



## Lodi Energy Center Project Participant Committee

### Staff Report

AGENDA ITEM NO.: 15

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**Date:** June 7, 2017

**Meeting Date:** June 12, 2017

**To:** Lodi Energy Center Project Participant Committee

**Subject:** Mark III Construction, Inc. Public Works Agreement – Multi-Facility Security Systems Development and Installation. Applicable to the following projects:  
All Generation Services Facilities – Geothermal, Combustion Turbine and Hydroelectric.

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#### Proposal

Approve the public works agreement with Mark III Construction, Inc. for the installation of security systems at the NCPA Generation Facilities project for an amount not to exceed \$1,283,481.

#### Background

NCPA facilities have existing physical security systems of various ages and capability. In 2014, NCPA conducted a security assessment of key facilities with security consultant CH2M Hill. CH2M Hill provided prioritized recommendations for each facility location based on identified threats and vulnerabilities, including the installation of physical security systems.

In 2015, the security systems for NCPA Headquarters (HQ) and Disaster Recovery Center (DRC) facilities were upgraded, based on the assessment's recommendations.

The scope of this project is to implement the recommendations at NCPA's Generation Services facilities - Geothermal, Combustion Turbines (CT1, CT2, and LEC), and Hydroelectric Projects. This includes upgraded and expanded surveillance (video cameras and related equipment), intrusion detection (motion sensors and door alarms), access control (door locks), and related servers and workstations at each facility. The purpose of creating one project to update all Generation Services facilities is to obtain timely and cost effective solutions from bidding contractors, and to ensure the consistency of systems and hardware installed across NCPA's facilities.

#### Selection Process

The Project was publicly advertised for pre-qualification October 24, 2016. Six (6) firms expressed an interest in the project and submitted pre-qualification documents. Staff conducted interviews of the references and scored the respective firms' experience/qualifications. Four (4) contractors: Burns & McDonnell, RFI, Mark III Construction, Inc., and 3D Datacom were deemed qualified, while two (2) contractors did not meet the minimum qualifications after project experience and references were examined. The four qualified contractors were approved by NCPA to bid on the project.

A bid package for this public works project was issued on November 23, 2016. Bid walks were held at NCPA Generation Services facilities December 12– 15. Five (5) addenda were issued for the Project which included bid walk questions and answers, additional project drawings, bid list item changes, and public works contract updates for 2017. Bids were opened on February 7, 2017. NCPA received two (2) bids, and both were declared to be non-responsive on February 27, 2017. The reason the bids were declared non-responsive are as follows: 3D Datacom submitted a bid that omitted one or more legally required documents, and Mark III submitted a bid having not completed all required bid walks.

Because NCPA did not receive any responsive bids, NCPA opened negotiations with all four (4) previously prequalified contractors on March 1<sup>st</sup>, 2017. NCPA required that all contractors complete any bid walks that were not previously completed. Bids were opened on May 12, 2017. Two (2) bids were received.

<b>CONTRACTOR</b>	<b>BID AMOUNT</b>
Mark III	\$1,166,801
3D Datacom	\$1,667,158

Mark III Construction, Inc. was determined to be the low, responsible, and responsive bidder. The low bid came in significantly (over \$500,000) under the second bid from 3D Datacom. Mark III Construction, Inc. confirmed that it did not see any vulnerabilities in the bid design documents.

It is the practice of staff to closely manage and monitor the construction progress and enforce the contract. Staff recommends a 10% construction contingency for this project. The contingency is reserved solely for NCPA to utilize in the cases that legitimate site conditions or design changes warrant the need for additional funds. The contract will not contain any reference or connection to the contingency.

Fiscal Impact

The total cost of the Multi-Facility Security Systems Development and Installation project is \$1,283,481. This includes construction and a 10% contingency. The cost is broken down into separate costs to the Geothermal, CT1, LEC, and Hydroelectric Projects, based on the scope of work and materials required at each facility. Each Generation Services Project FY17 budget has Physical Security funds encumbered from the FY16 budget.

Cost breakdown and budget funds currently allocated for Physical Security are as follows:

<b><u>PROJECT</u></b>	<b><u>BUDGET</u></b>	<b><u>COST</u></b>	<b><u>DELTA</u></b>
Geothermal	\$408,923	\$358,256	\$50,667
CT1	\$78,420	\$300,040	(\$221,620)
LEC	\$170,204	\$181,112	(\$10,908)
CT2	\$12,674	\$18,915	(\$6,241)
Hydroelectric	\$298,435	\$425,158	(\$126,723)
<b>TOTAL</b>	<b>\$968,656</b>	<b>\$1,283,481</b>	<b>(\$314,825)</b>

The Hydroelectric Project FY17 budget has a remaining balance of \$10,000 for Project Security, \$103,624 for Maintenance of Structures, and \$61,743 for Maintenance of Dams, which have been identified as available funds for this project.

