

VOITH HYDRO, INC.

P.O. Box 15022
York, PA 17405-7022

Proposal: MB2-437
Date: February 10, 2017

Proposal

TO Los Alamos County, Department of Public Utilities
ADDRESS 1000 Cental Avenue, Suite 130
ATTENTION Mr. James Alarid Tel: 505-663-3420 email: james.alarid@lacnm.us

VOITH HYDRO INC. (Company) agrees to sell to Purchaser agrees to purchase from Company the product(s) described below.

El Vado

Mr. Alarid:

If contracted to do so, and in full compliance with your request as well as standard Voith manufacturing and inspection practices, Voith shall provide the following:

Replacement parts for Shaft Seal Assembly Option 1 – See attached sketch, (option 1 is the upper sketch).

Item 1:

Furnish:

- One (1) Seal Ring Insert (in halves), made from laminated plastics.
- One (1) Sliding Ring made from heat treated martensitic steel
- Two (2) Studs
- Four (4) Nuts
- One (1) Key
- Eight (8) Lee springs LHC 156M 05S

The sliding ring and the seal ring insert will be changed according to the attached sketch. The seal will have a hydraulic pre-load. Eight (8) springs providing a total spring load of 2400 N. In addition, the sliding ring will increase in hardness. The ring will be manufactured from martensitic steel with heat treatment.

Total Price – Item 1:

FIFTY TWO THOUSAND ONE HUNDRED SEVENTEEN DOLLARS.....\$52,117.00

Item 2

Site supervision for seal installation and testing at Voith Hydro’s standard rates.

Total Price – Item 2:

TO BE DETERMINED.

Pricing: (hardware only).....\$52,117.00

Any supply, service, item or good, not specifically and expressly listed in the included scope of supply shall be considered as an additional supply, subject to our analysis and approval, and shall potentially influence schedule, delivery time price and other affected conditions.

Proposal

PRICE(S): See Previous Page

TAXES: None Included

Any applicable duties or sales, use, excise, value-added, or similar taxes will be added to the price and invoiced separately (unless acceptable exemption certificate is furnished).

PRICE POLICY CLAUSE:

Firm for acceptance within the validity of this proposal.

TERMS OF PAYMENT: Net 30 days

Unless otherwise stated, all payments shall be in United States dollars, and a pro rata payment shall become due as each shipment is made. If shipment is delayed by Purchaser, date of notice of readiness for shipment shall be deemed to be date of shipment for payment purposes.

On late payments, the contract price shall, without prejudice to Company's right to immediate payment, be increased by 1 1/2% per month on the unpaid balance, but not to exceed the maximum permitted by law.

If at any time in Company's judgment Purchaser may be or may become unable or unwilling to meet the terms specified, Company may require satisfactory assurances or full or partial payment as a condition to commencing or continuing manufacture or making shipment; and may, if shipment has been made, recover the product(s) from the carrier, pending receipt of such assurances.

SHIPPING DATE: **Approximately 12 weeks after receipt of order.** Shipment dates are contingent upon receipt of acceptable material within quoted delivery dates.

DELIVERY TERMS: INCOTERMS 2010 - DAP (Shipping included in price)

OTHER TERMS:

This offer will remain in effect for **30 days**, unless changed in the interim upon written notice from Company. Documents and related correspondence shall be sent to the VOITH HYDRO office at:

P.O. Box 15022, York, PA 17405-7022

This document and any other documents specially referred to as being a part hereof, constitute the entire contract on the subject matter, and it shall not be modified except in writing signed by both parties.

THIS CONTRACT INCLUDES THE GENERAL PROVISIONS ENCLOSED HEREIN.

TERMS AND CONDITIONS OF SALE

Article 1 -- Limited Warranty

1. Seller warrants title to the product(s) and also warrants the product(s) on date of shipment to Buyer to be of the kind and quality described herein, and free of defects in workmanship and material. Seller warrants its field services performed by it to be competent and that any recommendations of its Representative shall reflect his best judgment. Seller warrants its engineering services performed by it to be of the kind and quality described herein and in accordance with generally accepted standards and practices prevailing in the industry at the time performed. Seller warrants its installation and/or any other services performed by it, on date of performance, to be of the kind and quality described herein, in accordance with generally accepted standards and practices prevailing in the industry at the time performed, and free of defects in workmanship. **THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES**, including but not limited to implied warranties of merchantability and fitness of use, **AND CONSTITUTES THE ONLY WARRANTY OF SELLER WITH RESPECT TO THE PRODUCTS AND SERVICES.**

