



# Rushmore Electric Power Cooperative, Inc.

A Touchstone Energy® Cooperative 

1715 Cambell St., P.O. Box 2414  
Rapid City, SD 57709-2414

Phone: (605) 342-4763  
Fax: (605) 348-2026

## REQUEST FOR PROPOSAL

NO.  
**REPC-D-EQ-IT-001**

FOR:  
**INDUSTRIAL CONTROL SYSTEM CYBERSECURITY TECHNOLOGY**  
**INTEGRATION FOR RURAL ELECTRIC COOPERATIVE UTILITY**  
**COMPANIES**  
**(ICS-REC)**

FEDERALLY FUNDED PROJECT

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### **PROPOSAL**

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## BIDDER'S CHECKLIST

NOTE: This checklist is provided only to assist you in submitting a Proposal; this supplied checklist is not to be considered all-inclusive.

- \_\_\_\_\_ The Bid Schedule has been completed, the math has been verified and the total bid price is correct.
- \_\_\_\_\_ Any erasures or corrections have been initialed by the person signing the Proposal.
- \_\_\_\_\_ Material proposals include all pertinent shipping information.
- \_\_\_\_\_ Clear and concise clarifications or exceptions, if applicable.
- \_\_\_\_\_ All addenda have been acknowledged or indicate "NONE" if none received.
- \_\_\_\_\_ The bid validity date has been entered.
- \_\_\_\_\_ The Proposal has been properly signed.
- \_\_\_\_\_ The Proposal has been properly prepared for email submittal with the defined subject line prior to the delivery timeline, as defined in the *Instructions to Bidders, Section 4 – Proposal Submittal and Signature* and directed to the contact identified in the *Instructions to Bidders, Section 2 – Correspondence*.
- \_\_\_\_\_ The Proposal includes documentation relevant to satisfy the requirements of the BABA Act, as defined in the *Instructions to Bidders, Section 7 – Proposal Content* and directed to the contact identified in the *Instructions to Bidders, Section 2 – Correspondence*.

**INSTRUCTIONS TO BIDDERS**  
Request for Proposal No. **REPC-D-EQ-IT-001**

**SECTION 1 - GENERAL**

Proposals are requested by **Rushmore Electric Power Cooperative, Inc.** (the "Owner") for the equipment (the "Equipment ") set forth in the Specification (the "Specification"), available upon request, and in accordance with the attached General Conditions (the "General Conditions") and the documents listed in the Table of Contents, which documents are incorporated herein by reference. The following sections contain instructions and format requirements, which must be followed by a Bidder in order for their Proposal to be given a complete and proper evaluation.

The Owner owns and operates a stand-alone radio network system dedicated to two-way radio communications, as well as device connectivity inclusive to a joint-use supervisory control and data acquisition-(SCADA) system. The Owner is also involved in other business ventures through its subsidiary operations (hereinafter collectively called the "System").

The Equipment defined in the Specification, available upon request, is to be delivered to the Owner on or before **Friday, February 28<sup>th</sup>, 2025**. Time is of the essence, and it is of major importance that the successful Bidder takes all reasonable efforts to schedule and deliver the Equipment in the minimum amount of time possible.

Failure to comply with these bidding instructions may disqualify a Bidder from further consideration.

**SECTION 2 - CORRESPONDENCE**

All correspondence, questions, or comments concerning the Proposal documents should be directed to:

Rushmore Electric Power Cooperative, Inc  
1715 Cambell St.  
Rapid City, SD 57709

Attn: MarcCharles Zautke  
Phone: (605) 342-4759  
Fax: (605) 348-2026  
E-Mail: [mzautke@rushmore.coop](mailto:mzautke@rushmore.coop)

**SECTION 3 – CLARIFICATIONS OF THE PROPOSAL**

It shall be the Bidder's responsibility to advise the Owner, before the bid opening date, of conflicting requirements or omissions of information in the Bid Documents, which require clarification. Those items not resolved should be listed in the Proposal, Section 2 – Clarifications and Exceptions, together with a statement of the basis upon which the Proposal is made.

