

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Engineering / Sun Metro

AGENDA DATE: October 13, 2009

CONTACT PERSON/PHONE: Terrence Freiburg, Purchasing Mgr., 541-4313
R. Alan Shubert, P.E., City Engineer 541-4125

DISTRICT(S) AFFECTED: Districts 3, 4, and 8

SUBJECT:

Request authorization to purchase and install heating, venting, air conditioning (HVAC) equipment and accessories from the following cooperative purchasing network, BuyBoard TCPN contract #R4669, for the Eastside Transit Terminal, Northeast Transit Terminal, and Five Points Transit Terminals as recommended by Engineering and Sun Metro Departments.

BACKGROUND / DISCUSSION:

The City can purchase equipment from cooperative purchasing networks at a lower cost to the City off the BuyBoard contract from Trane Building Services. Previous procurement on the 2008 Reprogramming Playground and Swings programs demonstrated that the City obtains high volume discount pricing using the BuyBoard than procuring the equipment thru the request for proposal low bid process. The price for equipment using the Cooperative Agreement is \$226,144.19. The price includes equipment, labor, freight, and installation. Also included on the Eastside Transit Terminal is enclosing seating areas with store fronts. The enclosure is needed to efficiently run the HVAC system by minimizing heat loss and providing energy savings.

PRIOR COUNCIL ACTION:

City Council authorized the City to participate in the Texas Association of School Boards and the Cooperative Purchasing Network, Buyboard August 21, 2007 to achieve high volume discount pricing, combining the City of El Paso purchasing requirements with other agencies.

AMOUNT AND SOURCE OF FUNDING:

Source of Funding ? : Project No. PCP09MT014/Department ID 60600011/ Account No. 508027, Fund No. 11639)

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____

FINANCE: (if required) _____

DEPARTMENT HEAD: _____

(Example: if RCA is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA: _____

CITY MANAGER: _____

DATE: _____

PROJECT FORM

DATE: October 7, 2009

PROJECT: Purchase and Install HVAC Equipment
Department: Engineering
BUDGET NO: 60600011 - 11639 - 508027 - PCP09MT014
FUNDING SOURCE: Capital Grants -TX-90-X344 (Rehab Facilities) - Construction
REPRESENTATIVE DISTRICT[S]: 3, 4 & 8

RECOMMENDATION: VENDOR: Trane Building Services
EL PASO, TEXAS

ESTIMATED TOTAL AMOUNT: \$226,144.19

Request that the Purchasing Manager for Financial Services be authorized to issue a Purchase Order to Trane Building Services of El Paso, TX, a contractor under the TCPN Cooperative Purchasing Program, Contract # R4669, for procurement and installation of heating, venting, air conditioning (HVAC) equipment and accessories at the Eastside, Northeast and Five Points Transit Terminals. Participation by the City of El Paso in the Cooperative Purchasing Network (TCPN) was approved by Mayor and Council on March 27, 2007.

TOTAL RECOMMENDED ESTIMATED AWARD: \$226,144.19

CITY COUNCIL: APPROVED [] REJECTED []

APPROVED:

CITY COUNCIL DATE: October 13, 2009

Handwritten signature of Terrence Freiburg, Purchasing Manager



TCPN CONTRACT INFORMATION

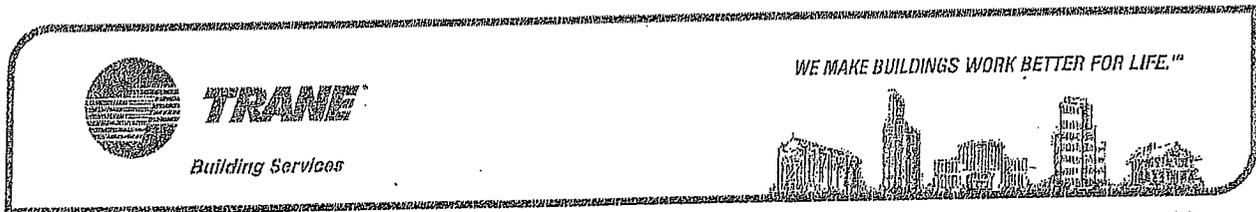


Contract:	Heating, Ventilating, Air Conditioning & Plumbing		
Awarded Vendor:	Trane		
TCPN Contract Number:	R4669 (All PO's must reference "Per TCPN Contract")		
Contract Expiration Date:	December 31 , 2009		
Number of Annual Renewals:	1		
Approved Products/Services:	All HVAC and plumbing products available through the Trane Company including: Refrigeration, unitary, air handlers, air terminal devices & heating products, DDC controls, cooling towers, pumps, invertors, heat recovery, boilers & water heaters, dust collectors, plumbing fixtures, training services, start-up & commissioning services, installation & turnkey contracting, financial services, scheduled maintenance, repair services with coverage, plumbing services, warranty services, site surveys, equipment rentals, professional services, Parts Inventory Pricing Program (PIPP), Facilities Management.		
Order Placement:	Contract terms allow PO's to be sent directly to this vendor and must reference "PER TCPN CONTRACT."		
Pricing:	Contact vendor for pricing.		
Other:	Click here for due diligence documents.		
Other:			
Online Ordering Availability:			
Freight/Delivery:			
Vendor Contact:	Alabama Teri Borton 580 East Burgess Rd Ste A-2 Pensacola, FL 32504 (850) 857-3740 teri.borton@trane.com	Arizona Larry Erp 850 W. South Ave. Tempe, AZ 85282 (480) 333-2895 Tel lerp@trane.com	Arkansas Mike McClellan 1501 Westpark Dr, Ste 9 Little Rock, AR 72204 (501) 661-0621 Tel mjmcclellan@trane.com
	California Don Thomas 310 Soquel Way Sunnyvale, CA 94085 (408) 481-3747 dthomas@trane.com	Delaware Pamela Kinley 66 Southgate Blvd. New Castle, DE 19720 (302) 395-0200 pakinley@trane.com	Florida Teri Borton 580 East Burgess Rd Ste A-2 Pensacola, FL 32504 (850) 857-3740 teri.borton@trane.com
	Kansas (Wichita) Brett Miller (316) 265-9656 Tel bmiller4@trane.com	Kansas (Kansas City) Sara Holmes 8014 Flint Lenexa, KS 66214 (913) 599-4664 Tel sholmes@trane.com	Louisiana Teri Borton 580 East Burgess Rd Ste A-2 Pensacola, FL 32504 (850) 857-3740 teri.borton@trane.com
	Mississippi Teri Borton 580 East Burgess Rd Ste A-	Missouri Sara Holmes 8014 Flint	New Mexico Mark Fafard 4401 Ellison NE

	<p>2 Pensacola, FL 32504 (850) 857-3740 teri.borton@trane.com</p> <p>Oklahoma Wendell Rames 305 Hudiburg Circle Oklahoma City, OK 73108 (405) 787-2237 Ext. 600 wbrames@trane.com</p> <p>Tennessee Jim Bierkamp 5220 Middlebrook Pike South Knoxville, TN 37921 (865) 588-0607 jim.bierkamp@trane.com</p>	<p>Lenexa, KS 66214 (913) 599-4664 Tel sholmes@trane.com</p> <p>Oregon Stan McIntyre (503) 620-8031 (503) 639-1454 simcintyre@trane.com</p> <p>Texas Jon Symko 10555 Westpark Dr Houston, TX 77042 (713) 530-4499 JSymko@huntongroup.com</p>	<p>Albuquerque, NM 87109 (505) 884-2044 msfafard@trane.com</p> <p>Philadelphia Paul DeIulio 741 First Avenue King of Prussia, PA 19406 (610) 962-1633 pdeIulio@tozourtrane.com</p> <p>Washington Scott Harbers 2021 152nd Avenue NE Redmond, WA 98052 (425) 586-1618 SHarbers@trane.com</p>
Vendor Website:	http://www.trane.com		
Vendor MWBE/HUB Status:	Not Certified		
TCPN Authorizing Statutes:			
TCPN Order Processing:			

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Trane
 1405 Vanderbilt Dr.
 El Paso, TX 79935
 Phone: (915) 593-3484
 Fax: (915) 593-0027

October 7, 2009

TCPN Contract # R4669
 TCPN Quote # 05-10202-09-006
 G-10159-150

Jaime Aguirre
 Engineer
 1 Civic Center
 EL PASO, TX 79901 U.S.A.

Site Address:
 Sun Metro Northeast, 5-Points & Eastside
 Bus Terminals
 EL PASO, TX 79924 U.S.A.

Attention: Jaime Aguirre

Project Name: Sun Metro Northeast, 5-Points and Eastside Bus Terminals HVAC Upgrades.

