

## **COUNCIL ACTION FORM**

**SUBJECT: POWER PLANT UNIT #8 COAL MILL PARTS**

**BACKGROUND:**

This bid is for the purchase of mill parts needed for planned mill rebuilds associated with routine maintenance and inventory replenishment for the Power Plant Unit #8 Coal Mills. This equipment is used for pulverizing coal into a powder that is used as fuel in the Unit #8 Boiler. A total of four mills provide coal for Unit #8, and three of those four must be operating for the Plant to be fully operational. If a second mill were to go offline, the generating capacity of the Plant would be limited due to the lack of ability to get fuel into the boiler. As a result, the Power Plant may have to purchase electricity, or start up one or both gas turbines in order to supplement generating capacity. This would likely lead to significantly higher production costs.

The majority of the parts on this bid have a long lead time and are being purchased now for the planned maintenance of the coal mills. Maintenance delays will be reduced significantly by having these parts in stock at the Plant and minimize the risk of the Plant having to run at less than full capacity if more than one of the coal mills goes offline. In addition, by purchasing these parts in higher quantities based on planned rebuilds, as opposed to an as-needed basis, the City realizes savings based on increased volume discounts and overall reduced transaction costs associated with shipping costs and multiple issuances of purchase orders.

Funding is available from the approved FY2009/10 Electric Production operating budget for Unit #8 Boiler Maintenance, which contains \$313,500 for parts. If needed, funding is also available from the approved FY2009/10 Electric Production operating budget for Unit #7 Boiler Maintenance, which contains \$150,000 for parts. Of the \$463,500 amount available between these two accounts, \$187,741.48 has been spent, which leaves \$275,758.52 remaining.

**This is the third time that these parts have gone out for bid.** The first time these parts were bid out was through an invitation to bid process. On January 12, 2010, City Council rejected the single bid received and directed staff to rebid the parts. The second time these parts also were bid out through an invitation to bid process, but the terms & conditions were stripped down to only those applicable to the purchase of these parts. On February 23, 2010, City Council allowed the single bidder to withdraw its bid and directed staff to attempt to secure the critical mill parts through the issuance of a request for proposal (RFP) process.

This group of parts has been very challenging for staff to procure, primarily due to exceptions taken by the single bidder to the City's terms & conditions each time bids were solicited. In addition, those same terms & conditions prevented another company

from submitting its bid because it felt it could not fully agree to them. As a result of these challenges on the first two bid attempts, staff recommended, and the Council agreed, that on the third attempt to secure the needed parts an RFP would be issued instead of an invitation to bid. In issuing an RFP, the City could allow more flexibility in negotiation of mutually agreeable terms and conditions. It also offers more versatility on different sources for the parts that may be available.

Both Purchasing and Electric Services staff have done a considerable amount of searching for potential responders to the RFP for these parts. In addition to that, Electric Services staff provided drawings and additional technical information about the parts to aid these potential responders in identifying and pricing them. With the combination of these two efforts, along with the issuance of the RFP containing very limited City of Ames terms & conditions (reduced to only those applicable to the procurement of parts), staff believed there was enough information and flexibility that would enable the City to receive proposals from additional firms compared to previous attempts.

On April 1, 2010, the RFP document was issued to twenty-one (21) firms. The RFP invitation was also advertised on the Current Bid Opportunities section of the Purchasing webpage. On May 5, 2010, staff received competitive sealed proposals for Unit #8 coal mill parts from two firms as shown on the attached report (Attachment A). After their evaluation, staff determined that the proposal submitted by Bradken is non-responsive. The non-responsiveness of Bradken's proposal was based on: 1) the firm provided its proposal on its own Quotation form, 2) the firm provided pricing on only five of the sixteen items listed, 3) the pricing was per Bradken's Terms and Conditions, and 4) the prices quoted could change at any time prior to order placement.

As a result, only one proposal remains -- that being from Babcock & Wilcox (B&W), Barberton, OH, in the amount of \$212,968.36 (inclusive of sales-tax). **Despite reduced City of Ames terms & conditions on the request for proposal, B & W still took numerous exceptions, and also inserted some modifications on the City of Ames RFP document which it submitted along with its pricing.** Staff requested an electronic version of the B&W red-lined RFP document which contained all of these exceptions and modifications in order to expedite review by the City Attorney. A copy of the RFP (Attachment B) with these exceptions and modifications notated in red has been attached for City Council reference.

**The City Attorney found that the majority of the exceptions taken and modifications proposed to the City's terms and conditions are counter to most of the tenets of the City's purchasing policies. In this instance, however, the City does not have any other option but to review them, understand the risks associated with them, and make a decision on whether to move forward in agreement or not. Based on this, the exceptions and modifications by B & W are presented to City Council for consideration.**

The exceptions and modifications that have been identified as objectionable are shown on Attachment C. All other exceptions and modifications to the RFP document not

identified in Attachment C have been reviewed by staff and the City Attorney, and it has been determined that those did not pose a risk to the City.