**SECTION 4 - PROPOSAL SUBMITTAL AND SIGNATURE**

The Proposal must be submitted to **Mr. MarcCharles Zautke** by email no later than **1:00PM Mountain-(DST), Thursday, August 15<sup>th</sup>, 2024**, and shall not be withdrawn for any reason after said date. Bidder shall indicate "**Confidential - RFP No. REPC-D-EQ-IT-001**" in the email subject line.

The Bidder shall sign each of the Proposals submitted with its usual signature and shall identify its full business name and address.

## **SECTION 5 - PROPOSAL PRICING**

For the Equipment defined in the Specification, available upon request, Bidder shall submit the following:

- Unit Pricing
- Sales, Use and Excise Taxes, applicable to the Equipment, which become the property of the Owner, shall be included in the prices quoted in the Proposal

## **SECTION 6 - PROPOSAL EVALUATION**

The Owner will evaluate proposals. The following criteria, not necessarily listed in the order of importance, will be used in evaluating the Proposals:

- A. The bid amount.
- B. Equipment lead-time.
- C. Bidder's experience.
- D. Compliance to the Specification and all other Proposal documents.
- E. Such other criteria as may be used at the sole discretion of the Owner.

## **SECTION 7 - PROPOSAL CONTENT**

The following item(s) shall be included and/or addressed in all Proposals submitted:

- A. The Bidder shall state in the Proposal, Section 2 – Clarifications and Exceptions, all exceptions or clarifications to the Specification and all other Proposal documents. Prior to contract award, this listing will be conformed as necessary to be mutually acceptable.
- B. The Bidder shall provide, to the best of their knowledge and ability, documentation relevant to the Build America, Buy America Act-(BABAA), enacted as part of the Infrastructure Investment and Jobs Act on November 15, 2021. Per the United States Department of Agriculture, "BABAA requires that all iron, steel, manufactured products, and construction materials used in federally funded projects on infrastructure must be produced in the United States."<sup>1</sup>

## **SECTION 8 - ACCEPTANCE AND REJECTION OF PROPOSALS**

The Owner reserves the right to accept or reject all or any part of the Proposals and to waive irregularities and informalities in any Proposal that is submitted.

All Proposals shall become the property of the Owner. This request implies no obligation on the part of the Owner. If requested, unsuccessful Bidders shall return all Bid documents, materials, drawings, specifications, etc., to the Owner.

## **SECTION 9 - WITHDRAWALS AND REFERRALS**

The Proposal may be withdrawn by a Bidder at any time prior to the due date set forth above without prejudicing the Bidder's right to file another Proposal, provided such other Proposal complies with the Bid Documents hereof and is received prior to the due date set forth above. Bidders may withdraw a Proposal by submitting written notice prior to the due date.

Proposals shall only be submitted by the addressee, unless written permission to refer Proposal and attachments to another firm is obtained from the Owner.

<sup>1</sup> "What are the BABAA Act Requirements?", Build America, Buy America Act | Rural Development, United States Department of Agriculture, Accessed July 2, 2024, <https://www.rd.usda.gov/build-america-buy-america#:~:text=BABAA%20requires%20that%20all%20iron,produced%20in%20the%20United%20States>.

**PROPOSAL**  
Request for Proposal No. **REPC-D-EQ-IT-001**

**SECTION 1 - BID**

In accordance with the Instructions to Bidders, attached hereto and made a part hereof, the undersigned ("Bidder") hereby proposes to provide to **Rushmore Electric Power Cooperative, Inc.** ("Owner") the labor, equipment, supplies or materials and related services necessary to furnish the equipment/material (the "Equipment") described in the Specification (the "Specification"), available upon request, and made a part hereof in accordance with the attached General Conditions (the "General Conditions"), and the documents listed in the Table of Contents, which documents are incorporated by reference and which together with this Proposal are hereinafter called "Proposal Documents", are made a part hereof.

