



# Board Action

## BOARD OF DIRECTORS

September 19, 2023

### ITEM

North Omaha Station Unit 5 Air Preheater Basket and Seal Replacement Labor

### PURPOSE

Board of Directors authorization to reject the proposals received in response to RFP No. 6065, and for the District to enter into a negotiated contract for labor to replace the air preheater baskets and seals for North Omaha Station Unit 5.

### FACTS

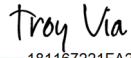
- a. The existing baskets and seals are at the end of their expected life. Recent inspection reports have confirmed replacement of the baskets and seals is needed to maintain unit reliability.
- b. The air preheater basket and seal work will be completed during the planned spring 2024 outage.
- c. Purchase of materials will be provided separate from this contract.
- d. Two (2) bids were received, and both were determined to be legally non-responsive.

### ACTION

Authorization by the Board to reject all proposals received in response to RFP No. 6065 and allow District Management to enter into a negotiated contract.

#### RECOMMENDED:

#### APPROVED FOR BOARD CONSIDERATION:

DocuSigned by:  
  
 184167224FA24AE...  
 Troy R. Via  
 Vice President – Utility Operations  
 and Chief Operating Officer

DocuSigned by:  
  
 AC209FDGE56247E...  
 L. Javier Fernandez  
 President and Chief Executive Officer

TRV:sae

- Attachments: Letter of Recommendation  
 Tabulation of Bids  
 Legal Opinion  
 Resolution



**MEMORANDUM**

**DATE:** August 31, 2023

UO-2023-016

**FROM:** S.A. Eidem

**TO:** T.R. Via

**SUBJECT:** North Omaha Station Unit 5 Air Preheater Basket and Seal Installation Labor

1.00 GENERAL

Request for Proposal (RFP) No. 6065 is for the labor contract for replacement of baskets and seals utilized in the North Omaha Station Unit 5 (NO5) air preheaters. The contract is for installation labor only and does not include the supply of materials. A materials contract was previously awarded in May 2023. Installation is planned to occur during the scheduled unit outage in the spring of 2024.

There are two layers of basketed heat transfer elements within the NO5 air preheaters (hot end and cold end). The heat transfer elements are subject to erosion and corrosion during operation. Replacement of both layers are included in this contract, along with replacement of the air preheater seals.

Two proposals were submitted and opened in response to the RFP on August 17, 2023. The Engineer's Estimate at the time of bid opening was \$1,300,000. The proposal prices are as follows:

COMPANY	BASE BID PRICE
TEiC	\$1,687,271.00
Total Western, Inc.	\$908,374.25

2.00 COMPLIANCE WITH CONTRACT TERMS AND CONDITIONS

OPPDP's legal counsel noted the proposal received from TEiC is legally non-responsive due to adding Special Conditions on top of a previously agreed upon Master Services Agreement between OPPD and TEiC. The Special Conditions materially alter the risk allocation of the District and TEiC.

OPPD's legal counsel noted the proposal received from Total Western is legally non-responsive due to Total Western including revised payment terms that are in conflict with the desired milestones in OPPD's bid documents. In addition, Total Western included a Recruitment Fee to be paid by OPPD if OPPD hires any Total Western employees during the term of the contract, or during twelve months after completion of the contract.

3.00 COMPLIANCE WITH TECHNICAL REQUIREMENTS


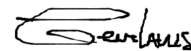
The proposals received were determined to comply with the technical requirements.

4.00 RECOMMENDATION

Based on the non-compliance with the legal requirements of this RFP, it is recommended that all proposals received for RFP No. 6065 be rejected by the Board of Directors and that District Management be authorized to enter into a negotiated contract.



