

## MEMORANDUM OF AGREEMENT

PERTAINING TO AGGIEBUY PURCHASE ORDER #AB0332118 FOR THE GAS TURBINE GENERATOR #1 - 50,000 HOUR INTERVAL MAINTENANCE PROJECT, ON THE CAMPUS OF TEXAS A&M UNIVERSITY, COLLEGE STATION, TEXAS

This Memorandum of Agreement ("Agreement"), made this 3<sup>rd</sup> day of January, 2018 by and between Texas A&M University, a member of The Texas A&M University System, an agency of the State of Texas hereinafter referred to as the "Owner", and MTU Maintenance Berlin-Brandenburg, hereinafter referred to as the "Contractor", pertains to all items covered by Texas A&M RFP TAMU MAIN 17-0047, TAMU Purchase Order #AB0332118 in the AggieBuy System, together with all the specifications, documents and Terms and Conditions which are hereby agreed to by Contractor and incorporated herein.

**WITNESSETH:** That for and in consideration of the payment and agreement hereinafter mentioned, to be made and performed by Owner, Contractor and Owner agree to the following terms:

1. Contractor shall provide, at Contractor's own proper cost and expense, all material, labor and equipment necessary for the Gas Turbine Generator #1 - 50,000 Hour Interval Maintenance Project and as designated on the tabulation of bids and resolution of award as shown on the face of the pending Purchase Order for the sum of Three Million, One Hundred Five Thousand, One Dollars & Zero Cents (\$3,105,001.00)
2. Contractor agrees that the General and Special Conditions as stated in the attached Appendix A, the printed or written explanatory matter thereof, Scope of Work, and Contractor Requirements and Specifications as stated in RFP 17-0047, are all made a part hereof and collectively evidence and constitute the Texas A&M University Purchase Order. Contractor and Owner have reviewed and agreed to revisions to these terms, a copy is attached for reference.
3. Contractor agrees to be responsible for the timely payment of all costs and expenses incurred in the performance of this Agreement and for the payment of all applicable income and self-employment taxes.
4. Contractor agrees to provide the services covered by the Purchase Order and Agreement, in the time period agreed upon by the Owner designee and Contractor. However, in case where Contractor fails to complete the services within the agreed timeframe, to the extent permitted by the Constitution and laws of the State of Texas, Texas A&M's sole remedy and Contractor's sole liability in that respect, shall be limited to making payments of liquidated

damages to Texas A&M in the amount of \$20,000.00 USD per day, furthermore limited to a maximum amount of 10% of Contract value.

5. It is further agreed that Contractor will provide Owner Certificates of Insurance as required in the specifications and this Agreement prior to beginning work on campus. The Contractor agrees to furnish Performance and Payment Bonds, payable to Texas A&M University, within ten (10) days following award of the Bid and in the amount of 100% of the Purchase Order. The only form of surety acceptable as Performance and Payment Bonds is a surety or blanket bond from a company chartered or authorized to do business in the State of Texas, on the forms provided by The Texas A&M University System (Bid/Proposal Bond Form C-2 (07/07); Performance Bond Form C-6 (05/07); Payment Bond Form C-7 (05/07), copies attached. Each bond shall contain an embossed seal by a Surety(ies). Owner agrees to return to Contractor the Bid Bond which was submitted as a guarantee that Performance and Payment Bonds would be executed, after said Performance and Payment Bonds have been received and accepted by Owner.
6. Contractor hereby agrees that no mechanic, contractor, subcontractor, materialman or other person can or will contract for or in any other manner have or acquire any lien upon any materials covered by this Memorandum of Agreement and resultant Purchase Order.
7. Contractor agrees to indemnify and hold the State of Texas, the Board of Regents of Texas A&M University System, Owner, their officers, employees, and agents (the Indemnified Parties) harmless from and indemnify each against any and all liabilities, actions, damages, suits, proceedings, judgments, and costs (excluding attorney's fees) for claims resulting from the acts or omissions of Contractor performing under this Agreement or the acts or omissions of others under Contractor's supervision and control. To the extent permitted by the Constitution and laws of the State of Texas, Contractor's indemnity obligations under this section 7 shall not exceed the amount payable by Owner to Contractor under this Agreement.
8. Contractor must comply with all Texas A&M University's rules and regulations, and all applicable federal, state and local environmental laws and regulations. This Agreement shall be construed and governed in accordance with the laws of the State of Texas.
9. Contractor shall submit one copy of an itemized invoice showing order number and agency purchase order number. Owner will incur no penalty for late payment if payment is made in 30 or fewer days from receipt of goods or services and an uncontested invoice.
10. Contractor agrees to indemnify and hold Owner harmless from claims involving infringement of patents or copyrights for services Contractor provides.
11. Contractor hereby assigns to Owner any and all claims for overcharges associated with this contract which arise under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. (1973), and which arise under the antitrust laws of the State of Texas, TEX. Bus. & Comm. Code Ann. Sec. 15.01, et seq. (1967).
12. (a) Contractor acknowledges that Owner is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for

public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.

