

VIRGIN ISLANDS WATER AND POWER AUTHORITY
POST OFFICE BOX 1450
SAINT THOMAS
U.S. VIRGIN ISLANDS 00804



**CONTRACT BETWEEN THE VIRGIN ISLANDS WATER AND
AMERICAN WIRE GROUP, INC.**

Contract No. SC-18-20

This Contract (the "Contract") is a properly negotiated agreement between all parties involved. Any marks, changes, white out, or deletions without the expressed written permission from all parties involved shall make this contract null and void.

This Agreement (hereinafter "the Contract") is entered into this 17th day of July 2020 by and between AMERICAN WIRE GROUP, INC. (hereinafter called the "Contractor") of 2980 NE 207th Street, Ste. PH, Miami, Florida 33180 and the VIRGIN ISLANDS WATER AND POWER AUTHORITY (hereinafter called the "Authority"), located at 9720 Estate Thomas, Post Office Box 1450, St. Thomas, U.S.V.I. 00804, for the procurement of medium voltage cable and sectionalizing cabinets for the Cruz Bay Underground Electrical Construction Project. The Contractor and the Authority shall hereinafter be referred to as the "Parties."

WITNESSETH

In consideration of the mutual promises, covenants and conditions contained herein the Parties hereto, intending to be legally bound, hereby agree as follows:

- 1. SCOPE OF WORK/WORK:** The scope of work for this project is for the procurement of medium voltage cable and sectionalizing cabinets for the Cruz Bay Underground Electrical Construction Project. The scope of services shall include design, manufacturing, assembly, factory testing and shipment in accordance with the contract

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specifications and contract drawings. The scope of work for this project consist of the following:

- **Furnish Medium Voltage Cables in accordance with Contract Documents and Specifications.**
- **Furnish Sectionalizing Cabinets in accordance with Contract Documents and Specifications.**
- **Furnish other Electrical Hardware Accessories in accordance with Contract Documents and Specifications (supplied by AWG). Refer to Section Q Proposal Schedule for Page 16-17 of PR-11-20 Cruz Bay Cable RFP. Copy attached for the reference as Appendix C.**
- **Provide factory testing in accordance with Contract Documents and Specifications.**
- **Cable reels shall not exceed 2,000 Feet. Exact reel length shall be coordinated with the VIWAPA prior to shipment.**
- **Ship to Crown Bay, St. Thomas, USVI. The cables, sectionalizing cabinets, and accessories shall be separated by feeder and packaging shall be clearly labeled to match approved nameplates.**

The Work shall conform to the following:

1. **The Authority's General Contract Terms for Equipment and Supplies With Federal Requirements attached hereto and made a part hereof as Appendix "A"; and**
2. **Hud General Provisions "HUD RIDER" attached hereto and made a part hereof as Appendix "B"; and**

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3. Specifications contained in the Authority's Request for Proposal, PR-11-20, dated October 2019 with cover letter dated November 12, 2019 combined and attached hereto and made a part hereof as Appendix "C"; and
4. Specifications contained in the Authority's Request for Proposal's, PR-11-20, Addendum I dated November 26, 2019 attached hereto and made a part hereof as Appendix "D"; and
5. The Contractor's Response-Option 1 Only- to PR-11-20 dated November 2019 attached hereto and made a part hereof as Exhibit "A".

2. **TERM:** This Contract shall commence on the date of execution of the Parties and the issuance by the Authority of a notice to proceed (the "Commencement Date"). The Contract shall expire One Hundred Twenty (120) Days from the date of issuance of the notice to proceed. The parties acknowledge that any agreed to renewal may require an adjustment of the prices set forth herein based upon the current market rates for metals and materials at the time of such renewal.

3. **CONSIDERATION:** In consideration of the Contractor's performance of the Work, the Authority shall pay the Contractor the total sum Not to Exceed Two Million One Hundred Seventy-Two Thousand One Hundred Thirty-One Dollars and 59/100 (\$2,172,131.59) based on the various product rates provided in product quote attached hereto as Exhibit A (the "Contractor's Response – Option 1 only").

4. **PAYMENT TERMS:** All invoices are due net sixty (60) days from the date of shipment. Seller shall invoice the Authority at such time that title and risk of loss for any Product(s) passes to the Authority pursuant to the terms of Section 13 below. When submitting invoices, copies shall also be sent to the Authority's Grant Management

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Department at grantsmanagement@viwapa.vi .

