

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



**CONTRACT BETWEEN THE VIRGIN ISLANDS WATER AND
TRIDENT INDUSTRIES**

Contract No. SC-12-23

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 7th day of December, 2022 by and between TRIDENT INDUSTRIES (hereinafter called the "Contractor") of 1900 E. Golf Road Ste. 950, Schaumburg, IL 60173, 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 up to 600 composite poles of type WAPA-5017, fifty (50) feet, seventeen (17) inch diameter, .85 wall thickness. The Contractor and the Authority shall collectively 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 up to 600 composite poles of type WAPA-5017, fifty (50) feet, seventeen (17) inch diameter, .85 wall thickness; no ground wire will be installed. The Work shall conform to the following:

- a. The Authority's General Contract Terms for Equipment and Supplies with Federal Requirements attached hereto and made a part hereof as Appendix "A" to include amendments as noted in Paragraph 16; and
- b. The Contractor's Quote dated August 5, 2022 attached hereto and made a part hereof as Exhibit "A".

2. TERM: This Contract shall commence on the date of execution of the Parties (the "Effective Date"). The Contract shall expire one (1) year from the Effective Date.

3. CONSIDERATION: In consideration of the Contractor's performance of the Work, the Authority shall pay the Contractor the total sum not to exceed **Four Million Five Hundred Ninety Three Thousand Three Hundred Dollars and 00/100 (\$4,593,300.00)** based on the various product rates provided in product quote attached hereto as Exhibit A (the "Contractor's Quote").

4. PAYMENT TERMS: All invoices will be based upon thirty (30) days payment terms upon approval by the Authority's Project Coordinator. Seller shall invoice the Authority on the date of shipment from the Florida facility. Payments are to be remitted within sixty (60) days from the Florida port shipment. When submitting invoices, copies shall also be sent to the attention of the Grant Management Department, at grantsmanagement@viwapa.vi. A Bill of Lading is required to be submitted with any invoice.

5. SHIPPING OF MATERIALS: The Contractor shall transport the composite poles, Free Along Side (FAS), to the agreed upon Florida port for shipping to the United States Virgin Islands. During transport, Contractor shall maintain in favor of the Authority, insurance covering All Risks in an amount equal to one hundred percent (100%) of the

value of shipped materials. Title to materials shipped from the mainland U.S. shall pass to the Authority upon transfer at the Florida port.

6. TERMS OF DELIVERY, ACCEPTANCE, AND PAYMENT: All orders shall be shipped as provided in Paragraph 5 and are deemed accepted by WAPA upon delivery of said shipment(s) unless rejected upon receipt (see further Paragraph 7, Inspection, below). WAPA may rightfully reject Trident's Products only when a reasonable inspection shows that the Products fail to conform substantially to the specifications for the Products. WAPA shall perform all inspections WAPA deems necessary as promptly as possible but in no event later than ten (10) days after delivery, at which time WAPA shall be deemed to have irrevocably accepted the Products. WAPA's remedies for any nonconformity detected after Products are accepted are limited to repair or replacement and as further expressed in Paragraph 30 (Warranty) below. Unless otherwise expressly agreed to in writing, risk of loss and title upon Delivered At Place (DAP). However, WAPA shall reimburse Trident for the cost of shipping from Trident's fabrication facility to DAP. Each delivery made shall stand as a separate sale subject to credit arrangements or receipt of cash, and fulfillment may be by partial or multiple shipments, which may result in multiple invoices.

7. INSPECTION: WAPA may inspect all Products ordered hereunder at all times and places, including during the period of use. Trident will permit WAPA and/or its designee's access to Trident's facilities at all reasonable times for such inspection. All Products are subject to final inspection and acceptance after delivery to WAPA. WAPA agrees to carefully check Products upon unloading at the destination. No claims for

shortages or delivery of improper material shall be recognized by Trident unless written notice with accompanying photos specifying in detail the nature and extent of the shortage, defect, or damage is emailed to Trident (email: qc@tridentstrong.com) within ten (10) days from receipt. Trident shall be liable for all shipping costs related to Products that are returned pursuant to a valid claim. In no case shall Trident pay or be liable for any claims resulting from the use by WAPA of improper material or from the use by WAPA of Products having apparent defects or damages when installed by WAPA.

8. COMPLIANCE WITH DAVIS-BACON ACT: If applicable, the Contractor shall comply with the Davis-Bacon and Related Acts (DBRA) as found in the Code of Federal Regulations (Title 29 CFR, parts 1,3,5,6 and 7). Per the DBRA, the Contractor and its subcontractors performing services under this Contract and on federal contracts shall pay not less than the prevailing wage rates and fringe benefits listed in the Davis-Bacon Wage Rate Determination for corresponding classes of laborers and mechanics employed on similar projects in the area.