- (b) Upon Owner's written request, Contractor will provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under chapter 552, Texas Government Code, to Owner in a non-proprietary format acceptable to Owner. As used in this provision, "public information" has the meaning assigned Section 552.002, *Texas Government Code*, but only includes information to which Owner has a right of access.
  - (c) Contractor acknowledges that Owner may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), *Texas Government Code*.
13. A child support obligor who is more than thirty (30) days delinquent in paying child support and a business entity which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The *Texas Family Code* requires the following statement: "Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminate and payment may be withheld if this certification is inaccurate."
  14. The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by Owner and Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. Contractor shall submit written notice of a claim of breach of contract under this Chapter to the University Contracts Officer, Texas A&M University, who shall examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve the claim.
  15. Pursuant to Section 2252.903, *Texas Government Code*, Contractor agrees that any payments owing to Contractor under this Agreement may be applied directly toward certain debts or delinquencies that Contractor owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.
  16. If Contractor is a taxable entity subject to Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then Contractor certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that Contractor is exempt from the payment of franchise (margin) taxes.
  17. A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. The *Texas Government Code* requires the following statement: "Under Section 2155.004,

*Texas Government Code*, the contractor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.”

18. Contractor agrees that in accordance with Section 2155.441, *Texas Government Code*, in performing its duties and obligations under this Agreement, Contractor will purchase products and materials produced in Texas when such products and materials are available at a price and time comparable to products and materials produced outside of Texas.
19. Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against Owner shall be in the county in which the primary office of the chief executive officer of Owner is located.
20. Contractor understands that acceptance of funds under this agreement constitutes acceptance of the authority of the Texas State Auditor’s Office or any successor agency (collectively, “Auditor”), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.
21. By executing and/or accepting this Agreement, Contractor and each person signing on behalf of Contractor certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of The Texas A&M University System (TAMUS) or TAMUS Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by Owner or TAMUS, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.
22. Insurance. Contractor shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth below. With the exception of Professional Liability (E&O), all coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to Owner. By requiring such minimum insurance, the Owner shall not be deemed or construed to have assessed the risk that may be applicable to Contractor under this Agreement. Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Contractor is not relieved of any liability or other obligations assumed pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. No policy will be canceled without unconditional written notice to Owner at least ten (10) days before the effective date of the cancellation.

**Coverage**

**Limit**

**A. Worker's Compensation***For Contractor's employees based in the United States and providing services:*

Statutory Benefits (Coverage A)	Statutory
Employers Liability (Coverage B)	\$1,000,000 Each Accident
	\$1,000,000 Disease/Employee
	\$1,000,000 Disease/Policy Limit

Workers' Compensation policy must include under Item 3.A. on the information page of the workers' compensation policy the state in which work is to be performed for Owner. Workers' compensation insurance is required, and no "alternative" forms of insurance will be permitted except for as provided herein.

*For Contractor's employees based in Berlin and providing services:*

Statutory equivalent under German law.

**B. Automobile Liability**

Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Single Limit of liability per accident for Bodily Injury and Property Damage;

**C. Commercial General Liability**

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products / Completed Operations	\$1,000,000
Personal / Advertising Injury	\$1,000,000
Damage to rented Premises	\$300,000
Medical Payments	\$5,000

The required commercial general liability policy will be issued on a form that insures Contractor's or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

**Additional Endorsements**

The Auto and Commercial General Liability Policies shall name The Texas A&M University System Board of Regents for and on behalf of The Texas A&M University System and Texas A&M University as additional insured's.

**D. Contractor will deliver to Owner:**

Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance after the execution and delivery of this Agreement and prior to the performance of any services by Contractor under this Agreement. Additional evidence of insurance will be provided on a Texas Department of Insurance approved certificate form verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

All insurance policies, with the exception of worker's compensation and employer's liability, will be endorsed and name The Board of Regents for and on behalf of The Texas A&M University System, The Texas A&M University System and Texas A&M University as Additional Insureds up to the actual liability limits of the policies maintained by Contractor. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage. The Commercial General Liability Additional Insured endorsement will include on-going and completed operations and will be submitted with the Certificates of Insurance.