The CT1 FY17 budget is short by \$221,620 and there are no alternate funds available for the fiscal year. It is recommended that this shortfall be addressed by increasing the CT1 FY18 budget by this amount.

Environmental Analysis

This activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a “project” for purposes of Section 21065 the California Environmental Quality Act. No environmental review is necessary.

Submitted by:

KEN SPEER  
Assistant General Manager  
Generation Services

Attachments: (1)

- Public Works Agreement with Mark III Construction, Inc.

## AGREEMENT

This contract ("Contract" or "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the Northern California Power Agency, a joint powers public agency organized and existing under the laws of the State of California (hereinafter referred to as "NCPA") and \_\_\_\_\_, a **[California Corporation / Limited Liability Company / General Partnership / Limited Partnership / Individual]** with offices located at \_\_\_\_\_, (hereinafter referred to as "Contractor"), collectively referred to as the "Parties"),

WHEREAS, NCPA intends to have constructed the Multi-Facility Security Systems Development and Installation ("Project") located at **NCPA's Facilities near Alameda, Middletown, Lodi, Calaveras County, & Tuolumne County, CA** (hereinafter referred to as the "Project"), and the work required by this Contract is an integral part of this Project, and

WHEREAS, on \_\_\_\_\_, at its regularly scheduled meeting, the NCPA Commission has approved and authorized this Project by Resolution No. \_\_\_\_\_ ( if estimated at over \$250,000); and

WHEREAS, both Parties have a desire to perform the work described herein;

**NOW THEREFORE, IT IS AGREED THAT:**

### **SECTION 1. SCOPE OF WORK**

Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor, materials, transportation and utility services and incidentals necessary to fully perform and complete, in a good workmanlike manner, free from any and all liens and claims from mechanics, material suppliers, subcontractors, artisans, machinists, teamsters, freight carriers, and laborers, and in strict accordance with the Contract Documents (as defined below), including without limitation the drawings and technical specifications and plans included therein, the Work of:

**Northern California Power Agency  
Project Description: Multi-Facility Security Systems Development and Installation  
NCPA Bid No.: GSHQ-101**

It is understood and agreed that such tools, equipment, apparatus, facilities, labor, materials, transportation and utility services and incidentals shall be furnished, and the Work performed and completed, in accordance with the Contract Documents and subject to the approval of NCPA and NCPA's duly authorized representatives.

### **SECTION 2. TIME OF COMPLETION; LIQUIDATED DAMAGES**

Contractor hereby agrees to commence the Work within 7 calendar days from the date of NCPA's "Notice to Proceed," and to diligently prosecute the same to completion within **one hundred twenty-five (125)** consecutive calendar days commencing after the date of NCPA's Notice to Proceed. Contractor shall complete the work no later than June 30, 2017, except as adjusted by any subsequent change order. Time is of the essence in this Agreement.

This Contract is being awarded in reliance upon the completion date set forth in the Contract Documents and the dates established by schedules set forth and released by NCPA. NCPA will hold the Contractor responsible and accountable for all damages suffered by NCPA as a consequence of the Contractor's

failure to meet the schedule dates, or to complete the work at the time specified, except for such excusable delays as listed in the Contract Documents.

It is agreed by the parties to this Agreement that in the case in which portion of the work called for under Contract Documents are not completed within the times specified, damages will be sustained by NCPA, and it is and will be impractical and extremely difficult to ascertain the actual damages which NCPA will sustain in the event of and by reason of such delay. It is therefore agreed that the Contractor shall pay to NCPA the sums stipulated for delays in finishing the work beyond the times of completion specified; and the Contractor agrees to pay these liquidated damages, and further agrees that NCPA may deduct the amount thereof from any moneys due or that may become due the Contractor under the Contract Documents. If such moneys are insufficient, the Contractor or its surety or sureties shall pay to NCPA any deficiency within thirty (30) days of invoice submittal by NCPA.

Liquidated damages in the amount of 1% of the contract price per day for each day after 100 days of delay shall be imposed on Contractor.

**SECTION 3. CONTRACT PRICE**

NCPA will pay Contractor in current funds as full consideration for the full and complete performance of this Agreement the sum of:

\_\_\_\_\_ (\$\_\_\_\_\_), being Contractor's bid amount, subject to subsequent contract change order(s), for furnishing all materials and for doing all the Work contemplated under this Agreement; for all loss or damages arising out of the nature of the Work, or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the Work, until the Work is accepted by the NCPA; for all expenses incurred by or in consequences of the suspension or discontinuance of the Work; and for well and faithfully completing the Work, the whole thereof, in the manner and in accordance with the Contract Documents therefore and the requirements of NCPA under them.

