



# Peabody Municipal Light Plant

**Community Owned. Not for profit. It's Ours.**

## PEABODY MUNICIPAL LIGHT PLANT

### BID - MATERIALS

#### INSTRUCTIONS TO BIDDERS

1. Peabody Municipal Light Plant (PMLP) will receive bids for a **VOICE OVER IP TELEPHONY SYSTEM** until 11:00 a.m., Tuesday, September 5, 2017 at its General Offices at 201 Warren Street Extension, Peabody, Massachusetts, 01960, at which time the bids will be publicly opened and read.
2. BIDS --
  - A. All bids must be submitted along with the completed Bid Form provided in these specifications. If additional space is required, it shall be so noted on a supplemental attachment under the bidder's letterhead and entitled "Remarks". This attachment shall become a part of the Bid Form.
  - B. The Bid Form shall be without interlineations, alterations, erasures or changes in phraseology.
  - C. The Bid Form shall be enclosed in a sealed envelope, clearly marked on the outside with the bidders name and address, and the following bold lettering: **"VOICE OVER IP TELEPHONY SYSTEM"**. Three copies of all bids must be submitted in a sealed envelope properly marked with the Title of the bid and mailed/delivered to:  
  
Peabody Municipal Light Plant  
ATTENTION: Glenn Trueira, Manager  
201 Warren Street Extension  
Peabody, MA 01960
  - D. The Bid Form and supplemental sheets identified on same shall constitute and shall hereinafter be termed the "Bid".
  - E. The firm submitting a bid shall assume the responsibility of making a careful examination of the specifications and related documents and all other matters that may affect cost and performance. Bidders will be required, at their own expense, to comply with all statutes, regulations, ordinances and tests which may be applicable.
  - F. Each firm shall submit with their bid, evidence of their experience and qualifications to satisfactorily fulfill the specifications and requirements.

G. Each firm submitting a bid shall notify PMLP, in writing, if they find any discrepancies or omissions from the specifications, or if in doubt as to their meaning. If an explanation is necessary, a reply will be made by an addendum issued to all firms who have received specifications. PMLP will not give verbal answers to any inquiries regarding the meanings of the specifications. All inquiries should be addressed to PMLP, Attention: Glenn Trueira, 201 Warren Street Extension, Peabody, Massachusetts, 01960.

### 3. CHANGES IN SPECIFICATIONS --

PMLP may advise all firms who have received specifications, by means of addenda, of any changes in the Specifications during the bid period. All such changes shall become a part of the Specifications as if originally included therein.

### 4. SITE INSPECTIONS --

PMLP is not responsible for any inspections, visits, etc., that may be made to any sites or potential sites in connection with this work. The coordination, approval, and expense for such inspections, visits, etc., is the responsibility of the firm submitting the bid.

### 5. PRICES --

All prices and applicable discounts will be firm for the delivery quoted. Bidders must include on a separate sheet, any discount schedule which may be applicable to this purchase. The bid prices shall include everything necessary for fulfillment of the Contract, including delivery (at PMLP jobsite, Peabody, MA), except as may be otherwise expressly provided in the Contract Documents.

### 6. ESCALATOR CLAUSES --

Bids which are not subject to any form of upward escalator clause are preferred. If firm prices cannot be quoted, the Bidder shall base the escalation provision upon the index stipulated in the specification attached thereto. If no index is stipulated in the specification, bidder shall state the index upon which his bid is based. Failure to do so will be considered grounds for rejection of the bid.

The PMLP reserves the right to consider any bid which may be offered subject to an escalator clause, up or down, that is clearly defined as to basis of escalation, specifically, a given lowest posted price in a nationally recognized index provided that no other index is stipulated in the attached specifications. Preference will be given to bids in accordance to the first paragraph in this section.

7. EXECUTION OF CONTRACT --

- A. The Successful Firm will be notified of the award of the Contract in writing and shall properly and promptly execute a Contract on the PMLP Contract Form, within fifteen (15) days after receiving notification of the Award of the Contract.
- B. The Contract, when executed, shall be deemed to include the entire agreement between the parties. The Seller shall not be entitled to any modifications resulting from unauthorized claims or statements made by representatives of PMLP or other persons.
- C. PMLP shall have, at its option, the right to increase the contracted quantity bid by up to twice the original quantity which is stated in the bid specifications.

