


VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda
Bids and Proposals

TO : President and Village Board of Trustees

FROM : Scott Neihaus, Village Manager

DATE : July 5, 2019 Agenda Date July 18, 2019

TITLE : Waiver of Bids - Cummins NPower
Charles Lane Storm Water Station and Police Department Generators

SUBMITTED BY: Brian M. Jack, Utilities Superintendent 

RESULTS:

Date Bids Were Published _____ Bidding Closed _____

Total Number of Bids Received _____

Total Number of Bidders Meeting Specifications _____

Bid Security Required _____ Yes _____ No

Performance Bond Required _____ Yes _____ No

Were Any Bids Withdrawn _____ Yes _____ No

Explanation:

Waiver of Bids Requested? _____ X _____ Yes _____ No

If yes, explain: Purchase is directly from manufacturer.

Award Recommended to Lowest _____ Yes _____ No

Responsible Bidder?

If no, explain:

FISCAL IMPACT:

Charles Lane: Budget Estimate \$118,000.00 Amount of Award \$36,530.00
Water & Sewer Capital Reserve Fund: 520.790.715.75420 Proj: RM PROG 30

Police Department: Budget Estimate \$150,000.00 Amount of Award \$78,735.00
Water & Sewer Capital Reserve Fund: 430.710.720.75420 Proj: FM 19 06

BACKGROUND/RECOMMENDATION:

Waive bids and award a contract to Cummins NPower for the purchase of two (2) generators, one for Charles Lane Storm Water Station and one for the Police Department building.

Has Recommended Bidder Worked for Village Previously X Yes _____ No

If yes, was quality of work acceptable X Yes _____ No

REVIEW (as needed):

Village Attorney XX _____ Date _____

Finance Director XX _____ Date _____

Village Manager XX _____ Date _____

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 4:30 pm, Wednesday, prior to the Board Agenda distribution.

MEMORANDUM



To: Scott Niehaus, Village Manager
From: Brian Jack, Utilities Superintendent *B*
Through: Carl Goldsmith, Director of Public Works *g*
Date: July 5, 2019
Subject: **Waiver of Bids - Cummins NPower
Charles Lane Storm Water & Police Department Generators**

Background

The Department of Public Works is recommending that two permanent on-site generators be installed at the Charles Lane Storm Water Station located at 940 Charles Lane and at the Lombard Police Department located at 235 E Wilson Avenue. The Police Department Generator is over 20 years old and has reached the end of its useful life and currently resides inside the Police Department garage. The goal is to relocate the generator to the outside which will be easier to service and create more usable space in the garage for the Departments long term plan of expanding operations. Each generator will be used in the event of an electrical power outage.

The Village has standardized on the Cummins generators and has acquired multiple Cummins generators throughout the course of numerous water, sewer, and storm water station projects that have been underway since 2001. The Village Hall generator was recently replaced and is also a Cummins Generator. The generators have performed satisfactorily, and Cummins has provided adequate support for the equipment. The Fleet Services staff has attended training to maintain the Cummins generators and it is more efficient for them to specialize in maintaining one manufacturer rather than multiple types of generators.

Cummins has provided a price for both locations that include the generator in a sound attenuated enclosure and delivery. The cost for a 125 kilowatt (kW) natural gas-powered generator for the Charles Lane Storm Water site is \$36,530.00. The cost for a 300-kilowatt (kW) diesel powered generator for the Police Department site is \$78,735.00. The quote from Cummins does not include installation. The installation for the generators will be procured under a separate contract for the project. By purchasing the generators outright, the Village is saving approximately 15% (or \$17,000) and avoiding contractor markup. Scheduling and coordination of the delivery will be handled by the Village and their engineering consultant for the project.

Funds for the Charles Lane Storm Water Station generator are budgeted in the Water & Sewer Capital Reserve Fund: 520.790.715.75420 Proj: RM PROG 30. Funds for the Police Department generator are budgeted in the Facility Improvements and Maintenance Fund: 430.710.720.75420 Proj: FM 19 06.

Recommendations

Please present this request for a waiver of bids and award of a contract to Cummins NPower, Hogkins, IL, in an amount not to exceed \$115,265.00 for the purchase of two (2) generators (1 - 125 kW and 1 - 300 kW) for approval by the Board of Trustees at their July 18, 2019 meeting. Please execute signature on the attached contract and return two copies to the Water Treatment and Wastewater Pumping Division for further processing.

VILLAGE OF LOMBARD

Contract for Purchase of Backup Generators for the Charles Lane Storm Water Station and the Lombard Police Department

This agreement is made this 18th day of July, 2019 by and between, and shall be binding upon, the Village of Lombard, an Illinois municipal Corporation hereinafter referred to as (the "Village") and Cummins NPower LLC hereinafter referred to as (the "Contractor").

Witnesseth That in consideration of the mutual promises of the parties delineated in the Contract Documents, the Contractor agrees to sell and the Village agrees to pay for the following described items as set forth in the Contract Documents:

Backup Generators

One (1) 125kW natural gas driven generator in an amount not to exceed \$36,530.00

One (1) 300kW diesel driven generator in an amount not to exceed \$78,735.00

1. This Contract shall embrace and include all of the applicable Contract Documents listed below as if attached hereto or repeated herein:
 - a. The Contractor's Quote Dated July 3, 2019
 - b. Required Certificate of Insurance, Indemnification, Venue, Other Contractor Responsibilities
2. The Village agrees to pay, and the Contractor agrees to accept as full payment for the items which are the subject matter of this Contract the total sum of \$115,265.00 paid in accordance with the provisions of the Local Government Prompt Payment Act and the provisions of the Contract Documents.
3. Risk of loss, destruction or damage of or to goods under this Contract shall be on contractor until delivery of the goods to the Village and acceptance of the goods by the Village.
4. The Contractor agrees to perform the terms of this Contract according to the following schedule: Deliver submittals for Village approval within one (1) week of Notice to Proceed and deliver equipment within ten (10) weeks from the date the Village approves the submittals. Time is of the essence of this Contract.
5. Where the terms of this Contract conflict with the provisions of the Contract Documents, the Contract Documents shall be binding.

IN WITNESS WHEREOF, the Village of Lombard, Illinois by Village President, and the Contractor have hereunto set their hands this 18th day of July 2019.

If an individual or partnership, all individual names of each partner shall be signed or if a corporation, an officer duly authorized shall sign here:

Accepted this __ day of _____, 2019 .

Individual or Partnership _____ Corporation _____

By Position/Title

By Position/Title

Print Company Name

THE VILLAGE OF LOMBARD, ILLINOIS

Accepted this 18th day of July 2019.