**SECTION 4. BONDS**

Prior to execution of this Agreement, Contractor shall obtain a one hundred percent (100%) Performance Bond, a one hundred percent (100%) Payment (Labor and Materials) Bond, and a ten percent (10%) Maintenance Bond each in the form included in the Contract Documents.

**SECTION 5. INSURANCE**

Before beginning any work under this Contract, Contractor, at its own cost and expense, shall procure the types and amounts of insurance listed below against claims that may arise from or in connection with the performance of the work hereunder by Contractor and its agents, representatives, employees, and subcontractors. Contractor shall maintain the insurance policies required by this section throughout the term of this Contract. The cost of such insurance shall be included in the Contractor's price. Contractor shall not allow any subcontractor to commence work on any subcontract until Contractor has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to NCPA. Verification of the Contractor's required insurance shall be submitted and made part of this Contract prior to execution. The existence of insurance shall not relieve or decrease the liability of Contractor under the Contract Documents.

**5.1. Workers' Compensation.** Contractor shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than One Million Dollars (\$1,000,000.00) per accident. In the alternative, Contractor may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of NCPA. The insurer, if insurance is provided, or the Contractor, if a program of self-insurance is provided, shall waive all rights of subrogation against NCPA and its officers, officials, employees, and volunteers for loss arising from work performed under this Contract.

**5.2. Commercial General Insurance.**

**5.2.1. General requirements.** Contractor, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Contract in an amount not less than one million dollars (\$1,000,000) and two million dollars (\$2,000,000.00), per occurrence, combined single limit coverage for risks associated with the work contemplated by this Contract. If a Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Contract or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily injury, personal injury, including death resulting therefrom, completed operations and products liability; broad form property damage liability; coverage for the XCU hazards of explosion, collapse, and underground, and contractual liability as to the obligations assumed by the Contractor under the Contract Documents.

**5.2.2. Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (current edition) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. No endorsement shall be attached limiting the coverage.

**5.3 Automobile Liability Insurance.**

**5.3.1. General requirements.** Contractor, at its own cost and expense, shall maintain automobile liability insurance for the term of this Contract in an amount not less than one million dollars (\$1,000,000) and two million dollars (\$2,000,000.00), per occurrence, combined single limit coverage for risks associated with the work contemplated by this Contract. If an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Contract or the general aggregate limit shall be at least twice the required occurrence limit.

**5.3.2. Minimum scope of coverage.** Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (current edition) symbol 1. No endorsement shall be attached limiting the coverage.

**5.4 All Policies Requirements.**

**5.4.1. Acceptability of Insurers.** All insurance required by this section is to be placed with insurers with a Best's rating of no less than A:VII.

**5.4.2. Verification of Coverage.** Prior to beginning any work under this Contract, Contractor shall furnish NCPA with endorsements (as to insurance referenced in Sections 5.2, 5.3 and 5.5) and certificates, with complete certified copies of all policies (if requested by NCPA), evidencing to NCPA's reasonable satisfaction, compliance with Section 5 herein. All endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf.

**5.4.3. Notice of Reduction in or Cancellation of Coverage.** Contractor shall provide at least thirty (30) days prior written notice of any material changes to the insurance specified herein, including suspension, cancellation, termination, limitation, reduction in scope or amount. NCPA's receipt of such notice shall not constitute NCPA's acceptance of such material change.

**5.4.4. Additional Insured; Primary Insurance.** An endorsement at least as broad as Insurance Services Office form number CG 20 10 (current edition) shall be attached to policies referenced in Sections 5.2, 5.3 and 5.5, stating that NCPA and its officers, employees, agents, and volunteers shall be covered as additional insureds with respect to such policies. The coverage shall contain no special limitations on the scope of protection afforded to NCPA or its officers, employees, agents, or volunteers.

Each endorsement shall state that coverage is primary insurance with respect to NCPA and its officers, officials, employees, agents and volunteers, and that no insurance or self-insurance maintained by NCPA shall be called upon to contribute to a loss under the coverage.

**5.4.5. Deductibles and Self-Insured Retentions.** Contractor shall disclose to and obtain the written approval of NCPA for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Contract.

During the period covered by this Contract, only upon the prior express written authorization of NCPA, Contractor may increase such deductibles or self-insured retentions with respect to NCPA, its officers, employees, agents, and volunteers. NCPA may condition approval of an increase in deductible or self-insured retention levels with a requirement that Contractor procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

**5.4.6. Subcontractors.** Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**5.4.7. Variation.** NCPA may approve a variation in writing in the foregoing insurance requirements, upon a determination that the coverage, scope, limits, and forms of such insurance are either not commercially available, or that NCPA's interests are otherwise fully protected.