8. TERMS AND CONDITIONS --

The terms and conditions of the contract shall also be in accordance with the attachment entitled "Purchaser's Terms and Conditions." Any exceptions to these terms and conditions must be clearly identified in the bid under the category of exceptions to the Purchaser's Terms and Conditions.

9. DEFINITIONS --

The names and words Peabody Municipal Light Plant, PMLP, Purchaser, Owner, and Buyer as used in these documents are synonymous. The names and words, Bidder, Contractor, Seller, Vender, and Manufacturer as used in these Contract documents are synonymous.

10. RIGHT TO ACCEPT OR REJECT BIDS --

PMLP reserves the right to accept or reject bids or portions thereof, and to reject all bids, to waive any formalities in the process, if it is deemed to be in the best interests of PMLP. Proposals received after the public opening date and time will not be accepted.

11. ITEMS CONTAINED IN THE BID PACKAGE –

- Legal Notice
- Instructions to Bidders
- Purchaser's Terms and Conditions
- Specifications
- Bid Form
- Certified of Non-Collusion & Tax Compliance Certification
- Sample Contract

## PURCHASER'S TERMS AND CONDITIONS

### MATERIALS CONTRACT

#### 1. ENTIRE AGREEMENT AND AMENDMENTS

The terms and provisions of this Contract, together with the terms and provisions of all documents incorporated herein by reference, constitute the full and entire Contract between the Purchaser and the Seller concerning the matters set forth herein, and no other agreement or understanding of any nature whatsoever has been entered into or will be recognized, nor has the Purchaser made any inducements or representations to the Seller except as expressly stated in this Contract. No modification of this Contract shall be binding or have any force or effect on either party, unless reduced to writing and signed by the Purchaser and the Seller, or the authorized representatives of same. No provision of this Contract is intended or shall be construed to be for the benefit of any third party.

#### 2. PERFORMANCE

Time is of the essence in this Contract. If the Seller shall fail in any respect to prosecute the work with promptness and diligence, the Purchaser may cancel this Contract in part or in its entirety without liability for the cancelled part(s).

#### 3. PATENTS, TRADEMARKS, COPYRIGHTS

It is mutually understood and agreed that the Contract includes all royalties and costs arising from patents, trademarks and copyrights in any way involved in the work. If the Seller, or its subvendors/subcontractors, is required or desires to use any design, device, material or process covered by letters, patent, trademark, or copyright, the Seller indemnifies and holds harmless the Purchaser from any and all claims for infringement by reasons of the use of any such patented design, device, material or process to be performed under the Contract and shall indemnify the Purchaser for any costs, expenses and damages which they may be obligated to pay by reason of such infringement, at any time during the prosecution or after the completion of the work. The Purchaser shall give to the Seller notification of the source of any such suit or proceeding and shall furnish the Seller (at the Seller's expense) all needed information, authority and assistance to enable the Seller to defend the same. If any material, equipment, or work is in any such suit or proceeding held to constitute infringement or its use is enjoined, the Seller, within a reasonable time, shall either secure for the Purchaser, at the Seller's own expense, the right to continue using said material, equipment or work by suspension of the injunction, by procuring for the Purchaser a license, or otherwise, or shall at the Seller's own expense and as the Purchaser may elect, replace such material, equipment or work with non-infringing material, equipment or work, or modify it so that it becomes non-infringing, or remove such infringing material, equipment

or work, and refund the sums paid therefore by the Purchaser all without injury or damage to any other property of the Purchaser.

#### 4. INDEPENDENT CONTRACTOR RELATIONSHIP

The Seller shall perform work as an independent contractor.

#### 5. INSPECTION EXPEDITING

All material, equipment and/or work to be supplied under this contract is subject to inspection and/or expediting by the Purchaser or its representative. The Seller shall allow the Purchaser or its representative free access to Seller's works and provide free access to the works of Seller's subvendors/subcontractors.

#### 6. COMPLIANCE WITH LAW

The Seller will comply with all applicable federal, state, and local laws, rules and regulations. Compliance includes, but is not limited to, the Occupational Safety and Health Act of 1970, Peabody Municipal Light Plant Safety Rules & Regulations, Executive Order 11246 (Equal Opportunity) and guidelines established by the Council on Wage and Price Stability, all as amended periodically.

