



Board of Aldermen - Special Meeting

Thursday, July 27, 2023 at 6:30 pm

CENTRALIA CITY HALL COUNCIL CHAMBERS

114 S. Rollins Street, Centralia, MO 65240

1. CALL TO ORDER

2. ROLL CALL

Aldermen: Lonnie Cox, Robert Hudson, David Wilkins, Harold Deckerd, Don Rodgers, Landon Magley

3. PLEDGE OF ALLEGIANCE

4. COMMENTS FROM CITIZENS

Comments from citizens may be sent in writing prior to 5:00 p.m. on the date of this meeting to Mayor Chris Cox, mayor@centraliamo.org, or City Administrator Tara Strain, tara@centraliamo.org.

ACTION AGENDA

5. LEGAL

a. Contract with Arkansas Electric

motion

CLOSED SESSION*

*During the meeting, the Board of Aldermen may elect to go into closed session and hold a closed vote, and the purpose of such closed session and closed vote shall be:

1. As provided for under Section 610.021(3) of the Revised Statutes of Missouri for hiring, firing, disciplining or promoting of particular employees by a public governmental body.

6. CLOSED SESSION

(motion)

7. RETURN TO OPEN SESSION

(motion)

RESUME REGULAR SESSION

8. AS MAY ARISE

9. ADJOURN



Arkansas Electric Cooperatives, Inc.

Reliable • Affordable • Responsible

STANDARD TERMS AND CONDITIONS FOR THE SALE OF GOODS, MATERIALS AND/OR EQUIPMENT

These *Standard Terms and Conditions for the Sale of Goods, Material, and/or Equipment* ("Terms") apply to all sales of goods, material and/or equipment (collectively "Goods") made, or quotes issued by Arkansas Electric Cooperatives, Inc. (hereinafter referred to as "us," "we," "our," or "AECI"). By accepting our Quote, issuing a purchase order, purchasing, or accepting Goods from AECI, the counterparty (hereinafter referred to as "you", "your" or "Purchaser") hereby accepts and agrees to be bound by these Terms with or without signature.

Article I Formation

1. **Contract.** Our Quote, these Terms, and any purchase order issued by you that we specifically accept in writing (collectively the "Contract") shall constitute the entire agreement between AECI and Purchaser. Any terms or conditions proposed in your purchase order that add to, vary from or conflict with our Quote or these Terms are deemed material and are hereby rejected.
2. **Joint Negotiations.** The Parties have participated jointly in the negotiation and drafting of the Contract and, if an ambiguity or question of intent or interpretation arises, it is the intent of the Parties that the Contract be construed as jointly drafted and that no presumption or burden of proof arise favoring or disfavoring any Party by virtue of the authorship of any provision of the Contract
3. **Conflict.** In the event of a conflict between your purchase order and these Terms, these Terms shall control. In the event of a conflict between our Quote and these Terms, our Quote shall control.

Article II Provision of Goods

We shall provide to you the quantities and types of Goods as set forth in our Quote. You may request a change to such quantities and types of Goods, provided that such request shall only be affected upon our written acceptance of such request. If any change causes an increase or decrease in the cost of or the time required for performance hereunder, an equitable adjustment shall be made in the price and/or delivery schedule, including but not limited to a minimum restocking fee of 15%.

Article III Pricing and Payment

1. **Pricing.** Subject to the following, you shall pay the price(s) set forth in our Quote:
 - a. **Expiration.** All prices provided in our Quote are subject to expiration (i) within thirty (30) calendar days from the date of issuance of our Quote, or (ii) automatically for Goods marked "In Stock" if we sell such goods prior to receiving your purchase order. We will take best efforts to inform you in writing of any expiration of pricing, but our failure to do so shall not extend pricing that has expired under this Article III, Section 1(a).
 - b. **Supply Arrangements.** For items that are purchased by you under a supply arrangement ("Supply Arrangement"), whereby AECI agrees to sell and deliver Goods to you periodically, AECI reserves the right, upon prior written notice to you, to increase the prices of such Goods in amounts needed to offset any price increases for such Goods that AECI receives from its suppliers during the term of the Supply Arrangement. If you do not wish to accept such price increases, you may terminate the Supply Arrangement regarding the affected Goods by providing written notice to AECI within 30 days of your receipt of a price increase notice from AECI. All price increases will apply to Goods delivered after AECI gives notice of such price increases, and will continue to apply until AECI receives notice of termination from Purchaser.
 - c. **Pricing Confidentiality.** The prices of all Goods are confidential, and you shall not disclose such prices to any other party. AECI and Purchaser acknowledge and agree that money damages for any breach of Purchaser's obligation not to disclose the price of Goods or Services is both incalculable and insufficient and that any such breach would irreparably harm AECI. Therefore, in the event of an actual or prospective breach of the obligation in this Section, AECI shall be entitled to preliminary and permanent injunctions to prevent or remedy such breach, and specific enforcement of this Agreement, in addition to any other remedies to which AECI may be entitled at law or in equity.

product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, and general and administrative burden charges from termination of any order.