**City Council should note that B&W is a very large international company and it is the original equipment manufacturer (OEM) for both the coal mills and the replacement parts that need to be ordered. Since these are parts from the original manufacturer, the staff believes that these parts will meet our performance needs. In addition, B&W is a reputable provider and its representatives provide excellent service.**

The equipment requiring the replacement parts is over thirty years old. Many foundries and other companies that formerly sold replacement parts are apparently no longer offering them because they have not responded to numerous request for bids. This essentially means that B&W is the single source for these parts and further explains why it is the only company to provide bids the previous two times this went out. **The City Council should be advised that the Power Plant will need to order parts in the future for this same equipment. At that time, B&W may need to be considered a "sole source" based on the difficulty in bidding these parts. Inevitably, this will be a continuing issue as long as equipment from B&W needs to be maintained.**

**Staff has reviewed the exceptions and modifications proposed by B&W and has determined that it is worth the risk by agreeing to its proposed terms and conditions. Staff believes it is worth the purchase risk because there are potentially far greater risks for Electric Services, and impacts to the ratepayers, if there are continued delays on ordering these parts or if no agreement is reached and the parts are never ordered.**

Due to the lack of replacement parts, since December 2009 Power Plant staff has twice been required to put back into service two mills on Unit 8 re-using worn and damaged mill parts in order to operate the unit and to burn out coal in bunkers that had overheated by spontaneous combustion. If left unattended, these bunkers would have created a major safety hazard for the Plant (due to the potential of a coal dust explosion).

Another significant reason to accept these risks is to maintain the full generating capability of the Power Plant as much as possible, which helps to protect the City from exposure to very expensive power pricing and electric system reliability problems.

#### **ALTERNATIVES:**

- 1a. Agree to exceptions and modifications to the terms and conditions of the City of Ames request for proposal document.
- b. Award a contract to Babcock & Wilcox, Barberton, OH, for the purchase of Unit # 8 coal mill parts in the amount of \$212,968.36 (inclusive of sales-tax).

2. Reject all proposals and direct staff to delay purchase of replacement parts.

**MANAGER'S RECOMMENDED ACTION:**

The purchase of these mill parts in advance of major maintenance work will reduce the risks of delays on planned mill rebuilds, and also help reduce downtime due to unplanned mill equipment failures. Having a coal mill fail and remain down for an extended period of time increases the risk of incurring significant cost for purchased power, should we need to purchase power at a high-cost time.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, agreeing to exceptions and modifications to the terms and conditions of the City of Ames request for proposal document, and awarding a contract to Babcock & Wilcox, Barberton, OH, for the purchase of Unit # 8 coal mill parts in the amount of \$212,968.36 (inclusive of sales-tax).



# REQUEST FOR PROPOSAL NO. 2010-172 UNIT #8 COAL MILL PARTS

Company Name of Bidder:	B & W			Bradken
GROUP 1				** NON-RESPONSIVE **
DESCRIPTION	QTY	UNIT PRICE	Total	
Set Wedge Ring	3	\$ 4,734.50	\$ 14,203.50	
Yoke Assy	1	\$ 26,990.00	\$ 26,990.00	
Sales or Use Tax (7%)			\$ 2,883.55	
Non-Taxable Freight in Above Total			\$ 1,575.00	
OVERALL	\$45,652.05			
GROUP 2				
DESCRIPTION	QTY	UNIT PRICE	Total	
Socket Assy's Spring	18	\$ 372.72	\$ 6,708.96	
Ring Bottom Seal Kit	2	\$ 12,355.00	\$ 24,710.00	
Pyrite Gate	6	\$ 305.55	\$ 1,833.30	
Sales or Use Tax (7%)			\$ 2,327.66	
Non-Taxable Freight in Above Total			\$ 157.00	
OVERALL	\$35,736.92			
GROUP 3				
DESCRIPTION	QTY	UNIT PRICE	Total	
Housing Units VAM 20	3	\$ 4,250.00	\$ 12,750.00	
Housing Unit (Left)	1	\$ 425.00	\$ 425.00	
Housing Unit (Right)	1	\$ 425.00	\$ 425.00	
Clamp, Housing Units	36	\$ 18.55	\$ 667.80	
Spring, 1.5 Inch EL64	12	\$ 1,620.00	\$ 19,440.00	
Fill In Balls VAM 20 9.25"	6	\$ 615.00	\$ 3,690.00	
Fill In Balls VAM 20 10.5"	6	\$ 645.00	\$ 3,870.00	
Fill In Balls VAM 20 9.875"	6	\$ 625.00	\$ 3,750.00	
Fill In Balls VAM 20 12.25"	15	\$ 685.00	\$ 10,275.00	
Upper Grinding Ring	2	\$ 18,825.00	\$ 37,650.00	
Lower Grining Ring	2	\$ 14,290.00	\$ 28,580.00	
Sales or Use Tax (7%)			\$ 8,506.60	
Non-Taxable Freight in Above Total			\$ 1,550.00	
OVERALL	\$131,579.40			
GRAND TOTAL:	\$212,968.36			
	20 Weeks ARO			

**OFFER FORM  
UNIT #8 COAL MILL PARTS**

To provide all equipment, materials, transportation, and other components as specified herein to the City of Ames, Iowa.