All insurance policies will be endorsed to provide a waiver of subrogation in favor of The Board of Regents of The Texas A&M University System, The Texas A&M University System and Texas A&M University. No policy will be canceled without unconditional written notice to Owner at least ten days before the effective date of the cancellation. All insurance policies will be endorsed to require the insurance carrier providing coverage to send notice to Owner ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any required insurance policy.

Any deductible or self-insured retention must be declared to and approved by Owner prior to the performance of any services by Contractor under this Agreement. Contractor is responsible to pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be mailed, faxed, or emailed to the following Owner contact:

Department of Contract Administration  
Texas A&M University  
1182 TAMU  
College Station, Texas 77843-1182  
Facsimile: (979) 862-7130  
Email: [contracts@tamu.edu](mailto:contracts@tamu.edu)

The insurance coverage required by this Agreement will be kept in force until all services have been fully performed and accepted by Owner in writing.

23. Neither party is required to perform any term, condition, or covenant of this Agreement, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other similar occurrence, the cause of which is not reasonably within the control of such party and which by due diligence it is unable to prevent or overcome.
24. Contractor expressly acknowledges that Owner is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by Owner of its right to claim such exemptions, privileges, and immunities as may be provided by law.

25. The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and laws of the State of Texas.
26. Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email or other commercially reasonable means and will be effective when actually received. Owner and Contractor can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

Owner: Texas A&M University  
Department of Procurement Services  
P.O. Box 30013  
College Station, TX 77843-3013  
Attention: Clyde Oberg  
Phone: 979-845-1042  
Fax: 979-845-8171  
E-mail: [co@tamu.edu](mailto:co@tamu.edu)

Contractor: MTU Maintenance Berlin-Brandenburg GmbH  
Dr-Ernst-Zimmermann Str. 2  
D-14974 Ludwigsfelde  
DE  
Attn: Charles McClendon  
Phone: 830-312-3296  
Fax: 229-439-8224  
E-mail: [Charles.McClendon@mtuusa.com](mailto:Charles.McClendon@mtuusa.com)

27. Contractor acknowledges and understands that Section 2252.901, *Texas Government Code*, prohibits Owner from using state appropriated funds to enter into any employment contract, consulting contract, or professional services contract with any individual who has been previously employed, as an employee, by the agency within the past twelve (12) months. If Contractor is an individual, by signing this Agreement, Contractor certifies that Section 2252.901, *Texas Government Code*, does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.
28. Contractor acknowledges that, because Owner is an agency of the State of Texas, liability for the tortious conduct of the agents and employees of Owner or for injuries caused by conditions of tangible state property is provided solely by the provisions of the Texas Tort Claims Act (*Texas Civil Practice and Remedies Code*, Chapters 101 and 104), and that Worker's Compensation Insurance coverage for employees of Owner is provided by owner as mandated by the provisions of Chapter 502, *Texas Labor Code*. Owner shall have the

right, at its option, to (a) obtain liability insurance protecting Owner's buildings and contents, to the extent authorized by Section 51.966, *Texas Education Code*, or other law, or (b) self-insure against any risk that may be incurred by Owner as a result of its operations under this Agreement.

29. Contractor acknowledges that Owner is obligated to comply with Chapter 2270, *Texas Government Code*. By executing this Agreement, Contractor certifies it does not and will not, during the performance of this Agreement, boycott Israel. Contractor acknowledges this Agreement may be terminated if this certification is inaccurate.
30. Contractor acknowledges that Owner is obligated to comply with Subchapter F, Chapter 2252, *Texas Government Code*. By executing this Agreement, Contractor certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated if this certification is inaccurate.

**IN WITNESS WHEREOF**, the parties to these presents have executed this Agreement in two (2) counterparts, each of which shall be deemed an original, in the year and day first written above.

