

Late Backup

Item #2
Contract
Management



TO: Mayor and Council
FROM: Rolando Fernandez, Assistant Director, Contract Management Department
DATE: June 23, 2015
SUBJECT: Chilled Water Piping Construction Contract Award



Item #2 on Tuesday's Council Meeting agenda is a construction contract award for Austin Energy's chilled water piping. This item was postponed from the June 23rd, 2015 Council Meeting. This contract would provide construction services necessary to connect new customers to its district cooling (chilled water) systems, including installation of piping controls, heat exchangers and other appurtenances within customer's mechanical rooms. This memo serves as an overview of the solicitation process used for this recommended contract award, and to provide information on the protest process and staff's finding. Solicitation milestones:

- Solicitation CLMC511A
- Solicitation Issued: March 9, 2015
- Solicitation Due Date: April 16, 2015
- 1 addendum, 1 clarification
- Number of bidders: 4
- Apparent Low Bidder: Bilfinger Tepsco, Inc.
- Low Bid Amount: \$4,857,240.42
- Bid Certified on: April 22, 2015
- Contract Authorization Amount: \$6,000,000 with three 12 month options for a total contract amount of \$12,000,000

The City issued this solicitation in March of 2015 and received four (4) responsive bids to this solicitation. The bid certification process was conducted on April 22, 2015, at which point, the bidders were notified that the City would move forward with requesting authorization from City Council to award the contract to Bilfinger Tepsco, Inc.

The Protest:

On April 24th, the Contract Management Department received an "Intent to Protest" letter from the fourth low bidder, Mechanical and Process Systems. Mechanical and Process Systems submitted their formal protest letter on May 6th. Mechanical and Process Systems stated that the heat exchangers they included as part of their bid were based upon heat exchangers that had been specified in another solicitation (DNJ0110) that the city has issued and recently awarded for two specific downtown

developments, and therefore the City had set a precedent in their use. The solicitation (CLMC511A) for Chilled Water Construction did not include a specification for this specific heat exchanger, only that they needed to be certified to AHRI Standard 400-2001. Their choice of including this specific heat exchanger was one of the reasons they were the fourth highest bidder.

The Protest Process

When a contractor submits a formal protest on a solicitation issued by the Contract Management Department, the Department Director reviews the letter and any supporting documentation prior to making a decision to deny the protest or accept the protest and hold a protest hearing with an independent third party hearings officer. In the course of their review, the Director may request information from the City department requesting the solicitation and internal department staff to review the procurement process.

In this instance, the Director reviewed the information submitted by Mechanical and Process System, met with technical staff at Austin Energy, and the procurement Division Manager of the Contract Management Department. Specifically, the Director reviewed the two main points addressed in the formal protest letter:

- 1) Solicitation DNJ0110 and the implication that the City had set a precedent in the use of a certain brand of heat exchangers, and that by setting this precedent, only one manufacturer of the heat exchangers could have been used as part of a bid; and,
- 2) The City issued an addendum 2 that was referenced in Section SS235700.

Findings:

1. In our review of this item, it was determined that solicitation CLMC511A Chilled Water Piping Construction Distribution Sites Rebid did not identify or require a specific manufacturer of the heat exchangers to be used as claimed by Mechanical and Process Systems. The Solicitation issued by the Purchasing Office- (DNJ0110) for two specific downtown developments did not set a precedent as to the type of heat exchangers that were required by Austin Energy.
2. In our review it was noted that the City issued only one addendum. Addendum 1, which was issued by the City to change or amend our solicitation documents, did not discuss, identify or disqualify specific manufacturers.
3. The City requested in its solicitation documents that any heat exchangers identified by the bidders, be certified to *ARI 400-2001 Liquid to Liquid Heat Exchangers with Addenda 1 and 2 (AHRI) standard by Air-Conditioning, Heating, and Refrigeration Institute (formerly ARI), 01/01/2001.*
 - a. It is critical to note that the addenda referenced in the italicized sentence relates to standard industry specifications are not related to, nor governed by, the City. This appears to be the confusion that led to the protest for Mechanical and Process System.

After a thorough review of the facts, the Director denied the protest. The Director found no irregularities to the procurement process and found no irregularities related to the issues addressed by the Mechanical and Process System in their formal protest letter. Mechanical and Process Systems was sent a formal protest denial letter on May 12th. This ended the protest process for Mechanical and Process Systems.

If you have any questions relating to this procurement process, please contact me at 974-3064. Thank you.

