

FILED 2/18/2020
DOCUMENT NO. 00977-2020
FPSC - COMMISSION CLERK

FLORIDA PUBLIC SERVICE COMMISSION
OFFICE OF COMMISSION CLERK



DOCUMENT NUMBER ASSIGNMENT*

FILED DATE: 2/18/2020

DOCKET NO.: 20200001-EI

DOCUMENT NO.: 00977-2020

DOCUMENT DESCRIPTION:

CONFIDENTIAL

(CONFIDENTIAL) Hearing Exhibit No. 111 from 2/5/20 DOAH Hearing. [CLK Note: See DN 10935-2019 for Exh Nos. 1, 68-75, 80, 82, 100]

***This document number has been assigned to a confidential document.**

For further information, contact the Office of Commission Clerk.

E-MAIL: CLERK@PSC.STATE.FL.US PHONE NO. (850) 413-6770 FAX NO. (850) 717-0114

CONFIDENTIAL

DOAH CASE NO. 19-006022

COMMISSION STAFF EXHIBIT NO. 111

Excerpt from Tenaska – Mitsubishi 2002 Contract.

CONFIDENTIAL

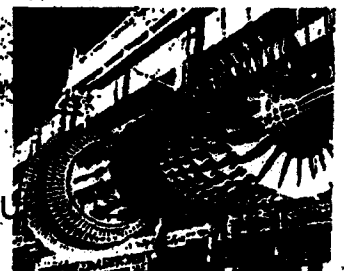
SCANNED & FILED
ELECTRONICALLY
PCD



Tenaska Power Equipment, LLC



Contract for Purchase
Steam Turbine Generator
Between
Tenaska Power Equipment, LLC
and
Mitsubishi Power Systems, Inc.
dated May 2002



Volume 1

DEF-19FL-FU

CONFIDENTIAL

CONTRACT FOR PURCHASE OF STEAM TURBINE GENERATOR

between

TENASKA POWER EQUIPMENT, LLC

and

MITSUBISHI POWER SYSTEMS, INC.

DEF-19FL-FUEL-012726

TABLE OF CONTENTS

ARTICLE 1. DEFINITIONS	1
Acceptance Test	1
Acceptance Testing	1
Affiliate	1
Applicable Insurance Policies	1
Applicable Laws	1
Availability Test	2
Business Days	2
Buyer's Inspector(s)	2
Buyer's Security	2
Cancellation Charge	2
Computer Programs	2
Contract	2
Contract Coordinators	2
Contract Price	2
DDP	2
Delivery	2
Delivery Payment	2
Delivery Point	2
Demonstration Tests	3
DEQ	3
Directed Order	3
Dispute Notice	3
Documentation	3
Domestically-Sourced Items	3
EPC Agreement	3
EPC Contractor	3
Equipment	3
Facility	3
Final Acceptance	3
Final Test Value	3
Force Majeure Event	3
GTG Contract	4
Guaranteed Delivery Date	4
Initial Synchronization	4
Internationally-Sourced Items	4
Liquidated Damage Performance Guarantees	4
Month	4
Noise Emission Guarantee	4
Noise Emission Tests	4
Normal Carriage	4
Owner Caused Delay	4
Performance Minimums	4
Performance Tests	5
Port of Entry	5
Power Plant	5
Project	5
Project Site	5
Punch List	5
Scheduled Date of Substantial Completion	5
Section(s)	5