If within two years from date of delivery by Seller, but not more than one year from date of initial commercial operation of any item of product(s) or from date of performance of services by Seller, Buyer discovers that any item of the product or any service was not as warranted above and promptly notifies Seller in writing thereof, Seller shall remedy such nonconformance by, at Seller's option, adjustment or repair or replacement of the item and any affected part of the product(s) or by re-performance of the service, as the case may be, or by refund of a portion of the purchase price applicable to the nonconforming item or nonconforming service. Buyer shall assume all responsibility and expense for removal and reinstallation in connection with the foregoing remedies. The same obligations and conditions shall extend to replacement parts furnished by Seller hereunder. Seller shall have the right of disposal of parts replaced by it. **THIS STATES BUYER'S EXCLUSIVE REMEDY AGAINST SELLER AND ITS SUPPLIERS/SUBCONTRACTORS RELATING TO THE PRODUCT(S) AND SERVICES, WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL THEORY**, and whether arising out of warranties, representations, instructions, installations or defects from any cause. Buyer shall assume responsibility for, and Seller may rely upon, the accuracy and completeness of information furnished by Buyer; Seller's product guarantees of power, efficiency and/or other similar output guarantees are contingent upon the input parameters provided by the Buyer. Seller and its suppliers/subcontractors shall have no obligation as to any product either which is not furnished by Seller or which has been improperly stored or handled or which has not been operated or maintained according to instructions in Seller or supplier furnished manuals.

Article 2 -- Limitation of Liability

NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY, NEITHER SELLER NOR ITS SUPPLIERS/SUBCONTRACTORS SHALL BE LIABLE, WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL THEORY, FOR LOSS OF USE, REVENUE OR PROFIT, OR FOR COST OF CAPITAL OR OF SUBSTITUTE USE OR PERFORMANCE, OR FOR INCIDENTAL, INDIRECT, OR SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS OR COST OF SIMILAR TYPE, OR FOR CLAIMS BY BUYER FOR DAMAGES OF BUYER'S CUSTOMERS.

Likewise, **SELLER SHALL NOT, UNDER ANY CIRCUMSTANCE, BE LIABLE FOR THE FAULT, NEGLIGENCE, OR WRONGFUL ACTS OR OMISSIONS OF BUYER OR BUYER'S EMPLOYEES**, or Buyer's other contractors or suppliers. **ANY INDEMNITY OR OBLIGATION TO DEFEND OR HOLD HARMLESS OF BUYER BY SELLER SHALL BE LIMITED TO ACTIONS AND/OR OMISSIONS OF SELLER THAT RESULT IN CLAIMS OF BODILY INJURY, WRONGFUL DEATH AND/OR PROPERTY DAMAGE AND FURTHERMORE SHALL RESPOND ONLY TO SUCH CLAIMS FROM THIRD PARTIES TO THIS CONTRACT.** Under no circumstance shall Seller be liable to or defend, indemnify and hold harmless Buyer for the sole negligence of Buyer. Neither the Seller nor its Field Service Representative shall be responsible for the acts, omissions or workmanship of employees, contractors,

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subcontractors or agents of the Buyer or for their failure to follow the advice or instructions of the Seller's Field Service Representative, or for performing any work or giving any advice in respect of goods or services to the Buyer by Seller or others. **LIQUIDATED DAMAGES**, if any, for lateness or any product guarantee **SHALL BE THE BUYER'S EXCLUSIVE REMEDY AGAINST SELLER** and shall not exceed five (5%) percent of the contract price. Notwithstanding, the total liability of Seller to Buyer under all circumstances shall not exceed the contract price.

THIS LIMITATION OF LIABILITY ARTICLE SHALL PREVAIL OVER ANY CONFLICTING OR INCONSISTENT PROVISION CONTAINED IN ANY OF THE DOCUMENTS WHICH COMPRISE THIS CONTRACT.

Article 3 -- Patents

PATENTS - Seller shall pay costs and damages finally awarded in any suit against Buyer or its vendees to the extent based upon a finding that the design or construction of the product(s) as furnished infringes a United States' patent (except infringement occurring as a result of incorporating a design or modification at Buyer's request) provided that Buyer promptly notifies Seller of any claim of such infringement, and Seller is given the exclusive right at its expense to settle such claim and to defend or control the defense of any suit based upon such claim. THIS ARTICLE SETS FORTH SELLER'S EXCLUSIVE LIABILITY WITH RESPECT TO PATENT INFRINGEMENT.

