



City of Grand Island

Tuesday, July 14, 2009

Council Session

Item G12

#2009-165 - Approving Contract Termination - Platte Generating Station Mercury Control System

Staff Contact: Gary R. Mader; Wes Nespor

Council Agenda Memo

From: Gary R. Mader, Utilities Director
Wesley Nespor, Asst. City Attorney/Purchasing

Meeting: July 14, 2009

Subject: Contract Termination - PGS Mercury Control System

Item #'s: G-12

Presenter(s): Gary R. Mader, Utilities Director

Background

The federally issued Clean Air Mercury Rule (CAMR) capped mercury emissions of all of the nation's power plants by mandating states to implement plans to meet a specified national budget limit of emissions. The City was required by this rule to reduce the annual mercury emissions from the Platte Generating Station in 2010 and make further reductions in 2018, by either installing mercury emission control equipment or purchasing mercury emission allowances. In September 2006, the City authorized Black & Veatch to perform engineering and consulting services regarding this mercury rule. Black & Veatch recommended the addition of mercury control equipment to Platte Generating Station. The Council awarded the bid for the purchase of the required mercury control equipment at the January 22, 2008 Council meeting to SPE-Amerex from Batavia, IL, for \$6,262,839.00.

Two months later, in March, 2008, the Federal District of Columbia Circuit Court of Appeals vacated the CAMR. As a result, EPA's previously promulgated regulatory action was voided, and EPA was tasked with developing new regulation. Because of the court's action, the contract for purchase of the previously required mercury control equipment was placed on hold.

Discussion

At the time of the court's ruling, it was anticipated that EPA would rapidly revisit their rule making process and develop a revised CAMR in accordance with the court's directions. The Mercury Control System contract was placed on hold. Expedient revision of the CAMR has not occurred. As yet, no replacement regulation has been developed, and there are no indications that the EPA is focused on working on a revised regulation.

It is expected that a revised regulation will not be promulgated for several years. Because of changes in the power plant equipment markets and the economy in general over the last year, it would be very difficult to establish an equitable, adjusted contract price to resume the project at this time. And as time passes, that contract price setting becomes increasingly difficult. Rebidding the project would be the preferred method of equipment acquisition after the lapse of significant time from the original award. Therefore, Utilities Department staff, representatives from Black & Veatch and representatives from SPE Amerex have met to discuss methods to cancel the project, and mutually agreed that cancellation is an appropriate course of action.

The original contract includes specific provisions for mutually agreed contract cancellation. Total expenditures completed to the point of project suspension on this contract were \$437,559.36. The Utilities Department and SPE-Amerex recommend terminating the Platte Generation Station Mercury Control System contract pursuant to Article 00512.18 of the original contract. The full contract is a 487 page document and is available in the office of the City Clerk or the Utilities Department.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council authorize termination the contract for the PGS Mercury Control System with SPE-Amerex of Batavia, IL, with no further liability with respect to claims for reimbursement from SPE-Amerex.

Sample Motion

Move to authorize termination of the contract with SPE-Amerex for the PGS Mercury Control System.



BLACK & VEATCH

City of Grand Island (CGI)
Platte Station Unit 1
Specification 62.0201 Mercury Control System

B&V Project 145805.62.0201
June 22, 2009

Attention:

Subject: Contract Termination

The City of Grand Island is terminating the Platte Station Unit 1 Mercury Control Project. Pursuant to Article 00512.18 Termination Without Cause, we are advising you that the contract for Specification 62.0201 Mercury Control System is terminated.

The final contract value for work performed, excluding the cost of the performance and payment bonds, shall be \$437,559.36. SPE Amerex is released from all further liability for meeting the contract requirements. The City of Grand Island shall have no further liability with respect to claims for reimbursement from SPE Amerex.

SPE Amerex should promptly cancel the performance and payment bonds. The City of Grand Island previously reimbursed SPE Amerex for the full amount of the bonds in the amount of \$204,006.00. The refund amount received by SPE Amerex for cancellation of the bonds shall be belong to The City of Grand Island.

Please provide written acknowledgment of receipt of this letter by signing in the space provided below and return immediately. If you have any questions, please call me at (913) 458-4318.

Very truly yours,

Black & Veatch

Curt Brown
Project Manager

PURCHASER ACKNOWLEDGEMENT:

SUPPLIER ACKNOWLEDGEMENT:

Name

Name

Title

Title

Date

Date

RESOLUTION 2009-165

WHEREAS, in 2008, the federally issued Clean Air Mercury Rule (CAMR) capped mercury emissions of all of the nation's power plants by mandating states to implement plans to meet a specified national budget limit of emissions; and

WHEREAS, the City was required by this rule to reduce the annual mercury emissions from the Platte Generating Station in 2010 and make further reductions in 2018; and

WHEREAS; the City authorized Black & Veatch to perform engineering and consulting services regarding this mercury rule, and it was their recommendation to add mercury control equipment to Platte Generating Station; and

WHEREAS, the City of Grand Island, Utilities Department awarded the bid for the purchase of the required mercury control equipment at the January 22, 2008 Council meeting to SPE-Amerex of Batavia, Illinois for \$6,262,839.00; and

WHEREAS, two months later, in March, 2008, the Federal District of Columbia Circuit Court of Appeals vacated the CAMR, voiding the previously promulgated regulatory action; and the contract for purchase of the previously required mercury control equipment was placed on hold; and

WHEREAS, no replacement regulation has been developed, and there are no indications that the EPA is focused on working on a revised regulation and;

WHEREAS, Utilities Department staff, representatives from Black & Veatch and representatives from SPE Amerex met to discuss methods to cancel the project, and mutually agreed that cancellation is an appropriate course of action pursuant to Article 00512.18 of the original contract.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA that the Mayor is hereby authorized to, on behalf of the City, to terminate the contract with SPE-Amerex of Batavia, Illinois, for the PGS Mercury Control System with no further liability with respect to claims for reimbursement from SPE-Amerex.

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Adopted by the City Council of the City of Grand Island, Nebraska, July 14, 2009.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form ☐ _____
July 9, 2009 ☐ City Attorney