Name of Bidder                      **The Babcock and Wilcox Company**  
Address of Bidder                **20 South Van Buren Avenue**  
   **Barberton, Ohio 447203**

To the City of Ames, Iowa:

The undersigned as bidder, having examined and determined the scope of the contract documents, hereby proposes to provide the required equipment, materials, transportation and other components to perform the work as described in the Bidder's Proposal/Quotation, F.O.B. Destination.

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\_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ as  
follows

**\*\* The City reserves the right to award this contract in whole or in groups. \*\***

**We the undersigned agree to furnish and deliver Unit # 8 coal mill parts as specified for the following bid amounts:**

**GROUP 1**

QTY	U/M	DESCRIPTION	UNIT PRICE	TOTAL COST
3	EA	SET WEDGE RING *B&W DWG # 183706c. Catalog # 3065522 or EQUIVALENT* MFG. <u>Babcock and Wilcox</u> Catalog# <u>2336815</u>	\$ <u>38,920.00</u>	\$ <u>38,920.00</u>
1	EA	YOKE ASSY *B&W DWG # 183704-O. B&W PART #245859E OR EQUIVALENT MFG. <u>Babcock and Wilcox</u> Catalog# <u>3065522</u>	\$ <u>4,734.50</u>	\$ <u>4,734.50</u>
		Sales and/or Use tax on above materials (7% if licensed to pay Iowa Sales Tax.)		\$ <u>3,055.82</u>
		Non Taxable Freight Amount (All Prices quoted FOB Destination with full freight and/or delivery charges allowed)		\$ <u>425.00</u>

	Lead Time from PO Receipt Date: <u>12 Weeks</u>	<b>Overall Total:</b>	<b>\$ <u>47,135.32</u></b>
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## GROUP 2

QTY	U/M	DESCRIPTION	UNIT PRICE	TOTAL COST
18	EA	SOCKET ASSY'S, SPRING *B&W DWG # 7000051 or EQUIVALENT* MFG. <u>Babcock and Wilcox</u> Catalog# <u>7000051</u>	\$ <u>372.72</u>	\$ <u>6,708.96</u>
2	EA	RING BOTTOM SEAL KIT *B&W PART #7000154 or EQUIVALENT* MFG. <u>Babcock and Wilcox</u> Catalog# <u>7000154</u>	\$ <u>12,355.00</u>	\$ <u>24,710.00</u>
6	EA	PYRITE GATE *B&W DWG # 7000146. Catalog # 3092830 or EQUIVALENT* MFG. <u>Babcock and Wilcox</u> Catalog# <u>3092830</u>	\$ <u>305.55</u>	\$ <u>1,833.30</u>
Sales and/or Use tax on above materials (7% if licensed to pay Iowa Sales Tax.)				\$ <u>2,327.66</u>
Non Taxable Freight Amount (All Prices quoted FOB Destination with full freight and/or delivery charges allowed)				\$ <u>157.00</u>
		Lead Time from PO Receipt Date: <u>5 Weeks</u>	<b>Overall Total:</b>	<b>\$ <u>35,736.92</u></b>

## GROUP 3

QTY	U/M	DESCRIPTION	UNIT PRICE	TOTAL COST
3	SETS (10 EA)	HOUSING UNITS VAM 20 *B&W PART # 7000058, Catalog # 4664888 or EQUIVALENT* MFG. <u>Babcock and Wilcox</u> Catalog# <u>4664888</u>	\$ <u>425.00</u>	\$ <u>5,525.00</u>
1	EA	HOUSING UNIT VAM 20 *B&W PART# 7000059, Catalog # 4664887 LEFT or EQUIVALENT* MFG. <u>Babcock and Wilcox</u> Catalog# <u>4664887</u>	\$ <u>425.00</u>	\$ <u>425.00</u>

1	EA	HOUSING UNIT VAM 20 *B&W PART# 7000059, Catalog # 4664886 RIGHT or EQUIVALENT* MFG. <u>Babcock and Wilcox</u> Catalog# <u>4664886</u>	\$ <u>425.00</u>	\$ <u>425.00</u>
36	EA	CLAMP, HOUSING UNITS *B&W PART # 7001685 or EQUIVALENT* MFG. <u>Babcock and Wilcox</u> Catalog# <u>7001685</u>	\$ <u>18.55</u>	\$ <u>667.80</u>
12	EA	SPRING, 1.5 INCH EL64 PULVERIZER WITH 2 FLATS *B&W PART #7000184 or EQUIVALENT* MFG. <u>Babcock and Wilcox</u> Catalog# <u>7000184</u>	\$ <u>1,620.00</u>	\$ <u>19,440.00</u>
6	EA	FILL IN BALLS VAM 20 9.25" *B&W CATALOG # 2230204 OR EQUIVALENT* MFG. <u>Babcock and Wilcox</u> Catalog# <u>2230204</u>	\$ <u>615.00</u>	\$ <u>3,690.00</u>
6	EA	FILL IN BALLS VAM 20 10.5" *B&W CATALOG # 2230206 OR EQUIVALENT* MFG. <u>Babcock and Wilcox</u> Catalog# <u>2230206</u>	\$ <u>645.00</u>	\$ <u>3,870.00</u>
6	EA	FILL IN BALLS VAM 20 9.875" *B&W CATALOG # 2230205 OR EQUIVALENT* MFG. <u>Babcock and Wilcox</u> Catalog# <u>2230205</u>	\$ <u>625.00</u>	\$ <u>3,750.00</u>
15	EA	FILL IN BALLS VAM 20 12.25" *B&W PART #7001550, CATALOG # 2230208 OR EQUIVALENT* MFG. <u>Babcock and Wilcox</u> Catalog# <u>2230208</u>	\$ <u>685.00</u>	\$ <u>10,275.00</u>



