

Areawide Public Utility Contract  
for  
**Electric, Natural Gas, and Regulated Energy  
Management Services**  
Contract No. GS-00P-08-BSD-0552  
between the  
**United States of America**  
and  
**CPS Energy**  
**San Antonio, Texas**  
For the  
Incorporated City of San Antonio

Negotiated Areawide Contract  
**No. GS-00P-08-BSD-0552**

between the  
United States of America  
and  
**CPS Energy**

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NEGOTIATED AREAWIDE CONTRACT  
No. **GS-00P-08-BSD-0552**

BETWEEN THE  
UNITED STATES OF AMERICA  
AND  
**CPS Energy**  
**San Antonio, Texas**

THIS AREAWIDE CONTRACT FOR ELECTRIC, NATURAL GAS, AND ENERGY MANAGEMENT SERVICES is executed this **29** day of **SEPTEMBER 2008**, between the UNITED STATES OF AMERICA, acting through the Administrator of General Services (hereinafter referred to as the "Government"), pursuant to the authority contained in 40 U.S.C. 501(b)(1), and the City of San Antonio, acting by and through the City Public Service Board of San Antonio, a municipal gas and electric utility organized and existing under the laws of the State of Texas and having its principal office and place of business at 145 Navarro, P.O. Box 1771, San Antonio, TX 78296 (hereinafter referred to as the "Contractor" or "CPS Energy"):

*WHEREAS*, with some exceptions, the Government is generally required by Chapter 1 of Title 48 of the Federal Acquisition Regulation (FAR), 48 CFR 41.204, to enter into a bilateral contract for utility and/or regulated energy management services at each Federal facility where the value of the service provided is expected to exceed \$100,000 per year;

*WHEREAS*, where the Government has an areawide contract in effect with a particular utility then such utility service is normally to be procured thereunder;

*WHEREAS*, the Contractor and the Government mutually desire that this Areawide Contract be used by the agencies of the Government in obtaining electric, natural gas, and/or energy management services from the Contractor and to facilitate partnering arrangements as encouraged and authorized by P.L. 102-486 (Energy Policy Act of 1992) 10 U.S.C. 2913 and 42 U.S.C. 8256);

*NOW, THEREFORE*, in consideration of the premises and mutual covenants herein contained, the parties hereby agree as follows:

## ARTICLE 1. DEFINITIONS.

**1.1.** As used in this contract,

(a) the term "Areawide Contract" means this master contract entered into between the Government and Contractor to cover the utility service acquisitions of all Federal agencies in the service territory from Contractor for a period not to exceed ten (10) years;

(b) the term "Agency" means any Federal department, agency, or independent establishment in the executive branch of the Government, any establishment in the legislative or judicial branches of the Federal Government, or any wholly or mixed ownership Government corporation, as defined in the Government Corporation Control Act, a list of which Agencies may be found at ADM 4800.2E on the General Services Administration website;

(c) the term "Ordering Agency" means any Agency that enters into a bilaterally executed Authorization for procurement of electric, natural gas, and/or energy management services under this Areawide Contract;

(d) the term "Authorization" means an order form used to acquire services under this areawide contract (see Exhibit "A" AUTHORIZATION FOR ELECTRIC SERVICE, Exhibit "B" AUTHORIZATION FOR NATURAL GAS SERVICE, and/or Exhibit "C" AUTHORIZATION FOR ENERGY MANAGEMENT SERVICE annexed hereto);

(e) the term "Termination Authorization" means an order form used to discontinue or disconnect services under this Areawide Contract (see Exhibit "A" AUTHORIZATION FOR ELECTRIC SERVICE, Exhibit "B" AUTHORIZATION FOR NATURAL GAS SERVICE, and/or Exhibit "C" AUTHORIZATION FOR ENERGY MANAGEMENT SERVICE);

(f) the term "Service" means any commodities, financial incentives, goods, and/or services generally available from the Contractor pursuant to its tariffs, rates, rules, regulations, riders, practices, or terms and conditions of service, as may be modified, amended, or supplemented by the Contractor and approved from time to time by the City Public Service Board, in accordance with Texas State Law;

(g) the term "Natural gas Service" means regulated natural gas commodities (where applicable), transportation, distribution, and/or related services;

(h) the term "Energy Conservation Measure" means any specific energy related intended to provide energy savings and/or demand reduction in Federal facilities (Reference Article 18 herein);

(i) the term "Energy Management Service (EMS)" means any project that reduces and/or manages energy demand in a facility as well as energy audits and any ancillary services necessary to ensure the proper operation of the energy conservation measure. Such measures include, but are not limited to, operating, maintenance and commissioning services (Energy Conservation Measure and Demand Side Management Measure are considered equivalent terms.) To be considered an EMS measure, the measure must satisfy all of the following requirements:

1. the EMS measure must produce measurable energy reductions or measurable amounts of controlled energy and/or water use;
2. the EMS measure must be directly related to the use of energy or directly control the use of energy;
3. the preponderance of work covered by the EMS measure (measured in dollars) must be for items 1 and 2 above; and
4. the EMS measure must be an improvement to real property or any action that is necessary to ensure the functionality of the EMS measure.

(j) the term "Contractor's Tariff" means the City Public Service Board of San Antonio, Texas utility service Tariffs or Rates, and includes rate schedules, ordinances, covenants, riders, rules, regulations, practices, and regulated terms and conditions of service as may be modified, amended or supplemented by the Board from time to time under applicable State Law;

(k) the term "Contractor's Terms and Conditions" for this Agreement, means the terms, conditions, policies, procedures, payment terms and prices established by the Contractor for those services that are provided pursuant to this Contract but not subject to the direct oversight or approval of the Board;

(l) the term "Connection Charge" means a Contractor's charge for facilities on either one or both sides of the Government's delivery point which facilities (1) are required to make connections with the nearest point of supply and (2) are in accordance with the Contractor's Tariff and the Board's rules and regulations, installed, owned, maintained and operated by the Contractor; and

(m) the term "Class of Service" or "Service Classification" means those categories of service established in the Contractor's Tariff as determined by the Board.

**1.2.** This Article is hereby expanded to include the additional definitions contained in FAR Clause 52.202-1, Definitions (JULY 2004), 48 C.F.R. 52.202-1, which are incorporated herein by reference.

## **ARTICLE 2. SCOPE AND DURATION OF CONTRACT.**

**2.1.** This Areawide Contract shall be in effect on and after the date of execution and shall continue for a period of ten (10) years, except that the Government, pursuant to the clause contained in FAR 52.249-2 (48 C.F.R. 52.249-2), incorporated into this Areawide Contract under Article 14.1-48, or the Contractor, upon 60 days written notice to the Government, and without liability to the Government or any Ordering Agency, may terminate this Areawide Contract, in whole or in part, when it is in their respective interest to do so, provided, however, that neither the stated duration of this Areawide Contract nor any other termination of it, in whole or in part, pursuant to such incorporated clause, this Article 2.1, or otherwise, shall be construed to affect any obligation for any payment, charge, rate, or other matter that may be imposed pursuant to the Contractor's Tariff, rates, rules, regulations, riders, practices, or terms and conditions of service as may be modified, amended, or supplemented by the Contractor in accordance with Texas State Law.

