



MEMORANDUM

EUGENE WATER & ELECTRIC BOARD
ELECTRIC SERVICES DIVISION

Rely on us.

TO: Commissioners Farmer, Brown, Cassidy, Cunningham and Ernst
FROM: Dean Ahlsten and Gail Murray
DATE: May 26, 2009
RE: Request for Public Improvement Contract Exemption – University of Oregon Substation
ATT: Attachment 1: Notice of Public Hearing

Issue

The Board is being asked to approve a full exemption of procurements associated with the construction of a new Substation at the University of Oregon (U of O) and its associated 115 kV underground transmission lines. Approval of the exemption would grant staff the flexibility in securing various contracts with manufacturers, service providers, and construction contractors, as required, to meet critical deadlines, equipment requirements, and EWEB's obligation to serve significant load increases at the U of O campus.

Alternative procurement processes may include without limitation, formal and informal bids, request for proposals, quotations, design-build contracts, and direct negotiations. The processes used will be based on the considerations provided herein. Time is of the essence for this project; unreasonable delays will hamper the utility's ability to provide needed service to the U of O.

Background

The U of O has begun construction on an expansion of its Central Power Station (CPS) facility. The U of O is constructing a new chiller plant to accommodate campus cooling requirements and additional expansions that will nearly double the U of O's peak load from 10.3 MW's in 2008 to 18.9 MW's in 2009. In addition, staff is projecting new campus construction projects that will increase electrical loads as high as 33 MW's in the years to come.

In December 2007, the U of O notified EWEB staff of their expansion plans and need for additional capacity. EWEB staff began work on various design alternatives to serve the projected load increases. After much consideration and discussion, both parties agreed last summer that the preferred solution is construction of a new 66 MVA, 115-12.47 kV substation (like the new Willamette Substation) on U of O campus property. Placing a substation adjacent to the load center is the most cost effective and efficient method of service and it provides for future growth along the riverfront research park campus.

EWEB engineers subsequently began work on designs and on major equipment procurement contracts. These efforts were suspended in October 2008 when EWEB and the U of O were unable to agree on terms of the Intergovernmental Agreement (IGA) governing design, construction and ownership. Final terms of the IGA are still being finalized; in the meantime staff is working under a recently agreed upon advance payment by the University (\$212,000) for the initial engineering and design work.

With a doubling of the University's load by the summer of 2009, the reliability of EWEB's current service to campus will be greatly compromised. If either of the two primary distribution circuits to campus were to fail during a 2009/2010 summer peak cooling day, the campus will be forced to curtail loads until the failed equipment is repaired or replaced. Competitive bidding processes require considerable time to draft bidding documents, advertise, solicit, and evaluate bids that would further delay the necessary

construction of the substation. When coupled with lengthy substation equipment delivery times, the risks associated with EWEB's ability to serve, under contingency situations, will be extended. The University has been made aware of this system limitation and of the need to limit the length of exposure. The parties have agreed on a very aggressive target date of June 2011 for completion of the new substation (prior to 2011 summer peak cooling demands).

Staff Findings

Numerous constraints and concerns have prompted Staff's request of the Board:

- 1) Space Limitations – The University has limited property available for construction of a substation; as a result the new substation requires gas-insulated (GIS) 115 kV switchgear, of like manufacture as installed at EWEB's new Willamette Substation.
- 2) Project Schedule – Typically projects of this magnitude require up to three years from conception to completion. A major component in these prolonged schedules is the procurement of major equipment items such as power transformers. Lead times for the manufacture and receipt of substation class transformers have recently been as long as 18 months after award of contract.

Time is of the essence in providing increased capacity to the U of O. Staff will take all appropriate action including using alternative solicitation methods, when necessary to procure the required substation components. In order to meet the accelerated schedule, staff must order the equipment as quickly as possible and must be confident that the components purchased will be shipped on time and will perform as required.

- 3) Quality Control – Recent experience at EWEB's new Willamette and Coburg Substations revealed a general decline in the quality of substation class power transformers in the world market. EWEB's last four transformers, purchased via a competitive bidding process, resulted in units with numerous quality problems including oil leaks due to poor fabrication/welding techniques, incorrect/incomplete wiring, and substandard conduit & piping systems.
- 4) Compatibility with Existing EWEB Infrastructure – It is important that the U of O Substation utilizes and interfaces with existing EWEB technology.

In order to mitigate concerns with equipment procurements staff is considering the following options for the major procurement components of the project.