2	EA	UPPER GRINDING RING VAM 20 *B&W PART #7001550, CATALOG # 4702180 OR EQUIVALENT* MFG. <u>Babcock and Wilcox</u> Catalog# <u>4702180</u>	\$ <u>18,825.00</u>	\$ <u>28,580.00</u>
2	EA	LOWER GRINDING RING VAM 20 *B&W PART #8002912 OR EQUIVALENT* MFG. <u>Babcock and Wilcox</u> Catalog# _____	\$ <u>14,290.00</u>	\$ <u>28,580.00</u>
Sales and/or Use tax on above materials (7% if licensed to pay Iowa Sales Tax.)				\$ <u>8,000.85</u>
Non Taxable Freight Amount (All Prices quoted FOB Destination with full freight and/or delivery charges allowed)				\$ <u>1,550.00</u>
Lead Time from PO Receipt Date: <u>20 Weeks</u>			Overall Total:	\$ <u>123,848.65</u>

**Option:**

Percentage discount off of Overall Totals of Group 1, Group 2 and Group 3 if all three are purchased as a package: 00.0 %

The undersigned bidder certifies that this proposal is made in good faith without collusion or connection with any other person or persons bidding on the work.

It is understood and agreed that if this proposal is accepted, the Contract Price includes Federal, State and local taxes levied on wages and/or salaries paid to Contractor's employees and all taxes based upon net income of Contractor's business. However, the Contract Price includes sales tax but is exclusive of any other present or future Federal, State, Municipal or other sales or use tax with respect to the work covered hereby, or of any other present or future excise tax upon or measured by the gross receipts from this transaction or any allocated portion thereof or by the gross value of the work covered hereby; and of any present or future property tax or other similar change with respect to the work covered hereby. If Contractor is required by applicable law or regulation to pay or collect any such tax or taxes on account of this transaction or the work covered hereby, then such amount of tax and any penalties or interest thereon shall be reimbursed to Contractor or paid by the City.

**Deleted:** The undersigned bidder states that this proposal is made in conformity with the contract documents and agrees that, in the event of any discrepancies or differences between any conditions of this proposal and the contract documents prepared by the City of Ames, Iowa, the provisions of the latter shall prevail.

**Deleted:** bid amounts are inclusive of all taxes now or hereafter imposed by any Federal, or state, or other governmental agency and that such taxes shall be paid by the contractor

Submitted this 20<sup>th</sup> day of May, 2010.

Company Name of Bidder The Babcock and Wilcox Company  
Address of Bidder 20 South Van Buren Avenue  
Barberton, Ohio 447203

Signature of Authorized Agent  
Printed Name and Title Bill J. Baumgartner General Manager  
Telephone Number 1-800-354-4400  
Fax Number 330.860.9350  
E-mail TSR@babcock.com

**Check appropriate box:**

☐ Individual/Sole Proprietor    ☒ Corporation    ☐ Partnership    ☐ Other

**Taxpayer Identification Number (TIN): Please provide TIN**

Employer identification number  
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## **EVALUATION METHOD AND CRITERIA**

A selection team comprised of representatives from the Electric Services Department will review and evaluate the submittals, in consultation with representatives of the City Manager's Department, and Legal Services. RFP responses will be evaluated to ascertain which proposal best meets the City's needs. The City reserves the right to conduct negotiations with the finalist(s) in order to reach an agreement that meets the City's need and to accept revisions of proposals.

The goal of the selection team is to identify the proposal(s) that is in the City's best interest. The recommendation of the selection team will be submitted to the appropriate awarding authority for action thereon.

### **Method of Award - Best Evaluative Score Based on Written Response**

It is the intent of the City to award this Contract to the Vendor(s) who receive(s) the highest score when the Responses submitted by interested Vendors are reviewed by the City's selection team. For this RFP, the selection team will score responses based on the following criteria:

1. Price
2. Years of experience on manufacturing the parts specified in this RFP document
3. References
4. Lead time / Delivery
5. Metallurgy proposed



## GENERAL TERMS AND CONDITIONS

### METHOD OF BIDDING

Proposal documents can be obtained by contacting the Purchasing Division offices, 515 Clark Avenue, Ames, IA 50010. Responders using proposal documents not obtained from the City of Ames Purchasing Division are advised to contact the City of Ames Purchasing Division to provide a contact name, mailing address and phone number to enable receipt of necessary addenda. Reproduction of these documents without the express permission of the City of Ames is prohibited.