Payment for the Equipment listed in the Proposal Documents shall constitute full compensation to the Bidder for providing all supervision, labor, supplies, tools, equipment, facilities, storage, materials, and all other services necessary or desirable to furnish Equipment, except as specifically stated otherwise in this Proposal, in accordance with the following bid schedule:

**BID SCHEDULE**

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>QUANTITY</u>	<u>UNIT</u>	<u>UNIT PRICE</u>	<u>TOTAL</u>
1.	Control Management Server & Associated Software	1	EACH	\$	\$
2.	Industrial Router	32	EACH	\$	\$
3.	Industrial Switch	29	EACH	\$	\$

TOTAL (EQUIPMENT/MATERIAL) \$ \_\_\_\_\_

The quantities shown in the Bid Schedule are estimated quantities only. No claim shall be made against the Owner for any variation between the estimated quantities and the quantities actually required for the work. Payment will be made for the actual quantities required.

Unless otherwise specified, the Bidder shall participate in the determination of actual in-place physical count or measurement or otherwise shall accept those taken by Owner as final and conclusive in determining the actual quantities for payment.

**FREIGHT PRICING: (Additional to Proposal Price of Equipment/Material)**

Incoterm 2010: FCA - Point of Shipment (ex. Bidder's Facility) \$ \_\_\_\_\_

Bidder shall provide special shipping requirements below: (Bidder shall state "NA" if not applicable)

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## SECTION 2 – CLARIFICATIONS AND EXCEPTIONS

Bidder declares that the following list includes all variations from, clarifications of and exceptions to the Proposal Documents; otherwise, it will be interpreted by the Owner that this Proposal is in strict accordance with these documents. If no exceptions are taken, Bidder shall state "NONE".

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\_\_\_\_\_  
(Bidder shall initial here)

### SECTION 3 - RECEIPT OF ADDENDA

Bidder acknowledges receipt of the following Addenda: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_. If no Addenda were issued, Bidder shall state "NONE".

\_\_\_\_\_  
(Bidder shall initial here)

### SECTION 4 - VALIDITY OF PROPOSAL

The Proposal shall not be withdrawn for any reason after the bid due date referred to in the Instructions to Bidders, Section 4 - Proposal Submittal and Signature.

This Proposal shall be valid through \_\_\_\_\_.

### SECTION 5 - SIGNATURE

Provide the name and address of principal office, including signature of authorized representative.

Company Name:	_____	Telephone Number:	_____
Mailing Address:	_____	Fax Number:	_____
	_____	Toll Free Number:	_____
Street Address:	_____	E-Mail Address:	_____
	_____		
City, State, Zip:	_____		

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



# **GENERAL CONDITIONS OF PURCHASE**

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## **GENERAL CONDITIONS OF PURCHASE**

### **1. DEFINITIONS**

As used throughout this Agreement the following terms shall have the meanings set forth below:

- a) "Agreement" shall mean these General Conditions of Purchase together with any attachments, exhibits, appendices or other documents specifically referenced therein.
- b) "Goods" shall mean all equipment, materials, supplies and other items furnished by the Seller.
- c) "Purchaser" or "Owner" means the party designated as such on the face of this Agreement.
- d) "Purchaser's or Owner's premises" includes sites or facilities belonging to Purchaser, Purchaser's clients and Purchaser's agents.
- e) "Seller" or "Contractor" means the person, firm, company or corporation executing this Agreement with Purchaser and who will furnish the Work or Services provided for herein.
- f) "Subcontractor" shall mean and refer to a corporation, company, partnership, firm or individual having a direct contract with Seller or Contractor for performing the Work, and its, their or his employees and representatives.
- g) "Services" mean the services to be performed by Contractor for the Purchaser under this Agreement.
- h) "Work" means the labor, equipment, supplies or materials and related Services necessary to provide the construction required by or reasonably inferable from the Agreement.

