ways that are unambiguous as to the determination of the century.

31. The title of all materials and equipment furnished under this Purchase Order shall pass to KCPL upon transfer to the carrier. 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.

32. 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 KCPL. Risk of loss for items removed from the site by Contractor shall pass to Contractor upon removal from each item's installed location.

33. Upon completion of any job, Contractor shall obtain and furnish to KCPL:

a) 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

b) a completed and executed Vendor's Release of Lien and General Release, the form of which shall be supplied by KCPL. Contractor shall, upon request by KCPL, 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 KCPL property by Contractor's subcontractors, agents, employees, or suppliers. Should KCPL receive notice of an intent to file a lien from any of Contractor's agents, employees, or suppliers, KCPL will notify Contractor. Upon receipt of notice from KCPL 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 KCPL for all of KCPL'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.

34. The Contractor agrees to comply with the provisions of 29 CFR part 470.

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.