Texas A&M University  
Owner

MTU Maintenance Berlin-Brandenburg  
Contractor

By: \_\_\_\_\_  
Dr. Jerry Strawser  
Executive Vice President and  
Chief Financial Officer

By: \_\_\_\_\_  
Gregor Stoecker, Director of Sales

\_\_\_\_\_  
Matthias Gohlke  
Head of Controlling



# APPENDIX A

## GENERAL AND SPECIAL CONDITIONS REQUEST FOR PROPOSAL TAMU 17-0047

### 1.0 RECEIPT OF PROPOSALS:

- 1.1 Throughout these General and Special Conditions, Texas A&M University will be referred to as **Texas A&M**, and “the successful bidder”, to whom an award-of-order is made, will be referred to as **Contractor**.
- 1.2 To accomplish the work described herein and attached, it is the intent of **Texas A&M** to award a **Purchase Order** to the qualified bidder that submits the “Best Value” bid which complies with the Summary of Work, General Terms & Conditions, Project Requirements and Technical Specifications within and attached. Reference **Reference the RFP for the Scope of Work and submission details**.
- 1.3 The RFP submission details are defined in Section 6.1 of the RFP.
- 1.4 **RESPONSES WILL BE RECEIVED UNTIL 2:00 P.M., Thursday, August 24, 2017** at which time they will be opened in the Conference Room in the Procurement Services Building on the College Station campus of **Texas A&M**, Agronomy Road.
- 1.5 Any deviations by a responder from the Summary of Work, General Terms & Conditions, Project Requirements and Technical Specifications set forth by **Texas A&M** must be very clearly delineated.
- 1.6 Responses received after the advertised time for the bid opening will be ineligible for consideration.
- 1.7 **Texas A&M** reserves the right to reject any and all responses, or any part thereof, and to waive any technicalities or formalities in the RFP process if it is in the best interest of the university to do so.
- 1.8 It is **Texas A&M's** policy not to furnish proposal results over the phone. For information regarding proposal summaries, please provide a self-addressed, stamped envelope with your request to receive a copy of a particular bid summary.
- 1.9 General questions pertaining to this RFP may be directed to Clyde Oberg, Assistant Director, Texas A&M University, Department of Procurement Services, who may be contacted by dialing 979-845-1042 or via e-mail at [co@tamu.edu](mailto:co@tamu.edu).

### 2.0 PROJECT COORDINATOR

- 2.1 The Project Coordinator/Owner's Representative for this project will be from Texas A&M's Utilities & Energy Services Department.
- 2.2 The **Contractor** shall provide sufficient, safe, and proper facilities at all reasonable times for the observation and/or inspection of the work by the **Texas A&M** Project

Coordinator/Owner's Representative who will make periodic visits to the site to inspect the progress and quality of the work and to determine if the work is proceeding in accordance with the Summary of Work, General Terms & Conditions, Project Requirements and Technical Specifications.

### **3.0 PROPOSALS: Please Note Change to Section 3.2 – Pre-Proposal Conference**

- 3.1 Any responder with intentions of submitting a proposal shall carefully study the attached Summary of Work, General Terms & Conditions, Project Requirements and Technical Specifications including: scheduling the performance period, site security and access, product warranty requirements and vehicle parking at the site.
- 3.2 **ALL RESPONDERS MUST VISIT THE JOBSITE WITH THE PROJECT COORDINATOR/OWNER'S REPRESENTATIVE PRIOR TO SUBMITTING A BID.** There is a HIGHLY RECOMMENDED Pre-Proposal Conference and Walk-Thru scheduled for **Thursday, August 3, 2017 at 10:00 PM** to convene in the Conference Room of the Central Utility Plant located on 165 Asbury Street on the main campus of TAMU. Any vendor needing directions to the Pre-Proposal Conference location should contact Clyde Oberg, Assistant Director, at 979- 845-1042 or via e-mail at co@tamu.edu.
- 3.3 In submitting a proposal, the responder agrees to accept a **Purchase Order** accompanied by a **Memorandum of Agreement** incorporating all points included in the Summary of Work, General Terms & Conditions, Project Requirements and Technical Specifications within and attached to this RFP. Prices quoted on proposals must be guaranteed valid for a period of at least ninety (90) days beyond the date of the bid opening. **Texas A&M** agrees that, should a **Purchase Order** be awarded, it will be awarded as soon as possible following the bid opening date unless otherwise stated in the Specifications.
- 3.4 To ensure reliability, serviceability, and quality, entire systems offered by a responder must be provided by one manufacturer, if applicable, to the extent possible. Proposals must very clearly specify the manufacturer(s) of equipment and materials which will be furnished.
- 3.5 Responders must submit a price quotation for each line item indicated on the Proposals.