Keith T. Giagnorio
Village President

Attest:

Sharon Kuderna
Village Clerk

**VILLAGE OF LOMBARD
CONTRACTOR'S CERTIFICATION**

_____, having been first duly sworn, depose and states as follows: (Officer or Owner of Company)

I am the _____ for _____
(Title) (Name of Company)

(the "Contractor"), which has submitted a quote for the Charles Lane Storm Water Station and the Lombard Police Department Generators to the Village of Lombard and, having personal knowledge of the matters certified to herein, and being authorized by the Contractor to make the certifications set forth herein, hereby certifies that said

Contractor:

1. has a written sexual harassment policy in place, in full compliance with 775 ILCS 5/2-105(A) (4);
2. is not delinquent in the payment of any tax administered by the Illinois Department of Revenue, or if it is:
 - a. it is contesting its liability for the tax or the amount of tax in accordance with procedures established by the appropriate revenue Act; or
 - b. it has entered into an agreement with the Department of Revenue for payment of all taxes due and is currently in compliance with that agreement;
3. is in full compliance with the Federal Highway Administration Rules on Controlled Substances and Alcohol Use and Testing, 49 CFR Parts 40 and 382, and that

(Name of employee/ driver or "all employee drivers")

is/are currently participating in a drug and alcohol testing program pursuant to the aforementioned rules; and

4. is not barred from contracting with any unit of state or local government as a result of a violation of either Section 33E-3 or 33E-4 of Article 33E of the Illinois Criminal Code of 1961.

By: _____
Authorized Agent of Contractor

Subscribed and sworn to
before me this _____
day of _____, 2019.

Notary Public



Quotation

Cummins Sales and Service
 7145 Santa Fe Dr.
 Hodgkins, IL 60525 United States
 July 3, 2019

Project Name: Lombard Charles Lane Pump Station Generator rev 1

Thank you for your inquiry. We are pleased to quote as follows:

Item	Description	Qty
C125 N6	<p>Spark Ignited Genset: 60Hz-125kW U.S. EPA, Stationary Emergency Application Spark Ignited Genset: 60Hz-125kW Duty Rating-Standby Power Listing-UL 2200 NFPA 110 Type 10 Level 1 Capable IBC Seismic Certification OSHPD Seismic Certification Emissions Certification-Spark Ignited, EPA, Emergency, Stationary, 40CFR60 Fuel System-Natural Gas/LP Vapor,Auto Changeover Enclosure-Aluminum,Sound Att,Level 2, w/Exh System Voltage-277/480,3 Phase,Wye,4 Wire Alternator-60Hz,12L,480/277V,120C,40C amb Generator Set Control-PowerCommand 2.3 Exciter/Regulator-Pmg, 3 Phase Sensor Engine Governor-Electronic, Isochronous Only Display Language-English Gauge-Oil Pressure Stop Switch-Emergency Control Mounting-Left Facing Load Connections-Dual CB or EB or TB-Bottom Entry, Right CB,Loc A,200A,3P,600VAC,80%,UL CB,Loc B,200A,3P,600VAC,80%,UL Enclosure Color-Green,Aluminum Enclosure Enclosure - Wind Load 180MPH, ASCE7-10 Skidbase-Housing Ready Engine Starter - 12 VDC Motor Battery Charging Alternator-Normal Output Battery Charger - 6 Amp, Regulated Engine Cooling-High Ambient Air Temperature Shutdown-Low Coolant Level Extension-Engine Coolant Drain Engine Coolant-50% Antifreeze, 50% Water Mixture</p>	1

Coolant Heater, Extreme Cold Ambient
Engine Air Cleaner-Normal Duty
Engine Oil Heater-120 Vac, Single Phase
Engine Oil
Genset Warranty- Base
Literature-English
Packing-Skid, Poly Bag
Ship Loose-Green SL2 Baffle
Rack-Battery
Extension-Oil Drain
Common Parts Listing
Product Revision - B
Enclosure Kit-Sound Level 2 Duct

Commercial Accessories

Fuel Strainer-Natural Gas,1 1/4"NPT Inlet/Outlet
Regulator-Natural Gas,1 1/4"NPT Inlet/Outlet,7750CFH,25PSI

Freight

Cummins Site 2 Hr Load Bank Test

Cummins Site Start Up and Battery

Price for Equipment as described above: \$36,530.00

Comments

- *Offloading, rigging, and fuel is not included.*
- *Installation cost, permitting, and applicable taxes not included.*
- *Only those items outlined above will be included in this quotation. Any other items or materials added, regardless of specification, are subject to a price review by Cummins.*
- *No additional testing is included beyond Cummins standard startup procedures.*
- *NETA and Infra-red testing not included.*
- *This custom design requires drawing approval before manufacture may begin. Price is subject to review if changes are made in quantity or design.*

START-UP &
CHECK-OUT
SERVICE

Start-up services upon the installation of the above equipment by the electrical and mechanical contractors. Start-up services include the use of a trained generator set service technician for testing of the equipment supplied and general operating instructions to the owner/personnel. **These services will be performed during normal business hours,**

Monday through Friday 7:30 am to 3:30 pm.

Recommend 2-week notice to schedule start-up. Contractor needs to ensure that all engine and electrical systems are installed and connected to enable the system to be tested during the initial start-up and to prevent charges to the contractor for additional trips.

WARRANTY

The warranty start date is the date of the initial startup or 18 months after the factory ship date, whichever is sooner.

TERMS AND CONDITIONS FOR SALE OF POWER GENERATION EQUIPMENT

These Terms and Conditions, together with the Quote, Sales Order and/or Credit Application on the front side, are hereinafter referred to as this "Agreement" and shall constitute the entire agreement between the customer ("Customer") identified in this Agreement and Cummins and supersede any previous agreement or understanding (oral or written) between the parties with respect to the equipment ("Equipment") identified in this Agreement.

QUOTE TERM; SCOPE. The Quote is valid for 60 days. The price is firm provided drawings are approved and returned within 60 days after submission and ship date is not extended beyond published lead times. Any delays may result in escalation charges. A Sales Order for Equipment is accepted on hold for release basis. The Sales Order will not be released and scheduled for production until written approval to proceed is received. The Quote is limited to plans and specifications section set forth in the Quote. No other sections shall apply. Additional requirements for administrative items may require additional costs. The Quote does not include off unit wiring, off unit plumbing, offloading, rigging, installation, exhaust insulation or fuel, unless otherwise stated.

SHIPPING; DELIVERY. Equipment is quoted FOB origin, freight prepaid to first destination, unless otherwise stated. For consumer and mobile products, freight will be charged to Customer. A reasonable storage fee, as determined by Cummins, may be assessed if delivery of the Equipment is delayed, deferred, or refused by Customer. Offloading, handling, and placement of Equipment and crane services are the responsibility of Customer and not included in proposal, unless otherwise stated. All shipments are made within normal business hours, Monday through Friday. Any delivery, shipping, installation, or performance dates indicated in this Agreement are estimated and not guaranteed. Further, delivery time is subject to confirmation at time of order and will be in effect after engineering drawings have been approved for production. Cummins shall use best efforts to meet estimated dates, but shall not be liable for any delay in delivery, shipping, installation, or performance, however occasioned. Cummins may deliver in installments. Unless otherwise agreed to, packaging method, shipping documents and manner, route and carrier and delivery shall be as Cummins deems appropriate.

PAYMENT TERMS; CREDIT; RETAINAGE. If Customer has approved credit, as determined by Cummins, payment terms are net thirty (30) days from the date of invoice unless otherwise specified in the Quote, without deduction or setoff. If Commercial Customer pays by credit card, 3% will be added to the final price. If payment is not received when due, in addition to any rights Cummins has under the law and charges that Cummins may levy against Customer under statute (including attorney fees and costs of collection), Cummins may charge Customer eighteen percent (18%) interest annually, or the maximum amount allowed by law, on late payments. Payment shall be due in advance if Customer does not have approved credit. Retainage is not acceptable nor binding, unless required by statute or accepted and confirmed in writing by Cummins prior to shipment.