Seller agrees to comply with the provisions of the Occupational Safety and Health Act of 1970 and the Standards and Regulations issued thereunder and certifies that all items furnished under this Contract will conform to and comply with said standards and regulations. Seller further agrees to indemnify and hold harmless the Purchaser from all damages assessed against the Purchaser as a result of the seller's failure to comply with the Act and the standards issued thereunder and for the failure of the items furnished under this Contract to so comply.

#### 7. RISK OF LOSS

Risk of loss and/or damages shall be upon Seller until goods are physically delivered to the Purchaser's plant, storerooms, job site, or location indicated in the Contract Document. Materials will be considered as delivered only if all goods are physically received in proper condition and accepted by purchaser.

#### 8. DELIVERIES

The Purchaser will receive shipments Monday through Friday, holidays excluded, during its normal receiving hours (8:00 AM -3:00 PM). Any cost associated with shipments made during any time other than this receiving period will be to the Seller's account. All deliveries will be at PEABODY jobsite, Peabody, Massachusetts unless otherwise specified in the Peabody Municipal Light Plant specification section attached hereto.

## 9. ASSIGNMENT AND SUBCONTRACTING

The Seller's obligations authorized under this Contract are not assignable or transferable, and the Seller agrees not to subcontract any of the work authorized hereunder without the prior written approval of the Purchaser. The Purchaser retains the right to approve or disapprove of all subcontractors for such approved work.

## 10. CONFIDENTIALITY

The Seller shall keep all services carried out hereunder for the Purchaser (described in the Specifications attached hereto) entirely confidential, and not use, publish, or make known without the Purchaser's written approval, any information furnished by the Purchaser for purposes of such services, to any persons other than personnel of the parties of this Contract.

Any public representation regarding the Purchaser shall be made by the Purchaser, and any requests for information made to the Seller by a Third Party shall be referred to the Purchaser.

## 11. WAIVER

In the event the Purchaser shall fail to insist on performance of any of the terms or the exercise of any of its rights and privileges, such failure or any breaches, shall not constitute a waiver of such terms, conditions, rights or privileges.

## 12. CHANGES AND/OR AMENDMENTS

The Purchaser shall have the right, from time to time during the terms of this Contract, by written notice to the Seller, to make changes in or additions to drawings, specifications or instructions for the work covered in the Specifications, including the right to expand, decrease or limit the scope and nature of the work to be undertaken, or redirect work already in progress.

## 13. WARRANTY

The Seller warrants to the Purchaser that the article(s) provided and/or work performed under this Contract shall be fit for purpose in accordance with the Purchaser's specific instructions, shall be new and free from defects in material, workmanship and title, and shall meet all specifications. If the article(s) purchased and/or work performed do not meet the warranty above, the Purchaser, after determining a defect or non-conformance, will notify the Seller. At the sole discretion of the Purchaser the Seller shall replace, repair, or make good, without cost to the Purchaser, any defects or non-conformance arising within one year after date of acceptance of article(s) furnished and/or work performed.

#### 14. CUMULATIVE REMEDIES

Every right or remedy herein conferred upon or reserved to the Purchaser shall be cumulative and shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute, and the pursuit of any right or remedy shall not be construed as an election.

#### 15. DELAYS

The Seller expressly agrees to the work schedule provided for in the Contract and such schedule includes allowances for all hindrances and delays incident to the work. No claims shall be made by the Seller for hindrances and/or delays from any cause during the progress of the work except as provided under "SUSPENSION OF WORK" and/or "FORCE MAJEURE".

#### 16. SUSPENSION OF WORK

The Purchaser reserves the right to suspend and reinstate execution of the whole or any part of the work without invalidating the provisions of the Contract. Orders for suspension or reinstatement of work will be issued by the Purchaser to the Seller in writing. The time of completion of the work will be extended for a period equal to the time lost by reason of the suspension. No consideration shall be given by the Purchaser to cost increases or loss of anticipated profits, due to suspension or reinstatement of this Contract.