### **4.0 INSURANCE:**

- 4.1 The **Contractor** shall not commence work until all of the insurance specified on **APPENDIX B** has been obtained and certificates of such insurance in force have been filed with and accepted by **Texas A&M**. Insurance coverage shall provide for a thirty (30) day notice of cancellation or material change to the policy coverage and/or limits and the certificate of insurance in force must include a notice that the policy or policies do contain these provisions. Acceptance of insurance certificates by **Texas A&M** shall not relieve or decrease the liability of the **Contractor**.
- 4.2 Unless otherwise specified, the **Contractor** shall provide and maintain, until the work included in this bid invitation is completed and accepted by **Texas A&M** through the warranty period, the minimum insurance coverages outlined on **APPENDIX B**. Responders must acknowledge these insurance requirements by signature:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

- 4.3 Certificates of Insurance must be delivered or mailed to Clyde Oberg, Assistant Director, at the address indicated in Section 1.0, paragraph 1.3

## 5.0 BONDS:

- 5.1 **NO PERFORMANCE, PAYMENT OR BID BONDS SHALL BE REQUIRED ON A PURCHASE ORDER PROJECT TOTALING \$25,000.00 OR LESS.**
- 5.2 Proposals submitted without **Proposal Guarantees**, and documents from a Surety stating full intent to provide the responder with **Performance and Payment Bonds**, when required, will not be considered.
- 5.3 Faxed copies of Certified checks, Cashier's checks, **Bid, Performance or Payment Bonds** are not acceptable.
- 5.4 To facilitate an immediate award-of-order and project start date, bidders shall submit as an attachment to their proposal, if applicable, a document from a Surety stating full intent to provide the bidder with **Performance and Payment Bonds** as specified in paragraphs 5.6 through 5.7.3.
- 5.5 For projects totaling more than \$25,000.00, a Certified or Cashier's Check, or a **Bid Bond** from a Surety Company authorized to transact business in the State of Texas, in the amount of not less than five percent (5%) of the total of the entire bid, payable without recourse to the order of the Board of Regents of The Texas A&M University System, must accompany each bid proposal as a guarantee (**Proposal Guarantee**) that, if awarded the **Purchase Order**, the **Contractor** will execute and return the required **Performance and Payment Bonds** in such form and with such Sureties as **Texas A&M** may prescribe or approve, the cost of which to be included in the **Contractor's** proposal. If a **Bid Bond** is provided as the **Bid Guarantee**, the **Bid Bond must be submitted on the form provided by the Texas A&M University System (Form C-2), copy attached.**
- 5.5.1 The **Bid Bond** must be accompanied by a properly dated and executed Power of Attorney with a live Surety seal on each document. Failure to do so will constitute an irregular bid which may be rejected. Use of a Surety **Bid Bond** form will not be acceptable.
- 5.5.2 Should the **Contractor** fail to execute and return the **Memorandum of Agreement** and, when required, **Performance and Payment Bonds** within ten (10) days after the date of transmittal to the responder for that purpose, the **Bid Guarantee** shall become the property of **Texas A&M**, not as a penalty but as liquidated damages.
- 5.5.3 **Bid Guaranties** of the two lowest bidders may be retained by **Texas A&M** until

after the **Purchase Order** and **Bonds** have been executed. **Bid Guaranties** of all except the two lowest bidders will be returned by mail within four (4) working days after the opening of bid proposals.

- 5.5.4 **Bid Bonds & The AggieBid System.** Not applicable in this opportunity, as all responses are to be delivered or express mailed directly to the Department of procurement Services.
- 5.6 For projects totaling more than \$25,000, a **Payment Bond** in the full amount of the **Purchase Order** shall be executed and furnished by the **Contractor** for the protection of all claimants supplying labor, equipment, and materials in the performance of the work.
- 5.6.1 The only form of surety acceptable as a **Payment Bond** is a surety or blanket bond from a company chartered or authorized to do business in the State of Texas, on the form provided by the Texas A & M University System (Payment Form C-6B), copy attached. The Bond shall contain an embossed seal by a Surety(ies).
- 5.6.2 The **Payment Bond** shall have attached a valid Power-of-Attorney issued by the Surety, signed and sealed with the corporate embossed seal, authorizing the agent who signs the bond to commit the Surety to the terms of the bond, and stating the limit on the face of the Power-of-Attorney, if any, in the total amount for which the agent is empowered to issue a single bond.
- 5.6.3 The **Payment Bond** shall remain in force until expiration of the construction guaranty which extends for a period of one year after final acceptance of the related project by **Texas A&M**.
- 5.7 A **Performance Bond** in the full amount of the **Purchase Order** shall be executed and furnished by the **Contractor** as a guaranty that the scope of work will be performed faithfully and that **Texas A&M** and the State of Texas will be saved harmless from all costs and damages which **Texas A&M** and the State of Texas may suffer by reason of the **Contractor's** default or failure to perform the work.
- 5.7.1 The only form of surety acceptable as a **Performance Bond** is a surety or blanket bond from a company chartered or authorized to do business in the State of Texas, on the form provided by the Texas A & M University System (Performance Form C-6A), copy attached. The Bond shall contain an embossed seal by a Surety(ies).
- 5.7.2 The **Performance Bond** shall have attached a valid Power-of-Attorney issued by the Surety, signed and sealed with the corporate embossed seal, authorizing the agent who signs the bond to commit the Surety to the terms of the bond, and stating the limit on the face of the Power-of-Attorney, if any, in the total amount for which the agent is empowered to issue a single bond.
- 5.7.3 The **Performance Bond** shall remain in force until expiration of the construction guaranty which extends for a period of one year after final acceptance of the related project by **Texas A&M**.