We are pleased to offer you this proposal for performance of the following services for the Equipment listed. Services will be performed using Trane's Exclusive Service Procedure to ensure you get full benefit of our extensive service experience, coupled with the distinct technical expertise of an HVAC Equipment manufacturing leader. Our innovative procedure is environmentally and safety conscious, and aligns expectation of work scope while providing efficient and productive delivery of services.

Equipment List

Equipment	Qty	Manufacturer	Model Number	Serial Number	Area Served
Split System	2	Trane	4TWB3036A1000 / 4TEC3F36B1000	N/A	Northeast Terminal
Split System	2	Trane	4TWB3048A1000 / 4TEC3F48B1000	N/A	5-Points Terminal
Split System	4	Trane	4TWB30448A1000 / 4TEC3F36B1000	N/A	Eastside Terminal

Northeast Terminal Scope of Service

- Provide necessary permits to perform work.
- Provide removal and disposal of (2) existing evaporative cooling units.
- Furnish and install (2) Trane 3-Ton Condensing Units on roof outside facility towers.
- Furnish and install (2) Trane Air Handlers in mezzanine inside facility towers.
- Furnish and install necessary refrigerant and drain lines.
- Provide necessary sheetrock and seal exposed tower area.
- Furnish and install necessary supply ductwork (exposed) and supply diffusers (2 per unit) in each of two areas.
- Furnish and install necessary conduit, breakers, disconnects, wire, thermostats (7 day programmable) and sensors for the electrical service of (2) 3-Ton Trane Split Systems.
- Provide start-up and operational check of system.

Note: Proposal is based on existing service having adequate capacity to handle the additional power requirements.

5-Points Terminal Scope of Service

- Provide necessary permits to perform work.
- Provide removal and disposal of (2) existing evaporative cooling units.
- Furnish and install (2) Trane 4-Ton Condensing Units inside facility towers.
- Furnish and install (2) Trane Air Handlers in mezzanine inside facility towers.
- Furnish and install necessary refrigerant and drain lines.
- Provide necessary sheetrock and seal exposed tower area.
- Furnish and install necessary supply ductwork (exposed) and supply diffusers (4 per unit) in each of two areas.
- Furnish and install (1) diffuser for each bathroom and (1) for security office.
- Furnish and install (1) return air grille for each unit.
- Furnish and install necessary conduit, breakers, disconnects, wire, thermostats (7 day programmable) and sensors for the electrical service of (2) 4-Ton Trane Split Systems.
- Provide start-up and operational check of system.

Note: Proposal is based on existing service having adequate capacity to handle the additional power requirements.

Eastside Terminal Scope of Service

- Provide necessary permits to perform work.
- Provide removal and disposal of (4) existing evaporative cooling units.
- Furnish and install (4) Trane 4-Ton Condensing Units on roof outside facility towers.
- Furnish and install (4) Trane Air Handlers in mezzanine inside facility towers.
- Furnish and install necessary refrigerant and drain lines.
- Furnish and install necessary supply ductwork (non-exposed) and supply diffusers (4 per unit) in each of four areas.
- Furnish and install necessary conduit, breakers, disconnects, wire, thermostats (7 day programmable) and sensors for the electrical service of (4) 4-Ton Trane Split Systems.
- Provide start-up and operational check of system.
- Provide necessary sheetrock and seal exposed tower area.
- Furnish and provide labor and materials for the enclosure of seating areas with storefront doors and glazing. To include the sealing of attic space, open areas between seating areas.

NOTE: Existing 200A service is not adequate to handle additional power requirements of new equipment. 200-amps of additional power will be required. Per drawing E-1, there is a spare 2" conduit from the electrical room to landscaped area on the northwest side of terminal. We propose to use the conduit and extend it to EPEC transformer, 3-3/0 will be install in conduit from EPEC transformer to a new 200A panel in building. The new panel will feed the new A/C equipment.

We have not physically located the spare conduit in landscaped area. Proposal is contingent upon conduit being there.

Also, proposal is based on running new feeder conduit / wire directly to EPEC transformer. Furnishing and installation of new meter and CT equipment, if required by EPEC is excluded.

Pricing and Acceptance

Total Price:.....\$226,144.19

Clarifications

1. Applicable taxes are not included and will be added to the invoice.
2. Any service not listed is not included.
3. Work will be performed during normal Trane business hours.

Please send copy of purchase order to TCPN for registration (Fax: 713-744-0648)

"All estimated hours are referenced to the latest version of RS Means Cost Data with a Labor Location Factor of 0.75 and do not exceed these hours. If RS Means estimate guidelines are exceeded, a certificate of deviation will be provided."