**2.2.** Authorizations may be executed under this Areawide Contract at any time during the term of the Contract, up to and including the last effective date. The term of the Authorization shall be for a term of up to ten (10) years that is independent of the term of this Areawide Contract provided this Contract is superseded by a follow-on contract with the Contractor.

**2.3** The provisions of this Areawide Contract shall not apply to the Contractor's service to any Agency until both the Ordering Agency and the Contractor execute a written Authorization for electric, natural gas, and/or energy management services. Upon bilateral execution of an Authorization, the Contractor agrees to furnish to the Ordering Agency, and the Ordering Agency agrees to purchase from the Contractor, the above noted services for the installation(s) or facility(ies) named in the Authorization pursuant to the terms of this Areawide Contract.

**2.4.** Nothing in this Areawide Contract shall be construed as precluding the Ordering Agency and the Contractor from entering into an Authorization for negotiated rates or service of a special nature, provided such negotiated rates or service are in accordance with the rules and regulations of Contractor.

**2.5** This Areawide Contract incorporates by reference one complete set of rates and regulations, known as CPS Energy Rules and Regulations and CPS Energy Rate Schedules, which are in effect as of the date of execution of this Areawide Contract.

## **ARTICLE 3. EXISTING CONTRACTS.**

**3.1.** The parties agree that an Agency currently acquiring service from the Contractor under a separate written contract may continue to do so until that contract expires or until such time as the Agency and the Contractor mutually agree to terminate that separate written contract and have such service provided pursuant to this Areawide Contract by executing an appropriate Authorization or Authorizations.

**3.2.** Existing special rates and services of a special nature currently provided under a separate written contract may be continued under the Authorizations described in Article 3.1 if requested by the Ordering Agency and if in accordance with the rates and regulations of Contractor.

## **ARTICLE 4. AUTHORIZATION PROCEDURE AND SERVICE DISCONNECTION.**

**4.1.** To obtain or change service under this Areawide Contract, the Ordering Agency shall complete the appropriate Authorization and forward it to the Contractor. Upon the request of the Ordering Agency, the Contractor shall endeavor to provide reasonable assistance to the Ordering Agency in selecting the service classification which may be most favorable to the Ordering Agency. Upon execution of an Authorization by both the Contractor and the Ordering Agency, the date of initiation or change in service shall be effective as of the date specified in the Authorization. An executed copy of the Authorization shall be transmitted by the Ordering Agency to GSA at the address provided in Article 16.1.

**4.2.** During the term of this Areawide Contract, effective Authorizations need not be amended, modified, or changed by an Ordering Agency to reflect changes in: accounting and appropriation data, the Contractor's tariff, the Contractor's cost of purchased fuel, or the estimated annual cost of service. Such changes are considered internal to the party involved. Where changes are required in effective Authorizations because of a change in the service requirements of an Ordering Agency, an amended Authorization shall be mutually agreed upon and executed.

**4.3.** An Ordering Agency or the Contractor may discontinue service provided pursuant to this Areawide Contract to a particular Federal facility or installation by delivering a written Termination Authorization to the other. Such discontinuance of service by an Ordering Agency or the Contractor shall be in accordance with the terms of this Areawide Contract and the Contractor's Tariffs, rates, rules, regulations, riders, practices, and terms and conditions of service as may be modified, amended, or supplemented by the Contractor in accordance with Texas State Law.

**4.4** Prior to entering into an Authorization for goods and/or services generally available from other sources on a competitive basis, the Contracting Officer shall obtain a justification for utilizing other than full and open competition in accordance with the policies and procedures prescribed by Subpart 6.3 of the Federal Acquisition Regulations.

## **ARTICLE 5. RATES, CHARGES, AND PUBLIC REGULATION.**

**5.1** A complete listing of all the Contractor's Tariffs are available to the Government and any Ordering Agency electronically at the Contractor's website accessible via the tariff link on the website entitled [www.cpsenergy.com/](http://www.cpsenergy.com/).

**5.2.** Subject to the provisions of Article 2.3, all electric, natural gas, and/or energy management service purchases under this Areawide Contract, as well as any other action under this Areawide Contract shall be in accordance with, and subject to, the Contractor's rates, tariffs, rules, regulations, riders, practices, or terms and conditions of service, as may be modified, amended, or supplemented by the Contractor in accordance with Texas State Law, except to the extent that same are preempted by Federal Law. Throughout the term of the Contract, the Government shall have full access to the Contractor's currently effective Tariffs. In the event the Contractor's Tariff becomes inaccessible via the internet or the Ordering Agency does not have access to the internet, the Contractor agrees to provide newly effective or amended Tariff in accordance with the Contractor's Tariff distribution practices, policies and procedures applicable to all customers.

**5.3.** If, during the term of this Areawide Contract, a change in rates occurs for services specified in Authorizations in effect hereunder, the Contractor agrees to continue to furnish, and the Ordering Agency agrees to continue to pay for, those services at the newly approved rates from and after the date such rates are made effective. As provided in Article 4.2, modification of any Authorization hereunder is not necessary to implement higher or lower rates.

**5.4.** The Contractor hereby represents and warrants to the Government that the service rates available to any Ordering Agency hereunder shall at all times not exceed those available to any other customer served under the same service classification for the same or comparable service, under like conditions of use. Nothing herein shall require the Contractor to apply service rates that are inapplicable to the Ordering Agency.

**5.5.** Reasonable written notice via an Authorization shall be given by the Ordering Agency to the Contractor, at the address provided in Article 16.2, of any material changes proposed in the volume or characteristic of utility services required by the Ordering Agency.

**5.6.** To the extent required by the Contractor's Tariffs, rules, regulations, policies and practices, or Texas State Law applicable to all customers, and in accordance therewith, any necessary extension, alteration, relocation, or reinforcement of the Contractor's transmission or distribution lines, related special facilities, service arrangements, energy management services (including any rebates to which the Ordering Agency may be entitled), energy audit services, or other services required or requested by an Ordering Agency shall be provided and, as applicable, billed for, by the Contractor.

**5.7.** To the extent available from the Contractor, the Contractor shall provide and, as applicable, bill for technical assistance on or concerning an Ordering Agency's equipment (such as the inspection or repair of such equipment) as may be requested by such Ordering Agency. The charges for such technical assistance shall be calculated at the time the technical assistance is rendered, as mutually agreed upon by the Contractor and the Agency and shall comply with Contractor's Tariffs, if applicable.

**5.8.** The Authorization or any other agreement used to obtain and provide the matters, services, or technical assistance described in Articles 5.6 and 5.7 above shall contain information descriptive of the matters, services, or technical assistance required or requested, including the amount of (or method to determine) any payment to be made by the Ordering Agency to the Contractor for the provision of said matters, services, or technical assistance.

**5.9.** Any charges for matters or services referenced in Article 5.6 hereof which are not established by the Contractor's Tariffs or in the Contractor's rules and regulations shall be subject to audit by the Ordering Agency prior to payment; provided, however, that notwithstanding such right to audit, payment for the matters and services referenced in Article 5.6 hereof shall not be unreasonably withheld or denied. The Contractor further warrants and represents to the Government that charges for the matters or services referenced in Article 5.6 hereof will not exceed the charges billed to other customers of the Contractor served under the same service classification for like matters or services provided under similar circumstances.