The release of information by the City to the public is subject to *Iowa Code* Chapter 22 and other applicable provisions of the law relating to the release of records in the possession of the City. Responders are encouraged to familiarize themselves with these provisions prior to submitting a proposal. All information submitted by a respondent may be treated as public information by the City unless the Responder properly requests that information be treated as confidential and cites to applicable confidentiality provisions of Chapter 22 at the time of submitting the proposal. In the event the Responder marks each page of the proposal as proprietary or confidential without adhering to the requirements of the Section, the City may reject the proposal as noncompliant.

By submitting a proposal the Responder agrees that the City may copy the proposal for purposes of facilitating the evaluation or to respond to request for public records unless the information is to be treated confidential in accordance with Chapter 22 as referenced above. The Responder consents to such copying by submitting a proposal and warrants that such copying will not violate the rights of any third parties. In the event the respondent copyrights its proposal, the City may reject the proposal as noncompliant.

### RESPONDER FORMS, TERMS, AND CONDITIONS

If a Responder intends to request that the City of Ames complete any Responder application form, or any Responder agreement form, or agree to any Responder terms or conditions in connection with the proposed contract, the proposed forms and/or terms or conditions must be submitted with the proposal for review by the City's legal counsel during the evaluation of the proposal. This includes, but is not limited to Responder credit application and customer agreement forms, Responder lease forms, Responder terms/conditions of sale, Responder shipping or delivery terms, and Responder billing/payment terms.

Responders are advised that in the event any such forms or terms contradict City of Ames specifications or other contract requirements, the proposal may be rejected due to the contradiction unless Responders has indicated deletion of such clauses prior to submission to the City. If such forms/terms indicate a firm other than the Responder is in any way a party to the proposed contract, the proposed party must also indicate concurrence with deletion of such clauses.

If such forms or terms or conditions require that payments be remitted to other than the Responder, Responder shall indicate the name and address of the firm to whom Responder would request payments to be made, and the firm's relationship to the Responder.

If no Responder forms or terms or conditions are included with the proposal, no such forms or terms or conditions will be approved by the City during the evaluation or award processes or following award of contract. If the proposal does not indicate the proposed contractor, vendor, or payee to be a person or company other than the Responder 1) only the Responder will be considered as contractor/vendor, and 2) payments will be made only to the Responder to whom the contract is awarded. If the proposal does not clearly indicate that a person or company other than or in addition to the Responder would in any way be a party to the proposed contract, only the Responder would be considered the contractor/vendor.

**The City of Ames will in no case agree to contract terms or conditions not in compliance with City of Ames specifications and/or not submitted for review with proposals.**

#### **F.O.B. AND FREIGHT & TRANSPORTATION CHARGES**

All equipment, materials, and/or supplies furnished under the contract shall be F.O.B. destination with full freight allowed, unless otherwise specified in the RFP's project specific requirements. Title shall pass upon payment by the City and risk of loss shall pass to the City upon receipt by the City at its designated point of delivery.

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Proposal prices shall be inclusive of all freight and transportation costs.

#### **SUBMISSION OF PROPOSALS**

Each proposal shall be submitted on the Offer Form included with the contract documents, with all prices and requested data properly filled in, and accompanied by other data and information as required herein.

Proposals shall be submitted on or before the day and hour set for the proposal opening. Proposals shall be submitted in a sealed envelope addressed to the City Clerk, City Hall, Ames, Iowa. Envelopes shall be endorsed on the outside with the offerer's name, the contract number, and the title.

**Proposals submitted via facsimile machines and/or e-mail will not be accepted.**

Proposals may be withdrawn, altered, and/or resubmitted at any time before the time set for the opening of proposals. They may not be withdrawn within sixty days thereafter.

Proposal must be received at the time and place specified. Failure to submit the required number of copies may deem the vendor non-responsive.

Each bidder should submit a base proposal in the specified manner, but may also



propose other options to the City, either as additions or alternates, to the base proposal. Such additional offerings should be clearly identified. The City prefers that responses to be submitted in same Item (paragraph) sequence as the RFP and using same item (paragraph) numbers for reference.

Vendors are required to state exactly what they intend to furnish to the City via this RFP and must indicate any variances to the terms, conditions, and specifications of this RFP no matter how slight. If variations are not stated in the Vendor's Offer, it shall be construed that the Vendor's Offer fully complies with all conditions identified in this RFP.

Unit prices shall be provided by the bidder on the Offer Form when required in conjunction with the prescribed method of award and **shall be for the unit of measure requested.**

### **SIGNATURES OF OFFERERS**

Each offerer shall sign the Offer Form, using his or her usual signature, and giving his or her full business address.