DEF-19FL-FUEL-012727

Services	5
Shipment	5
Specifications	6
Steam Turbine Generator	6
Subcontractor(s) or Supplier(s)	6
Substantial Completion	6
Unit	6
Vendor Coordination Meeting	6
Witness Tests	6
 ARTICLE 2. SCOPE OF SUPPLY	 7
2.1 Scope	7
2.2 Directed Order	7
2.3 Obligation of Buyer	7
2.4 Not Used	8
2.5 Pre-Assembly	8
 ARTICLE 3. PRICE AND TERMS OF PAYMENT	 9
3.1 Contract Price	9
3.2 Taxes	9
3.3 Not Used	9
3.4 Changes in Contract Price	9
3.5 Payment	9
3.6 Cancellation Charge	10
 ARTICLE 4. SHIPMENT AND DELIVERY	 11
4.1 Shipment of Equipment	11
(a) Guaranteed Delivery Date	11
(b) Guaranteed Delivery Date	11
(c) Delivery	11
4.2 Method of Shipment	12
4.3 Early Delivery	12
4.4 Inspection of Equipment	12
4.5 Storage	13
 ARTICLE 5. INSPECTION AND FACTORY TESTS	 15
5.1 Inspection Rights	15
5.2 Witness Tests	15
5.3 Notification of Testing	15
5.4 Consequences of Inspection	15
5.5 Insurance Inspections	16
 ARTICLE 6. DELIVERY, TITLE, AND RISK OF LOSS	 17
6.1 Risk of Loss	17
6.2 Passage of Title	17
6.3 Computer Programs	17
6.4 License of Computer Programs	17

ARTICLE 7. DELAY OF SELLER	19
7.1 Force Majeure	19
7.2 Owner Caused Delay	19
ARTICLE 8. COMPLIANCE WITH LAWS, CODES AND STANDARDS	20
8.1 Compliance with Applicable Laws	20
8.2 Change in Applicable Laws	20
8.3 Compliance with Applicable Insurance Policies	20
8.4 Indemnification	20
ARTICLE 9. CHANGES; ADDITIONAL EQUIPMENT	22
9.1 Changes	22
ARTICLE 10. WARRANTY	23
10.1 Limited Warranties	23
10.2 Warranty Period	23
10.3 General Conditions of Warranty	23
10.4 Warranty Obligations	24
10.5 Extension of Warranty Period	25
10.6 Exclusive Warranties	25
10.7 Warranty Exclusion	25
ARTICLE 11. CONFIDENTIALITY PROVISIONS	26
11.1 Confidentiality	26
11.2 Confidential Information	26
11.3 Exclusions from Confidentiality	26
11.4 No Adequate Remedy	27
11.5 Confidentiality of Contract	27
ARTICLE 12. INTELLECTUAL PROPERTY	28
12.1 Intellectual Property Indemnification	28
12.2 Remedy for Infringement	28
12.3 Exception to Indemnification	28
ARTICLE 13. LIMITATION OF LIABILITY	30
13.1 Limitation of Liability	30
13.2 Consequential Damages Exclusion	30
13.3 Retention of Remedies	31
13.4 Further Limitations	31
ARTICLE 14. TERMINATION	32
14.1 Termination	32
14.2 Termination by Seller	32
14.3 Termination by Buyer for Material Breach	32
14.4 Termination for Failure to Achieve Performance Minimums or Substantial Completion	32

ARTICLE 15. INDEMNIFICATION	35
15.1 Indemnification of Buyer	35
15.2 Indemnification of Seller	35
ARTICLE 16. ACCEPTANCE TEST GUARANTEES	36
16.1 Performance and Emission Guarantees	36
(a) Liquidated Damage Performance Guarantees	36
(b) Noise Emission Guarantee	36
16.2 Satisfaction of Liquidated Damage Performance Guarantees and Noise Emission Guarantee	37
(a) Satisfaction of Liquidated Damage Performance Guarantees	37
(b) Satisfaction of Noise Emission Guarantee	38
16.3 Demonstration Test Guarantees	38
16.4 Availability Test Guarantee	39
16.5 Failure to Complete Performance Testing	39
ARTICLE 17. LIQUIDATED DAMAGES AND ACCEPTANCE TESTING	40
17.1 Schedule Liquidated Damages	40
(a) Delivery	40
(b) Substantial Completion	40
(c) Accrual of Liquidated Damages under Section 17.1	42
(d) Aggregation of Liquidated Damages	42
(e) Limitation	42
17.2 Performance	42
(a) Guarantees	43
(b) Performance Liquidated Damages	43
(i) MPS Net Steam Turbine Electrical Output	43
(ii) MPS Net Steam Turbine Maximum Electrical Output	43
(iii) MPS Net Steam Turbine Electrical Output	44
(c) Acceptance Testing	44
(i) Testing Procedures	44
(ii) Diagnostic Testing and Remedy	45
(iii) Retesting	45
(d) Seller's Election to Reduce Liquidated Damages for Substantial Completion	46
(e) Modified Liquidated Damages	47
(f) Failure of Performance Tests	48
(g) Limitation	48
17.3 Limitation of Liquidated Damages	49
17.4 Exclusive Remedy	49
17.5 Application of Contract Price Reductions	49
ARTICLE 18. CONTRACT MANAGEMENT	50
18.1 Contract Coordinators	50
18.2 Continuity of Seller's Employees	50
18.3 Contract Coordination	50
18.4 Status Reports	50
ARTICLE 19. TECHNICAL ADVISORY SERVICES	52
19.1 Technical Advisory Services	52