TAXES; EXEMPTIONS. Unless otherwise stated, the Quote excludes all applicable local, state and federal sales and/or use taxes, permits and licensing. Customer must provide a valid resale or exemption certificate prior to shipment of Equipment or applicable taxes will be added to the invoice.

TITLE; RISK OF LOSS. Title and risk of loss for the Equipment shall pass to Customer with delivery made in accordance with the delivery terms set forth above.

INSPECTION AND ACCEPTANCE. Customer shall inspect the Equipment upon delivery, before offloading, for damage, defects, and shortage. Any and all claims which could have been discovered by such inspection shall be deemed absolutely and unconditionally waived unless noted by Customer on the bill of lading. Where Equipment is alleged to be non-conforming or defective, written notice of defect must be given to Cummins within three (3) days from date of delivery after which time Equipment shall be deemed accepted. Cummins shall have a commercially reasonable period of time in which to correct such non-conformity or defect. If non-conformity or defect is not eliminated to Customer's satisfaction, Customer may reject the Equipment (but shall protect the Equipment until returned to Cummins) or allow Cummins another opportunity to undertake corrective action. In the event startup of the Equipment is included in the services, acceptance shall be deemed to have occurred upon successful startup.

LIEN; SECURITY AGREEMENT. Customer agrees that Cummins retains all statutory lien rights. To secure payment, Customer grants Cummins a Purchase Money Security Interest in the Equipment. If any portion of the balance is due to be paid following delivery, Customer agrees to execute and deliver such security agreement, financing statements, deed of trust and such other documents as Cummins may request from time to time in order to permit Cummins to obtain and maintain a perfected security interest in the Equipment; or in the alternative, Customer grants Cummins a power of attorney to execute and file all financing statements and other documents needed to perfect this security interest. Cummins may record this Agreement, bearing Customer's signature, or copy of this Agreement in lieu of a UCC-1, provided that it shall not constitute an admission by Cummins of the applicability or non-applicability of the UCC nor shall the failure to file this form or a UCC-1 in any way affect, alter, or invalidate any term, provision, obligation or liability under this Agreement. The security interest shall be superseded if Customer and Cummins enter into a separate security agreement for the Equipment. Prior to full payment of the balance due, Equipment will be kept at Customer's location noted in this Agreement, will not be moved without prior notice to Cummins, and is subject to inspection by Cummins at all reasonable times.

CANCELLATION; CHARGES. If Customer cancels all or a portion of this Agreement after its release to Cummins, Customer may incur a cancellation charge in accordance with current Cummins policy which is available upon request, in addition to the actual, non-recoverable costs incurred by Cummins. Written cancellation notice is required.

MANUALS. Unless otherwise stated, electronic submittals and electronic O & M manuals will be provided, and print copies may be available upon Customer's request at an additional cost.

TRAINING; START UP SERVICES; INSTALLATION. Startup services, load bank testing, and owner training are not provided unless otherwise stated. Site startup will be subject to the account being current and will be performed during regular Cummins business hours, Monday to Friday. Additional charges may be added for work requested to be done outside standard business hours, on weekends, or holidays. One visit is allowed unless specified otherwise in the Quote. A minimum of two-week prior notice is required to schedule site startups and will be subject to prior commitments and equipment and travel availability. A signed site check sheet confirming readiness will be required, and Cummins personnel may perform an installation audit prior to the startup being completed. Any issues identified by the installation audit shall be corrected at the Customer's expense prior to the start-up. Portable load banks for site test (if offered in the Quote) are equipped with only 100 feet of cable. Additional lengths may be arranged at an extra cost. Cummins is not responsible for any labor or materials charged by others associated with start-up and installation of Equipment, unless previously agreed upon in writing. Supply of fuel for start-up and/or testing, fill-up of tank after start up, or change of oil is not included unless specified in the Quote. All installation/execution work at the site including, but not limited to: civil, mechanical, electrical, supply of wall thimbles, exhaust extension pipe, elbows, hangers, expansion joints, insulation and cladding materials, fuel/oil/cooling system piping, air ducts, and louvers/dampers is not included unless specified in the Quote. When an enclosure or sub-base fuel tank (or both) are supplied, the openings provided for power cable and fuel piping entries, commonly referred to as "stub-ups", must be sealed at the site by others before commissioning. All applications, inspections and/or approvals by authorities are to be arranged by Customer.

WARRANTY. New and remanufactured Equipment purchased hereunder is accompanied by an express written manufacturer's warranty and is the only warranty offered on the Equipment. A copy of the express manufacturer's warranty is available upon request. Cummins' obligations under this warranty are limited to repair or replacement, at Cummins' option, of any defective component.

WARRANTY PROCEDURE. Prior to the expiration of the applicable warranty, Customer must give notice of a warrantable failure to Cummins and deliver the defective Equipment to a Cummins location or other location authorized and designated by Cummins to make the repairs during regular business hours. Cummins shall not be liable for towing charges, maintenance items such as oil filters, belts, hoses, etc., communication expenses, meals, lodging, and incidental expenses incurred by Customer or employees of Customer, "downtime" expenses, overtime expenses, cargo damages and any business costs and losses of revenue resulting from a warrantable failure.

LIMITATIONS ON WARRANTIES

Cummins expressly disclaims all warranties, either express or implied, including any implied warranty of merchantability and warranty for fitness of a particular purpose, to the extent permitted by law. The warranties set forth herein are the sole warranties made by Cummins. Some states do not allow limitation on warranties, so these limitations may not apply to you. The limited warranty does not cover Equipment failures resulting from:

- (a) inappropriate use relative to designated power rating; (b) inappropriate use relative to application guidelines; (c) inappropriate use of an EPA-SE application generator set relative to EPA's standards; (d) normal wear and tear; (e) improper and/or unauthorized installation; (f) negligence, accidents, or misuse; (g) lack of maintenance or unauthorized or improper repair; (h) noncompliance with any Cummins published guideline or policy; (i) use of improper or contaminated fuels, coolants, or lubricants; (j) improper storage before and after commissioning; (k) owner's delay in making Equipment available after notification of potential Equipment problem; (l) replacement parts and accessories not authorized by Cummins; (m) use of battle short mode; (n) owner or operator abuse or neglect such as: operation without adequate coolant, fuel, or lubricants; over fueling; over speeding; lack of maintenance to lubricating, fueling, cooling, or air intake systems; late servicing and maintenance; improper storage, starting, warm-up, running, or shutdown practices, or for progressive damage resulting from a defective shutdown or warning device; or (o) damage to parts, fixtures, housings, attachments and accessory items that are not part of the generating set.

INDEMNITY. Each party shall indemnify and hold harmless the other party, its affiliates, subsidiaries, officers, directors, agents and employees from and against any and all third party losses, costs, liabilities, damages and expense, including reasonable attorney and expert fees (collectively, "Losses"), subject to the Limitation of Remedies set forth below, attributable to bodily injury or property damage to the extent it is conclusively determined that such Losses were directly caused by the gross negligence or willful misconduct of such party. The party seeking indemnification shall give written notice to the other party promptly upon learning of the events giving rise to such claim; provided, however, that failure to provide such notice promptly shall only relieve an indemnifying party of its obligations hereunder to the extent it is prejudiced by such delay. The indemnifying party shall select counsel to control and manage the defense of a claim and the settlement thereof and shall keep the indemnified party apprised of all material developments with respect to such claim. The indemnified party may, at its expense, select additional co-counsel. The indemnifying party shall have no obligation to indemnify or hold harmless the indemnified party for any Losses conclusively determined to be caused by the negligence or willful misconduct of the indemnified party.