## **ARTICLE 6. BILLS AND BILLING DATA.**

**6.1** The services supplied hereunder shall be billed to the Ordering Agency at the address specified in each Authorization. Bills shall be submitted in original only, unless otherwise specified in the Authorization. All bills shall contain such data as is required by the Board to substantiate the billing, and such other reasonable and available data as may be requested by the Ordering Agency, provided that such other data are contained in bills provided to other customers of the Contractor served under the same service classification as the Ordering Agency.

## **ARTICLE 7. PAYMENTS FOR SERVICES.**

**7.1.** With the exception of the payments described in Article 7.4 herein, payments hereunder shall not be paid in advance of services rendered. The Ordering Agency shall effect payment of all bills for regulated services rendered under

this Contract in accordance with the terms of the Contractor's currently effective payment provisions of the tariffs, rates, rules, regulations, riders, practices, or terms and conditions of service. Changes in the Contractor's Tariff provisions for the payment of bills shall supersede the provisions of this paragraph.

**7.2.** The Ordering Agency will make invoice payments for energy management services in accordance with the provisions of the FAR Subpart 52.232-25 (Article 14.1-25). The interest rate for late payments made pursuant to this clause shall be computed in accordance with the Office of Management and Budget prompt payment regulations at 5 C.F.R. 1315.

**7.3** All payments hereunder shall not normally be made in advance of services rendered in accordance with 48 C.F.R. Subpart 32.4 unless required by the Contractor's Tariff or rules and regulations. The applicability of this provision is limited to connection charge and line extension payments specifically cited and provided for in the Contractor's Tariff.

**7.4** Each payment made by Treasury check to the Contractor shall include the Contractor's billing stub(s), or a Government or Ordering Agency payment document that clearly and correctly lists all of the Contractor's account numbers to which the payment applies and the dollar amount applicable to each account. If payment is by Electronic Funds Transfer either through the Automated Clearing House (ACH) or the Federal Reserve Wire Transfer System, the provisions of FAR Subpart 52.232-37 shall apply (See Article 14) and the Ordering Agency must specify the method of payment and the designated payment office in the Authorization.

#### **ARTICLE 8. CONTRACTOR-OWNED METERS.**

**8.1.** Metering equipment of standard manufacture suitable to measure all utility services supplied by the Contractor hereunder shall be furnished, installed, calibrated and maintained by the Contractor at its expense. In the event any meter fails to register or registers incorrectly, as determined by the regulations of the Contractor, billing adjustments shall be made in accordance with such regulations.

**8.2.** The Contractor, so far as possible, shall read all meters monthly in accordance with the Contractor's Tariff and regulations.

**8.3.** Meters shall be inspected upon installation at no direct charge to the Ordering Agency. Subsequent inspection, periodic testing, repair, and replacement of meters shall be done in such place and manner as provided by the Contractor's regulations. Upon notice that a meter is failing to register correctly, the Contractor shall take immediate steps to effect replacement or repair. Ordering Agencies shall have the right to request a meter test in accordance with the procedures prescribed in the Contractor's regulations. The tests and applicable meter accuracy standards are those set forth in the Contractor's regulations. The expense of meter tests shall be borne by the party designated as responsible therefor in the Contractor's regulations.

**8.4.** For the purposes of this Article, references to meters shall apply only to Contractor-owned metering devices installed and maintained by the Contractor in accordance with the Contractor's guidelines for utility service(s). References to meters under this Article shall not apply to meters that are to be installed by the Contractor at the request of an Ordering Agency, to be owned by the Government as a part of an Authorization for Energy Management Service or other service.

#### **ARTICLE 9. EQUIPMENT AND FACILITIES.**

**9.1.** Subject to the provisions of Article 5.6 hereof, the responsibility for owning, furnishing, installing, and maintaining all equipment and facilities (other than meters) required to supply service at the delivery point(s) specified in an Authorization shall be determined in accordance with the Contractor's tariffs, its policies and practices, and its rules and regulations. The Ordering Agency shall provide, free of charge to the Contractor, mutually agreeable locations on its premises for the installation of meters and such other equipment furnished and owned by the Contractor and necessary to supply service hereunder. The Contractor shall, at all times during the life of this Areawide Contract, operate and maintain at its expense such equipment or facilities as for which it has responsibility in accordance with this Article 9.1, and shall assume all taxes and other charges, if any are required by law, in connection therewith. Notwithstanding anything to the contrary in FAR 52.241-5 (Contractor's Facilities (FEB 1995)), to the extent required by the Contractor's Tariffs and rules and regulations, and in accordance thereof, such equipment and facilities as for which the Contractor has responsibility in accordance with this Article 9.1 shall be removed, or any underground equipment or facilities for which the Contractor has responsibility in accordance with this Article 9.1, such underground equipment or facilities may be abandoned, and in both cases, the Agency's premises restored, by the Contractor at its expense, within a reasonable time after discontinuance of service to the Ordering Agency.

**9.2.** Subject to the provisions of Article 11.1, all necessary rights-of-way, easements, licenses and such other rights necessary to permit the Contractor to perform under this contract shall be obtained and the expense for same borne in accordance with the Contractor's tariffs and rules and regulations.

## **ARTICLE 10. LIABILITY.**

**10.1.** When the Government and/or an Ordering Agency has limited or restricted the Contractor's right of access under Article 11 and thereby interfered with the Contractor's ability to supply service or to correct dangerous situations which are a threat to public safety, the Government shall be responsible for any liability resulting from such restricted or limited access to the extent permitted by law and authorized by appropriations. This Article 10.1 shall not be construed to limit the Government's liability under applicable law.

**10.2.** The Contractor's liability to the Government and to any Ordering Agency for any failure to supply service, for any interruptions in service, and for any irregular or defective service shall be determined in accordance with the Contractor's tariffs.

**10.3.** Except as provided above, and in accordance with the Contractor's Tariff and Terms and Conditions of Service, the Government shall not be liable for damage or injury to any person or property, including death, occasioned solely by the Contractor, its employees' or agents' negligent installation and use, operation or intentional misuse of the Contractor's equipment or facilities.

**10.4.** In accordance with the Contractor's Tariff and/or Terms and Conditions of Service, neither the Contractor nor its employees or agents, shall be liable for damage or injury to any person or property, including death, occasioned solely by the negligent installation, use, operation or intentional misuse of Contractor's equipment or facilities by the Government, its employees or agents.

**10.5.** The Contractor shall not be liable for incidents arising out of or in any way connected with the violation or compliance with any local, state, or federal environmental law or regulation resulting from pre-existing conditions at a Government job site, release or spill of any pre-existing hazardous materials or waste, or out of the management and disposal of any pre-existing contaminated soils or ground water which was removed from the ground as a result of work performed by the Contractor.