Proposals by partnerships shall be signed with the partnership name by one of the members of the partnership or by an authorized representative, followed by the designation of the person authorized to execute such documents.

The names of all persons signing should also be typed or printed below the signature.

A proposal by a person who affixes to his or her signature the word "president", "secretary", "agent", or other designation, without disclosing his or her principal will be rejected.

When requested by the purchaser, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished.

### **TAXES**

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The successful bidder is subject to payment of Iowa income tax in amounts prescribed by law. If the successful bidder is a non-Iowa partnership, individual or association, he or she shall furnish evidence, prior to execution of the contract, that bond or securities have been posted with the Iowa State Revenue Department in the amount required by law.

The City of Ames, Iowa has imposed a one-percent local option sales tax. Each bidder is responsible for determining how these taxes may affect the bid submitted for this project. Questions concerning application of the one-percent local option sales tax should be addressed to the Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319.

Bidders are advised that most goods and services purchased for the Electric Services Department are subject to State of Iowa sales taxes. Freight and some services are exempt from these taxes.

## WARRANTY

Contractor warrants that the Equipment supplied under this Contract shall be free from defects in workmanship and materials for a period of one (1) year from the date of first use or twenty four (24) months after shipment of Contractor's Equipment, whichever occurs first. In event of non-compliance with this Warranty, Contractor shall, at its option, modify, adjust, repair or replace F.O.B. point, any part or parts of the Equipment which are proven to be defective in workmanship and materials. Contractor shall not be liable for any transportation charges on parts returned for modification, adjustment, repair or replacement or any costs or charges associated with the removal or reinstallation of any such part or parts nor shall Contractor supply any labor for removal or reinstallation.

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If Contractor cannot or does not modify, adjust, repair or replace a part which is defective in workmanship and materials within a reasonable time after written notice of such defect is received by Contractor, or if an emergency exists rendering it impossible or impracticable for the City to have the work performed by Contractor, the City, after written notice to Contractor, may make or cause to be made such modification, adjustment, repair or replacement, in which case Contractor will reimburse the City for the reasonable cost thereof, exclusive, however, of any charges for removal or re-installation.

This Warranty does not cover the effects of normal wear, tear, deterioration or abuse of the Equipment; or the effects of abrasion, erosion, or corrosion; or the effects of improper storage or erection (if not within Contractor's scope of work hereunder); or operation or maintenance not in accordance with Contractor Operating Instructions and other conditions of service specified, and in accordance with generally accepted utility practice.

Contractor shall not be responsible for equipment or parts furnished by others or repairs or work done by others unless the same is specifically ordered by Contractor.

The sole liability of Contractor and the exclusive remedy of the City arising out of the manufacture, sale, furnishing of the Equipment hereunder or its use whether arising under contract, tort (including negligence), strict liability, or otherwise, shall be the modification, adjustment, repair or replacement as set forth above.

CONTRACTOR AND CITY AGREE THAT, IN CONSIDERATION OF THE ABOVE EXPRESS WARRANTY AND THE PERFORMANCE GUARANTEE(S), ALL OTHER WARRANTIES AND GUARANTEES, OTHER THAN TITLE, EITHER EXPRESSED OR IMPLIED, WHETHER ARISING UNDER LAW OR EQUITY OR CUSTOM OF THE TRADE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED FROM THIS CONTRACT

## PROPRIETARY INFORMATION

Any information concerning the parties hereto which is designated as Proprietary and disclosed to the other party incident to the performance of Work pursuant to this

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Contract is disclosed in confidence, and the transferee shall not publish or otherwise disclose it to others without the written approval of the transferor.

City understands that special techniques in the arts and sciences, developed or accumulated by the Contractor at its own time and expense, will be employed to benefit the City under this Contract, and agrees that such special techniques are proprietary and shall not be disclosed to any third party during or subsequent to the term of this Contract without the Contractor's prior written consent, provided, however, that nothing herein shall eliminate the City's right to disclose any data provided by the Contractor hereunder which (a) was furnished by the Contractor prior to this Contract without restrictions; (b) becomes knowledge available within the public domain or (c) is received by the City from a third party without restriction and without breach of this Contract.

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## **PATENT RIGHTS**

Contractor shall defend at its own expense any suit or action brought against the City based on a claim that any Equipment furnished hereunder, or any part thereof, or the designed use of same, constitutes infringement of any patent of the United States and Contractor shall also pay all costs and damages awarded therein against the City. In case use of such Equipment or any part thereof, is held to constitute infringement and its use is enjoined, Contractor shall, at its option and own expense either: procure for the City the right to continue to use such equipment, or part thereof; or replace it with substantially equivalent non-infringing equipment; or modify it so it becomes non-infringing.

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It shall be the responsibility of the City to provide prompt written notice of the assertion of any claim of infringement and to make available all other needed information, assistance, and authority it possesses for the defense of any suit or proceeding in which such claim is asserted.

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Any such replacement or modification shall be accomplished in the same manner as repair or replacement of defects under the Warranty article hereof.