- 5.8 **Performance and Payment Bonds** must be delivered or mailed to Clyde Oberg at the address indicated in Section 1.0, paragraph 1.3.
- 5.9 Reference **APPENDIX E – TEXAS A&M BONDS FORMS**, for the required Bond Forms.

## 6.0 WARRANTY:

- 6.1 Contractor's General Warranty and Guarantee. Contractor warrants to the Owner that all Work is executed in accordance with the Contract, complete in all parts and in accordance with approved practices and customs, and of the best finish and workmanship. The Contractor further warrants that unless otherwise specified, all materials and equipment incorporated in the Work under the Contract are new. The Owner may, at its option, agree in writing to waive any failure of the Work to conform to the Contract, and to accept a reduction in the Contract Sum for the cost of repair or diminution in value of the Work by reason of such defect. Absent such a written agreement, the Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute and is not waived by any inspection or observation by the Owner, A/E or others, by making any progress payment or final payment, by the use or occupancy of the Work or any portion thereof by the Owner, at any time, or by any repair or correction of such defect made by the Owner.
- 6.2 Warranty Period. Except as may be otherwise specified or agreed, the Contractor shall repair all defects in materials, equipment, or workmanship appearing within one year from the date of Substantial Completion of the Work. If Substantial Completion occurs by phase, then the warranty period for that particular Work begins on the date of such occurrence, or as otherwise stipulated on the Certificate of Substantial Completion for the particular Work.
- 6.3 Limits on Warranty. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
- 6.3.1 Modification or improper maintenance or operation by persons other than Contractor, Subcontractors, or any other individual or entity for whom Contractor is responsible, unless Owner is compelled to undertake maintenance or operation due to the neglect of the Contractor.
  - 6.3.2 Normal wear and tear under normal usage after acceptance of the Work by the Owner.
- 6.4 Events Not Affecting Warranty. Contractor's obligation to perform and complete the Work in a good and workmanlike manner in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
- 6.4.1 Observations by Owner and/or A/E;
  - 6.4.2 Recommendation to pay any progress or final payment by A/E;

- 6.4.3 The issuance of a Certificate of Substantial Completion or any payment by Owner to Contractor under the Contract Documents;
  - 6.4.4 Use or occupancy of the Work or any part thereof by Owner;
  - 6.4.5 Any acceptance by Owner or any failure to do so;
  - 6.4.6 Any review of a Shop Drawing or Sample submittal;
  - 6.4.7 or any inspection, test or approval by others.
- 6.5 Separate Warranties. If a particular piece of equipment or component of the Work for which the Contract requires a separate warranty is placed in continuous service before Substantial Completion, the Warranty Period for that equipment or component will not begin until Substantial Completion, regardless of any warranty agreements in place between suppliers and/or Subcontractors and the Contractor. The ODR will certify the date of service commencement in the Certificate of Substantial Completion.
- 6.5.1 In addition to the Contractor's warranty and duty to repair, the Contractor expressly assumes all warranty obligations required under the Contract for specific building components, systems and equipment.
  - 6.5.2 The Contractor may satisfy any such obligation by obtaining and assigning to the Owner a complying warranty from a manufacturer, supplier, or Subcontractor. Where an assigned warranty is tendered and accepted by the Owner which does not fully comply with the requirements of the Contract, the Contractor remains liable to the Owner on all elements of the required warranty not provided by the assigned warranty.
- 6.6 Correction of Defects. Upon receipt of written notice from the Owner, or any agent of the Owner designated as responsible for management of the Warranty Period, of the discovery of a defect, the Contractor shall promptly remedy the defect(s), and provide written notice to the Owner and designated agent indicating action taken. In case of emergency where delay would cause serious risk of loss or damage to the Owner, or if the Contractor fails to remedy within 30 days, or within another period agreed to in writing, the Owner may correct the defect and be reimbursed the cost of remedying the defect from the Contractor or its Surety.