S.A. Eidem, P.E.  
Director, Engineering Services  
Utility Operations

<b>TABULATION OF BIDS</b> Opened at 2:00 p.m., C.D.T., Thursday, August 17, 2023, in Omaha, Nebraska		<b>REQUEST FOR PROPOSAL NO. 6065</b>  <b>NO5 Air Preheater Baskets and Seals Replacement</b>		DocuSigned by:  Steve Palmer C171422F76EE422... Director Supply Chain Management DocuSigned by:  Compiled by and Certified Correct 5E05B86908EE4F61	
Anticipated Award Date September 21, 2023					
<b>ENGINEER'S ESTIMATE</b>  <u>\$1,300,000.00</u>					
<b>BID ITEM</b>		<b>BIDDER'S NAME &amp; ADDRESS</b>			
		Total-Western, Inc. 8049 Somerset Blvd Paramount, CA 90723		TEiC Construction Services, Inc 170 Tucapau Rd Duncan, SC 29334	
		<b>SUPPLIER'S BID</b>		<b>SUPPLIER'S BID</b>	
<b>1. <u>Proposal Price(S)</u></b>  Lump Sum Firm Price		<u>\$908,374.25</u>		<u>\$1,687,271.00</u>	
<b>2. <u>Completion Guarantee(s)</u></b>  Complete Installation of NO5 Air Preheater Baskets and Seals: April 3, 2024, 1700 Hour		<u>Guaranteed Completion Date</u>  <u>April 3, 2024, 1700 Hour</u>		<u>Guaranteed Completion Date</u>  <u>April 3, 2024, 1700 Hour</u>	



Troy F. Meyerson  
ATTORNEY  
402.978.5347  
tmeyerson@fraserstryker.com  
fraserstryker.com

August 29, 2023

Omaha Public Power District  
444 South 16<sup>th</sup> Street  
Omaha, NE 68102

RE: Request for Proposal No. 6065 – NO5 Air Preheater Basket Replacement 2024 ("RFP No. 6065")

Ladies and Gentlemen:

We have reviewed the two (2) proposals received in response to the District's RFP No. 6065 and provide the following legal opinion.

The proposal of Total-Western, Inc. ("TW") includes revised payment terms requiring weekly invoiced progress payments in conflict with the desired milestones in OPPD's bid documents. In addition, TW's proposal includes a Recruitment Fee to be paid by OPPD if it hires anyone during the term of the Contract or during the twelve (12) months after completion of the work under the contract. This Recruitment Fee would be required to be paid enterprise wide during the applicable period. It is our opinion that these substantial deviations to the District's requested RFP terms render the TW proposal legally non-responsive, and the TW proposal may not be considered by the Board of Directors for the award of this contract.

The proposal of TEiC Construction Services, Inc. ("TEiC") incorporates a previously agreed upon Master Services Agreement between TEiC and the District and then adds additional Special Conditions on top of such previously negotiated terms. These Special Terms materially alter the risk allocation of the District and TEiC and makes its proposal legally non-responsive to the bidding documents and may not be considered by the Board of Directors for the award of this contract.

Section 70-637(5) of the Nebraska Revised Statutes authorizes the Board of Directors to reject all bids if they are non-responsive to the contract documents or exceed the fair market value of the RFP's subject matter. Accordingly, the Board of Directors may reject both proposals for RFP No. 6065 and authorize Management to negotiate an acceptable contract. We recommend that the final contract documents be reviewed and approved by the District's General Counsel.

Sincerely,

Troy F. Meyerson  
FOR THE FIRM

TFM:  
3009463.1

Fraser Stryker PC LLO

500 Energy Plaza, 409 South 17th Street, Omaha, NE 68102 — TEL: 402.341.6000 — FAX: 402.341.8290



Moody/Via

**RESOLUTION NO. 6591**

**WHEREAS**, sealed bids were requested and advertised, as required by law, for the following:

**REQUEST FOR PROPOSAL (RFP) NO. 6065  
NO5 AIR PREHEATER BASKETS AND SEALS REPLACEMENT**

**WHEREAS**, bids were received and opened at the time and place mentioned in the published notices and the Director – Supply Chain Management supervised the tabulations, which have been submitted to this Board; and

**WHEREAS**, the Board of Directors has carefully considered the bids submitted, as well as the recommendations of the District's Management and General Counsel; and

**WHEREAS**, Section 70-637 of the Nebraska Revised Statutes authorizes the District's Board of Directors to reject proposals if they are not responsive to the Request for Proposals, and to authorize Management to pursue a negotiated contract without compliance with the sealed bidding provisions of Section 70-637 through 70-639; and

**WHEREAS**, the Board of Directors concurs with Management's recommendation that the two (2) proposals received for RFP No. 6065 are legally non-responsive.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of the Omaha Public Power District that all proposals received in response to Request for Proposal No. 6065 are rejected and Management is authorized to negotiate and enter into a contract or contracts for the North Omaha Station Unit 5 Air Preheater Baskets and Seals installation labor only, subject to review and approval of the final contract(s) by the District's General Counsel.