LIMITATIONS ON REMEDIES

THE MAXIMUM LIABILITY, IF ANY, OF CUMMINS FOR ANY DAMAGES, INCLUDING WITHOUT LIMITATION, AGREEMENT DAMAGES AND DAMAGES FOR PROPERTY, WHETHER ARISING FROM CUMMINS' BREACH OF AGREEMENT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT, IS LIMITED TO AN AMOUNT NOT TO EXCEED THE PRICE OF THE EQUIPMENT PAID BY CUSTOMER UNDER THIS AGREEMENT WHICH SHALL BE THE SOLE REMEDY UNDER THIS AGREEMENT. IN NO EVENT SHALL CUMMINS BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND INCLUDING WITHOUT LIMITATION DOWNTIME, PROPERTY DAMAGE, LOSS OF PROFIT OR REVENUE, LOSS OF DATA, DAMAGE TO GOODWILL HOWSOEVER CAUSED ARISING FROM THIS AGREEMENT OR THE BREACH OF THIS AGREEMENT, WHETHER IN INDEMNITY, TORT, CONTRACT, OR OTHERWISE. NOTHING IN THIS AGREEMENT EXCLUDES OR LIMITS LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY CUMMINS' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. BY ACCEPTANCE OF THIS AGREEMENT, CUSTOMER ACKNOWLEDGES CUSTOMER'S SOLE REMEDY AGAINST CUMMINS FOR ANY LOSS SHALL BE THE REMEDY PROVIDED UNDER THIS ENTIRE AGREEMENT.

FORCE MAJEURE. Cummins is not responsible for the occurrence of any unforeseen event, circumstance, or condition beyond its reasonable control including, but not limited to, acts of God, actions by any government authority, civil strife, fires, floods, windstorms, explosions, riots, natural disasters, embargos, wars, strikes or other labor disturbances, civil commotion, terrorism, sabotage, late delivery by Cummins' suppliers, fuel or other energy shortages, or an inability to obtain necessary labor, materials, supplies, equipment or manufacturing facilities. If any such cause results in delayed performance, the date of performance shall be extended for a period equal to time lost and shall be Customer's exclusive remedy.

DEFAULT; REMEDIES. Customer shall be in breach and default if: (a) any of the payments or amounts due under this Agreement are not paid; (b) Customer fails to comply, perform, or makes any misrepresentation relating to any of the Customer's obligations or covenants under this Agreement; or (c) prior to full payment of the balance due, Customer ceases to do business, becomes insolvent, makes an assignment for the benefit of its creditors, appoints a receiver, commences an action for dissolution or liquidation, or becomes subject to bankruptcy proceedings, or the Equipment is attached, levied upon, seized under legal process, is subjected to a lien or encumbrance, or transferred by operation of law or otherwise to anyone other than Cummins.

Upon the occurrence of any event of Customer's default, Cummins, at its sole option and without notice, shall have the right to exercise concurrently or separately any one or all of the following remedies, which shall be cumulative and not alternative: (a) to declare all sums due, and to become due, under this Agreement immediately due and payable; (b) to commence legal proceedings, including collection actions and specific performance proceedings, to enforce performance by Customer of any and all provisions of this Agreement, and to be awarded damages or injunctive relief for the Customer's breach; (c) to require the Customer to deliver the Equipment to Cummins' branch specified on the face of this Agreement; (d) to exercise one or more of the rights and remedies available to a secured party under the Uniform Commercial Code, whether or not this Agreement is subject thereto; and (e) to enter, without notice or liability or legal process, onto any premises where the Equipment may be located, using force permitted by law, and there to disconnect, remove and repossess the Equipment, the Customer having waived further right to possession after default. A waiver of any event of default by Cummins shall not be a waiver as to any other or subsequent default.

CUSTOMER REPRESENTATIONS; RELIANCE. Customer is responsible for obtaining, at its cost, permits, import licenses, and other consents in relation to the Equipment, and if requested by Cummins, Customer shall make these permits, licenses, and consents available to Cummins prior to shipment. Customer represents that it is familiar with the Equipment and understands operating instructions and agrees to perform routine maintenance services. Until the balance is paid in full, Customer shall care for the Equipment properly, maintain it in good operating condition, repair and appearance; and Customer shall use it safely and within its rated capacity and only for

Terms & Conditions

purpose it was designed. Even if Customer receives technical information, drawings, or advice, Customer has sole responsibility for intended use, for installation and design and performance where it is part of a power, propulsion, or other system. Limitation of warranties and remedies and all disclaimers apply to all such technical information, drawings, or advice. Customer acknowledges and agrees by accepting delivery of the Equipment that the Equipment purchased is of the size, design, capacity and manufacture selected by the Customer, and that Customer has relied solely on its own judgment in selecting the Equipment.

CONFIDENTIALITY. Each party shall keep confidential any information received from the other that is not generally known to the public and at the time of disclosure, would reasonably be understood by the receiving party to be proprietary or confidential, whether disclosed in oral, written, visual, electronic, or other form, and which the receiving party (or agents) learns in connection with this Agreement including, but not limited to: (a) business plans, strategies, sales, projects and analyses; (b) financial information, pricing, and fee structures; (c) business processes, methods, and models; (d) employee and supplier information; (e) specifications; and (f) the terms and conditions of this Agreement. Each party shall take necessary steps to ensure compliance with this provision by its employees and agents.

GOVERNING LAW. This Agreement and all matters arising hereunder shall be governed by and construed in accordance with the laws of the State of Indiana without giving effect to any choice of law provision. The parties agree that the courts of the State of Indiana shall have exclusive jurisdiction to settle any dispute or claim arising in connection with this Agreement.

INSURANCE. During the period in which any services are to be performed, Cummins shall maintain in full force and effect the following insurance coverages set forth below, at its sole cost and expense:

Commercial General Liability. Commercial General Liability insurance of not less than \$2,000,000 per occurrence and \$2,000,000 annual aggregate limit.

Automobile Liability. Business Auto Coverage with limits of \$1,000,000 each accident for bodily injury and property damage combined single limit per occurrence, extending to all owned, hired, and non-owned vehicles.

Worker's Compensation. Workers' compensation, occupational diseases, and disability benefits required by statute.

Employer's Liability. Employer's Liability with limits of at least \$1,000,000 per accident per employee; \$1,000,000 per disease per employee; and \$1,000,000 per disease policy limit.

Umbrella Liability. Such insurance shall follow form on concurrent terms with and provide coverage with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

Upon Customer's request, Cummins will provide to Customer a Certificate of Insurance evidencing Cummins' relevant insurance coverage.

ASSIGNMENT. This Agreement shall be binding on the parties and their successors and assigns. Customer shall not assign this Agreement without the prior written consent of Cummins.

Intellectual Property. Any intellectual property rights created by Cummins in the course of the performance of this Agreement or otherwise shall remain Cummins' property. Nothing in this Agreement shall be deemed to have given Customer a license or any other rights to use any of the intellectual property rights of Cummins. Customer's rights in and to the Cummins' intellectual property are limited to those rights as expressly set forth in this Agreement. All rights not expressly granted to Customer under this Agreement are expressly reserved by Cummins.