ARTICLE 20. TRAINING AND DOCUMENTATION	53
20.1 Documentation	53
20.2 Reproduction of Documentation	53
20.3 Training	53
ARTICLE 21. INSURANCE	54
21.1 Seller's Insurance Requirements	54
21.2 Additional Requirements for Seller's Insurance	54
21.3 Buyer's Insurance Requirements	54
21.4 All Risk Builder's Risk Insurance	55
21.5 Ocean Transit, Air Cargo and Delay in Start-up Insurance	55
21.6 Effect on Liquidated Damages	56
21.7 Additional Requirements for Buyer's Insurance	56
ARTICLE 22. GENERAL CLAUSES	57
22.1 Assignment	57
22.2 Third Party Beneficiaries	58
22.3 Entire Agreement	58
22.4 Severability	58
22.5 Independent Contractor	59
22.6 Governing Law	59
22.7 Notice	59
22.8 Construction	59
22.9 Written Guarantees	Error! Bookmark not defined.
22.10 Dispute Resolution	60
22.11 Disclosure of Information	60

Appendix A

Scope of Supply

Section 1
Section 2
Section 3

Introduction
Design Conditions
Liquidated Damage Performance Guarantees, Noise
Emission Guarantee, Demonstration Test Guarantees, and
Availability Test Guarantee
Performance Data
Description of Equipment
General Arrangement of Equipment
Division of Responsibility
Additional Engineering Information