## **7.0 PREVAILING WAGE:**

- 7.1 The **Contractor** will be required to pay not less than the wage scale of the various classes of labor as shown on the attached (current) Texas A&M University System prevailing wage schedule for Brazos County.
- 7.2 The specified rates are minimum rates only and **Texas A&M** will not consider any claims for additional compensation made by any Contractor or Subcontractor(s) because of payment by the Contractor or Subcontractor(s) of any wage rates in excess of the applicable minimum rates contained in the Schedule. Reference **APPENDIX D – Prevailing Wage Schedule for Brazos County**.

## **8.0 HISTORICALLY UNDERUTILIZED BUSINESSES**

- 8.1 It is the policy of the State of Texas, Texas Procurement and Support Services, Texas A&M

University System, Texas A&M and the Department of Procurement Services to ensure equal opportunity for Historically Underutilized Businesses (HUBs) in prime contracts, subcontracts and purchasing transactions. Texas A&M initiatives and State law mandate dictate that the Department of Procurement Services assist our prime contractors and core suppliers to achieve these ends through race, ethnic, and gender-neutral means. The goal of the HUB Subcontracting Plan (HSP) is to promote full and equal business opportunity for all businesses in Texas A&M contracting and purchasing.

- 8.2 Attached you will find **The State of Texas** HUB Subcontracting Plan (HSP). Failure to comply with the documentation requirements outlined in the attached HSP will result in Texas A&M rejecting your bid, proposal, or offer as a material failure to comply with the advertised specifications. Reference **APPENDIX C – HUB Subcontracting Plan**. The HSP Checklist sheet is included.

## 9.0 DISPUTE RESOLUTION:

- 9.1 The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by Owner and Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. Contractor shall submit written notice of a claim of breach of contract under this Chapter to the University Contracts Officer, Texas A&M University, who shall examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve the claim.

## 10.0 SUBMITTAL REQUIREMENTS:

- 10.1 **REFERENCES:** Bidders must include with their bid proposals a reference list of at least three (3) similar projects, comparable in quality and scope to that specified in the attached documents, that they have performed within the past five years. This list should include the names, addresses and telephone numbers of the owners' representatives for whom the prior work was performed.
- 10.2 **LIST OF SUBCONTRACTORS:** Bidders must include with their bid proposals a complete list of the names of all Subcontractors, if any, proposed to perform various parts of the project. This is to include contracts for work to be let by Subcontractors as well as those let by the Contractor. **If Subcontractor will not be utilized on this project, bidder must indicate below:**

No Subcontractors will be utilized on this project

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

- 10.3 **INSURANCE:** The Contractor will be required to provide proof of insurance according

to the attached schedule (**APPENDIX B**) prior to beginning any work on the **Texas A&M** campus. Refer to Section 4.0.

10.4 **BONDS:** Refer to Section 5.0

10.5 **LIST OF MATERIALS:** Within ten (10) days after issuance of **Purchase Order** and **Memorandum of Agreement**, the **Contractor** shall submit a list of all materials to be supplied to the project coordinator. Each item of material shall be designated by trade or brand name, catalog number, manufacturer's name and all other information required to properly describe the item.

10.6 **FORMS:** Refer to Section 1.0, paragraph 1.5.

10.7 All submittals (unless specified otherwise) must be submitted on-line via the AggieBid System as indicated in Section 1.0, paragraph 1.3. Reference Section 5.5.4 for submission of the Bid Bond.

## **11.0 PARKING ON THE TEXAS A&M CAMPUS:**

11.1 All vehicles parked on the **Texas A&M** campus must properly display a valid **Texas A&M** parking permit.

11.2 The Texas A&M Department of Transportation Services supervises and coordinates all parking, transportation and traffic related functions on the campus.

11.3 The **Contractor** will be responsible for obtaining parking permits from Transportation Services and resolving, should they arise, any parking regulation disputes and violations. The telephone number for Transportation Services is 979-862-7275.

## **12.0 PROJECT COMPLETION TIME:**

12.1 **THE SPECIFIED TIME PERIOD FOR COMPLETING THIS PROJECT WORKSCOPE IS to be determined by the Project Manager and the Contractor**, contingent upon **Texas A&M** awarding this project within five (5) working days following the bid-opening date.