**10.6.** The Government agrees to accept full responsibility for and bear all costs associated with pre-existing environmental liability. Responsibility for testing, abatement, remediation, and/or disposal of hazardous material, including, but not limited to, contaminated soil, lead paint, asbestos, fuel oil, or underground fuel oil tanks, shall remain with the Government. Where there is reason to suspect that hazardous material is present at the work site, or where hazardous material is encountered during the course of work being performed, the Contractor shall stop work; notify the Contracting Officer and Activity personnel, and request that the Government test the work site for such hazardous material and appropriately abate and dispose of such hazardous material. Once the work site has been cleared of all hazardous material, the Contractor shall resume work in that area.

## **ARTICLE 11. ACCESS TO PREMISES.**

**11.1** The Contractor shall have access to the premises served at all reasonable times during the term of this Areawide Contract and at its expiration or termination for the purpose of reading meters, making installations, repairs, or removals of the Contractor's equipment, or for any other proper purposes hereunder; provided, however, that proper military or other governmental authority may limit or restrict such right of access in any manner considered by such authority to be reasonably necessary or advisable.

**11.2** By submitting an Authorization for service, an Ordering Agency grants Contractor access to, and a license to place contractor's facilities and/or equipment on the Ordering Agency's property for purposes of providing services to the Ordering Agency. If Ordering Agency desires that special terms and/or conditions apply to the granting of such access to its property, Ordering Agency and Contractor shall agree to such terms and conditions as an Addendum to the Authorization. Contractor need not, and Ordering Agency may not require that Contractor obtain a separate license, easement or other agreement to place Contractor's facilities and/or equipment on the premises of Ordering Agency, if such facilities are solely for the purpose of providing service as anticipated herein to the Ordering Agency or other Agencies of the government. Ordering Agency may require Contractor to obtain a separate license or easement from the Ordering Agency to place Contractor's facilities and/or equipment on the premises of the Ordering Agency, if such facilities and/or equipment are utilized to provide service to customers other than the Ordering Agency or other Agencies of the U.S. Government.

## **ARTICLE 12. PARTIES OF INTEREST.**

**12.1.** This Areawide Contract shall be binding upon and inure to the benefit of the successors, legal representatives, and assignees of the respective parties hereto.

**12.2.** When the Contractor becomes aware that a change in ownership of the Contractor ("change in ownership" for purposes of this Areawide Contract being defined as a sale by Contractor's parent corporation of more than fifty percent of the outstanding voting stock of the Contractor) or a change in the name of the Contractor has occurred, the Contractor shall notify the Contracting Officer at the address provided in Article 16.1 not later than thirty (30) days after the effectiveness of any such ownership or name change.

**ARTICLE 13. REPRESENTATIONS AND CERTIFICATIONS.**

**13.1.** This Areawide Contract incorporates by reference the representations and certifications made by the Contractor on which is on file with the Government.

**ARTICLE 14. SUPPLEMENTAL CLAUSES.**

**14.1. 52.252-2** Clauses Incorporated by Reference. (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es): <http://www.arnet.gov>.

	<u>FAR REF</u>	<u>Prescribed In</u>	<u>Federal Acquisition Regulation</u>
(1)	52.202-1	2.201	Definitions (JUL 2004)
(2)	52.203-3	3.202	Gratuities (APR 1984)
(3)	52.203-5	3.404	Covenant Against Contingent Fees (APR 1984)
(4)	52.203-6	3.503-2	Restrictions on Subcontractor Sales to the Government (SEPT 2006)
(5)	52.203-7	3.502-3	Anti-Kickback Procedures (JUL 1995)
(6)	52.203-8	3.104-9(a)	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (JAN 1997)
(7)	52.203-10	3.104-9(b)	Price or Fee Adjustment for Illegal or Improper Activity (JAN 1997)
(8)	52.203-12	3.808(b)	Limitation on Payments to Influence Certain Federal Transactions (SEPT 2005)
(9)	52.204-3	4.905	Taxpayer Identification (OCT 1998)
(10)	52.204-4	4.303	Printed or Copied Double-Sided on Recycled Paper
(11)	52.204-7	4.1104	Central Contractor Registration (JUL 2006)
(12)	52.209-6	9.409(b)	Protecting the government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (SEPT 2006)
(13)	52.216-21	16.506-(d)(1)	Requirements (OCT 1995)
(14)	52.219-8	19.708-(a)	Utilization of Small Business Concerns (MAY 2004)
(15)	52.219-9	19.708(b)	Small Business Subcontracting Plan (SEPT 2006)
(16)	52.219-16	19.708(b)(2)	Liquidated Damages – Subcontracting Plan (JAN 1999)
(17)	52.222-3	22.202	Convict Labor (JUNE 2003)
(18)	52.222-26	22.810(e)	Equal Opportunity - Alternate I (FEB 1999)
(19)	52.222-35	22.1310(A)(2)	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans - Alternate I (DEC 2001)
(20)	52.222-36	22.1408(b)	Affirmative Action for Workers with Disabilities - Alternate I (JUNE 1998)
(21)	52.222-38	22.1310(c)	Compliance with Veterans' Employment Reporting Requirements (DEC 2001)
(22)	52.222-39	22.1605	Notification of Employee Rights Concerning Payment of Union Dues or Fees ((DEC 2004)
(23)	52.223-6	23.505	Drug-Free Workplace (MAY 2001)
(24)	52.232-25	32.908(c)	Prompt Payment (OCT 2003)
(25)	52.232-33	32.1110(a)	Payment by Electronic Funds Transfer—Central Contractor Registration (OCT 2003)*
(26)	52.232-34	32.1110(a)(2)	Payment by Electronic Funds Transfer—Other than Central Contractor Registration (MAY 1999)*
(27)	52.232-35	32.1110(c)	Designation of Office for Government Receipt of Electronic Funds Transfer Information (MAY 1999)*
(28)	52.232-36	32.1110(d)	Payment by a Third Party (MAY 1999)*
(29)	52.232-37	32.1110(e)	Multiple Payment Arrangements (MAY 1999)
(30)	52.233-1	33.215	Disputes (JUL 2002)
(31)	52.236-9	36.509	Protection of Existing Vegetation, Structures, Equipment,

			Utilities and Improvements (APR 1984)
(32)	52.237-2	37.110(b)	Protection of Government Buildings, Equipment and Vegetation (APR 1984)
(33)	52.241-2	41.501(c)(1)	Order of Precedence – Utilities (FEB 1995)
(34)	52.241-3	41.501(c)(2)	Scope and Duration of Contract (FEB 1995)*
(35)	52.241-4	41.501(c)(3)	Change in Class of Service (FEB 1995)
(36)	52.241-5	41.501(c)(4)	Contractor’s Facilities (FEB 1995)*
(37)	52.241-6	41.501(c)(5)	Service Provisions (FEB 1995)
(38)	52.241-8	41.501(d)(2)	Change in Rates or Terms and Conditions of Service for Unregulated Services (FEB 1995)
(39)	52.241-9	41.501(d)(3)	Connection Charges (FEB 1995)
(40)	52.241-10	41.501(d)(4)	Termination Liability (FEB 1995)
(41)	52.241-11	41.501(d)(5)	Multiple Service Locations (FEB 1995)*
(42)	52.241-12	41.501(d)(6)	Nonrefundable, Nonrecurring Service Charge (FEB 1995)
(43)	52.241-13	41.501(d)(7)	Capital Credits (FEB 1995)
(44)	52.242-13	42.903	Bankruptcy (JUL 1995)
(45)	52.244-5	44.204(c)	Competition in Subcontracting (DEC 1996)
(46)	52.249-2	49.502(a)(2)	Termination for the Convenience of the Government (Fixed Price) (MAY 2004)
(47)	52.249-8	49.504(a)(1)	Default (Fixed-Price Supply and Service (APR 1984)
(48)	52.253-1	53.111	Computer Generated Forms (JAN 1991)