Section 4
Section 5
Section 6
Section 7
Section 8

Appendix B

Payment and Cancellation Charge Schedule

Appendix C

Acceptance Test Guidelines, Procedures and Specifications

Appendix D

Payment Schedule for Storage

Appendix E

Training

Appendix F

Not Used

DEF-19FL-FUEL-012731

Appendix G

Documentation

Appendix H

Not Used

Appendix I

Technical Direction of Installation and
Commissioning Assistance

Appendix J

Division of Responsibility in Equipment Delivery

Appendix K

Site Description

Appendix L

Inspection & Test Plan

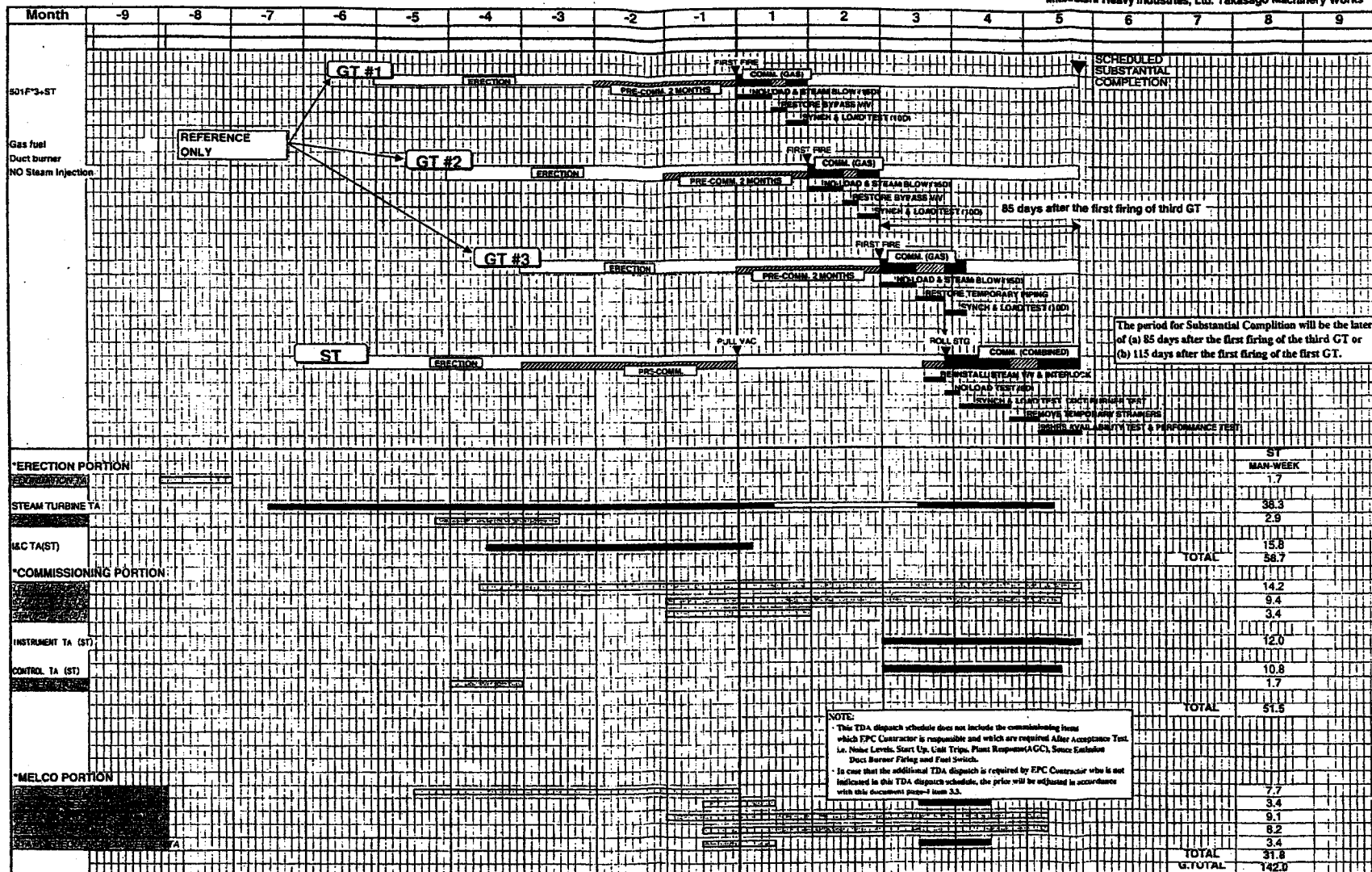
Appendix M

Rights and Obligations retained by Buyer

TENASKA Project Erection & Commissioning Plan (Including ST TDA Dispatch Schedule)
3on 1 C/C STG Portion

Attachment-A-2(a)

Mitsubishi Heavy Industries, Ltd. Takasago Machinery Works



If the fuel changed to gas only to dual, each commissioning period will be increased 35 days as per contract and number of T.A. will be required additionally at Buyer's cost

Estimated On Site Date shown above is not the responsibility to MHA.

This man-week dispatch schedule is based on MHA's experienced erection & commissioning schedule. The actual dispatch schedule will be developed in accordance with the Contract within 700man-week/block 18.2.

Green colored portion TA are common to cover GT & ST portion simultaneously. The dispatching schedule shown by bar chart is total dispatched man-weeks. The proportion of the man-week assigned to ST work are shown in exact number in the right column of above.

This schedule will be applicable only when GT and ST will be assigned to the same project site and be erected & commissioned at the same period.

DEF-19FL-FUEL-012926

CUSTOMER APPROVAL DRAWING CONTROL LIST

(04-24-02)

[illegible]

LASS>

A-APPROVAL DNG
F-FINAL DNG
I-INFORMATION DNG

RA-REAPPROVAL DWG
C-CONSTRUCTION DWG
R-REFERENCE DWG
Z-AS BUILT DWG

<STATUS>

1 - APPROVED WITHOUT COMMENT
2 - APPROVED WITH COMMENT
3 - NOT APPLICABLE
4 - INFORMATION ONLY

5 - NO COMMENT AND NO PRINT INCLUDED
6 - APPROVED WITH COMMENT AND
RESUBMIT THE REVISED DRAWING
7 - NOT APPROVED