2. Attorney fees;
3. Expert fees;
4. Court costs;
5. Mediation costs; or
6. Other costs not specifically provided for recovery under the Terms

Any claim for relief by you, against us, must be commenced within one (1) year after the cause of action accrues. AECI's total and aggregate liability arising out of or otherwise in connection with these Terms, including breach of contract, tort, indemnity or otherwise, shall not exceed the purchase price received by AECI for the Good giving rise to Purchaser's claim in the calendar year in which the applicable claim is made.

Article VIII Indemnification

To the fullest extent permitted by law, you will indemnify, defend and hold harmless us and each of our members, affiliates, subsidiaries, customers, directors, officers, employees and agents (collectively, the "Indemnified Persons") against and from any and all claims, lawsuits, judgments, losses, Recalls (as defined herein), penalties or actions, costs, liabilities, damages and expenses (including attorneys' fees) incurred or to be incurred (collectively, "Claim(s)"):

- a. For your breach of the Terms;
- b. To the extent it is alleged that your use of the Goods caused or will cause:
 - i. The death of or injury to any person or damage to any property;
 - ii. Any Claim made in connection with any promotional or advertising matter, guarantees, warranties, or labels;
 - iii. Infringement of any patent, design, trade name, trademark, copyright, trade secret or other intellectual property (collectively, "IP") right or entitlement of any third party; or
- c. Otherwise arising or alleged to have arisen out of your reckless or negligent use of the Goods.

Article IX Returns

With the exception of Goods marked as non-cancellable or non-returnable (NC/NR) on our Quote, unused goods in new or resalable condition, as determined in AECI's sole judgment, may be returned within 45 days of purchase for credit to the Purchaser's account. Returned Goods may be subject to a restocking fee of not less than 15% of the original price of the Good(s) sold. Unless otherwise instructed by AECI, Goods shall be returned by Purchaser to AECI's warehouse facility in Little Rock, Arkansas, at Purchaser's sole expense.

Article X Termination

For Supply Arrangements under Article III, Section 1.b, either party may terminate these Terms at any time, upon presentation of a 60 days' written notice given to the other party. Upon termination you will pay us (i) for all Goods delivered, (ii) for any works in progress, (iii) for any costs we have incurred in preparing to fulfill the remaining portions of your order, and (iv) for any third-party penalties or charges we receive as a result of canceling your order.

Article XI Miscellaneous

1. **Force Majeure.** AECI is not liable to Purchaser for any delay or failure in the sale or delivery Goods due to causes beyond AECI's reasonable control including, but not limited to, acts of God, natural or artificial disaster, riot, war, insurrection, invasion, strike,Page 3

delay by carrier, shortage of goods, national or state declared emergency, pandemic, acts or omissions of third parties, or acts or omissions of civil or military authority. Purchaser's obligations for payment shall not be suspended by Force Majeure.

2. **Recalls.** In the event you or we decide, or a United States or foreign government agency ("Agency") issues an order requiring us, to recall, replace, repair or make refunds with respect to any of our Goods included in the sale or that incorporate the Supplies (a "Recall"), we will fully cooperate and assist you in any such Recall.

3. **Dispute Resolution.** An attempt to resolve any dispute, claim or controversy arising out of the Terms must first be made, in good faith, between an executive of your company, and an executive of our company, by phone or in person. If such attempt fails, then the dispute, claim or controversy shall be submitted to mediation. If mediation fails, then final resolution of any dispute, claim or controversy arising out of the Terms shall be made before a court of law in the State of Arkansas, Pulaski County.

4. **Governing Law/Jurisdiction.** The Terms will be construed and interpreted according to the laws of the State of Arkansas, without regard to the laws regarding conflicts of laws. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

5. **Remedies.** The rights and remedies reserved by us in the Terms will be cumulative and in addition to any other rights or remedies provided by law or equity.

6. **Waiver.** Our waiver of any right or remedy will not affect any right or remedy subsequently arising under the same or similar clauses. A waiver of nonperformance under the Terms must be in writing and will apply only to the specific instance addressed in the waiver and to no other past or future nonperformance.

7. **Assignment.** Neither party may assign any benefit or obligation under the Terms without the written consent of the other party.

8. **Advertising.** You shall not, without first obtaining our specific written consent, in any manner advertise, publish or disclose to any third party that you have contracted with us to purchase Goods except as specified by us in writing or required for completion of an order.