**5.4.8 Reporting.** The endorsements shall also specify that any failure or delay to comply with reporting or other provisions of the policies shall not affect coverage provided to NCPA, its officers, officials, employees, agents or volunteers.

**5.4.9 Occurrence-basis for Coverage.** The endorsements shall also specify that coverage is on an occurrence or an accident basis, and not on a claims-made basis.

**5.5 Builder's Risk.** Contractor shall obtain and maintain at its own expense a builder's risk and fire insurance policy, special form including extended coverage and vandalism, and malicious mischief endorsements. The policy shall name NCPA and the Contractor as insureds. This insurance shall be in the amount of 100% of the Contract Price, and may be increased at NCPA's request to reflect change orders. In the event of partial or total destruction by fire of any or all of the Work at any time prior to completion and NCPA's acceptance of the Work, the Contractor shall promptly reconstruct all Work so destroyed or injured at the Contractor's sole cost and expense and at no cost to NCPA.

**5.6 Remedies.** In addition to any other remedies NCPA may have if Contractor fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, NCPA may, at its sole option exercise any of the following remedies, which are alternatives to other remedies NCPA may have and are not the exclusive remedy for Contractor's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Contract;
- Order Contractor to stop work under this Contract or withhold any payment that becomes due to Contractor hereunder, or both stop work and withhold any payment, until Contractor demonstrates compliance with the requirements hereof; and/or
- Terminate this Contract.

## **SECTION 6. INDEPENDENT CONTRACTOR**

**6.1. Independent Contractor.** At all times during the term of this Contract, Contractor shall be an independent contractor and shall not be an employee of NCPA. NCPA shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Contract. Notwithstanding any other NCPA, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing services under this Contract shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by NCPA, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of NCPA and entitlement to any contribution to be paid by NCPA for employer contributions and/or employee contributions for PERS benefits.

**6.2. Contractor Not Agent.** Except as NCPA may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of NCPA in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Contract to bind NCPA to any obligation whatsoever.



**SECTION 7. REGISTRATION**

During the term of this Agreement, Contractor warrants that it is currently registered with the Department of Industrial Relations and qualified to perform public work consistent with Labor Code section 1725.5. Contractor further warrants that any subcontractors, who are subject to Public Contract Code section 4104, are registered and qualified to perform public work consistent with Labor Code section 1725.5

**SECTION 8. LAW, VENUE, AND CONFLICTS OF INTEREST**

**8.1.** This Agreement has been executed and delivered in the State of California, and the validity, enforceability and interpretation of any of the provisions of the Contract Documents, including this Agreement, shall be determined and governed by the laws of the State of California, without regard to the choice of law doctrine.

**8.2.** The duties and obligations of the parties created hereunder are performable in Placer County and in that County where the NCPA Project is located. Either Placer County or the County where the Project Facility is located shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

**8.3.** Contractor may serve other clients, but none whose activities within the corporate limits of NCPA or whose business, regardless of location, would place Contractor in a “conflict of interest,” as that term is defined in the Political Reform Act, codified at California Government Code Sections 81000 *et seq.*

**8.4.** Contractor shall not employ any NCPA official in the work performed pursuant to this Contract. No officer or employee of NCPA shall have any financial interest in this Contract that would violate Government Code Sections 1090 *et seq.*

**8.5.** Contractor hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of NCPA. If Contractor was an employee, agent, appointee, or official of NCPA in the previous twelve months, Contractor warrants that it did not participate in any manner in the forming of this Contract. Contractor understands that, if this Contract is made in violation of Government Code Sections 1090 *et seq.*, the entire Contract is void and Contractor will not be entitled to any compensation for services performed pursuant to this Contract, including reimbursement of expenses, and Contractor will be required to reimburse NCPA for any sums paid to the Contractor. Contractor understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code Section 1090 and, if applicable, will be disqualified from holding public office in the State of California.

**SECTION 9. CHANGE ORDERS**

It is agreed that the Project Manager is the sole person authorized to execute change orders necessary to the prosecution of the Work, unless NCPA otherwise notifies Contractor in writing.

**SECTION 10. EXTRA WORK**

Contractor hereby agrees that it will not proceed with any extra work unless it has been authorized in writing to do so by the Project Manager prior to the commencement of such extra work.

**SECTION 11. PROGRESS PAYMENTS**

**11.01** The Contractor shall submit to NCPA’s designated representative at least 10 days before the first and/or third Monday of the month, for NCPA’s approval, a request for payment. Each progress payment to the Contractor by NCPA shall be in payment for only that work performed

by the Contractor during the period immediately preceding the Contractor's current request for payment.