I appreciate the opportunity to earn your business, and look forward to helping you with all of your services needs. Please contact me if you have any questions or concerns.

This proposal is valid 30 days from October 06, 2009.

This agreement is subject to Customer's acceptance of the attached Trane Services Terms and Conditions.

SUBMITTED BY: George Hernandez	Proposal Date: October 06, 2009
Account Manager _____	License Number: _____
CUSTOMER ACCEPTANCE	TRANE ACCEPTANCE
Authorized Representative _____	Trane U.S. Inc.
Printed Name _____	Authorized Representative _____
Title _____	Title _____
Purchase Order _____	Signature Date _____
Acceptance Date _____	

Trane Terms and Conditions for Installation

1. **Acceptance.** A proposal made upon these terms is subject to acceptance within thirty days from date and the prices are subject to change without notice prior to acceptance by Customer. If Customer's order is an acceptance of a written proposal, on a form provided by Trane, without the addition of any other terms and conditions of sale or any other modification, this document shall be treated solely as an acknowledgment of such order, subject to credit approval. If Customer's order is expressly conditioned upon Trane's acceptance or assent to terms other than those expressed herein, return of such order by Trane with these terms and conditions attached serves as notice of objection to Customer's terms and a counter-offer to provide Work in accordance with scope and terms of the original proposal. If Customer does not reject or object within ten days, Trane's counter-offer will be deemed accepted. If Customer permits or accepts performance, Trane's terms will be deemed accepted. Customer's acceptance of goods and/or Work by Trane will in any event constitute an acceptance by Customer of these terms and conditions.
2. **Contract Price & Taxes.** The Contract Price includes standard ground transportation and, if required by law, all sales, consumer, use and similar taxes legally enacted as of the date hereof only for equipment and material installed by Trane. Equipment sold on an uninstalled basis and any taxable labor do not include sales tax and taxes will be added. Prices stated are firm provided that notification of release for immediate production and shipment is received at the factory not later than five months from order receipt. If such release is received later than five months from order receipt date, but within eight months of order receipt date, prices will be increased a straight 1% (not compounded) for each one-month period (or part thereof) beyond the five-month firm price period up to the date of receipt of such release. If such release is not received within eight months after date of order receipt, the prices are subject to renegotiation, or at Trane's option, the order will be cancelled. If for any reason Customer delays shipment after release, prices are subject to increase as stated herein.
3. **Exclusions from Work.** Trane's obligation is limited to the Work as defined and does not include any modifications to the Work site under the Americans With Disabilities Act or any other law or building code(s). In no event shall Trane be required to perform work Trane reasonably believes is outside of the defined Work without a written change order signed by Customer and Trane.
4. **Construction Procedures.** Trane shall supervise and direct the Work using its best skill and attention and have exclusive control over construction means, methods, techniques, sequences and procedures.
5. **Payment Terms.** Customer shall pay Trane's invoices within net thirty (30) days of invoice date. Trane may invoice Customer for all equipment or material furnished, whether delivered to the installation site or to an off-site storage facility and for all work performed on-site or off-site. No retention shall be withheld from any payments except as expressly agreed in writing by Trane, in which case retention shall be reduced per the contract documents and released no later than the date of substantial completion. Under no circumstances shall any retention be withheld for the equipment portion of the order. If payment is not received as required, Trane may suspend performance and the time for completion shall be extended for a reasonable period of time not less than the period of suspension. Customer shall be liable to Trane for all reasonable shutdown, standby and start-up costs as a result of the suspension. Trane reserves the right to add to any account outstanding for more than 30 days a service charge equal to the lesser of the maximum allowable legal interest rate or 1.5% of the principal amount due at the end of each month. Customer shall pay all costs (including attorneys' fees) incurred by Trane in attempting to collect amounts due and otherwise enforcing these terms and conditions.
6. **Time for Completion.** Except to the extent otherwise expressly agreed in writing signed by an authorized representative of Trane, all dates provided by Trane or its representatives for commencement, progress or completion are estimates only. While Trane shall use commercially reasonable efforts to meet such estimated dates, Trane shall not be responsible for any damages for its failure to do so.
7. **Access.** Trane and its subcontractors shall be provided access to the Work site during regular business hours, or such other hours as may be requested by Trane and acceptable to the Work site owner or tenant for the performance of the Work, including sufficient areas for staging, mobilization, and storage. Trane's access to correct any emergency condition shall not be restricted.
