

GPES Terms 2009-01

1. Quoting, offer, and acceptance – Great Plains Energy Services, Inc. (“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. Supplier agrees that all quotations by seller 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 or its affiliates that specifically covers the purchase of goods, then the terms of that agreement control the purchase and sale of the goods, 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 Purchasing 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." Packaging must be limited to material shown on this RFQ or order. Supplier 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 - 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 for late deliveries or breach - GPES 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.
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 Purchasing 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 EXPRESSLY WARRANTS THAT ALL THE GOODS, MATERIALS AND MERCHANDISE COVERED BY ANY PURCHASE ORDER OR OTHER DESCRIPTION OR SPECIFICATION FURNISHED BY GPES WILL BE IN EXACT ACCORDANCE WITH SUCH ORDER, DESCRIPTION OR SPECIFICATION AND FREE FROM DEFECTS IN DESIGN, MATERIALS AND/OR WORKMANSHIP AND THAT GPES 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 GPES 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 GPES 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 GPES.
- b. 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 GPES'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.
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, Vendor must maintain the policy for a minimum period of five years after the completion of the work.
- h. Vendor shall insure all equipment, materials and work against casualty loss until official acceptance by GPES. Vendor shall be responsible for repair or replacement of all equipment, materials or work damaged by casualty. Vendor 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 shall make a good faith effort to use qualified minority-owned or woman-owned 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-owned or woman-owned contractor. GPES shall have the right and power to audit contractor's compliance with this provision and contractor will cooperate with such an audit. In addition, GPES may request and Contractor shall provide a "second tier" report showing direct and indirect spending with minority-owned and woman-owned subcontractors.
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:

- 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 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. Affiliate Language - 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.

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 2004.

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.