MISCELLANEOUS. Cummins shall be an independent contractor under this Agreement.

All notices under this Agreement shall be in writing and be delivered personally, mailed via first class certified or registered mail, or sent by a nationally recognized express courier service to the addresses set forth in this Agreement.

No amendment of this Agreement shall be valid unless it is writing and signed by the parties hereto. Failure of either party to require performance by the other party of any provision hereof shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver by a party of a breach of any of the provisions hereof constitute a waiver of any succeeding breach.

Any provision of this Agreement that is invalid or unenforceable shall not affect the validity or enforceability of the remaining terms hereof.

These terms are exclusive and constitute entire agreement. Customer acknowledges that the provisions were freely negotiated and bargained for and Customer has agreed to purchase of the Equipment pursuant to these terms and conditions. Acceptance of this Agreement is expressly conditioned on Customer's assent to all such terms and conditions. Neither party has relied on any statement, representation, agreement, understanding, or promise made by the other except as expressly set out in this Agreement. In the event of a conflict in the terms of this Agreement with any Customer terms or conditions or agreement (whether referenced in an order submitted by Customer as the terms that govern the purchase of the Equipment or otherwise) or any terms set forth in any other documentation of Customer with respect to the Equipment, the terms of this Agreement shall govern.

MISCELLANEOUS CHARGES. Cummins may incur additional charges which will be passed on to the Customer, as applicable.

COMPLIANCE. Customer acknowledges that the Equipment, and any related technology that are sold or otherwise provided hereunder may be subject to export and other trade controls restricting the sale, export, re-export and/or transfer, directly or indirectly, of such Equipment or technology to certain countries or parties, including, but not limited to, licensing requirements under applicable laws and regulations of the United States, the United Kingdom and other jurisdictions. It is the intention of Cummins to comply with these laws, rules, and regulations. Any other provision of this Agreement to the contrary notwithstanding, Customer shall comply with all such applicable all laws relating to the cross-border movement of goods or technology, and all related orders in effect from time to time, and equivalent measures. Customer shall act as the importer of record with respect to the Equipment and shall not resell, export, re-export, distribute, transfer, or dispose of the Equipment or related technology, directly or indirectly, without first obtaining all necessary written permits, consents, and authorizations and completing such formalities as may be required under such laws, rules, and regulations. In addition, Cummins has in place policies not to distribute its products for use in certain countries based on applicable laws and regulations including but not limited to UN, U.S., UK, and European Union regulations. Customer undertakes to perform its obligations under this Agreement with due regard to these policies. Strict compliance with this provision and all laws of the territory pertaining to the importation, distribution, sales, promotion and marketing of the Equipment is a material consideration for Cummins entering into this Agreement with Customer and continuing this Agreement for its term. Customer represents and warrants that it has not and shall not, directly or through any intermediary, pay, give, promise to give or offer to give anything of value to a government official or representative, a political party official, a candidate for political office, an officer or employee of a public international organization or any other person, individual or entity at the suggestion, request or direction or for the benefit of any of the above-described persons and entities for the purposes of inducing such person to use his influence to assist Cummins in obtaining or retaining business or to benefit Cummins or any other person in any way, and will not otherwise breach any applicable laws relating to anti-bribery. Any failure by Customer to comply with these provisions will constitute a default giving Cummins the right to immediate termination of this Agreement and/or the right to elect not to recognize the warranties associated with the Equipment. Customer shall accept full responsibility for any and all civil or criminal liabilities and costs arising from any breaches of those laws and regulations and will defend, indemnify, and hold Cummins harmless from and against any and all fines, penalties, claim, damages, liabilities, judgments, costs, fees, and expenses incurred by Cummins or its affiliates as a result of Customer's breach.

Upon Acceptance of this Proposal, Customer accepts the proposed products as well as the attached Cummins Inc terms and conditions. Please sign and return this quotation to proceed.

Company: _____ Ship to Address: _____

Printed Name: _____ Contact for Delivery: _____

Signature: _____ Phone Number: _____

Title: _____ Special Delivery Instructions: _____

Date: _____

Thank you for considering Cummins Sales and Service for this power generation project.

Submitted by;

Paul Hoogervorst , Sales Engineer
paul.a.hoogervorst@cummins.com
847-226-2119



Quotation

Cummins Sales and Service
7145 Santa Fe Dr.
Hodgkins, IL 60525 United States
June 28, 2019

Project Name: Lombard Police Station Generator Replacement

Thank you for your inquiry. We are pleased to quote as follows:

Item	Description	Qty
300DQDAC	<p>Diesel Genset: 60Hz-300/270kW U.S. EPA, Stationary Emergency Application Genset-Diesel,60Hz,300kW Duty Rating-Standby Power Listing-UL 2200 Emissions Certification, EPA, Tier 3, NSPS CI Stationary Emergency Enclosure-Steel,SndAtt,Level 2,Base Mtd,w/ExhSys Fuel Tank-Subbase,600 Gallon,UL142 Compliant Voltage-120/208,3 Phase,Wye,4 Wire Alternator-60 Hz, 12 Lead, Broad Range, 125/105C Generator Set Control-PCC 2100 Exciter/Regulator-Pmg, 3 Phase Sensor Engine Governor-Electronic, Isochronous Only Display Language-English Display-Control,Graphical Stop Switch-Emergency Interface-Communications Network, FTT-10 Control Mounting-Left Facing CB or EB or TB-Right Only Circuit Breaker-1200A,Right CB on Right side,3-Pole, UL 600,IEC 690, 100% CB or EB or TB-Bottom Entry, Right Enclosure Color-Green,Steel Enclosure Listing, ULC-S601-07 Distribution Panel-Prewired AC Features Louvers-AirOutlet,24VAC Motor Closed,Spring Opened Louvers-Air Inlet,24VAC Motor Closed,Spring Opened Separator-Fuel/Water Engine Starter-24 VDC Motor Battery Charging Alternator-Normal Output Battery Charger-12 Amp, Regulated Engine Cooling-High Ambient Air Temperature Shutdown-Low Coolant Level Engine Coolant-50% Antifreeze, 50% Water Mixture Coolant Heater-120 Volt Ac, Single Phase</p>	1

Engine Air Cleaner-Normal Duty
Engine Oil
Genset Warranty- Base
Literature-English
Packing-None, Base Mounted Housing
Common Parts Listing
Product Revision - K
Annunciator Control Kit-With Enclosure

Cummins Site Start Up and Battery
Cummins Site 2 hr Load Bank Test

Price for Equipment as described above: \$78,735.00

Comments

- *Offloading, rigging, and fuel is not included.*
- *Installation cost, permitting, and applicable taxes not included.*
- *Only those items outlined above will be included in this quotation. Any other items or materials added, regardless of specification, are subject to a price review by Cummins.*
- *No additional testing is included beyond Cummins standard startup procedures.*
- *NETA and Infra-red testing not included.*
- *This custom design requires drawing approval before manufacture may begin. Price is subject to review if changes are made in quantity or design.*

START-UP &
CHECK-OUT
SERVICE

Start-up services upon the installation of the above equipment by the electrical and mechanical contractors. Start-up services include the use of a trained generator set service technician for testing of the equipment supplied and general operating instructions to the owner/personnel. **These services will be performed during normal business hours, Monday through Friday 7:30 am to 3:30 pm.**

Recommend 2-week notice to schedule start-up. Contractor needs to ensure that all engine and electrical systems are installed and connected to enable the system to be tested during the initial start-up and to prevent charges to the contractor for additional trips.