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The foregoing sets forth the sole liability of Contractor and the exclusive remedy of the City with respect to patent infringement.

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## **DELAY IN PERFORMANCE**

Contractor shall not be liable for any expense, loss or damage resulting from delay or prevention of performance caused by fires, floods, acts of God, strikes, labor disputes, labor shortages, epidemics, lack of or reasonable inability to obtain materials, equipment, supplies, fuels or other energy shortages, riots, thefts, accidents, transportation delays, acts or failure to act of Government or CITY, delay in obtaining licenses, major equipment breakdown, or any other cause whatsoever, whether similar or dissimilar to those enumerated above, beyond the reasonable control of Contractor. In the event of any delay arising by reason of the foregoing, the time for performance shall be extended by a period of time equal to the time lost by reason of such delay and any other affected provisions of the Contract, including the price, shall be equitably adjusted.

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## PERMITS

Where laws, ordinances and regulations promulgated by Federal, Provincial, State, Municipal or other regulatory authorities, require permits to install or operate any Equipment covered by this Contract or the approval of the plans and specifications for the installation, the City shall be responsible for securing the permits and the approval of said plans or specifications from the proper authorities and for any required fees. If any changes are required in the Equipment to meet the requirements of any such regulatory bodies, the City shall inform Contractor of the changes needed and if the changes can be practicably accomplished, Contractor will make such changes. However, the Contract Price, schedule, and other affected provisions of this Contract shall be subject to appropriate adjustment.

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## PERFORMANCE GUARANTEE DISCLAIMER

Contractor represents that it will supply the Equipment described in accordance with its standard technical procedures and practices. However, as a condition hereof, Contractor and City realize that the performance of the Equipment to be supplied hereunder and its influence on other associated equipment cannot be exactly predicted. THEREFORE, ANY PERFORMANCE INFORMATION CONTAINED HEREIN IS SUBMITTED AND SET FORTH FOR THE CITY'S CONVENIENCE ONLY AND IS NOT REPRESENTED BY CONTRACTOR, NOR SHALL THE CITY CONSTRUCT IT, AS EITHER AN EXPRESS OR IMPLIED PERFORMANCE GUARANTEE.

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INASMUCH AS OPERATION OF THE EQUIPMENT SUPPLIED HEREUNDER IS TO BE WITHIN THE CONTROL OF THE CITY, NO GUARANTEE, WARRANTY, OR REPRESENTATION IS MADE OR TO BE IMPLIED THAT THE OPERATION OF EQUIPMENT TO BE SUPPLIED HEREUNDER WILL COMPLY WITH APPLICABLE FEDERAL, PROVINCIAL, STATE, OR LOCAL LAWS OR REGULATIONS GOVERNING ENVIRONMENTAL IMPACT.

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## MAXIMUM LIABILITY OF CONTRACTOR

The total liability of Contractor and its subcontractors, whether arising out of contract, tort (including negligence), strict liability, or any other cause of or form of action, shall not exceed the date of sale Contract Price.

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Except as to warranty of title to any goods furnished, all Contractor liability shall terminate upon the expiration of the warranty period specified in the Contract, provided, however, that City may enforce a claim of such liability by an action timely commenced in a court of competent jurisdiction in accordance with the applicable statute of limitations and/or statute of repose, but in no event later than one (1) year after expiration of the warranty period.

The provisions of this Article shall apply notwithstanding any other provisions of this Contract.

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## CONSEQUENTIAL DAMAGE DISCLAIMER

Notwithstanding any other provisions of this Contract, neither Contractor nor its subcontractors shall be liable, whether arising out of contract, tort (including negligence), strict liability, or any other cause of or form of action whatsoever, for loss of anticipated profits, loss by reason of plant or other facility shutdown, non-operation or increased expense of operation, service interruption, cost of purchased or replacement power, claims of City's customers, subcontractors, vendors or suppliers, cost of money, loss of use of capital or revenue, fines or penalties assessed or levied against the City by any governmental agency based on the operation, non-operation, or use of the Equipment or for any special, incidental or consequential loss or damage of any nature, whether similar or dissimilar to those enumerated above, arising at any time or from any cause whatsoever.

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### **SAFETY BY CITY**

City shall use and shall train and require its employees to use all safety devices, guards, and proper safe operating and maintenance procedures required by all applicable laws, regulations, codes and standards and as set forth in any operating and maintenance manuals and instruction sheets furnished by Contractor. City shall not remove or modify any safety device, guard or warning sign. If the City fails to strictly observe any of these obligations, City shall indemnify, defend and hold Contractor harmless from any resulting losses, injuries or damages.

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### **ASSIGNMENT**

Neither Contractor nor the City may assign all or any part of this Contract without the prior written consent of the other party unless such assignment is made to a parent company or to a successor by way of merger, consolidation or the acquisition of substantially all of the assets of the assigning party. In the event of an assignment, the assignee shall expressly assume the obligations of the assigning party in writing. Any assignment in violation of this article shall be null and void.