### **2. TITLE**

Seller warrants to Purchaser that Seller has good title to the Goods furnished pursuant to this Agreement and is transferring title to the Goods free and clear of any and all liens, restrictions, reservations, security interests or encumbrances of any kind.

### **3. PROPERTY RIGHTS**

All plans, drawings, specifications and the subject matter contained therein and all other information given to Seller by or on behalf of Purchaser in connection with performance of the Agreement involve valuable property rights of Purchaser and shall be held confidential by Seller and shall not be used or disclosed by Seller for any purposes other than those for which they have been supplied or prepared. When requested by Purchaser, Seller shall execute secrecy agreements.

All data, notes, drawings, designs, sketches, specifications, reports, and memoranda of every description relating to the Agreement or any part thereof as Seller shall produce and all copies of the foregoing, shall be the property of Purchaser, subject to inspection by Purchaser at all reasonable times and delivered to Purchaser or otherwise disposed of by Seller as Purchaser may direct from time to time.

### **4. ETHICS**

Owner's directors, employees and agents ("Owner's Personnel") are subject to ethics guidelines which prohibit acceptance of commissions, rebates, payments, kickbacks, lavish or expensive gifts and entertainments, or other things of significant cost or value. Seller agrees that its directors, employees, agents and subcontractors shall not provide any commissions, rebates, payments, kickbacks, lavish or expensive gifts and entertainments, or other things of significant cost or value to Owner's Personnel. Seller shall notify Owner's management of any such violation. Any willful violation may result in the cancellation of current contracts and removal of Seller from Owner's bidders list.

### **5. SHIPPING**

All Goods are to be shipped in accordance with instructions in this Agreement. Seller shall be responsible for the payment of all charges for handling, packaging, wrapping, bags and containers.

## **6. INSPECTION, ACCEPTANCE OR REJECTION**

The Goods shall be subject to inspection and tests by Purchaser and inspection and acceptance or rejection of the Goods shall be made as promptly as practicable after delivery. Failure to promptly inspect, accept or reject the Goods shall, nonetheless, not release the Seller from the responsibility of providing the Goods in accordance with the terms of this Agreement. If Purchaser rejects the Goods for whatever reason, said Goods shall be held, transported and/or stored at Seller's sole expense. Seller agrees that it shall promptly reimburse Purchaser for any such expenses.

## **7. PAYMENTS**

Payment will be made based upon invoices of Seller for Work performed based upon Seller's progress or for Goods furnished unless otherwise specified in this Agreement. Payment otherwise due may be withheld by Owner based upon defective Work not remedied, claims made or liens filed against Owner, failure to submit required documentation, or any other failure by Seller to perform in accordance with the terms of this Agreement. Payment, final or otherwise, shall not be construed as approval as to quality of the Work or Goods or any part thereof or relieve Seller of its obligations hereunder.

## **8. WARRANTY**

Seller warrants to Purchaser that the Goods will conform to the specifications, drawings and other descriptions supplied or adopted by Purchaser, if any, will, unless otherwise specified, be new, fit and sufficient for the purpose for which they are intended as evidenced in this Agreement and will be of good materials, design and workmanship and free from defects.

At Purchaser's request, Seller shall promptly, at no cost to Purchaser, either repair or replace (including payment of all removal, packing and transportation costs) any Goods, which within one year after being placed in regular use by Purchaser shall fail in the normal use and service and under proper operation, to conform to the foregoing warranties of Seller. In the event that Seller fails to promptly undertake to so repair or replace, Purchaser shall be entitled to correct the same at whatever means are available to Purchaser and to charge Seller for the cost of the same. All express warranties of Seller are set forth in this Agreement and NO IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR PARTICULAR PURPOSE SHALL APPLY. All third party warranties shall be assigned to Purchaser.