5. SCHEDULE: The Parties agree that the Scope of Work/Work shall be performed in

accordance with the milestone schedule outlined immediately below:

- 10% Mobilization (to be paid upon issuance of invoice)
- 15% Design Submittal approval
- 25% Upon Shipment
- 50% Equipment and Material Received by VIWAPA

6. SHIPPING OF EQUIPMENT: The Contractor shall ship the medium voltage cable and sectionalizing cabinets, DDP site to the Authority's facility at the Randolph Harley Generating Facility on St. Thomas . Contractor prior to shipment shall consign the medium voltage cable and sectionalizing cabinets to the Authority. The Authority will accept any consignment of the medium voltage cable and sectionalizing cabinets delivered DDP according with INCOTERMS 2020), at a port in the Virgin Islands. Title to Equipment shipped from the U.S. shall pass to the Authority upon payment in full; however, Contractor shall maintain in favor of the Authority, transport insurance covering All Risks in an amount equal to one hundred percent (100%) of the value of shipped consignment.

7. DESIGNATED PERSONNEL: The Authority reserves the right to designate personnel to provide information and to coordinate the Work with the Contractor. The Authority shall designate the following individual in the following capacity:

Project Coordinator



Elton Leitch
Transmission & Distribution
V.I. Water and Power Authority
P. O. Box 1450
St. Thomas, VI 00804
Phone: (340) 774-3552
elton.leitch@viwapa.vi

The Contractor designates the following individual in the following capacity:

Project Manager
Alla Gerenshteyn
VP Sales Caribbean
American Wire Group
2980 NE 207th Street
Suite PH
Miami, FL 33180
sales@buyawg.com

8. BUSINESS LICENSE: The Contractor and, if applicable, any of its sub-contractors must comply with all U.S. Virgin Islands licensing laws in connection with its business operations. The Contractor shall obtain all necessary and applicable business licenses and present copies of its licenses and those of its subcontractors to the Authority at contract execution. Failure of the Contractor to present copies of its licenses at contract execution shall be grounds to consider the Contract as void.

9. PROFESSIONAL STANDARDS: The Contractor shall observe and maintain the professional standards and good practices applicable to its profession and to Contractors doing business in the U.S. Virgin Islands.

10. LIABILITY OF OTHERS: Nothing in this Contract shall be construed to impose any liability against the Authority to persons, firms, associations, or corporations engaged by the Contractor as servants, agents, or independent contractors, or in any other



capacity whatsoever, or make the Authority liable to any such persons, firms, associations, or corporations for the acts, omissions, liabilities, obligations, and taxes of Contractor of whatsoever nature, including but not limited to employment insurance and social security taxes for Contractor, its servants, agents, employees, or independent Contractors.

11. CONTRACT DOCUMENTS: The Contractor shall perform and complete the Work in accordance with the Contract and the Contract Documents. The "Contract Documents" include:

1. The Authority's General Contract Terms for Equipment and Supplies With Federal Requirements and attached hereto and made a part hereof as Appendix "A"; and
2. Hud General Provisions "HUD RIDER" attached hereto and made a part hereof as Appendix "B"; and
3. Specifications contained in the Authority's Request for Proposal, PR-11-20, dated October 2019 with cover letter dated November 12, 2019 combined and attached hereto and made a part hereof as Appendix "C"; and
4. Specifications contained in the Authority's Request for Proposal, PR-11-20, Addendum I dated November 28, 2019 attached hereto and made a part hereof as Appendix "D"; and
5. The Contractor's Response- Option 1 Only- to PR-11-20 dated December 6, 2019 attached hereto and made a part hereof as Exhibit "A".

12. CHANGE ORDERS/ADDITIONAL SERVICES: The Contracting Officer must approve in writing all change orders or requests for additional services. In the absence of such written approval, the Authority shall not be liable for the payment of any services performed outside the scope of the Contract.

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13. CONSIGNMENT OF EQUIPMENT: The Contractor shall consign the Equipment to the Authority. The Authority will accept any consignment of the Equipment delivered DDP (Delivery Duty Paid, according with INCOTERMS 2020), at a port outside the Virgin Islands. The Contractor's consignment request must clearly state the terms of each consignment, and Title Transfer (herein known as "Title").

Title to Equipment shipped from the U.S. shall pass to the Authority upon shipment; however, Contractor shall maintain in favor of the Authority, transport insurance covering All Risks in an amount equal to one hundred percent (100%) of the value of shipped consignment.