#### 17. FORCE MAJEURE

A delay in, or failure of, performance of either party hereto shall not constitute default hereunder or give rise to any claim for damage if and to the extent such delay or failure is caused by occurrences beyond the control of the party affected, including, but not limited to, acts of God, or the public enemy, expropriation or confiscation of facilities or compliance with any order or request of a governmental authority, affecting to a degree not presently existing, the supply, availability, or use of materials or labor, acts of war, public disorders, rebellion or sabotage, floods, riots, strikes, or any causes whether or not the class or kind of those specifically named above, not within the control of the party affected and which, by the exercise of reasonable diligence, said party is unable to prevent. Should the work be delayed due to Force Majeure, or otherwise delayed due to conditions beyond the control of or without the fault or negligence of either party, the parties to this Contract shall confer to reach an agreement on the alterations of fees and/or other terms and conditions upon which the work shall be continued, or otherwise terminated.

#### 18. ARBITRATION

Arbitration of all questions and issues in dispute under this Contract shall be submitted to Arbitration in accordance with the provisions of the standard Form of Arbitration of the American Arbitration Association, but only in the event that both parties to this Contract so

agree to such submission for Arbitration. If both parties fail to agree to submit to Arbitration in the manner prescribed above, or to submit to Arbitration in any mutually acceptable form, all questions and issues in dispute will be submitted to a court of competent jurisdiction of the Commonwealth of Massachusetts to be tried according to the applicable laws of the Commonwealth of Massachusetts. Costs of such arbitration will be shared equally by the parties, unless the arbitrator determines that the claim made by one of the parties is without merit, in which event the arbitrator may award costs to the other party.

#### 19. TERMINATION FOR CAUSE

The Purchaser, on written notice, may suspend, postpone, abandon or terminate this Contract, or any part thereof, as a result of the Seller's failure to render to the satisfaction of the Purchaser the materials, work and/or services required of him under this Contract, including the progress of the work. The Purchaser shall be the sole determinant in all termination for cause issues and no consideration shall be given by the Purchaser to the Seller for any costs, claims, or loss of anticipated profits by the Seller as a result of the suspension postponement, abandonment or termination of this Contract, or any part thereof, by the Purchaser for the reason of cause.

#### 20. TERMINATION FOR CONVENIENCE

The Purchaser, on written notice, may suspend, postpone, abandon or terminate this Contract or any part hereof, and such action shall in no event be deemed a breach of the Contract. Such suspension, postponement, abandonment or termination may come about for the sole convenience of the Purchaser. Upon receipt of written notification from the Purchaser that this order or any part hereof, is to be terminated, the Seller shall immediately cease operations of the work stipulated, and assemble all material that has been prepared, developed, furnished or obtained under the terms of this Contract that may be in its possession or custody, and shall transmit the same to the Purchaser on or before the fifteenth day following the receipt of the above-written notice of termination, together with his evaluation of the cost of the work performed. The Seller shall be entitled to just and equitable payment in accordance with this Contract for any uncompensated work satisfactorily performed prior to such notice.

The Purchaser shall determine the amount of acceptable work performed by the Seller under this Contract. The Purchaser's evaluation shall be used as a basis to determine the amount of compensation due the Seller for this work, provided it shall be made in good faith and supported by substantial evidence.

In determining the value of the work performed by the Seller prior to termination, no consideration will be given to profit which the Seller might have reasonably expected to make on the uncompleted portion of the work.



## 21. INDEMNIFICATION

The Seller shall defend, indemnify and hold the Purchaser, and its employees free and harmless from and against any and all claims, demands, causes of action, suits or other litigation (including all costs thereof, including attorney's fees) of every kind and character arising on account of bodily injuries, death, damage to property in any way occurring incident to, arising out of or in connection with work performed or to be performed by the Seller hereunder or occurring incident to, arising out of or in connection with the presence of employees of the Seller or any of the Seller's subcontractors on the work premises, due to the sole negligence or willful misconduct of the Seller.

## 22. LAW OF CONTRACT - JURISDICTION

The Contract shall be construed under and shall be governed by the Laws of the Commonwealth of Massachusetts, and in case of controversy not otherwise settled shall be submitted to the exclusive jurisdiction of the Massachusetts Courts.

## 23. AUDIT

The Seller shall, at its own expense, keep and maintain complete records and books of account of its costs and expenses relating to the work in accordance with generally accepted accounting practices. Should a dispute arise between the Purchaser and Seller regarding reimbursable amounts and/or credits, the Seller shall grant the Purchaser permission to audit such records and books of account.

## 24. TAXES

The Seller shall pay all applicable state and local sales and use taxes on sales to, or used by, the Seller of tangible property and services employed by the Seller in the performance of the Order. The Seller shall identify all costs in connection therewith. The Purchaser is an organization exempt from the payment of such state and local taxes of tangible property and services, and will not reimburse the Seller for such taxes paid.