## **9. OPERATION & MAINTENANCE MANUALS**

Seller shall supply or shall cause to be supplied operating and maintenance manuals (the "Manuals") in the English language for the Equipment furnished by Seller or by Seller's suppliers, including information concerning system design and installation, startup, operation, as built drawings, precautions and warnings relative to the safety of life and equipment, certified code documentation, shutdown, maintenance and repair. Any difference between Equipment supplied for multiple units regarding operation, maintenance and repair shall be clearly identified.

Manuals shall include the Owner's Contract number, facility and a complete index of all data, documents and drawings contained within the Manual to facilitate the timely access to such information.

Seller shall submit two (2) draft copies of each Manual to Owner for technical review prior to submitting Manual in the final form. Following such review, unless otherwise required in the Specification, Seller shall furnish to Owner two (2) final copies, assembled in hard copy book form and one (1) editable and searchable electronic copy of each final Manual. The electronic copy shall be in Microsoft Word, Microsoft Excel and AutoCAD or other Owner preapproved format. Owner will reject incomplete Manuals and they will be returned to the Seller for completion and re-submittal. Final payment will not be made to Seller until acceptable final Manuals are submitted to Owner.

## **10. DELAYS**

Time of delivery is of the essence of this Agreement. Notwithstanding, Seller shall be excused for delays in delivery of the Goods where any such delay is due to acts of God, acts of Purchaser not within its rights, acts of civil or military authority, terrorism, fires, strikes, floods, epidemics, war, riot or other similar causes beyond Seller's control, which Seller could not have reasonably foreseen or provided against. In the event of any such delay, Seller shall only be allowed an extension of the date of delivery for a period equal to the duration of the delay and Seller shall not be entitled to any extra compensation for such delay. Seller shall promptly notify Purchaser in writing of any such delay and, at no additional cost to Purchaser, Seller shall take all reasonable steps to avoid or end such delay. Seller shall also promptly notify Purchaser when the cause of such delay has abated.

## **11. CHANGES**

Purchaser shall have the right to make changes in the specifications and drawings for the Goods by written notice to Seller. Upon receipt of a written notice, if Seller believes that such change or changes affects the price and/or the scheduled delivery or installation date for the Goods, Seller shall so notify Purchaser in writing within seven (7) calendar days. After receipt of Seller's written response, Purchaser and Seller shall mutually agree in writing upon an equitable adjustment in the price and/or the scheduled delivery or installation date to reflect the effect of such change. Seller agrees that it shall not suspend performance of this Agreement during the period Purchaser and Seller are in the process of negotiating such adjustments. No substitution shall be made in this Agreement without prior written consent of Purchaser and extra compensation will be paid to Seller only if agreed to in writing by Purchaser.

## **12. SUSPENSION**

Purchaser shall have the right to suspend Seller's performance of this Agreement for its convenience at any time by written notice to Seller. Upon receipt of such notice, Seller shall promptly suspend further performance of this Agreement to the extent specified and during the period of such suspension shall properly care for and protect the Work in progress. Purchaser may, at any time, withdraw this suspension by written notice to Seller specifying the effective date of said withdrawal and, upon such date, Seller shall diligently resume performance of the suspended work on the Goods. In the event Seller believes that any such suspension justifies modification of the Agreement price or delivery date, Seller shall notify Purchaser in writing of the same within five (5) working days after receipt of said notice. Thereafter, Purchaser and Seller shall agree upon an equitable adjustment in the Agreement price and/or delivery date based upon verified and approved supporting documentation. Seller shall be entitled to recover the additional costs incurred by it as a result of such suspension, but shall not be entitled to any damages or additional profits as a result of the suspension. Purchaser may, at its option, have costs reimbursable under this Section audited by either Purchaser's auditing staff or by independent certified public accountants selected by Purchaser.