Clauses marked with an asterisk (\*) are only applicable if checked on a Exhibit, and only to the work ordered on that Exhibit

**14.2** Clauses Incorporated in Full Text.

The following clauses relating to the Alternate versions of FAR clauses 52.222-26, 52.222-35, and 52.222-36 (clauses 18, 19, and 20 above) are herein incorporated in full text:

**52.222-26 Equal Opportunity.**

*Alternate I (Feb 1999).* As prescribed in 22.810(e), add the following as a preamble to the clause:

Notice: The following terms of this clause are waived for this contract: Pursuant to 41 CFR §60-1.5(a)(4), the requirements of this clause shall not be applicable to an agency, instrumentality or subdivision of the Contractor that does not participate in work on or under this Contract, and it is further acknowledged that the Contractor is exempt from the requirement of filing an Annual Compliance Report under 41 CFR §60-1.7(a)(1) and from the requirement of maintaining a written Affirmative Action compliance program under 41 CFR § 60-1.40 and Part 60-2 of Chapter 40.

EQUAL OPPORTUNITY (MAR 2007)

(a) *Definition.* "United States," as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b)(1) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor's activities (41 CFR 60-1.5).

(c)(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly

announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to—

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion;
- (iv) Transfer;
- (v) Recruitment or recruitment advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR Part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

(End of clause)

## 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.

*Alternate I (Dec 2001).* As prescribed in 22.1310(a)(2), add the following as a preamble to the clause:

Notice: The following term(s) of this clause are waived for this Contract: Pursuant to 41 CFR §60-250.4(a)(4), the requirements of this clause shall not be applicable to an agency, instrumentality or subdivision of the Contractor that does not participate in work on or under this Contract.

### EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEPT 2006)

(a) *Definitions.* As used in this clause—

“All employment openings” means all positions except executive and top management, those positions that will be filled from within the Contractor’s organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days duration, and part-time employment.

“Executive and top management” means any employee—

- (1) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;
- (2) Who customarily and regularly directs the work of two or more other employees;
- (3) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;
- (4) Who customarily and regularly exercises discretionary powers; and
- (5) Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment, who does not devote more than 40 percent of total hours of work in the work week to activities that are not directly and closely related to the performance of the work described in paragraphs (1) through (4) of this definition. This paragraph (5) does not apply in the case of an employee who is in sole charge of an establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which the individual is employed.

“Other eligible veteran” means any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

“Positions that will be filled from within the Contractor’s organization” means employment openings for which the Contractor will give no consideration to persons outside the Contractor’s organization (including any affiliates, subsidiaries, and parent companies) and includes any openings the Contractor proposes to fill from regularly established “recall” lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

“Qualified special disabled veteran” means a special disabled veteran who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such veteran holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

“Special disabled veteran” means—

- (1) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability—
  - (i) Rated at 30 percent or more; or
  - (ii) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap (*i.e.*, a significant impairment of the veteran’s ability to prepare for, obtain, or retain employment consistent with the veteran’s abilities, aptitudes, and interests); or
- (2) A person who was discharged or released from active duty because of a service-connected disability.

“Veteran of the Vietnam era” means a person who—

- (1) Served on active duty for a period of more than 180 days and was discharged or released from active duty with other than a dishonorable discharge, if any part of such active duty occurred—
  - (i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or
  - (ii) Between August 5, 1964, and May 7, 1975, in all other cases; or

(2) Was discharged or released from active duty for a service-connected disability if any part of the active duty was performed—

- (i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or
- (ii) Between August 5, 1964, and May 7, 1975, in all other cases.

(b) General.

(1) The Contractor shall not discriminate against the individual because the individual is a special disabled veteran, a veteran of the Vietnam era, or other eligible veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans' status in all employment practices such as—

- (i) Recruitment, advertising, and job application procedures;
- (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
- (iii) Rate of pay or any other form of compensation and changes in compensation;
- (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- (v) Leaves of absence, sick leave, or any other leave;
- (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
- (vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- (viii) Activities sponsored by the Contractor including social or recreational programs; and
- (ix) Any other term, condition, or privilege of employment.

(2) The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).

(c) Listing openings.

(1) The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public employment service office of the State wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.

(2) The Contractor shall make the listing of employment openings with the local employment service office at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(3) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State public employment agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts. The Contractor may advise the State agency when it is no longer bound by this contract clause.

(d) *Applicability.* This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.

(e) Postings.

(1) The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.

(2) The employment notices shall—

(i) State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, and other eligible veterans; and

(ii) Be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor), and provided by or through the Contracting Officer.

(3) The Contractor shall ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).

(4) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Contractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans.

(f) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, the Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(g) *Subcontracts.* The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for noncompliance.

(End of clause)

### **52.222-36 Affirmative Action for Workers with Disabilities.**

*Alternate I (June 1998).* As prescribed in 22.1408(b), add the following as a preamble to the clause:

Notice: The following term(s) of this clause are waived for this Contract: Pursuant to 41 CFR §60-741.4.4(a)(5), the requirements of this clause shall not be applicable to an agency, instrumentality or subdivision of the Contractor that does not participate in work on or under this Contract.

#### **AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUNE 1998)**

##### **(a) General.**

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as—

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(iii) Rates of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

(vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Contractor, including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

##### **(b) Postings.**

(1) The Contractor agrees to post employment notices stating—

(i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and

(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (*e.g.*, the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

(End of clause)

### **14.3** Repeal of Clauses During Term of Contract.

If, during the term of this Areawide Contract, any of the clauses contained in this Article are repealed, revoked, or dissolved by the Government, then such clauses shall no longer be part of this Contract as of the date of such repeal, revocation, or dissolution. The elimination of these clauses by reason of such repeal, revocation, or dissolution shall not affect the continuing validity and effectiveness of the remainder of the Contract or other clauses referenced in this Article.

## **ARTICLE 15. SMALL BUSINESS SUBCONTRACTING PLAN**

**15.1.** Attached hereto and made a part hereof by reference is a SUBCONTRACTING PLAN FOR SMALL BUSINESS CONCERNS, SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY SOCIALLY & ECONOMICALLY DISADVANTAGED INDIVIDUALS, HUB ZONE BUSINESS CONCERNS, WOMAN OWNED SMALL BUSINESS CONCERNS, VETERAN-OWNED SMALL BUSINESSES CONCERNS AND DISABLED VETERAN-OWNED BUSINESSES negotiated between the Contractor and the Government, which is applicable on a company wide basis pursuant to the requirements of 15 U.S.C. 637(d). The Contractor expressly understands that this subcontracting plan is an annual plan and hereby agrees to submit a new subcontracting plan by November 30<sup>th</sup> of each year during the life of this Contract.