Article 4 -- Delays

If Seller suffers delay in performance due to any cause beyond its control, including but not limited to acts of God, war, act or failure to act of government, act or omission of Buyer, fire, flood, strike or labor trouble, sabotage, acts of terrorism, or delay in obtaining from others suitable services, materials, components, equipment or transportation, the time of performance shall be extended for a period of time equal to the period of the delay and its consequences. Seller will give to Buyer notice in writing within a reasonable time after Seller becomes aware of any such delay. If the accumulated delay exceeds six months, Seller has the right, but not the obligation, to terminate the contract without cause. If terminated, Buyer shall assume responsibility for payment of costs, profit for work completed, and the commitment costs.

Article 5 -- Title, Risk of Loss and Insurance

Title to the product(s) and risk of loss or damage shall pass to Buyer at the point of shipment except that a security interest in the product(s) and proceeds and any replacement shall remain in Seller, regardless of mode of attachment to realty or other property, until the full price has been paid in cash. Buyer agrees to do all acts necessary to perfect and maintain said security interest, and to protect Seller's interest by adequately insuring the product(s) against loss or damage from any external cause with Seller named as insured or co-insured.

Article 6 -- Taxes and Currency

All prices specified are in US dollars unless otherwise stated. Sales and gross receipts taxes (including, without limitation goods and services tax, value added tax, sales and use taxes, all gross receipts taxes and retail sales tax) and all other taxes and duties other than those on income levied on Voith Hydro under applicable income tax laws are not included in the price as specified and are payable by Buyer.

Article 7 -- General

a. BUYER DATA - Timely performance by Seller is contingent upon Buyer's supplying to Seller, when needed, all required technical information, including drawing approval, and all required commercial documentation.

b. NONCANCELLATION - Buyer may not cancel or terminate for convenience, or direct suspension of manufacture, except on mutually acceptable terms.

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c. **STORAGE** - Any item of the product(s) on which manufacture or shipment is delayed by causes within Buyer's control, or by causes which affect Buyer's ability to receive the product(s), may be placed in storage by Seller for Buyer's account and risk.

d. **SHIPMENT** - The term "shipment" means delivery to the initial carrier in accordance with the delivery terms of this order. The shipping date is based upon conditions at the factory on the date hereof, and is subject to revisions to meet conditions on date of Buyer's acceptance. Seller may make partial shipments. Seller shall select method of transportation and route, unless terms are FCA INCOTERMS 2000, point of shipment and the Buyer specifies the method and route.

e. **SPECIAL SHIPPING DEVICES** - On shipments to a destination in the continental United States or Canada, Seller has the right to add to the invoice, as a separate item, the value of any special shipping device (oil barrel, reel, tarpaulin, cradle, crib and the like) used to contain or protect the product(s) invoiced, while in transit. Except as to oil barrels, full credit will be given on the return to Seller of the device in a reusable condition, CIP INCOTERMS 2000 destination. As to oil barrels, arrangement for return and credit must be made by Buyer with the refiner.

f. Compliance with OSHA or similar federal, state, provincial, or local laws during any operation or use of the product(s) is the sole responsibility of Buyer.

g. **INTEREST** - Buyer shall without notice pay interest at the rate of 1% per month (which is equivalent to 12.68% per annum, calculated annually) on any overdue payment and at the same rate on all other amounts required to be paid by Buyer hereunder which have been paid by Voith Hydro. Such interest is to be calculated and compounded monthly, not in advance and to accrue from the date from when such arrears were due and payable hereunder before and after maturity default and judgment until such arrears are paid in full. Payments of purchase price, and any other amounts due, are payable without set-off, abatement, deduction or counter-claim.

h. Assignment may be made only with written consent of both parties.

i. If at any time in Company's judgment Purchaser may be or may become unable or unwilling to meet the terms specified, Company may require satisfactory assurances or full or partial payment as a condition to commencing or continuing manufacture or making shipment; and may, if shipment has been made, recover the product(s) from the carrier, pending receipt of such assurances.

Article 8 -- Laws, Disputes and Venue

The laws of the Commonwealth of Pennsylvania shall govern the validity, interpretation and enforcement of any contract of which these provisions are a part. The parties hereby exclude the application of the United Nations Convention on the International Sale of Goods to this contract. Any dispute arising under this contract which cannot be resolved by the negotiation of the parties shall be finally resolved by arbitration under the Rules of the American Arbitration Association by a single arbitrator appointed in accordance with those Rules. The proceedings shall be conducted in English and the venue for the proceeding shall be situated in Philadelphia or some other mutually agreeable forum. Any determination or award shall be set forth in writing and shall be final and binding on the parties. The prices of this contract are based upon laws in effect on the date of the bid.

Article 9 -- Contract

This contract together with any amendments thereto which are accepted in writing by Voith Hydro constitute the entire agreement between Voith Hydro and Buyer pertaining to the purchase and installation of the product(s). No modification to this contract shall be binding upon a party hereto unless duly executed by a proper officer thereof in writing. No representation as to the product(s) or any other matter to Buyer shall in any way affect Buyer's obligation to pay the purchase price or perform its obligations under this contract.