WARRANTY

The warranty start date is the date of the initial startup or 18 months after the factory ship date, whichever is sooner.

TERMS AND CONDITIONS FOR SALE OF POWER GENERATION EQUIPMENT

These Terms and Conditions, together with the Quote, Sales Order and/or Credit Application on the front side, are hereinafter referred to as this "Agreement" and shall constitute the entire agreement between the customer ("Customer") identified in this Agreement and Cummins and supersede any previous agreement or understanding (oral or written) between the parties with respect to the equipment ("Equipment") identified in this Agreement.

QUOTE TERM; SCOPE. The Quote is valid for 60 days. The price is firm provided drawings are approved and returned within 60 days after submission and ship date is not extended beyond published lead times. Any delays may result in escalation charges. A Sales Order for Equipment is accepted on hold for release basis. The Sales Order will not be released and scheduled for production until written approval to proceed is received. The Quote is limited to plans and specifications section set forth in the Quote. No other sections shall apply. Additional requirements for administrative items may require additional costs. The Quote does not include off unit wiring, off unit plumbing, offloading, rigging, installation, exhaust insulation or fuel, unless otherwise stated.

SHIPPING; DELIVERY. Equipment is quoted FOB origin, freight prepaid to first destination, unless otherwise stated. For consumer and mobile products, freight will be charged to Customer. A reasonable storage fee, as determined by Cummins, may be assessed if delivery of the Equipment is delayed, deferred, or refused by Customer. Offloading, handling, and placement of Equipment and crane services are the responsibility of Customer and not included in proposal, unless otherwise stated. All shipments are made within normal business hours, Monday through Friday. Any delivery, shipping, installation, or performance dates indicated in this Agreement are estimated and not guaranteed. Further, delivery time is subject to confirmation at time of order and will be in effect after engineering drawings have been approved for production. Cummins shall use best efforts to meet estimated dates, but shall not be liable for any delay in delivery, shipping, installation, or performance, however occasioned. Cummins may deliver in installments. Unless otherwise agreed to, packaging method, shipping documents and manner, route and carrier and delivery shall be as Cummins deems appropriate.

PAYMENT TERMS; CREDIT; RETAINAGE. If Customer has approved credit, as determined by Cummins, payment terms are net thirty (30) days from the date of invoice unless otherwise specified in the Quote, without deduction or setoff. If Commercial Customer pays by credit card, 3% will be added to the final price. If payment is not received when due, in addition to any rights Cummins has under the law and charges that Cummins may levy against Customer under statute (including attorney fees and costs of collection), Cummins may charge Customer eighteen percent (18%) interest annually, or the maximum amount allowed by law, on late payments. Payment shall be due in advance if Customer does not have approved credit. Retainage is not acceptable nor binding, unless required by statute or accepted and confirmed in writing by Cummins prior to shipment.

TAXES; EXEMPTIONS. Unless otherwise stated, the Quote excludes all applicable local, state and federal sales and/or use taxes, permits and licensing. Customer must provide a valid resale or exemption certificate prior to shipment of Equipment or applicable taxes will be added to the invoice.

TITLE; RISK OF LOSS. Title and risk of loss for the Equipment shall pass to Customer with delivery made in accordance with the delivery terms set forth above.

INSPECTION AND ACCEPTANCE. Customer shall inspect the Equipment upon delivery, before offloading, for damage, defects, and shortage. Any and all claims which could have been discovered by such inspection shall be deemed absolutely and unconditionally waived unless noted by Customer on the bill of lading. Where Equipment is alleged to be non-conforming or defective, written notice of defect must be given to Cummins within three (3) days from date of delivery after which time Equipment shall be deemed accepted. Cummins shall have a commercially reasonable period of time in which to correct such non-conformity or defect. If non-conformity or defect is not eliminated to Customer's satisfaction, Customer may reject the Equipment (but shall protect the Equipment until returned to Cummins) or allow Cummins another opportunity to undertake corrective action. In the event startup of the Equipment is included in the services, acceptance shall be deemed to have occurred upon successful startup.

LIEN; SECURITY AGREEMENT. Customer agrees that Cummins retains all statutory lien rights. To secure payment, Customer grants Cummins a Purchase Money Security Interest in the Equipment. If any portion of the balance is due to be paid following delivery, Customer agrees to execute and deliver such security agreement, financing statements, deed of trust and such other documents as Cummins may request from time to time in order to permit Cummins to obtain and maintain a perfected security interest in the Equipment; or in the alternative, Customer grants Cummins a power of attorney to execute and file all financing statements and other documents needed to perfect this security interest. Cummins may record this Agreement, bearing Customer's signature, or copy of this Agreement in lieu of a UCC-1, provided that it shall not constitute an admission by Cummins of the applicability or non-applicability of the UCC nor shall the failure to file this form or a UCC-1 in any way affect, alter, or invalidate any term, provision, obligation or liability under this Agreement. The security interest shall be superseded if Customer and Cummins enter into a separate security agreement for the Equipment. Prior to full payment of the balance due, Equipment will be kept at Customer's location noted in this Agreement, will not be moved without prior notice to Cummins, and is subject to inspection by Cummins at all reasonable times.

CANCELLATION; CHARGES. If Customer cancels all or a portion of this Agreement after its release to Cummins, Customer may incur a cancellation charge in accordance with current Cummins policy which is available upon request, in addition to the actual, non-recoverable costs incurred by Cummins. Written cancellation notice is required.

MANUALS. Unless otherwise stated, electronic submittals and electronic O & M manuals will be provided, and print copies may be available upon Customer's request at an additional cost.

TRAINING; START UP SERVICES; INSTALLATION. Startup services, load bank testing, and owner training are not provided unless otherwise stated. Site startup will be subject to the account being current and will be performed during regular Cummins business hours, Monday to Friday. Additional charges may be added for work requested to be done outside standard business hours, on weekends, or holidays. One visit is allowed unless specified otherwise in the Quote. A minimum of two-week prior notice is required to schedule site startups and will be subject to prior commitments and equipment and travel availability. A signed site check sheet confirming readiness will be required, and Cummins personnel may perform an installation audit prior to the startup being completed. Any issues identified by the installation audit shall be corrected at the Customer's expense prior to the start-up. Portable load banks for site test (if offered in the Quote) are equipped with only 100 feet of cable. Additional lengths may be arranged at an extra cost. Cummins is not responsible for any labor or materials charged by others associated with start-up and installation of Equipment, unless previously agreed upon in writing. Supply of fuel for start-up and/or testing, fill-up of tank after start up, or change of oil is not included unless specified in the Quote. All installation/execution work at the site including, but not limited to: civil, mechanical, electrical, supply of wall thimbles, exhaust extension pipe, elbows, hangers, expansion joints, insulation and cladding materials, fuel/oil/cooling system piping, air ducts, and louvers/dampers is not included unless specified in the Quote. When an enclosure or sub-base fuel tank (or both) are supplied, the openings provided for power cable and fuel piping entries, commonly referred to as "stub-ups", must be sealed at the site by others before commissioning. All applications, inspections and/or approvals by authorities are to be arranged by Customer.