CC:

Marc A. Ott, City Manager
Elaine Hart, Chief Financial Officer
Greg Canally, Deputy Chief Financial Officer
Rosie Truelove, Director, CMD
Cheryl Mele, Chief Operating Officer
Edward Campos, Division Manager, CMD

Encl:

Mechanical and Process Systems Protest Letter
Contract Management Department Protest Denial Letter

MECHANICAL & PROCESS SYSTEMS

Mechanical Contractors

TACLA023236C

M-38061

May 6, 2015

City of Austin
Ms. Monica Lopez
Contract Compliance Representative
105 West Riverside Drive
Austin, Texas 78704

Re: C.I.P. 7190.006 IFB CLMC511A
Chilled water piping on Customer Distribution Sites Re-Bid
PROTEST OF FORMAL BID TABULATION & BID

Dear Ms. Lopez:

Mechanical & Process Systems LLC (MPS) is one of the contractors which provided the City of Austin (COA) with a Bid Tender for the above project.

The focus of MPS' protest centers around the heat exchangers which Austin Energy (herein after also referred to as the COA) has utilized on all of the buildings to which the COA provides chilled water service; and comprises the following:

1. Specification SS 235700, 2.1A states, "Manufacturers: Certified to AHRI Standard 400-2001 with Addenda 1 and 2".
 2. The precedence set by the COA in the selection and purchase of Heat Exchangers manufactured by Tranter, thereby essentially disqualifying Alpha-Laval in the solicitation IFBDNJ0110.
 3. The fact that Alpha-Laval (manufacturer that cannot meet the specification, as evidenced by solicitation IFBDNJ0110) was used by the contractors TEPSCO, PORTER, and PEABODY in this IDIQ solicitation.
 4. The issue of a Bid Tabulation and bidder ranking without apparent due diligence, by the COA, in the vetting of pricing offered by bidders, and especially as to the scope of work bid by contractors as it pertained to the specification requirement.
 5. The pre-purchase of numerous heat exchangers that shall be installed and piped/constructed/executed under this contract.
-
1. **Specification SS 235700, 2.1A states, "Manufacturers: Certified to AHRI Standard 400-2001 with Addenda 1 and 2".**

While an Addendum 1 was issued for this project, that addendum DID NOT include any reference to the heat exchangers specified per SS 235700.

Addenda 2 referenced in the specification SS 235700 is non-existent.

Since Addenda 1 did not discuss the manufacturers certified to AHRI Std.400-2001, and since Addenda 2 for this project is non-existent, MPS contends that the Tranter is the only manufacturer that can meet the stringent specification/requirements of Austin Energy.

2. The precedence set by the COA in the selection and purchase of Heat Exchangers manufactured by Tranter, thereby disqualifying Alpha-Laval in the solicitation IFBDNJ0110.

To date - and to MPS' best knowledge, the COA has not purchased an Alpha-Laval heat exchanger to be installed on projects on which Austin Energy has supplied chilled water to a client.

No doubt, if Alpha-Laval could meet the specification by Austin Energy, that company would have been awarded the IFBDNJ0110 project, and would be permitted as a manufacturer on the COA specification for this, the C.I.P. 7190.006 IFB CLMC511A project.

MPS is attaching **Exhibit "A"** which indicates that the Allstar Bix Group, LLC, which incorporated the Alpha-Laval heat exchanger in its bid for COA bid solicitation IFBNJ0110, was the apparent low bidder for that project.

As stated above, Allstar Bix Group, LLC was disqualified, and the award was made to Texas Air Systems - the Representative for Tranter heat exchangers.

3. The fact that Alpha-Laval (manufacturer that cannot meet the specification, as evidenced by solicitation IFBDNJ0110) was used by the contractors TEPSCO, PORTER, and PEABODY in this IDIQ solicitation.

To hi-light the manner in which the Official Bid Tab is skewed (and is representative of misinformation published by the COA) when an unapproved heat exchanger is used as a context of reference, MPS has attached **Exhibits B & C**.

Exhibit "B"

This exhibit indicates that when the heat exchangers are removed from the IDIQ Bill of Material, that MPS is the low bidder on the project. This is to say that:

- a) In the event that Owner furnished heat-exchangers are to be installed on this IDIQ contract, that MPS would be the low bidder.
- b) If the Owner permits a change-order to a bidder other than MPS, to furnish Tranter heat exchangers after that bidder is awarded the IDIQ contract, the issue of that change-order would be an illegal action by the COA.