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Article 10 -- BUYER'S RESPONSIBILITY FOR HAZARDOUS MATERIALS

1. For the purposes of applicable Environmental Law, the Buyer shall be deemed to have charge, control and management of the place of the Work with respect to conditions existing as at the date of this Contract.
2. Prior to the Seller's commencing the Work, the Buyer shall:
 - (a) take all necessary steps to determine whether any Hazardous Materials are present at the place of the Work;
 - (b) provide the Seller with a written list of any Hazardous Materials;
 - (c) advise the Seller as to the location of the Hazardous Materials; and
 - (d) obtain and maintain any waste generator registration required for the disposal of any hazardous or industrial waste in accordance with all requirements of Environmental Law.
3. The Buyer shall take all necessary steps to ensure that no person suffers injury, sickness or death and that no property is injured or destroyed as a result of exposure to, or the presence of, Hazardous Materials which were at the place of the Work prior to Seller's commencing the Work.
4. Except for asbestos, unless this Contract provides otherwise, the Buyer shall be responsible for taking all necessary steps, in accordance with all requirements of Environmental Law, to dispose of, store, neutralize or otherwise render harmless Hazardous Materials which were present at the place of the Work prior to the Seller's commencing the Work. Notwithstanding anything to the contrary, the Seller shall not have work of any kind on this contract involving asbestos and/or asbestos abatement.
5. If the Seller:
 - (a) encounters Hazardous Materials at the place of the Work; or
 - (b) has reasonable grounds to believe that Hazardous Materials are present at the place of the Work, which were not disclosed by the Buyer, as required under Section 3, or which were disclosed but have not been dealt with as required under Section 4, the Seller shall:
 - (c) take all reasonable steps, including stopping the Work, to ensure that no person suffers injury, sickness or death and that no property is injured or destroyed as a result of exposure to or the presence of the Hazardous Materials; and
 - (d) immediately report the circumstances to the Buyer in writing.
6. The Buyer shall, during the term of this Contract and for all materials that must be disposed of as a hazardous or industrial waste pursuant to Environmental Law, act as the "generator" for purposes of the disposal of any Hazardous Materials including, without limitation, signing all waste manifests required for the shipment of Hazardous Materials.
7. If the Seller is delayed in performing the Work or incurs additional costs as a result of taking steps required under Section 5, the time for completion of any of Seller's remaining obligations under this Contract shall be extended accordingly, and Seller shall be reimbursed for reasonable costs incurred as a result of the delay and as a result of taking those steps.
8. The Buyer shall indemnify and hold harmless the Seller and its agents, employees and subcontractors, from and against claims, demands, losses, costs (including, without limitation, legal expenses and the costs of any government or regulatory response), damages, actions, suits or proceedings arising of or resulting from exposure to, or to the presence of, Hazardous Materials which were at the place of the Work prior to the Seller's commencing the Work. This obligation shall not be

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construed to negate, abridge or reduce any other rights or obligations of indemnity set out in this Contract or which otherwise exist respecting a person or party described in this Section.

9. In this Contract:

- (a) **"Environmental Law"** means all applicable statutes, regulations, ordinances, by-laws, codes, guidance documents and all international treaties and agreements now or in hereafter in existence in Pennsylvania (whether federal, state or municipal) relating to the protection and preservation of the environment, health and safety, product safety, product liability or Hazardous Materials, including, without limitation, the *Comprehensive Environmental Response, Compensation, and Liability Act*, US Code, Title 42, Chapter 103, and state environmental protection legislation, all as amended from time to time; and
- (b) **"Hazardous Materials"** means any substance, product, element, radiation or matter included in any definition of "hazardous product", "dangerous goods", "waste", "toxic substance", "contaminant", "pollutant", "deleterious substance" or words of similar import under Environmental Law, or the presence of which in the environment is likely to affect adversely the quality of the environment in any way and, without limiting the generality of the foregoing, includes asbestos, asbestos-containing materials, lead and PCBs.

10. Sections 1 to 9 and this Section 10 shall prevail notwithstanding any other provision of this Agreement.

Article 11 -- Intellectual Property

Seller retains all ownership of Intellectual Property on this contract. Seller provides a non-transferable non-exclusive license to Buyer to use, reproduce, or display the technical data on this contract. This license does not permit the Buyer to reverse engineer the technical data; nor to release, perform, display, disclose, or authorize the use of the technical data to others; nor to use the technical data to manufacture additional quantities of the items on this contract.