14. WAIVERS AND AMENDMENTS: No waiver, modification, or amendment of any term, condition, or provision of this Contract shall be valid or of any force or effect unless made in writing, signed by the Parties or by their duly authorized representatives, and specifying with particularity the nature and extent of such waiver, modification, or amendment. Any such waiver, modification, or amendment in any instance or instances shall in no event be construed to be a general waiver, modification, or amendment of any of the terms, conditions, or provisions of this Contract, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

15. NOTICE: Any notice required to be given by the terms of this Contract shall be deemed to have been given when the same is sent by certified mail, postage prepaid, or personally delivered, addressed to the Parties as follows:

The Authority: Lawrence Kupfer
 Executive Director
 V.I. Water & Power Authority



P.O. Box 1450
St. Thomas, U.S. Virgin Islands 00804

The Contractor: Michael Dorfman
President – American Wire Group
2980 NE 207th Street
Suite PH
Miami, FL 33180

16. **AMENDMENT:** This Agreement may not be modified except in writing, signed by the party against whom the modification is to be enforced.

17. **ASSIGNMENT:** Neither the Contractor nor the Authority shall assign this Agreement to any interest therein, without prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Any assignment prohibited hereby shall be null and void.

18. **INVALIDITY AND AMENDMENTS:** If any of the provisions of this Agreement are invalid under applicable statute or rule of law, they are, to that extent, to be deemed to be omitted.

19. **GOVERNING LAW:** The laws of the U.S. Virgin Islands shall govern, construe, and enforce any and all of the rights and duties of the Parties arising from or relating in any regard to the subject matter of this contract, without regard to conflict of law statutes of the U.S. Virgin Islands, and jurisdiction shall be in a court of competent jurisdiction in the United States Virgin Islands.

20. **COUNTERPARTS:** This Agreement may be executed by the Authority and the Contractor individually or in several separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same agreement. In



the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

21. GENERAL CONTRACT TERMS: This Contract is subject to the Authority's General Contract Terms. attached hereto and made a part hereof as Appendix A.

Clause 2-General Statement of Responsibility of the Contractor

- Delete all reference to 'labor'; 'furnishings of labor'.

Clause 10-Excusable Delay and Damages

- At subsection a, insert in line 2, after *of God*, "Epidemics or Infectious Diseases that are declared by the World Health Organization to cover us from any potential issues from pandemics",...

Clause 13- Insurance – Exhibit A

- At subsection a, point 5 (Professional Liability) is omitted
- At subsection b, (Environmental Impairment Liability Insurance) is omitted
- At subsection c, point 1 (Builder's Risk Property Insurance) is omitted

Clause 14-Inspection and Test

- At subsection a, insert in line 3, after ...*subcontractors*, "at the Authority's expense",...

Clause 15-Right to Audit

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- At subsection 5, delete in line 3 ...*five years*, insert "four years"...
- At subsection 9, insert in line 1, after ...*recoup the ...*" reasonable'...

Clause 19-Indemnity

Add a at the end of the paragraph a new sentence as follows: Contractor shall not be liable for any damages caused by the Authority, its agents or other 3rd parties over whom the Authority has control except to the extent of Contractors negligent contribution.

Covid-19 Pandemic is creating significant challenges to supply chains worldwide as such we are adding the following clause to our order acknowledgement. Buyer acknowledges and agrees that due to the uncertainties with respect to the Pandemic, should AWG's cost of materials increase, including hardware items 1-15, and Cable items A thru I, AWG shall be entitled to an equitable adjustment to the per item price.

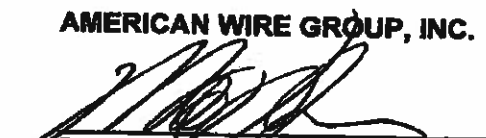
Clause 24-Termination for Convenience

Paragraph (c) second to last line - remove after word shall "If and"

22. ENTIRE AGREEMENT: This Contract and the Contract Documents constitute the entire agreement of the Parties hereto, and all prior understandings or communications, written or oral, with respect to the subject matter of this Contract are merged herein.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement on the day, month and year first above-written.


WITNESS

AMERICAN WIRE GROUP, INC.

By: Michael Dorfman
President



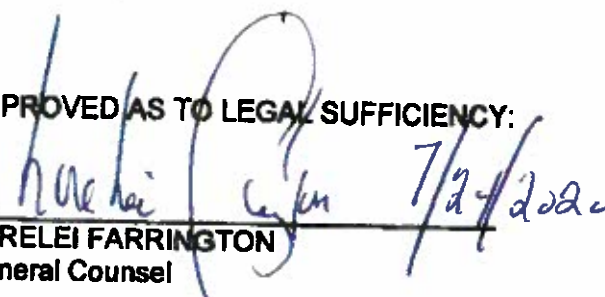
V.I. WATER & POWER AUTHORITY



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LAWRENCE J. KUPFER
Executive Director/CEO

APPROVED AS TO LEGAL SUFFICIENCY:


LORELEI FARRINGTON
General Counsel

Attachments