Exhibit "C-1"

This exhibit indicates pricing of heat exchangers by manufacturer Alpha-Laval (Heat exchangers used by TEPSCO, PORTER, and PEABODY)

Exhibit "C-2"

This exhibit indicates pricing of heat exchangers by manufacturer Tranter (Heat exchangers used by MPS).

4. The issue of a Bid Tabulation and bidder ranking without apparent due diligence, by the COA, in the vetting of pricing offered by bidders, and especially as to the scope of work bid by contractors as it pertained to the specification requirement

The COA has published an official Bid Tabulation, without it appears, proper vetting of the bids. The publishing of this document certainly at first glance - to individuals not familiar with the specification, the critical requirements of the project, the pricing difference of the quality of heat exchangers manufactured by Tranter v/s those manufactured by Alpha-Laval, and the manner in which the IDIQ pricing has been structured - places MPS as the highest bidder.

However, MPS maintains that the publishing of the Bid Tab is tantamount to publishing misinformation upon which critical decisions are to be made, which could very well negatively impact MPS' livelihood. It is therefore imperative that the COA reconsider the main components whose pricing has been incorporated on this project (at the very least, the heat exchangers) before selecting the successful bidder on this project.

5. The pre-purchase of numerous heat exchangers that shall be installed and piped/constructed/executed under this contract.

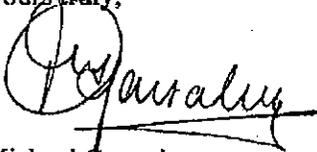
In the event the COA utilizes another contractor besides MPS to provide (per the IDIQ) piping services to hook-up COA furnished heat-exchangers (this includes those heat exchanger pre-purchased by the COA, or by others), then the COA is not using the low bidder to provide the same service.

Please be notified that MPS shall exercise every right within the COA mandates, either by the Open Records Act or other legal means necessary, to ensure that:

- a) Any pre-purchased heat exchangers are not installed by another contractor (since MPS is the low bidder when the heat exchangers are removed from the contract).
- b) In the event another contractor is required to purchase heat exchangers other than Alpha-Laval, a change-order is not issued to that contractor for the amendment of the specification for heat exchangers (to use Tranter heat exchangers), in the event the COA does not permit the use of Alpha-Laval heat exchanger on this contract (since MPS is the only bidder which used Tranter heat exchangers).

MPS looks forward to working with the City of Austin to ensure this project is awarded to the best contractor for the job, and that no major installation problems or slowdowns occur due to a costly specification oversight.

Yours truly,



Michael Gonzalez
President

MG/jls

Attachments (4)

BID TABULATION CITY OF AUSTIN Heat Exchangers									
BID NO.	IFB0N0110			Allstar Biz Group, LLC		Texas Air System		FMW Distributors, Inc.	
PR NO.	MAX48899			6006 Tasejillo Trail, Austin, Texas 78738		1340 Airport Commerce Drive, Suite 450, Austin, Texas 78741		2914 Whitman Drive, Montgomery, Texas 77356	
DATE:	1/28/2016								
BUYER:	Darrellyn Johnson								
ITEM NO.	ITEM DESCRIPTION	QTY	UNIT	UNIT PRICE	EXTD PRICE	UNIT PRICE	EXTD PRICE	UNIT PRICE	EXTD PRICE
1	Heat Exchangers Tranter, Model GXD-145-H-8-WR-471 per section 0500 requirements (includes welded frames)	2	EA	\$53,387.00	\$106,774.00	\$182,964.00	\$365,928.00	\$189,462.00	\$378,924.00
EA	Heat Exchangers Tranter, Model AXD-091-H-8-WR-431 per section 0500 requirements, (includes welded frames)	2	EA	\$99,470.00	\$198,940.00	\$87,431.50	\$174,863.00	\$94,788.00	\$189,572.00
					\$305,714.00		\$540,031.00		\$568,496.00

Prepared By: Mike Zembrano
Approved By: Darrellyn Johnson

EXHIBIT "A"

C.I.P. 7190.006 IFB CLMC511A
 Chilled water piping on Customer Distribution Sites Re-Bid
BID TABULATION - SANS HEAT EXCHANGERS

EXHIBIT "B"