**11.02** If requested by NCPA, the Contractor shall submit time sheets to NCPA daily for approval and signature. The daily time sheets shall clearly delineate the number of worker-hours and equipment hours worked in each given area of work. If NCPA makes this request, then only those time sheets signed by NCPA will be honored for payment.

**11.03** Each request for payment submitted by the Contractor shall include backup documentation in support of all quantities and costs for which payment is requested, including but not limited to all material invoices, subcontractor/vendor statements of quantities and/or services provided, equipment rental invoices and signed daily time sheets.

**11.04** Work performed at the request of NCPA, which is outside the scope of work and unit prices as defined in these Contract Documents, shall be itemized separately, with back-up documentation attached, and the total cost figures for the work shall be entered on the billing form under "Other Work". Work itemization with back-up shall be submitted with the Contractor's request for payment.

**11.05** Subject to Section 12 of the General Conditions, after approval by NCPA, progress payments will be made to the Contractor in the amount of ninety five percent (95%) of the approved billing. Progress payments will be made within 30 days after NCPA receives the Contractor's Request for Payment. NCPA's Progress Payment shall not constitute approval or acceptance of the Work performed.

## **SECTION 12. FINAL PAYMENT**

**12.01** Final payment will not be made to the Contractor until it has furnished evidence satisfactory to NCPA, of the Contractor's payment or provision for payment of all bills for material, labor, services, etc., incurred in connection with the performance of the Work; and at NCPA's option the written consent of the Contractor's surety to release final payment.

**12.02** Final payment will further be contingent on approval of, and acknowledgment by, NCPA that the Contractor has completed all tasks and complied with all conditions of the Contract Documents. Upon approval by NCPA, the final payment will be made to the Contractor. NCPA may withhold from final payment, to the extent allowed by applicable law, amounts which in NCPA's opinion are determined to be reasonable and necessary to provide security against any losses, damages, expense, and liability covered by the Indemnification provision in the Contract Documents, and claims filed or reasonable evidence indicating probable filing of claims, damages to NCPA or third parties, liquidated damages, or other lawful bases for withholding final payment.

**12.03** Final payment by NCPA, and acceptance of it by the Contractor, shall not constitute a waiver by NCPA, to any rights with respect to the Contractor's continuing obligations under the Contract Documents.

## **SECTION 13. DISPUTES**

**13.1.** All questions of fact, and any and all disputes with references thereto, arising out of the performance of this Contract, or changes therein, or extra work in connection therewith, shall be submitted in writing to NCPA. NCPA will then make the final decision, which when made in writing shall be final and conclusive on the parties hereto.

**13.2.** Prior to initiating litigation in a court of competent jurisdiction, both Contractor and NCPA shall undergo alternative dispute procedures as outlined in Public Contract Code Sections 20104

*et seq.* The parties also expressly agree that the Alternative Dispute Resolution procedures outlined in Public Contract Code Sections 20104 *et seq.* shall apply to all claims, including those that exceed \$375,000, and that such procedures are incorporated as though fully set forth in this Contract.

#### **SECTION 14. PREVAILING WAGES**

In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in the California Labor Code must be paid to all workers engaged in performing the Work. In accordance with California Labor Code Section 1770 and following, the Director of Industrial Relations has determined the general prevailing wage per diem rates for the locality in which the Work is to be performed. In accordance with California Labor Code Section 1773, NCPA has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the project. In accordance with California Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file at the Agency and will be made available on request. Throughout the performance of the Work the Contractor must comply with all provisions of the Contract Documents and all applicable laws and regulations that apply to wages earned in performance of the Work. Contractor assumes all responsibility for such payments and shall defend, indemnify and hold NCPA harmless from any and all claims made by the State of California, the Department of Industrial Relations, any subcontractor, any worker or any other third party with regard thereto.

#### **SECTION 15. GUARANTEE OF WORK**

Contractor hereby agrees that it will post a Maintenance Bond in the form included in the Contract Documents after final inspection by NCPA and completion of required corrections and/or repairs. Such Maintenance Bond shall guarantee Contractor's work for the period of one year after the date of recording of NCPA's Notice of Completion of the Work.

#### **SECTION 16. RELEASE**

Upon payment of undisputed amounts under this Agreement and if requested by NCPA, Contractor shall execute a Release in the form provided by NCPA. Such Release shall not apply to disputed contract claims in amounts specifically excluded by Contractor from the operation of the Release.

#### **SECTION 17. BINDING AGREEMENT; ASSIGNMENT**

Contractor, by execution of this Agreement, acknowledges that Contractor has read this Agreement and the other Contract Documents, understands them, and agrees to be bound by their terms and conditions. The Contract Documents shall inure to the benefit of and shall be binding upon the Contractor and NCPA and their respective successors and permitted assigns.