**15.2.** Information and announcements concerning current developments in the GSA Small Business Subcontracting Program are available on the GSA Energy Center web site accessible via <http://www.gsa.gov/energy>.

## **ARTICLE 16. NOTICES**

**16.1.** Unless specifically provided otherwise, all notices required to be provided to the Government under this Areawide Contract shall be mailed to: U. S. General Services Administration, Energy Center of Expertise (PLA), 301 7th Street, SW, Room 4004, Washington, DC 20405.

**16.2.** All inquiries and notices to the Contractor regarding this Areawide Contract shall be mailed to: Mr. Spurgeon Busby, CPS Energy, 7000 San Pedro, San Antonio, TX 78216 (telephone number 210-353-2339), or to such other person as the Contractor may hereafter designate in writing.

**16.3.** The Contractor shall provide GSA with a copy of all fully executed Exhibit "C" Authorizations for Energy Management Service including any applicable attachments at the address provided in Article 16.1.

## **ARTICLE 17. REPORTING**

**17.1** The Contractor shall provide, as prescribed and directed by the Contracting Officer, an annual report on Subcontracting Plan Achievements, in accordance with the approved subcontracting plan for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals by April 1 of each year during the life of this Areawide Contract. The report shall be submitted electronically utilizing the Small Business Administration's Electronic Subcontracting Reporting System. The website address of system can be found at <http://www.esrs.gov>.

**17.2** The Contractor shall provide, no later than the end of May, to the contracting officer at the address indicated in Article 16.1 an annual report for the preceding calendar year which will provide a summary listing of all Federal customers requiring service or change in service under this Areawide Contract. This summary report will include: (a) name or Ordering Agency, (b) service address, (c) nature of service, and (d) annual dollar value and quantity of service (if applicable).

## **ARTICLE 18. UTILITY ENERGY SERVICE CONTRACTS.**

**18.1.** Measurement and verification: Energy Conservation Measures (ECM) will not be normally considered unless a net overall energy usage or cost reduction can be demonstrated and verified. Verification standards for energy projects are established in the North-American Energy Measurement and Verification Protocol (NEMVP), published by the Department of Energy's Federal Energy Management Program (FEMP).

**18.2.** Unless otherwise provided by law, the following provisions shall apply:

(a) Payment for energy conservation measures, when authorized as Energy Management Service (EMS), shall be equal to the direct cost of capital or financing amortized over a negotiated payment term commencing on the date of acceptance of the completed installation;

(b) The payment term for Authorizations involving energy conservation measures should be calculated to enable the Ordering Agency's payment(s) to be lower than the estimated cost savings to be realized from its implementation. In no event, however, shall this term exceed 80% of the useful life of the equipment and material to be installed.

**18.3.** Subcontracting: The Contractor may perform any or all of its requested services through subcontractors, including its unregulated affiliates. ECM subcontractors shall be competitively selected in accordance with FAR 52.244-5 (Article 14.1-47 herein). Subcontractor selection shall be based on cost, experience, past performance and other such factors as the Contractor and the Ordering Agency may mutually deem appropriate and reasonably related to the Government's minimum requirements. Upon request by the Government, the Contractor shall make available to the contracting officer all documents related to the selection of a subcontractor. In no event shall the service be provided by subcontractors listed as excluded from Federal Procurement Programs maintained by GSA pursuant to 48 C.F.R. 9.404 (Article 14.1-12 herein).

**18.4.** For all Authorizations involving Energy Conservation Measures, it is desirable to have a Warranty Clause that addresses the specific needs and requirements of the work being performed and equipment that is to be provided by the

Contractor, however, in the absence of a Warranty Clause in the Authorization the following language will serve as the default Clause:

The Company shall pass through to the Agency all warranties on equipment installed or provided by it or its subcontractors on Government property with the following representation:

CPS ENERGY ACKNOWLEDGES THAT THE UNITED STATES OF AMERICA WILL OWN OR LEASE THE EQUIPMENT AND/OR MATERIALS BEING INSTALLED OR SUPPLIED HEREUNDER, AND, ACCORDINGLY, AGREES THAT ALL WARRANTIES SET FORTH HEREIN, OR OTHERWISE PROVIDED BY LAW IN FAVOR OF COMPANY SHALL INURE ALSO TO THE BENEFIT OF THE UNITED STATES AND THAT ALL CLAIMS ARISING FROM ANY BREACH OF SUCH WARRANTIES OR AS A RESULT OF DEFECTS IN OR REPAIRS TO SUCH EQUIPMENT OR SUPPLIES MAY BE ASSERTED AGAINST CPS ENERGY OR MANUFACTURER DIRECTLY BY THE UNITED STATES.

**18.5.** The Contractor shall submit to GSA a copy of all preliminary energy audit results or energy conservation measure analysis for review and approval. Upon approval of the preliminary audit or analysis and a receipt of a notice to proceed, the Contractor may negotiate Task Orders with the Ordering Agency for the implementation of the energy conservation measures described in the preliminary documents. The Contractor shall provide GSA with copies of fully executed Exhibit "C" Authorizations for Energy Management Service resulting from approved energy audits including any applicable attachments at the address provided in Article 16.1.

**18.6.** Contractor's Responsibilities under Contract:

(a) The Contractor shall not provide Energy Management Service to Federal facilities unless the facility is a current customer or prospective customer of the regulated utility within the franchised service territory of the utility company providing such services.

(b) The work that is to be performed under the Energy Management Service contract shall be limited to work resulting in a direct reduction in energy usage (see Article 1.1(j)) and any modifications or repairs that are necessary as a direct result of the installation of the Energy Conservation Measure.

#### **ARTICLE 19. MISCELLANEOUS.**

**19.1.** Contract administration: The Ordering Agency shall assist in the day-to-day administration of the utility service provided to it under an Authorization.

**19.2.** Anti-Deficiency: Unless otherwise authorized by Public Law or Federal Regulation, nothing contained herein shall be construed as binding the Government to expend, in any one fiscal year, any sum in excess of the appropriation made by Congress for that fiscal year in furtherance of the matter of the contract or to involve the Government in an obligation for the future expenditure of monies before an appropriation is made (Anti-Deficiency Act, 31 U.S.C. 1341(a)(1)(A)).

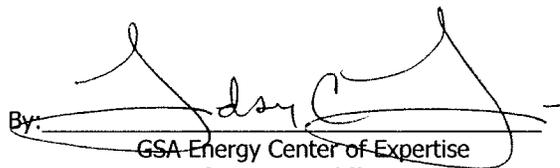
**19.3.** Obligation to Serve: Nothing contained in this contract shall obligate the Contractor to take any action which it may consider to be detrimental to its obligations as a municipal utility.

**19.4.** Term of Authorizations: It is recognized that during the life of this contract, situations and/or requirements may arise where it may be desirable that the term of service to an Ordering Agency's facility extend beyond the term of this contract. In such event, the particular Authorization involved may specify a term extending beyond the term of this contract, provided that is within the contracting authority of the Ordering Agency and appropriate termination liability provisions have been negotiated between the Contractor and Ordering Agency to address unamortized balances for connection charge and/or energy management service projects.