8. **Permits and Governmental Fees.** Trane shall secure (with Customer's assistance) and pay for building and other permits and governmental fees, licenses, and inspections necessary for proper performance and completion of the Work, which are legally required when bids from Trane's subcontractors are received, negotiations thereon concluded, or the effective date of a relevant Change Order, whichever is later. Customer is responsible for necessary approvals, easements, assessments and charges for construction, use or occupancy of permanent structures or for permanent changes to existing facilities.
9. **Utilities During Construction.** Customer shall provide without charge to Trane all water, heat, and utilities required for performance of the Work.
10. **Concealed or Unknown Conditions.** In the performance of the Work, if Trane encounters conditions at the Work site that are (i) subsurface or otherwise concealed physical conditions that differ materially from those indicated on drawings expressly incorporated herein or (ii) unknown physical conditions of an unusual nature that differ materially from those conditions ordinarily found to exist and generally recognized as inherent in construction activities of the type and character as the Work, Trane shall notify Customer of such conditions promptly, prior to significantly disturbing same. If such conditions differ materially and cause an increase in Trane's cost of, or time required for, performance of any part of the Work, Trane shall be entitled to, and Customer shall consent by Change Order to, an equitable adjustment in the Contract Price, contract time, or both.
11. **Pre-Existing Conditions.** Trane is not liable for any claims, damages, losses, or expenses, arising from or related to conditions that existed in, on, or upon the premises before the Commencement Date of this Agreement ("Pre-Existing Conditions"), including, without limitation, damages, losses, or expenses involving Pre-Existing Conditions of building envelope issues, mechanical issues, plumbing issues, and/or indoor air quality issues involving mold and/or fungi. Trane also is not liable for any claims, damages, losses, or expenses, arising from or related to work done by or services provided by individuals or entities that are not employed by or hired by Trane.
12. **Asbestos and Hazardous Materials.** Trane's Work and other services in connection with this Agreement expressly excludes any identification, abatement, cleanup, control, disposal, removal or other work connected with asbestos, polychlorinated biphenyl ("PCB"), or other hazardous materials (hereinafter, collectively, "Hazardous Materials"). Customer warrants and represents that, except as set forth in a writing signed by Trane, there are no Hazardous Materials on the Work site that will in any way affect Trane's Work and Customer has disclosed to Trane the existence and location of any Hazardous Materials in all areas within which Trane will be performing the Work. Should Trane become aware of or suspect the presence of Hazardous Materials, Trane may immediately stop work in the affected area and shall notify Customer. Customer will be responsible for taking any and all action necessary to correct the condition in accordance with all applicable laws and regulations. Customer shall be exclusively responsible for any claims, including the payment thereof, arising out of or relating to any Hazardous Materials on or about the Work site, not brought onto the Work site by Trane. Trane shall be required to resume performance of the Work in the affected area only in the absence of Hazardous Materials or when the affected area has been rendered harmless. In no event shall Trane be obligated to transport or handle Hazardous Materials, provide any notices to any governmental agency, or examine the Work site for the presence of Hazardous Materials.
13. **Force Majeure.** If Trane shall be unable to carry out any material obligation under this Agreement due to an Event of Force Majeure, this Agreement shall at Trane's election (i) remain in effect but Trane's obligations shall be suspended until the uncontrollable event terminates or (ii) be terminated upon ten (10) days notice to Customer, in which event Customer shall pay Trane for all parts of the Work furnished to the date of termination. An "Event of Force Majeure" shall mean any cause or event beyond the control of Trane. Without limiting the foregoing, "Event of Force Majeure" includes: acts of God; acts of terrorism, war or the public enemy; flood; earthquake; tornado; storm; fire; civil disobedience; pandemic insurrections; riots; labor disputes; labor or material shortages; sabotage; restraint by court order or public authority (whether valid or invalid), and action or non-action by or inability to obtain or keep in force the necessary governmental authorizations, permits, licenses, certificates or approvals if not caused by Trane.

14. **Customer's Breach.** Each of the following events or conditions shall constitute a breach by Customer and shall give Trane the right, without an election of remedies, to terminate this Agreement by delivery of written notice declaring termination, upon which event Customer shall be liable to Trane for all Work furnished to date and all damages sustained by Trane (including lost profit and overhead): (1) Any failure by Customer to pay amounts due more than thirty (30) days after the date of the invoice therefor; or (2) Any failure by Customer to perform or comply with any material provision of this Agreement.