The Contractor shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of all sureties on all bonds required by this agreement, including but not limited to the Payment (Labor and Materials) Bond, and NCPA.

#### **SECTION 18. CONTRACT DOCUMENTS**

The full, complete and exclusive contract between the parties hereto shall consist of the following identified documents (the "**Contract Documents**"): (1) The "**Bid Documents**," consisting of the Notice Inviting Bids, Instructions to Bidders, Bidder's Check List, Bid Form, Bid Bond, Designation of Subcontractors, Non-Collusion Declaration, Agreement, Workers' Compensation Insurance Certification,

NCPA  
Model Public Works Contract  
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Performance Bond, Payment (Labor and Materials) Bond, Maintenance Bond, Escrow Agreement for Security Deposits in Lieu of Retention, General Conditions, Supplementary Conditions, and Technical Specifications and Plans, if any, Maintenance Labor Agreement (LEC only), and any Addenda, and (2) any Change Orders, Field Orders, or NCPA's directives issued pursuant to and in accordance with this Agreement.

**SECTION 19. INDEMNIFICATION AND ATTORNEY'S FEES**

Contractor shall at its own cost, defend, hold harmless, and indemnify NCPA, its governing board, officials, commission members, officers, directors, employees, agents, and successors in interest ("Indemnitees") from and against any and all liability, damages, losses, claims, demands, actions, costs including attorney's fees and expenses ("Liabilities"), on account of injury to or death of persons or damage to any property (including property of NCPA) or delay or damage to another contractor resulting from or arising out of or in any way connected with the performance by the Contractor of this Agreement, and Contractor will reimburse Indemnitees for all Liabilities incurred by Indemnitees in consequence of any claims, demands, and causes of action which may be brought against Indemnitees arising out of the performance by the Contractor of this Agreement. However, notwithstanding, nothing in this section or the Contract Documents generally shall be construed to require the Contractor to indemnify the Indemnitees for their sole negligence, willful misconduct, or for defects in design furnished by Indemnitees. This section and the Contract Documents shall be construed consistent with Civil Code section 2782 so as to provide the maximum indemnification permitted by applicable law to Indemnitees.

This indemnification shall be in addition to any other indemnification provisions contained in the Contract Documents.

**SECTION 20. NO IMPLIED WAIVER OF BREACH**

The waiver of any breach of a specific provision of this Contract does not constitute a waiver of any other breach of that term or any other term of this Contract.

**SECTION 21. SUCCESSORS AND ASSIGNS**

The provisions of this Contract shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

**SECTION 22. USE OF RECYCLED PRODUCTS**

Contractor shall endeavor to prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

**SECTION 23. NONDISCRIMINATION AND EQUAL OPPORTUNITY**

Contractor shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Contractor under this Contract. Contractor shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Contract, including but not limited to the satisfaction of any positive obligations required of Contractor thereby.

Contractor shall include the immediately foregoing paragraph, verbatim, of this Subsection in any subcontract approved by the Contract Administrator or this Contract.

Contractor shall indemnify, defend, and hold harmless NCPA with respect to any alleged violation of this Section.

**SECTION 24. ENTIRE AGREEMENT**

The Contract Documents constitute the entire Agreement between the parties, and supersede any prior agreement between the parties, oral or written, including NCPA's award of the contract to Contractor, unless such agreement is expressly incorporated herein. NCPA makes no representations or warranties, express or implied, not specified in the Contract Documents.

**SECTION 25. EXECUTION OF OTHER DOCUMENTS**

The parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of the Contract Documents.

**SECTION 26. EXECUTION IN COUNTERPARTS**

This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

**SECTION 27. SEVERABILITY**

If any provision of the Contract Documents shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**SECTION 28. AMENDMENTS**

The terms of the Contract Documents shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the parties.

**SECTION 29. WRITTEN NOTICE**

Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm, to an officer or director of the corporation, or to a manager of the LLC for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party who gives the notice.

Any written notice to Contractor shall be sent to:

**[INSERT CONTRACTOR ADDRESS AND CONTACT INFORMATION]**

Any written notice to NCPA shall be sent to:

Northern California Power Agency  
Attn: Project Manager  
Ronald Yuen  
651 Commerce Dr, Roseville, CA 95678

and

Northern California Power Agency  
Attn: General Manager  
651 Commerce Drive  
Roseville, CA 95678

With a copy to:  
Michael F. Dean  
General Counsel  
Meyers Nave  
555 Capitol Mall, Ste. 1200  
Sacramento, CA 95814

**SECTION 29. TERMINATION OF AGREEMENT**

NCPA may terminate the Agreement as provided in the Contract Documents. The Contractor shall receive payment for all work performed to the date of termination in accordance with the provisions of the Contract Document.

