



Board Action

BOARD OF DIRECTORS

September 19, 2023

ITEM

Nebraska City Station Unit 1 (NC1) Air Preheater Basket and Seal Replacement Labor

PURPOSE

Board of Directors authorization to reject the proposals received in response to RFP No. 6071, and for the District to enter into a negotiated contract for labor to replace the air preheater baskets and seals for the Nebraska City Station Unit 1.

FACTS

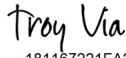
- a. The existing baskets and seals are at the end of their expected life. Recent inspection reports have confirmed replacement of the baskets and seals is needed to maintain unit reliability.
- b. The air preheater basket and seal work will be completed during the planned spring 2024 outage.
- c. Purchase 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. 6071 and allow Management to enter into a negotiated contract.

RECOMMENDED:

APPROVED FOR BOARD CONSIDERATION:

DocuSigned by:

 184167221FA24AE...

 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-2023-017

FROM: S.A. Eidem

TO: T.R. Via

SUBJECT: Nebraska City Station Unit 1 Air Preheater Basket and Seal Installation Labor

1.00 GENERAL

Request for Proposal (RFP) No. 6071 is for the labor contract for replacement of baskets and seals utilized in the Nebraska City Station Unit 1 (NC1) 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 three layers of basketed heat transfer elements within the NC1 air preheaters (hot end, hot intermediate, and cold end). The heat transfer elements are subject to erosion and corrosion during operation. Replacement labor for all three layers is 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 \$4,200,000. The proposal prices are as follows:

COMPANY	BASE BID PRICE
TEiC	\$2,997,680.00
Total Western, Inc.	\$1,871,467.15

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 and were economically evaluated.

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. 6071 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

<p align="center">TABULATION OF BIDS Opened at 2:00 p.m., C.D.T., Thursday, August 17, 2023, in Omaha, Nebraska</p>		<p align="center">REQUEST FOR PROPOSAL NO. 6071 NC1 Air Preheater Baskets and Seals Replacement</p>		<p align="center">DocuSigned by:  C171422F76EE422... Director Supply Chain Management</p> <p align="center">  5EC5B86907EE4F6 Compiled by and Certified Correct</p>	
<p align="center">Anticipated Award Date September 21, 2023</p>					
<p align="center">ENGINEER'S ESTIMATE</p> <p align="center"><u>\$4,200,000.00</u></p>					
<p align="center">BID ITEM</p>		BIDDER'S NAME & ADDRESS			
		<p align="center">Total-Western, Inc 8049 Somerset Blvd Paramount, CA 90723</p>		<p align="center">TEiC Construction Services, Inc 170 Tucapau Rd Duncan, SC 29334</p>	
		SUPPLIER'S BID	SUPPLIER'S BID	SUPPLIER'S BID	
1.	<p><u>Proposal Price(S)</u></p> <p>Lump Sum Firm Price</p> <p>Lump Sum Firm Price (optional line item)</p>	<p><u>\$1,871,467.15</u></p> <p><u>\$414,720.00</u></p>	<p><u>\$2,997,680.00</u></p> <p><u>\$198,000.00</u></p>		
2.	<p><u>Completion Guarantee(s)</u></p> <p>Complete Installation of NC1 Air Preheater Baskets and Seals: May 23, 2024, 1700 Hour</p>	<p><u>Guaranteed Completion Date</u></p> <p><u>May 23, 2024, 1700 Hour</u></p>	<p><u>Guaranteed Completion Date</u></p> <p><u>May 23, 2024, 1700 Hour</u></p>	<p><u>Guaranteed Completion Date</u></p>	



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

August 29, 2023

Omaha Public Power District
444 South 16th Street
Omaha, NE 68102

RE: Request for Proposal No. 6071 – NC1 Air Preheater Basket Replacement 2024 ("RFP No. 6071")

Ladies and Gentlemen:

We have reviewed the two (2) proposals received in response to the District's RFP No. 6071 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. 6071 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. 6590

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

**REQUEST FOR PROPOSAL (RFP) NO. 6071
NC1 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. 6071 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. 6071 are rejected and Management is authorized to negotiate and enter into a contract or contracts for the Nebraska City Station Unit 1 Air Preheater Baskets and Seals installation labor only, subject to review and approval of the final contract(s) by the District’s General Counsel.