15. **Indemnification.** Trane and Customer shall indemnify and hold each other harmless from any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, resulting from death or bodily injury or damage to real or tangible personal property, to the extent caused by the negligence or misconduct of their respective employees or other authorized agents in connection with their activities within the scope of this Agreement. Neither party shall indemnify the other against claims, damages, expenses or liabilities to the extent attributable to the negligence or misconduct of the other party. If the parties are both at fault, the obligation to indemnify shall be proportional to their relative fault. The duty to indemnify will continue in full force and effect, notwithstanding the expiration or early termination hereof, with respect to any claims based on facts or conditions that occurred prior to expiration or termination.

16. **Limitation of Liability.** NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING WITHOUT LIMITATION LOST REVENUE OR PROFITS), OR PUNITIVE DAMAGES. IN NO EVENT SHALL TRANE BE LIABLE FOR ANY DAMAGES (WHETHER DIRECT OR INDIRECT) RESULTING FROM MOLD, FUNGUS, BACTERIA, MICROBIAL GROWTH, OR OTHER CONTAMINATES OR AIRBORNE BIOLOGICAL AGENTS.

17. **Workmanship and Equipment Warranty.** Trane warrants that, for a period of one year from the date of substantial completion (the "Warranty Period"), Trane equipment installed hereunder and Work (I) shall be free from defects in material, manufacture, and workmanship and (II) shall have the capacities and ratings set forth in Trane's catalogs and bulletins; substantial completion shall be the earlier of the date that the Work is sufficiently complete so that Customer can utilize the Work for its intended use or the date that Customer receives beneficial use of the Work. If such defect is discovered within the Warranty Period, Trane will correct the defect or furnish replacement equipment (or, at its option, parts therefor) and, if said equipment was installed pursuant hereto, labor associated with the replacement of parts or equipment not conforming to this warranty. No liability whatsoever shall attach to Trane until said equipment and Work have been paid for in full and then said liability shall be limited to Trane's cost to correct the defective Work and/or the purchase price of the equipment shown to be defective. Equipment and/or parts that are not manufactured by Trane are not warranted by Trane and have such warranties as may be extended by the respective manufacturer. Trane's warranties expressly exclude any remedy for damage or defect caused by corrosion, erosion, or deterioration, abuse, modifications or repairs not performed by Trane, improper operation, or normal wear and tear under normal usage. Trane shall not be obligated to pay for the cost of lost refrigerant. Trane equipment sold on a supply basis is warranted in accordance with Trane's standard warranty for supplied equipment. THE WARRANTY AND LIABILITY SET FORTH IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES AND LIABILITIES, WHETHER IN CONTRACT OR IN NEGLIGENCE, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO REPRESENTATION OR WARRANTY IS MADE REGARDING PREVENTION BY THE SCOPE OF SERVICES, OR ANY COMPONENT THEREOF, OF MOLD, FUNGUS, BACTERIA, MICROBIAL GROWTH, OR ANY OTHER CONTAMINATES. TRANE SPECIFICALLY DISCLAIMS ANY LIABILITY IF THE SCOPE OF SERVICES OR ANY COMPONENT THEREOF IS USED TO PREVENT OR INHIBIT THE GROWTH OF SUCH MATERIALS.

18. **Insurance.** Upon request, Trane will furnish evidence of its standard insurance coverage. If Customer has requested to be named as an additional insured under Trane's insurance policy, Trane will do so but only to the extent of Trane's indemnity assumed under the indemnity provision contained herein. Trane does not waive any rights of subrogation.

19. **Applicable Law.** Except as provided below, this Agreement is made and shall be interpreted and enforced in accordance with the laws of the state in which the Work is performed. Any dispute arising under or relating to this Agreement which is not disposed of by agreement shall be decided by litigation in a court of competent jurisdiction located in the state in which the Work is performed. To the extent the Work site is owned and/or operated by any agency of the Federal Government, determination of any substantive issue of law shall be according to the Federal common law of Government contracts as enunciated and applied by Federal judicial bodies and boards of contract appeals of the Federal Government, provided, however, that if there is no applicable Federal Government contract law, this Agreement shall be governed, construed, interpreted and enforced in accordance with the governing law as set out in the contract with Trane's Customer.