WARRANTY. New and remanufactured Equipment purchased hereunder is accompanied by an express written manufacturer's warranty and is the only warranty offered on the Equipment. A copy of the express manufacturer's warranty is available upon request. Cummins' obligations under this warranty are limited to repair or replacement, at Cummins' option, of any defective component.

WARRANTY PROCEDURE. Prior to the expiration of the applicable warranty, Customer must give notice of a warrantable failure to Cummins and deliver the defective Equipment to a Cummins location or other location authorized and designated by Cummins to make the repairs during regular business hours. Cummins shall not be liable for towing charges, maintenance items such as oil filters, belts, hoses, etc., communication expenses, meals, lodging, and incidental expenses incurred by Customer or employees of Customer, "downtime" expenses, overtime expenses, cargo damages and any business costs and losses of revenue resulting from a warrantable failure.

LIMITATIONS ON WARRANTIES

Cummins expressly disclaims all warranties, either express or implied, including any implied warranty of merchantability and warranty for fitness of a particular purpose, to the extent permitted by law. The warranties set forth herein are the sole warranties made by Cummins. Some states do not allow limitation on warranties, so these limitations may not apply to you. The limited warranty does not cover Equipment failures resulting from: (a) inappropriate use relative to designated power rating; (b) inappropriate use relative to application guidelines; (c) inappropriate use of an EPA-SE application generator set relative to EPA's standards; (d) normal wear and tear; (e) improper and/or unauthorized installation; (f) negligence, accidents, or misuse; (g) lack of maintenance or unauthorized or improper repair; (h) noncompliance with any Cummins published guideline or policy; (i) use of improper or contaminated fuels, coolants, or lubricants; (j) improper storage before and after commissioning; (k) owner's delay in making Equipment available after notification of potential Equipment problem; (l) replacement parts and accessories not authorized by Cummins; (m) use of battle short mode; (n) owner or operator abuse or neglect such as: operation without adequate coolant, fuel, or lubricants; over fueling; over speeding; lack of maintenance to lubricating, fueling, cooling, or air intake systems; late servicing and maintenance; improper storage, starting, warm-up, running, or shutdown practices, or for progressive damage resulting from a defective shutdown or warning device; or (o) damage to parts, fixtures, housings, attachments and accessory items that are not part of the generating set.

INDEMNITY. Each party shall indemnify and hold harmless the other party, its affiliates, subsidiaries, officers, directors, agents and employees from and against any and all third party losses, costs, liabilities, damages and expense, including reasonable attorney and expert fees (collectively, "Losses"), subject to the Limitation of Remedies set forth below, attributable to bodily injury or property damage to the extent it is conclusively determined that such Losses were directly caused by the gross negligence or willful misconduct of such party. The party seeking indemnification shall give written notice to the other party promptly upon learning of the events giving rise to such claim; provided, however, that failure to provide such notice promptly shall only relieve an indemnifying party of its obligations hereunder to the extent it is prejudiced by such delay. The indemnifying party shall select counsel to control and manage the defense of a claim and the settlement thereof and shall keep the indemnified party apprised of all material developments with respect to such claim. The indemnified party may, at its expense, select additional co-counsel. The indemnifying party shall have no obligation to indemnify or hold harmless the indemnified party for any Losses conclusively determined to be caused by the negligence or willful misconduct of the indemnified party.

LIMITATIONS ON REMEDIES

THE MAXIMUM LIABILITY, IF ANY, OF CUMMINS FOR ANY DAMAGES, INCLUDING WITHOUT LIMITATION, AGREEMENT DAMAGES AND DAMAGES FOR PROPERTY, WHETHER ARISING FROM CUMMINS' BREACH OF AGREEMENT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT, IS LIMITED TO AN AMOUNT NOT TO EXCEED THE PRICE OF THE EQUIPMENT PAID BY CUSTOMER UNDER THIS AGREEMENT WHICH SHALL BE THE SOLE REMEDY UNDER THIS AGREEMENT. IN NO EVENT SHALL CUMMINS BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION DOWNTIME, PROPERTY DAMAGE, LOSS OF PROFIT OR REVENUE, LOSS OF DATA, DAMAGE TO GOODWILL) HOWSOEVER CAUSED ARISING FROM THIS AGREEMENT OR THE BREACH OF THIS AGREEMENT, WHETHER IN INDEMNITY, TORT, CONTRACT, OR OTHERWISE. NOTHING IN THIS AGREEMENT EXCLUDES OR LIMITS LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY CUMMINS' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. BY ACCEPTANCE OF THIS AGREEMENT, CUSTOMER ACKNOWLEDGES CUSTOMER'S SOLE REMEDY AGAINST CUMMINS FOR ANY LOSS SHALL BE THE REMEDY PROVIDED UNDER THIS ENTIRE AGREEMENT.

FORCE MAJEURE. Cummins is not responsible for the occurrence of any unforeseen event, circumstance, or condition beyond its reasonable control including, but not limited to, acts of God, actions by any government authority, civil strife, fires, floods, windstorms, explosions, riots, natural disasters, embargos, wars, strikes or other labor disturbances, civil commotion, terrorism, sabotage, late delivery by Cummins' suppliers, fuel or other energy shortages, or an inability to obtain necessary labor, materials, supplies, equipment or manufacturing facilities. If any such cause results in delayed performance, the date of performance shall be extended for a period equal to time lost and shall be Customer's exclusive remedy.

DEFAULT; REMEDIES. Customer shall be in breach and default if: (a) any of the payments or amounts due under this Agreement are not paid; (b) Customer fails to comply, perform, or makes any misrepresentation relating to any of the Customer's obligations or covenants under this Agreement; or (c) prior to full payment of the balance due, Customer ceases to do business, becomes insolvent, makes an assignment for the benefit of its creditors, appoints a receiver, commences an action for dissolution or liquidation, or becomes subject to bankruptcy proceedings, or the Equipment is attached, levied upon, seized under legal process, is subjected to a lien or encumbrance, or transferred by operation of law or otherwise to anyone other than Cummins.

Upon the occurrence of any event of Customer's default, Cummins, at its sole option and without notice, shall have the right to exercise concurrently or separately any one or all of the following remedies, which shall be cumulative and not alternative: (a) to declare all sums due, and to become due, under this Agreement immediately due and payable; (b) to commence legal proceedings, including collection actions and specific performance proceedings, to enforce performance by Customer of any and all provisions of this Agreement, and to be awarded damages or injunctive relief for the Customer's breach; (c) to require the Customer to deliver the Equipment to Cummins' branch specified on the face of this Agreement; (d) to exercise one or more of the rights and remedies available to a secured party under the Uniform Commercial Code, whether or not this Agreement is subject thereto; and (e) to enter, without notice or liability or legal process, onto any premises where the Equipment may be located, using force permitted by law, and there to disconnect, remove and repossess the Equipment, the Customer having waived further right to possession after default. A waiver of any event of default by Cummins shall not be a waiver as to any other or subsequent default.