- 115 kV Gas Insulated Switchgear: Systems Engineering recommends direct negotiation with Hyundai Heavy Industries, Inc. (HHI) for manufacture, assembly and installation of the 115 kV GIS equipment. On the Willamette Substation project, HHI demonstrated a commitment to quality, schedule, and customer service and Engineering is very satisfied with HHI's performance. A secondary benefit of reapplying the same design is a reduction in cost associated with ongoing operation, maintenance, training and stocking of parts. Several months will be saved during the purchase process because HHI has the majority of design completed due to the Willamette project, and they have already accepted EWEB's contractual terms and conditions. Systems Engineering believes procurement of the GIS equipment from HHI to be in the best interest of all parties.
- 115 kV Underground Transmission Lines: Due to the highly specialized nature of the design and construction techniques for high voltage underground transmission systems, the preferred contracting method is to place responsibility on a single contractor for the engineering, manufacturing and construction elements of the project. Such procurements are referred to design-build or engineer, procure and construct (EPC) contracts. Board approval of this exemption request includes approval for staff to use the design-build approach as an alternative procurement process.

- 115-12.47 kV; 33 MVA Power Transformers: EWEB is in need of two new substation class power transformers for its system in the next two years; they are identical to those required for the University Substation. Staff is pursuing a joint procurement for the purchase of four units; with the U of O reimbursing EWEB for the cost of two. A joint procurement should result in savings to both parties. Staff is requesting approval to pre-qualify, thus limiting bidders, to reputable supplier's who have demonstrated a commitment to high quality design and manufacturing.

For compatibility and scheduling reasons, the U of O may elect to negotiate directly with HHI for supply of its power transformers. HHI is considered to be one of the more reputable manufacturers of power transformers of the required specifications. There are advantages to having one supplier for the GIS and power transformers relative to the coordination of structural designs, integration of the equipment, and adherence to schedule.

The expected benefits associated with these approaches include:

- Customer Assurance and Agreement: The U of O's engineering firm is in favor of and in full agreement with utilizing the same GIS equipment as Willamette Substation and has incorporated it into their designs. Customer agreement and acceptance of this equipment is required to expedite the project. Qualifying an acceptable system by both parties, without debate or concerns of its ability to perform, is advantageous for the successful and timely completion of this work.
- System Compatibility: The utilization of existing equipment and technology is strongly encouraged by Systems Engineering and Substation Reliability. Efficiencies in substation operation and maintenance are greatly enhanced through the use of identical system components.
- Cost Savings: Staff believes substantial cost savings will result from reapplying the same equipment in terms of specification development, design, tools and equipment, spare parts, and experience. Staff time has already been expended to negotiate terms and conditions on the HHI equipment; because of this, staff believes negotiations with this manufacturer for the GIS system can be expedited.

The Willamette Substation GIS Systems was competitively bid and awarded in 2006. HHI was the lowest responsive, responsible bidder for the Willamette Substation project. HHI accepted EWEB's terms and conditions and provided quality product and service. Staff believes that it is unlikely that competition would be harmed or favoritism shown in the direct award of a contract to HHI for this specific equipment.

A review of the preliminary project schedule coupled with recent experience at Willamette Substation indicates that to meet a June 2011 in-service date, the major equipment must be on site by November 2010. This will require EWEB to award major equipment contracts by August 2009. This timeline does not provide, in all cases, for conventional bidding processes. Furthermore, the GIS procurement may include the assembly and installation by HHI field engineers/techs and/or subcontractor at the job site as EWEB Substation Reliability staff may be unable to accommodate a project of this magnitude, given staffing levels and other project work.

If feasible and in the parties best interests, staff will use alternative public contracting processes to assure the best possible pricing. All contracts exceeding Board approval thresholds, and the solicitation or negotiation processes used, will be submitted to the Board for contract approval once the EWEB/U of O IGA is executed.

Payment

The University will reimburse all costs for the new facilities, per EWEB's requirements. Upon completion, EWEB will operate, and maintain the new substation and transmission lines. The terms of the U of O's financing requires that they assume ownership of the substation facility upon completion. EWEB will own the 115 kV transmission lines and 115 kV switchgear located in the University Substation. The estimated cost of the project is in the \$10.5 – \$11.5 million range.

The Electric Utility Capital Improvement Plan (CIP) and the IGA assume net 30-day progress payments, by the U of O, as expenditures are made in 2009 through 2011. The actual timing of when the state funding might be made available may require other repayment arrangements.

Exemption Process

Since the UO substation is a public improvement project (construction), it falls under Oregon public contracting law (ORS279A & 279C) and the Board adopted (Division 5) contracting rule requirements. ORS279C.335 and EWEB Division 5-0600 through 5-0630 rules outline specific requirements that staff and the Board must follow before a construction project can be exempted. In this case, the law requires all public improvement projects to be traditionally bid, unless the work is an emergency or the contracting agency's Contract Review Board (EWEB's Board) exempts the project from competitive bidding.

EWEB's Board may exempt a public improvement contract or a class of public improvement contracts from the competitive bidding requirements upon its approval of staff findings. Staff's findings must outline specific reasons for exempting a specific project, which include type, cost and amount of the contract, the number of persons available to bid and such other factors as may be deemed appropriate. The findings should evident that due to the project's complexities and limitations, the exempting of the project is unlikely to harm competition or show favoritism in the awarding of the public contract(s). An additional consideration would be that exempting the project will result in substantial cost savings to the contracting agency.