12.2 Access to the jobsite will be **as determined by the Project Manager and the Contractor** during this time period.



## PERFORMANCE BOND

STATE OF TEXAS

COUNTY OF BRAZOS

KNOW ALL MEN BY THESE PRESENTS

That we, MTU Maintenance Berlin-Brandenburg, as Principal, and Philadelphia Indemnity Insurance Company, as Surety, are hereby held and firmly bound unto the State of Texas in the penal sum of: Three Million One Hundred Five Thousand One and NO/100 Dollars (\$ 3,105,001.00) for the payment whereof, the said Principal and Surety bind themselves, their heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

The conditions of this obligation are such that, whereas the Principal entered into a certain contract (the "Contract"), which Contract is incorporated into this Performance Bond by this reference, with the State of Texas acting by and through the Board of Regents of The Texas A&M University System, as Obligee, dated 10/24/2017 for the GTG1 50,000 hour overhaul, Combined Heat and Power System Maintenance, Proposal 17-0047, Project No. AB0332118

**NOW, THEREFORE**, if the Principal shall faithfully perform the Contract in accordance with the Contract Documents, including any warranties, and shall fully indemnify, and save harmless the State of Texas from all costs and damage that the State of Texas may suffer by reason of the Principal's default or failure to perform and shall fully reimburse and repay the State of Texas all outlay and expense that the State of Texas may incur in making good any such default or failure to perform, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

In the event the Principal is declared in default under the Contract, Surety will, within fifteen (15) days of the determination of such default, take over and assume responsibility for completion of such Contract and become entitled to the payment of the balance of the Contract Price, or the Surety shall make other arrangements satisfactory to the Obligee for the completion of the defaulted Work. Conditioned upon the Surety's faithful performance of its obligations, the Surety's liability shall not exceed the penalty of this Bond.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed under the Contract or to the Specifications accompanying the same shall in any manner affect its obligation on this Performance Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the Specifications.

The Surety agrees to pay to the State of Texas upon demand all loss and expenses, including attorney's fees and court costs, incurred by the State of Texas by reason of or on account of any breach of this obligation by the Surety.

This Bond is issued pursuant to the requirements of Section 2253.021, Texas Government Code, as amended.

**IN WITNESS WHEREOF**, the Principal and Surety have executed and sealed this instrument this 29th day of January, 20 18.

MTU Maintenance Berlin-Brandenburg Principal

(PRINCIPAL'S SEAL if a corporation)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Philadelphia Indemnity Insurance Company, Surety

(SURETY'S SEAL)

By: \_\_\_\_\_  
Name: Michael N. Rudberg, Atty-in-Fact  
Attorney-in-Fact

## PAYMENT BOND

STATE OF TEXAS

COUNTY OF BRAZOS

KNOW ALL MEN BY THESE PRESENTS

That we, MTU Maintenance Berlin-Brandenburg, as Principal, and Philadelphia Indemnity Insurance Company, as Surety, are hereby held and firmly bound unto the State of Texas in the penal sum of: Three Million One Hundred Five Thousand One and NO/100\*\*\*\*\* Dollars (\$ 3,105,001.00) for the payment whereof, the said Principal and Surety bind themselves, their heirs, executors, administrators and successors, jointly and severally firmly by these presents.

The conditions of this obligation are such that, whereas the Principal entered into a certain contract (the "Contract"), which Contract is incorporated into this Payment Bond by this reference, with the State of Texas acting by and through the Board of Regents of The Texas A&M University System, as Oblige, dated 10/24/2017 for the GTG1 50,000 hour overhaul, Combined Heat and Power System Maintenance, Proposal 17-0047 Project No. AB0332118.

**NOW, THEREFORE**, if the Principal shall promptly make payments to all claimants, as defined in Chapter 2253, Texas Government Code, supplying labor and materials in the prosecution of the work provided for in said Contract, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

This Bond is made and entered into solely for the protection of all claimants supplying labor and material in the prosecution of the Work provided for in said Contract, and all such claimants shall have a direct right of action under the Bond as provided in Chapter 2253, Texas Government Code.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed under the Contract shall in any wise affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed under the Contract.

The Surety agrees to pay the State of Texas upon demand all loss and expense, including attorney's fees and court costs, incurred by the State of Texas by reason of or on account of any breach of this obligation by the Surety.

**IN WITNESS WHEREOF**, the Principal and Surety have duly signed and sealed this instrument this 29th day of January, 20 18.

MTU Maintenance Berlin-Brandenburg, Principal

(PRINCIPAL'S SEAL)  
if a corporation)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Philadelphia Indemnity Insurance Company, Surety

(SURETY'S SEAL)

By: \_\_\_\_\_  
Name: Michael N. Rudberg, Atty-in-Fact  
Attorney-in-Fact