		MPS		Tepsco		Porter		Peabody
Bid Totals	\$	6,940,945.00	\$	4,857,240.00	\$	5,132,741.00	\$	6,866,092.00
HX-1	\$	(534,608.00)	\$	(261,279.00)	\$	(203,624.00)	\$	(438,840.00)
HX-2	\$	(808,736.00)	\$	(348,502.00)	\$	(409,424.00)	\$	(576,840.00)
HX-3	\$	(1,140,104.00)	\$	(518,376.00)	\$	(549,696.00)	\$	(814,200.00)
HX-4	\$	(1,542,616.00)	\$	(623,623.00)	\$	(742,280.00)	\$	(1,228,200.00)
TOTALS - Sans HTXs	\$	2,914,881.00	\$	3,105,460.00	\$	3,227,717.00	\$	3,808,012.00

EXHIBIT "C - 1"

TO: Interested Bidders

DATE: April 24, 2015

PROJECT : Austin Energy Heat Exchangers
HTS JOB # : N/A
REV # : 0

DELIVERY TERMS : FOB Factory FFA
TERMS OF PAYMENT : Net 30 Days (WAC)

ENGINEER : Austin Energy

Plans dated : 9/9/14
thru Addendum #

XXXXXXXXXXXXXXXXXXXXX *Is pleased to offer you the equipment as listed and priced below:*

ITEM	DESCRIPTION	QTY	TAGGING	ITEM PRICE
A	250 Ton Heat Exchanger	1	HX-1	\$15,340.00
B	500 Ton Heat Exchanger	1	HX-2	\$33,275.00
C	750 Ton Heat Exchanger	1	HX-3	\$44,856.00
D	1,000 Ton Heat Exchanger	1	HX-4	\$61,602.00

MECHANICAL EQUIPMENT SCOPE OF WORK

ITEM A: 250 Ton Heat Exchanger

- (1) Alfa Laval AQ4L-FG Plate & Frame Water to Water Heat Exchanger
 - Hot Side: 400 GPM, 59 F Inlet, 44 F Outlet; Cold Side: 400 GPM, 40 F Inlet, 55 F Outlet
 - AHRI 400 Certified Performance; ASME Pressure Vessel Code Certified
 - 0.5 MM Thick, 316 Alloy Stainless Steel Plate Construction
 - Clip On NBR Gaskets
 - 20% Surface Margin per Specifications
 - 20% Additional Plate Capacity per Specifications
 - Insulation Shroud per Specifications
 - End-Plate Ports w/ Studs for Flanged Piping Connections

ITEM B: 500 Ton Heat Exchanger

- (1) Alfa Laval AQ8-FG Plate & Frame Water to Water Heat Exchanger
 - Hot Side: 800 GPM, 59 F Inlet, 44 F Outlet; Cold Side: 800 GPM, 40 F Inlet, 55 F Outlet
 - Construction and Features Identical to ITEM A

ITEM C: 750 Ton Heat Exchanger

- (1) Alfa Laval AQ8-FG Plate & Frame Water to Water Heat Exchanger
 - Hot Side: 1200 GPM, 59 F Inlet, 44 F Outlet; Cold Side: 1200 GPM, 40 F Inlet, 55 F Outlet
 - Construction and Features Identical to ITEM A

ITEM D: 1,000 Ton Heat Exchanger

- (1) Alfa Laval AQ8-FG Plate & Frame Water to Water Heat Exchanger
 - Hot Side: 1600 GPM, 59 F Inlet, 44 F Outlet; Cold Side: 1600 GPM, 40 F Inlet, 55 F Outlet
 - Construction and Features Identical to ITEM A

NOT INCLUDED: Installation, Rigging, Piping, Testing, Valves, Controls/Metering

EXHIBIT "C - 2"

QUOTE

1340 Airport Commerce Drive
 Suite 460
 Austin, TX 78741
 Office: (512) 462-4777
 Fax: (512) 462-4945

April 13, 2015

To: **BIDDERS**



PROJECT: **IDIQ**

PRICING SUMMARY

DESCRIPTION	QTY	TAGGING	UNIT PRICE INCLUDING FREIGHT
Tranter AXP-091-H-5-UR-155	1	HX-1 250 TON - Run # 1064947	\$ 44,267 each
Tranter AXP-091-M-5-UR-319	1	HX-2 500 TON - Run # 1064952	\$ 70,507 each
Tranter AXP-118-M-5-UR-419	1	HX-3 750 TON - Run # 1064955	\$ 102,267 each
Tranter AXP-140-H-5-UR-491	1	HX-4 1000 TON - Run # 1064962	\$ 140,867 each

FOB Factory, Tax is Not Included.