9. INSURANCE: Without limiting the scope or extent of the protection afforded WAPA or the liabilities assumed by Trident herein, Trident shall obtain and maintain in force for the entire Term the following insurance and name WAPA, its subsidiaries and affiliates as additional insured on primary and noncontributory basis and include a severability of interest provision:

- a. Commercial General Liability insurance specifically including, without limitation, contractual liability insurance to cover liability assumed by Trident with combined single limits, per accident, of not less \$1,000,000 bodily injury,

including death and property damage.

- b. Commercial Umbrella Liability insurance with limits of not less than \$2,000,000 per occurrence. Such umbrella shall be excess over all other coverage required in this section, except Worker's Compensation.

Trident shall require its insurance carriers, with respect to all insurance policies, to waive all rights of subrogation against WAPA, its directors, officers, agents and employees, and Trident shall indemnify WAPA against any loss or expense, including reasonable attorneys' fees, resulting from the failure to obtain such waiver.

10. 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
Cordell Jacobs
Transmission & Distribution
V.I. Water and Power Authority
P. O. Box 1450
St. Thomas, VI 00804
Phone: (340) 642-0946
cordell.jacobs@viwapa.vi

The Contractor designates the following individual in the following capacity:

Ted Fotos
Chief Operating Officer
Trident Industries
1900 E. Golf Road
Suite 950
Schaumburg, IL 60173
ted@tridentstrong.com

11. 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.

12. 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.

13. INDEPENDENT CONTRACTORS: It is expressly agreed that the Parties shall be independent contractors and that the relationship between the Parties shall not constitute a partnership, joint venture, or agency. Neither Party shall have the authority to make any statements, representations, or commitments of any kind, or to take any action, which shall be binding on the other Party, without the prior consent of such other Party.

14. FORCE MAJEURE: Notwithstanding anything to the contrary contained herein, Contractor shall not be liable for any delays or failures in performance resulting from acts beyond its reasonable control including, without limitation, acts of God, terroristic acts, pandemics, war, or civil unrest.

15. INDEMNIFICATION:

- a. Trident shall defend, indemnify and save harmless WAPA, its parent, affiliates and subsidiaries, and their respective directors, officers and employees, from and against any and all claims, demands, losses, damages, attorney fees and expenses to the extent caused by or resulting from any negligent act or omission or willful misconduct of Trident, its agents, employees, or subcontractors, including consultants, arising out of or in connection with Trident's performance hereunder to the fullest extent permitted by law.
- b. Trident shall not be obligated to indemnify WAPA against any liability, losses, claims, damages, costs and expenses to the extent arising from WAPA's negligence or the negligence of its parent, affiliates, and subsidiaries, and their respective directors, officers and employees.

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

- a. The Authority's General Contract Terms for Equipment and Supplies with Federal Requirements attached hereto and made a part hereof as Appendix "A", excepting in their entirety as not applicable (1) Paragraph 3 - COMMENCEMENT, PROSECUTION AND COMPLETION OF WORK; (2) Paragraph 4 - SITE WORK; and (3) Exhibit A - WAPA INSURANCE REQUIREMENTS; and
- b. The Contractor's Quote dated August 5, 2022, attached hereto and made a part hereof as Exhibit "A".

17. NON-DISCRIMINATION: No person shall be excluded from participating in, be denied the proceeds of or be subject to discrimination in the performance of the contracted services on account of race, creed, color, sex, religion, disability, or national origin.

18. 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.

19. VENUE: The Parties agree that all causes of action against either Party shall be brought in the court of competent jurisdiction in the United States Virgin Islands.

20. CHOICE OF LAW: This Contract shall be governed by and construed in accordance with the laws of the United States Virgin Islands without regard to applicable principles of conflicts of law. Each of the Parties hereto irrevocably consents to the exclusive jurisdiction of any federal or state court located within the United States Virgin Islands, in connection with any matter based upon or arising out of this Contract or the matters contemplated herein, agrees that process may be served upon them in any manner authorized by the laws of the United States Virgin Islands for such persons and waives and covenants not to assert or plead any objection which they might otherwise have to such jurisdiction and such process.

21. 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.