20. **Assignment.** Customer may not assign, transfer, or convey this Agreement, or any part hereof, or its right, title or interest herein, without the written consent of Trane. This Agreement shall be binding upon and inure to the benefit of Customer's permitted successors and assigns.

21. **Complete Agreement.** This Agreement constitutes the entire Agreement between both parties. This Agreement may not be amended, modified or terminated except by a writing signed by the parties hereto. No documents shall be incorporated herein by reference except to the extent Trane is a signatory thereon.

22. **Equal Employment Opportunity/Affirmative Action Clause.** Trane is a federal contractor that complies fully with Executive Order 11246, as amended, and the applicable regulations contained in 41 C.F.R. Parts 60-1 through 60-60, 29 U.S.C. Section 793 and the applicable regulations contained in 41 C.F.R. Part 60-741; and 38 U.S.C. Section 4212 and the applicable regulations contained in 41 C.F.R. Part 60-250.

23. **U.S. Government Work.** The following provision applies only to direct sales by Trane to the US Government. The Parties acknowledge that all items or services ordered and delivered under this Agreement Purchase Order are Commercial Items as defined under Part 12 of the Federal Acquisition Regulation (FAR). In particular, Trane agrees to be bound only by those Federal contracting clauses that apply to "commercial" suppliers and that are contained in FAR 52.212-5(e)(1). Trane complies with 52.219-8 or 52.219-9 in its service and installation contracting business.

The following provision applies only to indirect sales by Trane to the US Government. As a Commercial Item Subcontractor, Trane accepts only the following mandatory flow down provisions: 52.219-8; 52.222-26; 52.222-35; 52.222-36; 52.222-39; 52.247-64. If the Work is in connection with a U.S. Government contract, Customer certifies that it has provided and will provide current, accurate, and complete information, representations and certifications to all government officials, including but not limited to the contracting officer and officials of the Small Business Administration, on all matters related to the prime contract, including but not limited to all aspects of its ownership, eligibility, and performance. Anything herein notwithstanding, Trane will have no obligations to Customer unless and until Customer provides Trane with a true, correct and complete executed copy of the prime contract. Upon request, Customer will provide copies to Trane of all requested written communications with any government official related to the prime contract prior to or concurrent with the execution thereof, including but not limited to any communications related to Customer's ownership, eligibility or performance of the prime contract. Customer will obtain written authorization and approval from Trane prior to providing any government official any information about Trane's performance of the work that is the subject of this offer or agreement, other than this written offer or agreement.

Trane U.S. Inc.
1-26.251-10(0208)
Supersedes 1-26.251-10(1107)



TRANE

Building Services

Safety



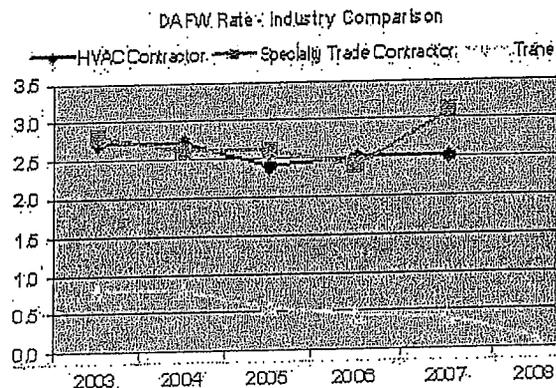
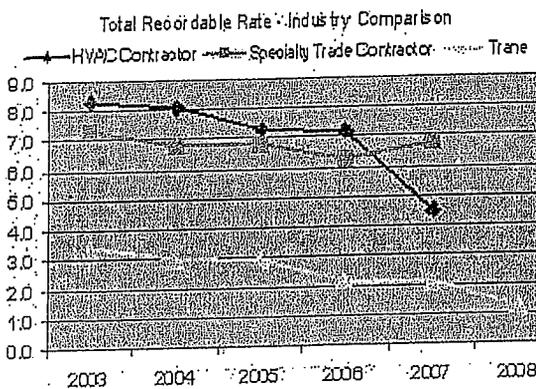
Trane's Safety Standard

Trane is committed to providing a safe work environment for all employees and to preventing accidents in its business operations. To accomplish our objectives Trane has instituted safety programs, procedures and training that incorporate a progressive approach to injury prevention.

Proven Safety Success

Trane's safety culture in America is unparalleled in the building services industry and has demonstrated proven results via continuous reduction of injury rates.