**SECTION 30. MONITORING BY DEPARTMENT OF INDUSTRIAL RELATIONS**

This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

**IN WITNESS WHEREOF**, the Northern California Power Agency has authorized the execution of this Agreement by its General Manager has caused this Agreement to be duly executed.

NORTHERN CALIFORNIA POWER AGENCY

ATTEST

By \_\_\_\_\_  
RANDY S. HOWARD, General Manager

By \_\_\_\_\_  
Assistant Secretary of the Commission

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

APPROVED AS TO FORM

By \_\_\_\_\_  
Ruthann G. Ziegler  
Assistant General Counsel

CONTRACTOR:

\_\_\_\_\_  
(Name - Type or Print)

By \_\_\_\_\_  
Signature (if a partnership, all partners must sign)

\_\_\_\_\_  
Official Title

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
License No./Classification/Expiration Date

**CORPORATE CERTIFICATE**

I, \_\_\_\_\_, hereby certify that I am the Secretary of the Corporation named as Contractor in the foregoing Agreement; that \_\_\_\_\_ who signed the Agreement on behalf of the Contractor, was then \_\_\_\_\_ of such Corporation; that the Agreement was duly signed for and in behalf of such Corporation by authority of its governing body and is within the scope of its corporate powers.

(Corporate Seal)

(Secretary)





**ADDENDUM No. 1**  
**NCPA Bid No. GSHQ-101**  
**Multi-Facility Security Systems Development and Installation**  
**Date: 2/1/17**  
**Bid Opening: February 7, 2017, 5:00 p.m. PST**

This Addendum modifies parts of the Bid Documents for the above-mentioned Project. This Addendum shall form part of the Bid Documents and Contract Documents for this Project.

Each bidder shall confirm receipt of this Addendum in the space provided in the Bid Form. Any bid not acknowledging receipt of this Addendum shall be considered as an incomplete bid.

**CHANGES TO THE BID DOCUMENTS:**

**PUBLIC WORKS CONTRACT**

ITEM ONE

The last date to submit a sealed bid, as written in Notice Inviting Bids, Section 1. A., is changed from January 16, 2017 to February 7, 2017 at 5:00PM PST.

ITEM TWO

The completion time after NCPA Notice to Proceed, as written in Model Public Works Contract Agreement, Section 2, is changed from 125 calendar days to 150 calendar days. The additional completion date of June 30, 2017 is removed. Changes are as follows:

Contractor hereby agrees to commence the Work within 7 calendar days from the date of NCPA's "Notice to Proceed," and to diligently prosecute the same to completion within **one hundred fifty (150)** consecutive calendar days commencing after the date of NCPA's Notice to Proceed, except as adjusted by any subsequent change order. Time is of the essence in this Agreement.

ITEM THREE

The addition of the Bollard Specification drawing to the Technical Specifications and Plans Attachment D – Equipment Requirements.

ITEM FOUR

The revision of the Bid Form – Bid Essential Items and Bid Form – Bid Optional Items, to reflect the project scope as presented and discussed during the bid walks.

ITEM FIVE

The addition of Bid Optional Items – Item #59- All Sites - 5 Year Software Maintenance and Support for All Application Software.

ITEM SIX

The revision of the Attachment B – Equipment Matrix as well as Attachment C - Equipment Location Drawings, to reflect the project scope as presented and discussed during the bid walks.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company

\_\_\_\_\_  
Date



**ADDENDUM No. 5**  
**NCPA Bid No. GSHQ-101**  
**Multi-Facility Security Systems Development and Installation**  
**Date: 2/1/17**  
**Bid Opening: February 7, 2017, 5:00 p.m. PST**

This Addendum modifies parts of the Bid Documents for the above-mentioned Project. This Addendum shall form part of the Bid Documents and Contract Documents for this Project.

Each bidder shall confirm receipt of this Addendum in the space provided in the Bid Form. Any bid not acknowledging receipt of this Addendum shall be considered as an incomplete bid.

**CHANGES TO THE BID DOCUMENTS:**

**ITEM ONE**

Section 13.3 is added to the Agreement to read as follows:

**13.3** Notwithstanding Sections 13.1 and 13.2, procedures for the Contractor to make claims for: (1) an extension of time, including relief from damages or penalties for delay; (2) payment by NCPA of money or damages arising from work done by, or on behalf of, the Contractor, where the underlying contract does not expressly provide for payment or payment to which the Contractor is not otherwise entitled, or (3) the payment of an amount disputed by NCPA are set forth in Section 10.03 of the General Conditions.