**19.5.** Preexisting Privatization Task Order: Notwithstanding any provision herein to the contrary, Privatization Task Order DADA10-99-F-0400 Modification P0002 dated 08-May-2003 recognized under area wide contract GS-OOP-98-BSD-0056 via a modification to authorization for electric service effective December 1, 2003, shall remain in full force and effect unless it expires or is terminated under the terms of that task order. Nothing herein shall be interpreted to either modify the terms of, or limit the scope or duration of, that task order. It is understood, however, as stated under Article 2.2 of this contract, that any new task orders entered into under this renewal areawide contract GS-00P-08-BSD-0552 shall be limited to a term of 10 years.

IN WITNESS WHEREOF, the parties have executed this contract as of the day and the year first above written.

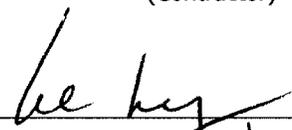
UNITED STATES OF AMERICA  
Acting through the Administrator  
of General Services

By:   
GSA Energy Center of Expertise  
Contracting Officer

ATTEST:

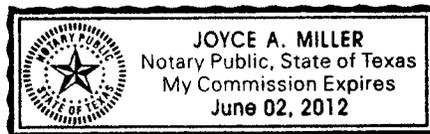
By:   
GSA Energy Center of Expertise

CPS Energy  
(Contractor)

By:   
Title: EVP ENERGY DELIVERY + SOLUTIONS

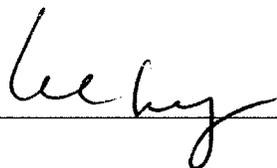
ATTEST:

By:   
Title: Admin Asst. 3



CERTIFICATE

I, AL LUJAN, certify that I am EUP ENERGY DELIVERY + SOLUTIONS of CPS ENERGY, a Municipal Utility named as Contractor in the negotiated Areawide Public Utility Contract No. GS-OOP-08-BSD-0552; that \_\_\_\_\_, who signed said contract on behalf of the Contractor, was then \_\_\_\_\_ of said Municipal Utility; and that said contract was duly signed for and on behalf of said Municipal Utility and is within the scope of its Municipal powers.

/s/ 

(Municipal Seal)

**EXHIBIT "A"**

Contractor's ID NO. \_\_\_\_\_ (Optional)  
Ordering Agency's ID \_\_\_\_\_ (Optional)

**CPS ENERGY**  
AUTHORIZATION FOR ELECTRIC SERVICE, CHANGE IN ELECTRIC SERVICE,  
OR TERMINATION OF ELECTRIC SERVICE UNDER  
CONTRACT NO. **GS-OOP-08-BSD-0552**

Ordering Agency: \_\_\_\_\_  
Address: \_\_\_\_\_

Pursuant to Contract No. GS-OOP-08-BSD-0552 between the Contractor and the United States Government and subject to all the provisions thereof, service to the United States Government under such contract shall be rendered or modified as hereinafter stated. Contract Article 2 and 4 shall be followed for the initiation of service under this contract.

PREMISES TO BE SERVED: \_\_\_\_\_  
SERVICE ADDRESS: \_\_\_\_\_

NATURE OF SERVICE:  Connect,  Change,  Continue Service,  Termination,  Line Extension, Alteration, Relocation, or Reinforcement,  Metering,  Special Facilities,  Ancillary Services,  Other

OTHER TERMS AND CONDITIONS: \_\_\_\_\_  
Attach any other relevant terms and conditions under which service will be provided.

POINT OF DELIVERY: \_\_\_\_\_

TERM OF SERVICE: From \_\_\_\_\_ through \_\_\_\_\_.

SERVICE HEREUNDER SHALL BE UNDER RATE SCHEDULE NO. \_\_\_\_\_\*, Hereafter amended or modified by the regulatory body having jurisdiction. (see article 5 of this contract.)

ESTIMATED ANNUAL ENERGY USAGE: \_\_\_\_\_ KWH, ESTIMATED DEMAND: \_\_\_\_\_ KW

ESTIMATED ANNUAL SERVICE COST: \$ \_\_\_\_\_

ESTIMATED CONNECTION/SPECIAL FACILITIES CHARGE: \$ \_\_\_\_\_ (if applicable)\*\*

ACCOUNTING AND APPROPRIATION DATA FOR SERVICE: \_\_\_\_\_  
FOR CONNECTION/SPECIAL FACILITIES CHARGE: \_\_\_\_\_

**FOR ANY SERVICE NOT SUBJECT TO COMMISSION APPROVAL, the Contracting Officer may consider the following clauses, if applicable, for the service to be provided under this Authorization (Check applicable clauses):**

- (1) \_\_\_\_\_ 52.211-10 *Commencement, Prosecution and Completion of Work (APR 1984)*
- (2) \_\_\_\_\_ 52.241-4 *Change in Class of Service (FEB 1995)*
- (3) \_\_\_\_\_ 52.241-3 *Scope and Duration of Contract (FEB 1995)*
- (4) \_\_\_\_\_ 52.241-5 *Contractor's Facilities (FEB 1995)*
- (5) \_\_\_\_\_ 52.241-11 *Multiple Service Locations (FEB 1995)*
- (6) \_\_\_\_\_ 52.243-1 *Changes-Fixed Price (AUG 1987)*
- (7) \_\_\_\_\_ 52.249- \_\_\_\_\_ *Default ( \_\_\_\_\_ ) (Specify appropriate Clause)*

BILLS WILL BE RENDERED TO THE ORDERING AGENCY FOR PAYMENT AT THE FOLLOWING ADDRESS:

\_\_\_\_\_ in \_\_\_\_\_ copies.

The foregoing shall be effective as of \_\_\_\_\_ and upon execution of the Authorization by the Contractor and the Ordering Agency.

ACCEPTED:

(Ordering Agency)

**CPS ENERGY**

By: \_\_\_\_\_  
Authorized Signature

By: \_\_\_\_\_  
Authorized Signature

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

\* Include a reference to the applicable rate schedule, and attach a copy of such schedule. \*\* If necessary, attach and make part hereof supplemental agreements or sheets that cover required connection or extension charges and special facilities or service arrangements. (See Article 5 of this Contract for instructions.)

**NOTE:**  
A fully executed copy of this Authorization shall be transmitted by the ordering Agency to the Energy Center of Expertise (PLA), General Services Administration, Washington, DC 20407.

**EXHIBIT "B"**

Contractor's ID NO. \_\_\_\_\_ (Optional)  
Ordering Agency's ID \_\_\_\_\_ (Optional)

**CPS ENERGY**  
AUTHORIZATION FOR NATURAL GAS SERVICE, CHANGE IN NATURAL GAS SERVICE, GAS TRANSPORTATION,  
OR TERMINATION OF NATURAL GAS SERVICE UNDER  
**CONTRACT NO. GS-OOP-08-BSD-0552**

Ordering Agency: \_\_\_\_\_  
Address: \_\_\_\_\_

Pursuant to Contract No. GS-OOP-08-BSD-0552 between the Contractor and the United States Government and subject to all the provisions thereof, service to the United States Government under such contract shall be rendered or modified as hereinafter stated. Contract Article 2 and 4 shall be followed for the initiation of service under this contract.