22. 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: Andrew L. Smith
Executive Director/CEO
V.I. Water & Power Authority
P.O. Box 1450
St. Thomas, U.S. Virgin Islands 00804
andrew.smith@viwapa.vi

Copy to: Office of the General Counsel
V.I. Water and Power Authority
P.O. Box 1450
St. Thomas, U.S. Virgin Islands 00804
legaldepartment@viwapa.vi

The Contractor: Ted Fotos
Chief Operating Officer
Trident Industries
1900 E. Golf Road
Suite 950
Schaumburg, IL 60173
ted@tridentstrong.com

23. DEBARMENT CERTIFICATION: By execution of this Contract, the Contractor certifies that it is eligible to receive contract awards using federally appropriated

funds and that it has not been suspended or debarred from entering into contracts with any federal agency. The Contractor shall include this provision in each of its subcontracts hereunder.” In the event the Contractor or subcontractor misrepresents its eligibility to receive contract awards using federal funds, the Contractor or subcontractor agrees that it shall not be entitled to payment for any work performed under this contract or any subcontract and that the Contractor or subcontractor shall promptly reimburse the Virgin Islands Water and Power Authority for any payment (s) heretofore made. Contractor understands that the Authority will not release any funds until Contractor’s SAM’s number has been provided to the Authority and/or the Authority has verified Contractor’s debarment status.

24. NO CONVICTION: Contractor affirms that Contractor, its directors and/or its principals have not been convicted of a federal criminal violation within the past twenty-four (24) months and that Contractor does not have unpaid federal tax liability.

25. CONFIDENTIALITY AND NON-DISCLOSURE: Contractor agrees that any information provided to Contractor by the Authority of a confidential nature will not be revealed or disclosed to any person or entity, except in the performance of this Agreement or as directed by legal or regulatory authority, without the express consent of the Authority.

26. ASSIGNMENT OF RIGHTS: Contractor may not assign its rights under this Agreement to any party without the prior written consent of the Authority.

27. TERMINATION FOR CONVENIENCE: WAPA may at any time cancel or change the Contract for its convenience and without cause. Upon receipt of written notice from WAPA of such termination, Trident will terminate any and all performance under the

Contract, except for any products en route to the U.S. Virgin Islands. In the event a Contract change required by WAPA results in additional costs to Trident, such reasonable costs shall be charged to WAPA so long as Trident informs WAPA, in writing, of such additional costs at the time the change is requested and WAPA provides written approval of such change and additional costs. All Trident initiated contract changes must be approved, in writing, by WAPA prior to shipment.

No Products shall be taken back and credited or replaced unless arrangements for return have previously been made with Trident within thirty (30) days from date of shipment. Trident's written consent must be provided in advance of WAPA 's return of Products for credit.

28. TERMINATION: TRIDENT DEFAULT. WAPA may terminate these Supply Conditions of Contract or all or any part of a Contract by giving notice of default to Trident, if Trident:

- a. refuses or fails to deliver Products within the time specified in the applicable Contract if the delay is unexcused; or
- b. fails to comply with any of the provisions of the Contract or so fails to make progress as to endanger performances hereunder. In the event of termination for default, WAPA's liability shall be limited solely to the payment for Products delivered and accepted by WAPA under the Contract, which liability shall be credited against any damage that

WAPA incurs as a result of such default.

29. TERMINATION FOR BANKRUPTCY: In the event that either Party files for protection under bankruptcy laws, makes an assignment for the benefit of creditors, appoints or suffers appointment of a receiver or trustee over its property, files a petition under any bankruptcy or insolvency act or has any such petition filed against it which is not discharged within sixty (60) days of the filing thereof, then the other Party may terminate this Agreement effective immediately upon written notice to such Party.

30. WARRANTY: See Exhibit B for the Limited Warranty which is exclusive and in lieu of all other warranties, express or implied.

31. 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.

32. GENERAL CONTRACT TERMS: This Contract is subject to the Authority's General Contract Terms for Equipment and Supplies with Federal Requirements attached hereto and made a part hereof as Appendix A.

33. SURVIVAL: The following sections of this Contract will survive the termination or expiration of this Contract and will remain in effect until fulfilled:

- Clause 3: Consideration
- Clause 17: Indemnification
- Clause 18: Contract Documents
- Clause 19: Governing Law

34. SEVERABILITY CLAUSE: Should any provision of this Contract be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement shall be unaffected thereby and shall continue to be valid and enforceable.

35. 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.

SIGNATURE PAGE TO FOLLOW

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


WITNESS




WITNESS


TRIDENT INDUSTRIES

 12/15/22
TED FOTOS Date
Chief Operating Officer

V.I. WATER & POWER AUTHORITY

 12.20.2022
ANDREW L. SMITH Date
Executive Director/CEO

APPROVED AS TO LEGAL SUFFICIENCY:


DIONNE G. SINCLAIR
General Counsel

Attachments