Trane Injury Rates v. Industry Competitors



Comparison Industries - Data from US Bureau of Labor Statistics - NAICS Codes:

- HVAC Repair & Maintenance Contractors (Retail Industry) - 811310
- HVAC Specialty Trade Contractors (Construction) - 238220

Industry comparison data from US Bureau of Labor Statistics



WE MAKE BUILDINGS WORK BETTER FOR LIFE.™



TRANE

Building Services

Trane Injury Rates v. Industry Competitors (continued)

Trane's incident (OSHA) rates are consistently 50-70% below the industry average. This outstanding safety achievement is the end result of the rigorous team oriented approach to our safety program that creates accountability and empowerment in all employees and management and fuels our institutional safety culture. This is the key to our continual improvement.

Safety Tools, Training & Expertise

Trane's service and contracting technicians are not only among the most skilled in the industry they are also extensively trained in safe work procedures. Our technicians receive safety training, equipment, tools, procedures, and management support to identify jobsite hazards and take appropriate measures to prevent personal injuries. The resources available to Trane technicians include:

- Safety Training – 20 hrs per year, including classroom and web-based platforms.
-Topics include, but are not limited to, Lockout/Tagout, Confined Space Entry, Hazard Communication, Respiratory Protection, Hearing Conservation, Excavations, Scaffolding, Rigging, Powered Industrial Truck operation, Ladders, Vehicle Safety, Fire Protection, PPE, Emergency Response, First Aid / CPR.
- Electrical Safety – NFPA 70E compliant – electrical PPE; flame-resistant clothing; training.
- Fall Protection – full complement of fall arrest and fall restraint equipment for each technician.
- Ergonomics – custom-designed for HVAC field technicians, includes training, material handling equipment and procedures.
- Smith System Safe Driving Program – Trane's safety Managers are certified instructors; safety Managers train technicians; 1-800 "How's My Driving?" stickers are located on the back of service vehicles.
- USDOT compliance – technicians scheduled within Material of Trade and Hours of Service limits and are fully qualified under Department of Transportation rules for driving commercial motor vehicles with GVWR >10,000 and 26,000 lbs.
- Refrigerant Management – Service technicians are trained to manage refrigerant in accordance with U.S. EPA rules using a sophisticated electronic tracking system developed by Trane.
- Empowerment - Technicians are empowered with full management support to address safety hazards as they see fit. If ever in doubt about how to do a job or task safely, the technician is required to ask a qualified person for assistance before proceeding with work.

Management Leadership and Commitment

Accident prevention is a primary responsibility of management at Trane. Trane's safety culture is based on the following management principles:

- Leadership at the local level manages the local organization's safety performance.
- Management is financially accountable for safety performance.
- Local management is actively engaged in risk reduction activities and training and manages safety performance outcomes.
- Management clearly communicates to all Trane employees their safety expectations and strongly enforces compliance with those expectations.
- Employees are held accountable when they fail to meet safety expectations.

Local management and supervisory personnel at the local level are responsible for implementation of the following safety program elements:

- The Safety Management System developed by Trane – developed in accordance with OHSAS 18001.



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TRANE[®]

Building Services

Management Leadership and Commitment (continued)

- Audits and Inspections – Supervisors, Middle and Upper Managers must conduct field inspections. Corporate Safety conducts detailed compliance and management systems audits.
- Company safety compliance programs – ensure that they are fully implemented.
- Safety and environmental performance – tracked using a Balanced Scorecard with leading and lagging indicators and metrics.
- Subcontractor Qualification – Implement this process to promote safety and safety plan compliance on multi-employer job sites.
- Six Sigma and Lean – use these productivity tools to enhance safety on job sites.
- Drug and Alcohol Policy – mandatory DOT required for-cause and post-accident testing after recordable injuries and property damage.
- Motor Vehicle Records Search – annual checking of driving records of employees driving company vehicles.

Jobsite Safety Equals Customer Value

At Trane safety is part of our culture for every employee. What this means to our customers is fewer job site accidents and the delays and liability concerns that come along with them. What this means to our staff is greater confidence in the practices and procedures they use on the job and the pride that comes from working for one of the premier service organizations in the world. Tighter safety standards and fewer accidents can also lead to better on-time project completion and higher quality results.

When you use Trane Building Services to install, maintain or upgrade your building systems you will take full advantage of our superior safety program, low incident rates and subcontractor safety management procedures. These help you manage project risk more effectively than you could using multiple contractors or even a single prime contractor with a less impressive safety record.



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