PERFORMANCE AND DRAWINGS ARE INCLUDED

**PRICING IS FIRM FOR 24 MONTHS FROM DATE OF BID
 EACH PRICING REFLECTS THE QUANTITY DISCOUNT FOR THE NUMBER OF UNITS SPECIFIED ON THE BID FORM
 (8 PER SIZE)**

Heat Exchanger leadtime – 8-10 weeks

Shrouds – 12-14 weeks

- Insulated Shroud
- Insulation is 1mm Stucco Aluminum
- Poly Urethane Internal
- Stainless steel locking devices
- 150 psig design pressure
- AHRI Certified
- ASME Code Stamp
- Welded Nozzle Liners
- Parallel gaskets (NOT TYPICAL AUSTIN ENERGY DESIGN BUT PER SPECS)
- Standard 3 year parts and labor warranty
- Unit frame is capable of holding 20% additional plates

NOT INCLUDED

- Rigging and Installation.
- Testing, Balancing and Calibration

Thank you for your consideration on this project.

-This quotation is subject to change without notice and void after 16 days.
 -Add to the prices quoted any sales tax payable on the transaction under any effective Federal or State statute.
 -F.O.B. Factory, FFA, Per Mutually Agreed Schedule. No material to be returned without written authorization.
 -PAYMENT TERMS: Net 30 Days, Upon Receipt of Satisfactory Credit Information
 -TAS equipment will be supplied based upon approved submittal data
 -Retainage is not allowed. TAS is a material supplier, and will be supplying the entire purchase order value upon delivery of equipment
 -Payment to TAS cannot be conditioned on receipt of payment from the owner to a contractor, construction manager, or customer
 -TAS standard warranty, parts only, is for 12 months from startup date, not to exceed 18 months from ship date
 -TAS is responsible and accountable only for the acts and omissions of TAS
 -Insurance certificates and bonds can/will be provided upon request

TEXAS AIR SYSTEMS
 INCORPORATED

BY: **KLINT KINGSBURY /AR**



City of Austin

Founded by Congress, Republic of Texas, 1839
Contract Management Department, PO Box 1088, Austin, Texas 78767 Telephone 512/974-7181 Fax 512/974-9427

May 12, 2015

Email: MIKE@MPSLTD.US

Michael Gonzalvez
Mechanical & Process Systems
1804 Central Commerce Court
Round Rock, Texas 78664

RE: CLMC511A - Chilled Water Piping Construction on Customer Dist. Sites REBID

Dear Mr. Gonzalvez:

I have received the Protest letter and back-up documentation dated May 6, 2015, submitted by Mechanical & Process Systems (MPS) related to the above referenced solicitation. Your protest is related to a solicitation for heat exchangers that Austin Energy issued in January 2015. After careful review and consideration, I found no irregularities in the solicitation or bid process to warrant a protest hearing.

You state in your protest letter that the heat exchangers specified in solicitation DNJ0110 are ones that the City has used in all of the buildings that the City has provided chilled water service and therefore the City has set a precedent in their use. Solicitation DNJ0110 was a one-time purchase and delivery for two specifically identified projects being developed in downtown Austin: the Fairmont Hotel and an office building at 500 W. 2nd Street. The two heat exchangers were purchased for those sites as requested by the individual developers of those projects. The City has no intention of installing those identified heat exchangers through the contract awarded by CLMC511A. I found no connection or precedence between these two separate and distinct solicitations.

You further state in your letter that Solicitation CLMC511A did not identify or require a specific manufacturer of the heat exchangers. This is correct. Specifically, Section SS235700, Part 2 – Products, 2.1A page 1 of 4, specified that the heat exchanger manufacturers had to be certified to AHRI Standard 400-2001 with Addenda 1 and 2 in order to meet the specified operational requirements. It was the intent of the City to allow each bidder to determine the best manufacturer to meet the needs of the specifications. MPS was free to select its own manufacturer and supplier of these heat exchangers. I found no abnormality in my review of the specification or procurement process.



City of Austin

Founded by Congress, Republic of Texas, 1839
Contract Management Department, PO Box 1088, Austin, Texas 78767 Telephone 512/974-7181 Fax 512/974-9427

In conclusion, I found no irregularities in either the solicitation or bid evaluation process. No protest hearing is warranted. This concludes the protest process. If you have any questions, please contact me at (512) 974-3064.

Sincerely,

Rosie Truelove, Director
Contract Management Department

cc:

Rolando Fernandez, Assistant Director, CMD
Edward Campos, Division Manager, CMD
James Matlock, Project Manager, AE
John Routh, Project Manager, AE
Monica Lopez, Buyer Senior, CMD