**ITEM TWO**

Section 10.03 is added to the General Conditions to read as follows:

**10.03** This section shall govern any claim by the Contractor for: (1) an extension of time, including relief from damages or penalties for delay; (2) payment by NCPA of money or damages arising from work done by, or on behalf of, the Contractor, where the underlying contract does not expressly provide for payment or payment to which the Contractor is not otherwise entitled; or (3) the payment of an amount disputed by NCPA.

Contractor may submit to NCPA a claim for any of the three above-referenced matters. Contractor shall provide NCPA with reasonable documentation

necessary to support its claim. Contractor shall submit its claim by registered mail or certified mail, return receipt requested.

NCPA, within forty-five (45) days of its receipt of the claim, unless such time is extended as referenced in this section, shall conduct a reasonable review of the claim and provide Contractor with a written statement identifying what portion of the claim NCPA disputes and what portion NCPA does not dispute.

The forty-five (45) day period referenced herein may be extended by mutual agreement of NCPA and Contractor or, if the NCPA Commission's approval is necessary to provide the Contractor with such a written statement, and the Commission does not meet within the 45-day period, NCPA shall have three (3) days following the Commission's next duly noticed public meeting to provide the Contractor with the written statement.

Payment on any undisputed portion of the claim shall occur within sixty (60) days of NCPA issuing the written statement.

If NCPA does not respond within the required time period, the claim shall be deemed rejected in its entirety.

If Contractor disputes NCPA's written statement as to of any portion of the claim, or if NCPA fails to respond within the specified time period, Contractor may demand in writing an informal conference to meet and confer for settlement of the dispute. Upon receipt of such demand by registered mail or certified mail, return receipt requested, NCPA shall schedule a meet and confer conference within thirty (30) days, to settle the dispute. Within ten (10) business days of the conclusion of the meet and confer conference, NCPA shall provide Contractor with a written statement identifying the portion and amount of the claim that remains in dispute, if any. If NCPA does not respond within the required time period, the entire claim shall be deemed to remain in dispute. NCPA shall pay any portion of the claim that is undisputed after the conference within sixty (60) days of NCPA issuing the written statement.

Any portion of the claim that remains disputed, as identified by the Contractor in writing, shall be submitted to nonbinding mediation. The Parties shall mutually agree on a mediator within ten (10) business days of the Contractor identifying the disputed portion of the claim in writing. If the Parties cannot agree upon a mediator, each Party shall select a mediator, and those mediators shall then select a qualified neutral third party to mediate. Each Party shall bear the fees and costs charged by its respective mediator, and the parties shall share all other fees and costs associated with the mediation equally. The parties may mutually agree, in writing, to waive mediation. If mediation is unsuccessful, civil litigation may be commenced, subject to all applicable laws and provisions of this Contract, including any obligation to arbitrate disputes. Unless otherwise agreed to by the Parties in writing, this mediation shall excuse any further obligation to mediate

under Public Contract Code Section 20104.4. As used herein, “mediation” means any nonbinding process in which an independent third party assists the Parties in dispute resolution through negotiation or issuance of an evaluation.

If a subcontractor lacks legal standing to assert a claim against NCPA, the subcontractor may request that the Contractor present NCPA with a claim on behalf of the subcontractor or a lower tier subcontractor. The subcontractor shall furnish reasonable documentation to support the claim. Within forty-five (45) days of receipt of the request, Contractor shall provide subcontractor with a written statement confirming that the Contractor presented the claim to NCPA, or providing the reasons that the Contractor did not.

Upon receipt of a claim, the Parties may also mutually agree, in writing, to waive the provisions of this section and, instead, proceed directly to commencement of a civil action or binding arbitration.

Any payment not paid within the time period required by this Section shall bear interest at seven percent (7%) per annum.

All references to days in this section are to calendar days, unless otherwise specified.

### ITEM THREE

Section 1.10 is added to Attachment A (Scope of Work Document) of the Technical Specifications and Plans, to read as follows:

**1.10 Claims.** Procedures for the Contractor to make claims for: (1) an extension of time, including relief from damages or penalties for delay; (2) payment by NCPA of money or damages arising from work done by, or on behalf of, the Contractor, where the underlying contract does not expressly provide for payment or payment to which the Contractor is not otherwise entitled or (3) the payment of an amount disputed by NCPA are set forth in Section 10.03 of the General Conditions.

In the event of a conflict between the terms and provisions of this Addendum No. 5 and the terms and provisions of the other Bid Documents, the terms and provisions of the Addendum No. 5 shall control. In all other respects, the Bid Documents shall remain unchanged and in full force and effect.

2766125.2

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Signature

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Title

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Company

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Date