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### **NON-WAIVER**

The failure of either party to insist or enforce in any instance strict performance of any of the terms of this Contract or to exercise any rights hereunder conferred, shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

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### **TAXES**

The Contract Price includes Federal, State and local taxes levied on wages and/or salaries paid to Contractor's employees and all taxes based upon net income of Contractor's business. However, the Contract Price includes sales tax but is exclusive of any other present or future Federal, State, Municipal or other sales or use tax with respect to the work covered hereby, or of any other present or future excise tax upon or measured by the gross receipts from this transaction or any allocated portion thereof or by the gross value of the work covered hereby; and of any present or future property tax or other similar change with respect to the work covered hereby. If Contractor is

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required by applicable law or regulation to pay or collect any such tax or taxes on account of this transaction or the work covered hereby, then such amount of tax and any penalties or interest thereon shall be reimbursed to Contractor or paid by the City.

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## **ERROR IN BIDS**

Bidders or their authorized representatives are expected to fully inform themselves as to the conditions, requirements, and specification before submitting proposals. Failure to do so will be at the bidder's own risk, and he or she cannot secure relief on the plea of error. Neither law nor regulations make allowance for errors either of omission or commission on the part of bidders.

## **MANUFACTURER'S SPECIFICATIONS AND SUPPORTING DATA**

When requested in the detailed specification, each offerer shall furnish, as part of his or her proposal, a copy of the manufacturer's specifications or complete supporting data giving full details of the materials and/or services he or she is proposing.

## **EXECUTION OF CONTRACT**

The City will notify the successful bidder(s). The notification of award will be accompanied by the required number of unsigned counterparts of the contract. Within thirty (30) days after notification of award, the successful bidder(s) shall review such contract for acceptability and if found acceptable, sign and deliver the required number of counterparts of the contract together and/or evidence of insurance coverages if called for in the proposal documents.

No proposal shall be considered binding upon the City until the contract is properly executed by both parties and, when required, the contract bond filed with the city clerk.

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The contract(s) will be presented to the City Council for approval in accordance with applicable laws, regulations, and City policies.

If the contract(s) is approved by the City Council, the City shall deliver one fully signed copy of the contract(s) to the successful bidder(s).

The contract(s), when executed, shall be deemed to include the entire agreement between parties. The contractor(s) shall not claim any modification resulting from representation or promise made by representative of the owner or other persons.

## **ORAL STATEMENTS NOT BINDING**

It is understood and agreed that the written terms and provisions of this contract shall supersede all oral statements of any and every official or other representative of the purchaser, and oral statements shall not be effective or be construed as entering into, or forming a part of, or altering this contract in any way whatsoever.

## **LAWS**

The Agreement shall be governed by the laws of the State of Iowa.

Deleted: with venue in Story County District Court

**RESERVATIONS**

The City of Ames does hereby reserve the right to reject any or all proposals, to waive informalities, and to make such awards as it shall deem to be in the best interest of the City.

## B & W EXCEPTIONS & MODIFICATIONS

The following are objectionable exceptions and modifications to the City of Ames request for proposal document for the Unit # 8 coal mill parts.

- 1) Page 1 – B & W substituted City's Contract document with their own proposal.

Risk: City is required to accept every contract term proposed by B & W.

- 2) Page 5 - B & W deleted City's Contract document and modified tax responsibility on the Offer Form.

Risk: City is required to accept all responsibility for unforeseen tax liabilities. City is not aware of any tax consequences.

- 3) Page 12 - B & W added a limited *Warranty* provision.

Risk: a) Duration of warranty is 24 months or 12 months from installation, whichever is sooner. b) Sole remedy under warranty is repair or replacement by B & W. c) All other implied or express warranties are disclaimed.

- 4) Page 12 - B & W added a *Proprietary Information* provision.

Risk: City would be required to seek a protective order to prevent disclosure of B & W's technical information if a public records request is received. City does not anticipate receiving significant amounts of proprietary information.

- 5) Page 13 - B & W added a *Delay in Performance* provision.

Risk: City assumes all risks caused by delays beyond control of B & W.

- 6) Page 14 - B & W added a *Performance Guarantee Disclaimer* provision

Risk: City assumes all responsibilities for performance of equipment and compliance with applicable regulations.

- 7) Page 14 - B & W added a *Maximum Liability of Contractor* provision

Risk: B & W's total liability is limited to the contract price and liability ends when warranty expires.

- 8) Page 14 - B & W added a *Consequential Damage Disclaimer* provision

Risk: City may not recover any damages due to equipment failure.

9) Page 15 - B & W added a *Taxes* provision.

Risk: City is responsible for any unforeseen tax liabilities. None are anticipated.

10) Page 16 (Under *Execution of Contract* Paragraph 1) – B & W added some language.

Risk: B & W has 30 days after award to determine whether the contract is acceptable. Offer is contingent upon B & W executing the contract.

11) Page 16 (Under *Laws*) – B & W deleted the venue.

Risk: If a contract dispute arises, City could be required to litigate in Ohio.