## 25. BID QUANTITIES

PMLP shall have, at its option, the right to increase the contracted quantity bid by up to twice the original quantity which is stated in the bid specifications.

## 26. ACCEPTANCE

This order expressly limits acceptance to the terms stated herein. Any additional or different terms proposed by the Seller are objected to and are hereby rejected.

## 27. COMPLETION OF CONTRACT

This Contract will not be considered complete until all specifications and Contract requirements have been satisfied. These requirements also include the Purchaser's acceptance of all documentation, drawings, manuals, etc. Final payment shall not be construed to relieve the Seller of any of its obligations under this Contract.

## 28. NOTICE

The Purchaser agrees to give the Seller immediate notice of any and all claims for which the Seller may be liable, and the Seller agrees to give the Purchaser immediate notice of any and all claims for which the Purchaser may be liable. All claims hereunder shall be in writing and shall be deemed to have been duly given if delivered or mailed, first class, registered mail, postage paid.

### A. IF TO THE SELLER, ADDRESS

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### B. IF TO THE PURCHASER, AT PEABODY MUNICIPAL LIGHT PLANT, 201 WARREN STREET EXTENSION, PEABODY, MASSACHUSETTS, 01960

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# SAMPLE

## CONTRACT

AGREEMENT made this «Day» by and between the Peabody Municipal Light Plant, a business duly established under the laws of the Commonwealth of Massachusetts and having a usual place of business at 201 Warren Street Extension, Peabody, Massachusetts 01960, hereinafter referred to as "PMLP" and «Name», having a usual place of business at «Address», hereinafter referred to as «Nickn».

WITNESSETH, that the PMLP and «Nickn», for the consideration hereinafter stated, agree as follows:

1. That «Nickn» shall furnish «Material» as set forth in the specifications incorporated in the bid opened on «Date».
2. All material shall be furnished and delivered to the PMLP jobsite as defined in the attachments hereto.
3. The Contract price for the material shall be the bid price of «Amount» as set forth on the bid form dated «Biddate» and herein incorporated by reference.
4. «Nickn» shall not assign or transfer this contract, or any part thereof, or any sum due or to become due hereunder without the written consent of the PMLP.
5. This AGREEMENT together with the Instructions to Bidders, Purchaser's Terms and Conditions, PMLP Specifications, and Vendor's Bid, hereto attached, form this Contract and are as fully a part of this Contract as if herein repeated.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT the day and year above first written.

«Company»

PEABODY MUNICIPAL LIGHT PLANT

BY \_\_\_\_\_  
(NAME)

BY \_\_\_\_\_  
GLENN TRUEIRA, MANAGER

\_\_\_\_\_  
(TITLE)

DATE: \_\_\_\_\_



## CERTIFICATE OF NON-COLLUSION

THE BELOW SIGNED QUOTER HAS NOT DIVULGED TO, DISCUSSED OR COMPARED HIS QUOTE WITH OTHER QUOTES AND HAS NOT COLLUDED WITH ANY OTHER QUOTER OR PARTIES TO A QUOTE WHATSOEVER. The undersigned certifies under penalties of perjury, that this accompanying bid or proposal is not the result of, or affected by, any unlawful act of collusion with any other person or company engaged in the same line of business or commerce, or any other fraudulent act punishable under the Commonwealth of Massachusetts or United States Law. As used in this certification, the "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

**Note:** No premiums, rebates or gratuities to any employee are permitted with, prior to, or after any delivery of materials. Any such violation will result in the cancellation and/or return of material (as applicable) and the removal from the master bidders list.

|   |  |
|---|--|
| <b>Contractor's Full Legal Name:<br/>(PLEASE TYPE OR PRINT)</b> |  |
| <b>Authorized Signature:</b>                                    |  |
| <b>Date:</b>  |  |

## TAX COMPLIANCE CERTIFICATION

Pursuant to MGL c. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

|   |  |
|---|--|
| <b>Contractor's Full Legal Name:<br/>(PLEASE TYPE OR PRINT)</b> |  |
| <b>Duly Authorized Signature:</b>                               |  |
| <b>Date:</b>  |  |
| <b>Social Security # or FID #:</b>                              |  |