## **13. CANCELLATION FOR CONVENIENCE**

Purchaser shall have the right to cancel this Agreement for its convenience at any time by written notice to Seller. On the date of such cancellation stated in said notice, Seller shall discontinue all Work pertaining to this Agreement, shall place no additional orders and shall preserve and protect materials on hand purchased for or committed to this Agreement. In the event of cancellation, Seller shall promptly deliver to the Purchaser all Work product, finished or unfinished and in exchange Seller shall be paid the earned portion of the total cost of all Work completed as of the date of cancellation. The earned portion of the total cost of Work is that part of the work on the Goods or Services which Seller has completed and for which Seller has expended resources. Purchaser may, at its option, have those costs, which are reimbursable under this Section audited by either Purchaser's auditing staff or by independent certified public accountants selected by Purchaser.

#### **14. TERMINATION FOR DEFAULT**

In the event Seller becomes insolvent, files for bankruptcy, a bankruptcy petition is filed against Seller, Seller makes a general assignment for the benefit of its creditors or if a receiver shall be appointed for all or a substantial portion of Seller's property or in the event Seller fails to comply with any of the provisions or requirements of this Agreement within ten (10) days after receipt in writing of notice of such default by Purchaser, Purchaser may, by written notice to Seller, without prejudice to any other rights or remedies which Purchaser may have at law or in equity, terminate further performance by Seller of this Agreement. In the event of such termination, Seller shall promptly deliver to the Purchaser all Work product, finished or unfinished, or make disposition as otherwise directed by the Purchaser. Purchaser may complete the performance of this Agreement by such means as Purchaser reasonably selects and Seller shall be responsible for any additional costs incurred by Purchaser in so doing. Any amounts due Seller for Goods delivered by Seller in compliance with the terms of this Agreement prior to such termination for default, shall be subject to a set off against the additional costs incurred by Purchaser completing Seller's obligations under the Agreement and other damages incurred by Purchaser as a result of Seller's default.

#### **15. CONFIDENTIALITY**

Seller shall not, at any time prior to five years after the Services are completed or terminated, use for any purpose other than performing the Services or disclose to any third parties any business or technical information, knowledge or data of Purchaser (or its subsidiaries, agents or clients) disclosed to Seller in connection with the Services or developed by Seller in the performance of the Services; provided, however, that the foregoing obligations of nonuse and nondisclosure shall not apply to any information, knowledge or data which:

- a. Was already known to Seller at the time it was disclosed in connection with the Services;
- b. Was published prior to the issuance of this Agreement or, without fault of Seller, thereafter becomes published
- c. Or is lawfully disclosed to Seller by a third party as a matter of said third party's right.

This Agreement does not contemplate that Purchaser will be afforded access to any confidential or proprietary information of Seller or any third parties. In the event that Seller discloses any such information to Purchaser or includes such information in any of Seller's Work product without having obtained Purchaser's prior written approval to do so, Purchaser shall be entitled to use and disclose such information without restriction and Company shall defend and hold Purchaser harmless from any claims of third parties with respect thereto.

#### **16. INDEMNITY**

Seller agrees to defend, indemnify and hold harmless Owner and its members, shareholders, directors, managers, partners, officers, employees, agents and contractors (the "Indemnified Parties") from and against, and shall promptly reimburse each Indemnified Party with respect to any claim, demand or cause of action, including any actual loss, cost, expense, liability, fine or damage incurred or suffered by the Indemnified Party (including reasonable fees and expenses of attorneys, technical experts and expert witnesses, court costs and other out-of-pocket expenses) related to any bodily injury, death or property damage resulting from Seller's breach of this Agreement, Seller's violation of any law, rule or regulation or Seller's negligence or willful misconduct.

In the event any such loss, cost, expense, liability, fine or damage is caused by the concurrent default or negligence of any Indemnified Party, the Indemnified Party's violation of any law, rule or regulation or the failure of the Indemnified Party to perform its obligations under this Agreement, Seller shall be relieved of its obligation to indemnify the Indemnified Party to the extent such loss, cost, expense, liability, fine or damage was caused by such concurrent default or negligence, such failure to comply or such failure to perform.

Neither the coverage nor the limits of Insurance required by this Agreement shall in any way restrict the foregoing indemnity obligation of Seller.