9. **Continuing Obligations/Severability.** The continuing obligations of each party under the Terms will survive the expiration, non-renewal or termination of the Terms. Any term or condition that is declared unlawful or unenforceable by a court of competent jurisdiction will not apply. The unenforceability of any such term or condition will not affect the enforceability of any other term or condition.

ATTACHEMENT A
[AECI TERMS & CONDITIONS]

Any applicable policies, procedures, and programs (collectively “Rules”) are otherwise available on AECI’s website at <https://aecc.com/aecc-and-aeci-terms-and-conditions/aeci-terms-and-conditions/> ([AECI Terms and Conditions – Electric Cooperatives of Arkansas](#)). These Rules may hereafter be revised, from time to time, by AECI, by posting revisions on the Website without notice and such revisions shall be binding on both Purchaser and AECI upon posting.

ATTACHMENT B
[PURCHASER CONTACT INFORMATION]

Authorized Signer	
Printed Name	
Title	
Email Address	
Phone Number	

Operational Contact	
Printed Name	
Title	
Email Address	
Phone Number	



ARKANSAS ELECTRIC COOPERATIVES, INC.

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VOLUME COMMITMENT AGREEMENT

This Volume Commitment Agreement (VCA) is entered into by and between **Arkansas Electric Cooperatives, Inc. (AECI)**, a designated distributor of transformers, at 1 Cooperative Way, Little Rock, Arkansas 72209 and **CITY OF CENTRALIA (Purchaser)** (each individually a "Party" and together the "Parties") is subject to the AECI's *Standard Terms and Conditions for the Sale of Goods, Materials, and/or Equipment* (Terms), attached hereto as Attachment A and incorporated herein by referenced.

The Parties hereby agree as follows:

- 1. Formation.** This VCA, the Terms and any purchase order issued by Purchaser that is specifically accepted by AECI shall constitute the entire agreement between AECI and Purchaser with respect to the subject matter herein. Any terms or conditions proposed in the purchase order that add to, vary from or conflict with this VCA or the Terms are deemed material and are hereby rejected. In the event of conflict or inconsistency between the Terms and this VCA, the VCA shall control.
- 2. Term.** This VCA is effective from January 1, 2024 and will expire on December 31, 2024 (Term).
- 3. Termination.** This VCA can be terminated at any time by either Party with 90 days' written notice, subject to the Purchaser Penalties (Section 9) if the VCA is terminated by Purchaser and AECI Penalties (Section 10) if the VCA is terminated by AECI.
- 4. Volume Commitment.** AECI agrees to sell up to the Commitment Amount and Purchaser agrees to buy at least 95% of the Commitment Amount (Threshold Amount) and up to the Commitment Amount, of transformers during the Term of the VCA. The Parties agree to the Commitment Amount and Threshold Amount for each product line as set forth in Table 1. The Commitment Amount shall mean the maximum number of each product line for which AECI is obligated to produce for Purchaser. The Threshold Amount is the minimum amount of each product line the Producer is committed to buy from AECI and that AECI is obligated to deliver to Purchaser without penalty.

TABLE 1

		1PH Poles	1PH Pads	3PH
January 1, 2024 December 31 2024	<i>Commitment Amount</i>	[enter quantity, if none enter "0")	[enter quantity, if none enter "0")	[enter quantity, if none enter "0")
	<i>Threshold Amount = 95% Commitment Amount</i>	[enter quantity, equal to 95% of Commitment Amount)	[enter quantity, equal to 95% of Commitment Amount)	[enter quantity, equal to 95% of Commitment Amount)

- 5. Monthly Slot Quantities.** Monthly Slot Quantities shall be derived by dividing the Commitment Amount by 12, unless otherwise specified by Purchaser. AECI, at its sole discretion, shall determine the maximum monthly quantity that could be sold to Purchaser (Monthly Slot Quantities) based on required Lead Time and Shipping Commitments, as set

forth in the attached Schedule 1. AECI reserves the right, in its sole discretion, to determine for each week the quantity of transformers that can be delivered to Purchaser.