CUSTOMER REPRESENTATIONS; RELIANCE. Customer is responsible for obtaining, at its cost, permits, import licenses, and other consents in relation to the Equipment, and if requested by Cummins, Customer shall make these permits, licenses, and consents available to Cummins prior to shipment. Customer represents that it is familiar with the Equipment and understands operating instructions and agrees to perform routine maintenance services. Until the balance is paid in full, Customer shall care for the Equipment properly, maintain it in good operating condition, repair and appearance; and Customer shall use it safely and within its rated capacity and only for

Terms & Conditions

purpose it was designed. Even if Customer receives technical information, drawings, or advice, Customer has sole responsibility for intended use, for installation and design and performance where it is part of a power, propulsion, or other system. Limitation of warranties and remedies and all disclaimers apply to all such technical information, drawings, or advice. Customer acknowledges and agrees by accepting delivery of the Equipment that the Equipment purchased is of the size, design, capacity and manufacture selected by the Customer, and that Customer has relied solely on its own judgment in selecting the Equipment.

CONFIDENTIALITY. Each party shall keep confidential any information received from the other that is not generally known to the public and at the time of disclosure, would reasonably be understood by the receiving party to be proprietary or confidential, whether disclosed in oral, written, visual, electronic, or other form, and which the receiving party (or agents) learns in connection with this Agreement including, but not limited to: (a) business plans, strategies, sales, projects and analyses; (b) financial information, pricing, and fee structures; (c) business processes, methods, and models; (d) employee and supplier information; (e) specifications; and (f) the terms and conditions of this Agreement. Each party shall take necessary steps to ensure compliance with this provision by its employees and agents.

GOVERNING LAW. This Agreement and all matters arising hereunder shall be governed by and construed in accordance with the laws of the State of Indiana without giving effect to any choice or conflict of law provision. The parties agree that the courts of the State of Indiana shall have exclusive jurisdiction to settle any dispute or claim arising in connection with this Agreement.

INSURANCE. During the period in which any services are to be performed, Cummins shall maintain in full force and effect the following insurance coverages set forth below, at its sole cost and expense:

Commercial General Liability. Commercial General Liability Insurance of not less than \$2,000,000 per occurrence and \$2,000,000 annual aggregate limit.

Automobile Liability. Business Auto Coverage with limits of \$1,000,000 each accident for bodily injury and property damage combined single limit per occurrence, extending to all owned, hired, and non-owned vehicles.

Worker's Compensation. Workers' compensation, occupational diseases, and disability benefits required by statute.

Employer's Liability. Employer's Liability with limits of at least \$1,000,000 per accident per employee; \$1,000,000 per disease per employee; and \$1,000,000 per disease policy limit.

Umbrella Liability. Such insurance shall follow form on concurrent terms with and provide coverage with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

Upon Customer's request, Cummins will provide to Customer a Certificate of Insurance evidencing Cummins' relevant insurance coverage.

ASSIGNMENT. This Agreement shall be binding on the parties and their successors and assigns. Customer shall not assign this Agreement without the prior written consent of Cummins.

Intellectual Property. Any intellectual property rights created by Cummins in the course of the performance of this Agreement or otherwise shall remain Cummins' property. Nothing in this Agreement shall be deemed to have given Customer a license or any other rights to use any of the intellectual property rights of Cummins. Customer's rights in and to the Cummins' intellectual property are limited to those rights as expressly set forth in this Agreement. All rights not expressly granted to Customer under this Agreement are expressly reserved by Cummins.

MISCELLANEOUS. Cummins shall be an independent contractor under this Agreement.

All notices under this Agreement shall be in writing and be delivered personally, mailed via first class certified or registered mail, or sent by a nationally recognized express courier service to the addresses set forth in this Agreement. No amendment of this Agreement shall be valid unless it is writing and signed by the parties hereto. Failure of either party to require performance by the other party of any provision hereof shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver by a party of a breach of any of the provisions hereof constitute a waiver of any succeeding breach.

Any provision of this Agreement that is invalid or unenforceable shall not affect the validity or enforceability of the remaining terms hereof.

These terms are exclusive and constitute entire agreement. Customer acknowledges that the provisions were freely negotiated and bargained for and Customer has agreed to purchase of the Equipment pursuant to these terms and conditions. Acceptance of this Agreement is expressly conditioned on Customer's assent to all such terms and conditions. Neither party has relied on any statement, representation, agreement, understanding, or promise made by the other except as expressly set out in this Agreement. In the event of a conflict in the terms of this Agreement with any Customer terms or conditions or agreement (whether referenced in an order submitted by Customer as the terms that govern the purchase of the Equipment or otherwise) or any terms set forth in any other documentation of Customer with respect to the Equipment, the terms of this Agreement shall govern.

MISCELLANEOUS CHARGES. Cummins may incur additional charges which will be passed on to the Customer, as applicable.

COMPLIANCE. Customer acknowledges that the Equipment, and any related technology that are sold or otherwise provided hereunder may be subject to export and other trade controls restricting the sale, export, re-export and/or transfer, directly or indirectly, of such Equipment or technology to certain countries or parties, including, but not limited to, licensing requirements under applicable laws and regulations of the United States, the United Kingdom and other jurisdictions. It is the intention of Cummins to comply with these laws, rules, and regulations. Any other provision of this Agreement to the contrary notwithstanding, Customer shall comply with all such applicable all laws relating to the cross-border movement of goods or technology, and all related orders in effect from time to time, and equivalent measures. Customer shall act as the importer of record with respect to the Equipment and shall not resell, export, re-export, distribute, transfer, or dispose of the Equipment or related technology, directly or indirectly, without first obtaining all necessary written permits, consents, and authorizations and completing such formalities as may be required under such laws, rules, and regulations. In addition, Cummins has in place policies not to distribute its products for use in certain countries based on applicable laws and regulations including but not limited to UN, U.S., UK, and European Union regulations. Customer undertakes to perform its obligations under this Agreement with due regard to these policies. Strict compliance with this provision and all laws of the territory pertaining to the importation, distribution, sales, promotion and marketing of the Equipment is a material consideration for Cummins entering into this Agreement with Customer and continuing this Agreement for its term. Customer represents and warrants that it has not and shall not, directly or through any intermediary, pay, give, promise to give or offer to give anything of value to a government official or representative, a political party official, a candidate for political office, an officer or employee of a public international organization or any other person, individual or entity at the suggestion, request or direction or for the benefit of any of the above-described persons and entities for the purposes of inducing such person to use his influence to assist Cummins in obtaining or retaining business or to benefit Cummins or any other person in any way, and will not otherwise breach any applicable laws relating to anti-bribery. Any failure by Customer to comply with these provisions will constitute a default giving Cummins the right to immediate termination of this Agreement and/or the right to elect not to recognize the warranties associated with the Equipment. Customer shall accept full responsibility for any and all civil or criminal liabilities and costs arising from any breaches of those laws and regulations and will defend, indemnify, and hold Cummins harmless from and against any and all fines, penalties, claim, damages, liabilities, judgments, costs, fees, and expenses incurred by Cummins or its affiliates as a result of Customer's breach.

Upon Acceptance of this Proposal, Customer accepts the proposed products as well as the attached Cummins Inc terms and conditions. Please sign and return this quotation to proceed.

Company: _____ Ship to Address: _____
Printed Name: _____ Contact for Delivery: _____
Signature: _____ Phone Number: _____
Title: _____ Special Delivery Instructions: _____
Date: _____

Thank you for considering Cummins Sales and Service for this power generation project.

Submitted by;

Paul Hoogervorst, Sales Engineer
paul.a.hoogervorst@cummins.com
847-226-2119