PREMISES TO BE SERVED: \_\_\_\_\_  
SERVICE ADDRESS: \_\_\_\_\_

NATURE OF SERVICE:  Connect,  Change,  Continue Service,  Termination,  Gas Transportation,  
 Line Extension, Alteration, Relocation, or Reinforcement,  Special Facilities,  Other

OTHER TERMS AND CONDITIONS: \_\_\_\_\_  
Attach any other relevant terms and conditions under which service will be provided.

POINT OF DELIVERY: \_\_\_\_\_  
\_\_\_\_\_

TERM OF SERVICE: From \_\_\_\_\_ through \_\_\_\_\_.

SERVICE HEREUNDER SHALL BE UNDER RATE SCHEDULE NO. \_\_\_\_\_\*, Hereafter amended or modified by the regulatory body having jurisdiction. (see article 5 of this contract.)

ESTIMATED ANNUAL ENERGY USAGE: \_\_\_\_\_ MMBtu

ESTIMATED ANNUAL SERVICE COST: \$ \_\_\_\_\_

ESTIMATED CONNECTION/SPECIAL FACILITIES CHARGE: \$ \_\_\_\_\_ (if applicable)\*\*

ACCOUNTING AND APPROPRIATION DATA FOR SERVICE: \_\_\_\_\_  
FOR CONNECTION/SPECIAL FACILITIES CHARGE: \_\_\_\_\_

**CLAUSES INCORPORATED BY REFERENCE (Check applicable clauses):**

- (1) \_\_\_\_\_ 52.211-10 *Commencement, Prosecution and Completion of Work (APR 1984)*
- (2) \_\_\_\_\_ 52.236-5 *Material and Workmanship (APR 1984)*
- (3) \_\_\_\_\_ 52.241-4 *Change in Class of Service (FEB 1995)*
- (4) \_\_\_\_\_ 52.241-3 *Scope and Duration of Contract (FEB 1995)*
- (5) \_\_\_\_\_ 52.241-5 *Contractor's Facilities (FEB 1995)*
- (6) \_\_\_\_\_ 52.241-7 *Change in Rates or Terms and Conditions of Service for Regulated Services (FEB 1995) (Use Full Text of Clause)*
- (7) \_\_\_\_\_ 52.241-11 *Multiple Service Locations (FEB 1995)*
- (8) \_\_\_\_\_ 52.243-1 *Changes-Fixed Price (AUG 1987)*
- (9) \_\_\_\_\_ 52.249- *Default ( \_\_\_\_\_ ) (Specify appropriate Clause)*

BILLS WILL BE RENDERED TO THE ORDERING AGENCY FOR PAYMENT AT THE FOLLOWING ADDRESS: \_\_\_\_\_  
\_\_\_\_\_ in \_\_\_\_\_ copies.

The foregoing shall be effective upon the return of the fully executed original Authorization by the Contractor to the ordering Agency.

ACCEPTED:

\_\_\_\_\_  
(Ordering Agency)

By: \_\_\_\_\_  
Authorized Signature  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**CPS ENERGY**  
(Contractor)

By: \_\_\_\_\_  
Authorized Signature  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\* Include a reference to the applicable rate schedule, and attach a copy of such schedule.

\*\* If necessary, attach and make part hereof supplemental agreements or sheets that cover required connection or extension charges and special facilities or service arrangements. (See Article 5 of this Contract for instructions.)

**NOTE:**

A fully executed copy of this Authorization shall be transmitted by the ordering Agency to the Energy Center of Expertise (PLA), General Services Administration, Washington, DC 20407.

**EXHIBIT "C"**

Contractor's ID NO. \_\_\_\_\_ (Optional)

Ordering Agency's ID NO. \_\_\_\_\_ (Optional)

**CPS ENERGY**  
**AUTHORIZATION FOR ENERGY MANAGEMENT SERVICES**  
**CONTRACT NO. GS-OOP-08-BSD-0552**

Ordering Agency: \_\_\_\_\_

Address: \_\_\_\_\_

Pursuant to Contract No. GS-OOP-08-BSD-0552 between the Contractor and the United States Government and subject to all the provisions thereof, service to the United States Government under such contract shall be rendered or modified as hereinafter stated. Contract Articles 2 and 4 shall be followed for the initiation of service under this contract.

PREMISES TO BE SERVED: \_\_\_\_\_

SERVICE ADDRESS: \_\_\_\_\_

- NATURE OF SERVICE:  Preliminary Energy Audit       ECP Feasibility Study       ECP Engineering & Design Study  
 Energy Conservation Project (ECP) Installation       Demand Side Management (DSM) Project  
 Other (See Remarks Below)

SERVICE HEREUNDER shall be provided consistent with the Contractor's applicable tariffs, rates, rules, regulations, riders, practices, and/or terms and conditions of service, as modified, amended or supplemented by the Contractor and approved, to the extent required, by the Commission. (See Article 5 of this contract.)

POINT OF DELIVERY: \_\_\_\_\_

ESTIMATED PROJECT COST: \$ \_\_\_\_\_

ACCOUNTING AND APPROPRIATION DATA: \_\_\_\_\_

**LIST OF ATTACHMENTS:**

- |  |  |  |  |
|--|--|--|--|
| <input type="checkbox"/> General Conditions  | <input type="checkbox"/> Payment Provisions    | <input type="checkbox"/> Special Requirements  | <input type="checkbox"/> Economic Analysis     |
| <input type="checkbox"/> Facility/Site Plans | <input type="checkbox"/> Historical Data       | <input type="checkbox"/> Utility Usage History | <input type="checkbox"/> ECP Feasibility Study |
| <input type="checkbox"/> Design Drawings     | <input type="checkbox"/> Design Specifications | <input type="checkbox"/> Certifications        | <input type="checkbox"/> Commission Schedules  |

**CLAUSES INCORPORATED BY REFERENCE (Check applicable clauses):**

(1)  52.211-10 Commencement, Prosecution and Completion of Work (APR 1984)

(2)  52.232-5 Payments under Fixed-Price Construction Contracts (SEP 2002)  
Supersedes provisions of payment clauses in Article 14.

(3)  52.2332-27 Prompt Payment for Construction Contracts (FEB 2002)

(4)  52.236-5 Material and Workmanship (APR 1984)

(5)  52.241-8 Change in Rates or Terms and Conditions of Service for Unregulated Services (FEB 1995) (Use full Text of Clause)

(6)  52.243-1 Changes-Fixed Price (AUG 1987)

(7)  52.249-\_\_ Default (\_\_\_\_\_) (Specify appropriate Clause)

In addition, the Contracting Officer negotiating the terms and conditions under this authorization shall supplement the above-referenced clauses with clauses for the appropriate type of contract.

REMARKS:

ACCEPTED:

\_\_\_\_\_  
(Ordering Agency)

**CPS ENERGY**  
(Contractor)

By: \_\_\_\_\_  
Authorized Signature

Title: \_\_\_\_\_

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

Telephone No. \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Signature

Title: \_\_\_\_\_

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

Telephone No. \_\_\_\_\_

**NOTE:**

A fully executed copy of this Authorization shall be transmitted by the ordering Agency to the Energy Center of Expertise (PLA), General Services Administration, Washington, DC 20407.