6. **Requirement for Purchase Order.** Purchaser must issue a Purchase Order (PO), subject to AECI's written acceptance pursuant to the Terms, no later than the required Lead Time as indicated in Schedule 1.
 - a. PO quantities shall be no less than Threshold Amount but no more than the Commitment Amount of the Monthly Slot Quantity allocated to Purchaser. Any quantity ordered for each product line that exceeds the available Commitment Amount applicable to the Monthly Slot Quantity will be automatically applied to future month, unless otherwise specified on the PO, but in no event shall AECI be obligated to deliver, for any product line, an amount above the Commitment Amount for the applicable year.
 - b. If Purchaser does not place a PO by the Lead Time specified in Schedule 1, AECI shall notify Purchaser and allow for a 1-week (7 calendar days, including holidays) grace period. If Purchaser does not order sufficient quantities of product to consume the available slots allocated to Purchaser within the 1-week grace period, Purchaser will relinquish the applicable slots, without implication for future POs or slots and AECI will not be obligated to deliver any product above the amounts accepted by PO to the Purchaser for that Slot Month.
7. **Pricing.** Pursuant to the Terms, prices are established in AECI's Quote. Prices for products under this VCA shall be adjusted quarterly on January 1, April 1, July 1, and October 1.
8. **Shipping Commitment.** AECI will take all reasonable commercial efforts to ship the Monthly Slot Quantity no later than the Shipping Commitment Date outlined in Schedule 1, provided that the PO (i) was accepted by AECI through written confirmation, and (ii) meets the requirements set forth above. All shipping dates are approximate and are dependent upon (i) prompt receipt by AECI of all information necessary to fulfill Purchaser's order; (ii) Purchaser's compliance with this VCA, (iii) manufacturer production capacity, component and material availability, and (iv) other terms in this VCA and the Terms, including but not limited to force majeure.
9. **Purchaser Penalties.** If Purchaser fails to purchase or fails to place a PO(s) to purchase the Threshold Amount, a penalty shall be charged to Purchaser's account, on a quarterly basis, in an amount equal to the number of units by which the Purchaser has failed to purchase below the Threshold Amount times 25% of the average unit selling price in effect at the end of each applicable quarter. PO's canceled by Purchaser and products returned by Purchaser shall be considered Purchaser's failure to purchase for purposes of this Section. For the avoidance of doubt the Purchaser Penalty will be calculated as of March 31, June 30, September 30, December 31 of each calendar year.
10. **AECI Penalties.** Subject to the Terms, including but not limited to Force Majeure events, and the terms and conditions of this VCA, if AECI fails to deliver the sum total of units in approved PO's during the preceding quarter, AECI shall pay Purchaser, in the form of a credit to Purchaser's account, a penalty of 25% of the average selling price for each unit. For the avoidance of doubt the AECI Penalty will be calculated as of March 31, June 30, September 30, December 31 of each calendar year.

11. **Force Majeure.** Force majeure under this VCA is governed by the Terms and Conditions as defined in Attachment A.

12. **Emergency Response Plan.**

a. AECI shall make best efforts to prioritize emergency orders over existing slotted orders. Purchaser shall have the option to count their emergency orders towards their Commitment Amount. If Purchaser decides not to apply emergency orders towards their Commitment Amount, AECI shall have the right to adjust the AECI Commitment down by the number of units designated as emergency orders which will not be subject to the AECI Penalties as previously defined. Due to the nature of the emergency, Purchaser hereby acknowledges that third party emergency orders will take precedence over Purchaser existing POs and Shipping Commitments that are not emergency orders; provided, however that AECI shall promptly notify Purchaser of any third-party emergency orders that will take precedence over existing POs and Shipping Commitments.

b. AECI will quantify the impact of emergency relief efforts to its production schedule and will modify the Shipping Commitments in Schedule 1 by an amount of time equal to the time spent satisfying the emergency orders. By way of example, if Purchaser issues a PO for emergency order that require two weeks for AECI to process, then AECI shall extend the Shipping Commitments for all accepted POs by two weeks.

13. **Amendment.** This VCA, Schedule 1, and any PO that has been issued and accepted may be amended or modified only by signed written mutual agreement. Schedule 1 and POs may only be amended four (4) weeks prior to the Lead Time as indicated in Schedule 1.

[SIGNATURES ON THE FOLLOWING PAGE]

The foregoing has been AGREED AND APPROVED, in its entirety, by:

**ARKANSAS ELECTRIC
COOPERATIVES, INC.**

PURCHASER [CITY OF CENTRALIA]

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SCHEDULE 1				
[MONTHLY SLOT QUANTITIES]				
PO Due Date	Shipping Commitment Date	Pole Mounts	Pad Mounts	3-Phase Pad Mounts
9/15/2023	Jan-24		10x 25 kVA	
10/15/2023	Feb-24		1x 50 kVA	
11/15/2023	Mar-24		1x 100 kVA	
12/15/2023	Apr-24			
1/15/2024	May-24		15x 25 kVA	
2/15/2024	Jun-24			
3/15/2024	Jul-24			
4/15/2024	Aug-24			
5/15/2024	Sep-24			
6/15/2024	Oct-24			
7/15/2024	Nov-24			
8/15/2024	Dec-24			

\$36,775
this budget
year

2024 Commitment Total			
2024 Threshold Amount			