#### **17. CONSEQUENTIAL DAMAGES**

Seller and Purchaser shall not be liable to the other for consequential or punitive damages for lost production and revenues as a result of performance under this Agreement.

## **18. ASSIGNMENTS**

Seller shall not assign the Agreement, or any part thereof, without the prior written consent of Owner. Any assignment of the Agreement, in whole or in part, voluntarily, by operation of law or otherwise, without written consent of Owner, shall be null and void.

The Owner may, in its sole discretion, assign its obligations under this Agreement to one or more of its subsidiaries or any party acquiring all or substantially all of the rights or assets of Owners business. Such assignment will not relieve the Owner or Seller of its obligations and/or liabilities hereunder.

## **19. INFRINGEMENT**

Seller warrants that Owner's purchase, installation and/or use of the Goods will not result in any claim of infringement or actual infringement of any patent, trademark, copyright, franchise or other intellectual property right.

## **20. MECHANIC'S LIENS**

Seller agrees to indemnify, hold harmless and defend Purchaser from and against all laborers', material men's and/or mechanics' liens arising from the performance of Seller's obligations under this Agreement and Seller shall keep the premises of the Purchaser free from all such claims, liens or encumbrances. Seller waives all rights of mechanics' or material men's lien against the property of the premises of the Purchaser.

## **21. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION CERTIFICATION**

The Seller agrees to comply with the following executive orders and regulations which form part of this Agreement and are incorporated herein by this reference:

- Executive Order 11246 as amended.
- 41 CFR 60-1.4 Equal Opportunity Clause.
- 41 CFR 60-1.7 Reports and other Required Information.
- 41 CFR 60-1.8 Segregated Facilities.
- 41 CFR 60-250.4 and 250.5 Equal Opportunity – Special Disabled Veterans and Vietnam Era Veterans
- 41 CFR 60-300.5(a) Equal Opportunity Qualified Protected Veterans
- 41 CFR 60-741.4 and 741.5 Equal Opportunity – Workers with Disabilities.
- Seller shall not use any workplace training or promote any behavior that instructs or instills in its employees any form of race or sex stereotyping or any form of race or sex scapegoating and shall comply with the requirements set forth in Executive Order 13,950 of September 22, 2020, 85 Fed. Reg. 60683.

## **22. ENTIRE AGREEMENT**

This Agreement shall become a binding contract to Seller and Purchaser upon Seller's signing and returning an acceptance copy of this Agreement or upon Seller otherwise acknowledging acceptance of this Agreement or commencing performance of this Agreement, whichever occurs first. This Agreement, together with specifications, drawings and documents, if any, referred to herein and other documents referred to therein, if any, which by this reference are all made a part hereof, constitute the entire Agreement between Seller and Purchaser and all prior negotiations, proposals and writings pertaining to this Agreement on the subject matter hereof are hereby superseded. Any additional or different terms or conditions which may appear in any communication from Seller are hereby expressly objected to and shall not be effective or binding unless specifically agreed to in writing by Purchaser and no such additional or different terms or conditions in any printed form of Seller shall become part of this Agreement despite Purchaser's acceptance of Goods unless such acceptance specifically, in writing, recognizes or consents to their inclusion.

## **23. CONFLICTS**

In the event of an express conflict among the terms contained within the Agreement documents, Seller shall promptly so notify the Purchaser and shall comply with the Purchaser's resolution of the conflict.

**24. CHEMICALS**

Seller shall provide a current Safety Data Sheet (“SDS”) for all substances delivered hereunder which may pose a physical, or health hazard to the user in accordance with Federal Regulation 29 CFR 1910.1200 (Hazard Communication, Right to Know). Seller will provide SDS with the initial shipment of the material for this Agreement as well as with the first shipment after an SDS has been updated.

**25. GOVERNING LAW**

This Agreement shall be subject to and governed by the laws of the State of South Dakota without respect to any conflict of law principles that might otherwise direct the application of the laws of another jurisdiction.