In this particular situation, staff is also faced with a high-risk reliability situation for the U of O, i.e. the urgency and time limitations of the project warrant immediate attention to avoid potential harm to a public body. The legal consideration here is that a "reasonable person" would not delay the procurement of goods, services, or work that is critical to remedying this type of situation. Even though the urgency of this project is because of the U of O's actions and not EWEB's, staff is working diligently to meet its obligation to serve its customer.

ORS 279C.335 Competitive bidding; exceptions; exemptions

Before final adoption of the required findings, the Board must hold a public hearing. Those requirements are as follows:

- Notification of the public hearing must be published in at least one trade newspaper of general statewide circulation a minimum of 14 days before the hearing. Public entities in Oregon use the Daily Journal of Commerce to satisfy this provision.
- The notice must state that the public hearing is for the purpose of taking comments on the draft findings for an exemption from the competitive bidding requirement. At the time of the notice, copies of the draft findings must be made available to the public for review. At the option of the contracting agency, the notice **may** describe the process by which the findings are finally adopted and **may** indicate the opportunity for any further public comment.
- At the public hearing, the contracting agency must offer an opportunity for any interested party to appear and present comment.

- If a contracting agency is required to act promptly due to circumstances beyond the agency's control that do not constitute an emergency, notification of the public hearing may be published simultaneously with any agency solicitation if an alternative public contracting method is used, as long as responses to the solicitation are due at least five days after the Board meeting and approval of the findings. Therefore, staff cannot ask for approval of any contracts until the Board has approved the exemption.
- The purpose of an exemption is to exempt one or more public improvement contracts from competitive bidding requirements. The representations in and the accuracy of the findings, including any general description of the resulting public improvement contract, are the basis for approving the findings and granting the exception.

The Board may elect to: 1) Reject this request for exemption and require that staff take the time to competitively bid out all aspects of this project, in which case, critical completion dates will be at risk; 2) Agree with the request, hold the public hearing, and approve staff's immediate action; or 3) Approve the request with specific stipulations, i.e. direct staff to use alternative solicitation methods for each component of the project.

Recommendation & Requested Board Action

Time is of the essence to meet this urgent project's completion schedule. Staff recommends that the Board exempt from competitive bidding, all contracts associated with the construction of the new Substation at the University of Oregon. Traditional and alternative procurement methods are planned and will be used in consideration of the above-mentioned limitations. All contracts exceeding Board approval thresholds, resulting from the solicitation or negotiation processes utilized will be submitted to the Board for contract approval. Some aspects of these contracts may require the manufacturer to design, provide, and install certain substation components.

Major procurements/public improvement contracts associated with this project include 115kv GIS switchgear; two 33MVA power transformers, and 115 kV underground transmission circuits. If possible, major equipment will be purchased from the same manufacturer as the Willamette Substation to assure compatibility and quality.

Staff is requesting concurrence from the Board, after which staff intends to immediately post a Notice of Public Hearing (Attached) to be scheduled for the July 21 Board meeting, at which time staff will request board approval to exempt this project from competitive bidding requirements.

If you have questions regarding the technical aspects of the substation project please contact Dean Ahlsten 341-1830 or e-mail at dean.ahlsten@eweb.org. For questions regarding the exemption process please call Gail Murray at 434-5754 or e-mail at gail.murray@eweb.org.

ATTACHMENT 1

EUGENE WATER & ELECTRIC BOARD (EWEB)

NOTICE OF PUBLIC HEARING University of Oregon Substation Project Exemption

Notice is hereby given that Eugene Water & Electric Board (EWEB) will hold a public hearing at 7:30 p.m. on Tuesday, July 21, 2009, in its Board Room located at 500 East 4th Avenue, Eugene, Oregon, 97401, for the purpose of taking comments on EWEB's draft findings requesting an exemption for the University of Oregon Substation project (a public improvement). The exemption will excuse EWEB from the competitive bidding requirements of ORS 279C.300, and will allow EWEB to negotiate various contracts with manufacturers, consultants, and contractors for this Project, as allowed in ORS279C.335 and EWEB Rules.

Recent and future improvements at the university are resulting in an increase in the university's power consumption. This increase cannot be sustained using EWEB's existing infrastructure. A new substation must be built at the university to mitigate this need. Failure to act quickly will place the university at risk. Some substation equipment takes up to 18 months to manufacture and deliver. Standard and/or alternative procurement processes will be used whenever feasible. EWEB's findings give complete details.

Copies of the draft findings and this legal notice will be available to the public on EWEB's website: <http://www.eweb.org/bids-contracts/index.htm> and posted in "Bids & Contracts" under "Current Solicitations." Findings will be available at the time this Public Notice is published.

Dated this __ day of June, 2009
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