



MICHAEL N. FEUER
CITY ATTORNEY

REPORT NO. R 1 3 - 0 3 5 1
DEC 0 9 2013

REPORT RE:

**DRAFT ORDINANCE FOR THE HAIWEE POWER PLANT PENSTOCK
REPLACEMENT PROJECT REQUESTING THE LOS ANGELES CITY COUNCIL
TO ESTABLISH DESIGN-BUILD CRITERIA PURSUANT TO LOS ANGELES
CITY CHARTER SECTION 371**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Honorable Members:

This Office has prepared and now transmits for your consideration the enclosed draft ordinance, approved as to form and legality. This draft ordinance authorizes the Board of Water and Power Commissioners to: (1) establish criteria for the Los Angeles Department of Water and Power (LADWP) to award a design-build contract for the Haiwee Power Plant Penstock Replacement Project; (2) permit negotiations to allow clarifications and changes to the proposals pursuant to a competitive sealed proposal method; and (3) award a design-build contract for equipment and construction, for exclusive terms not to exceed three years, to a bidder with the lowest ultimate cost, as determined by LADWP.

The project will entail the advertisement of a Request for Proposal to obtain an agreement with one qualified and experienced contractor to replace approximately 10,000 feet of the Haiwee Penstock with composite pipe ranging from 84- to 102-inches in outside diameter. In addition, some portions of the penstock will be repaired or refurbished rather than replaced.

Background

The Haiwee Power Plant is located in Owens Valley, approximately 30 miles south of Lone Pine. The penstock serves the needs of both Power System and Water System by providing hydro power to the Haiwee Power Plant for generation of renewable energy and water supply to the City of Los Angeles as part of Los Angeles Aqueduct 1. A large portion of the penstock from the base of the Haiwee reservoir dam to the powerhouse is in disrepair due to collapse and corrosion. In 2008, a comprehensive third-party study was performed, which reviewed multiple previous studies, inspection reports, and operation and maintenance records. It was determined that the penstock has exceeded its service life and has no remaining safety margin. The study's conclusion was that complete replacement of the penstock was needed. In 2010, a net present value study was conducted, comparing the use of steel versus composite pipe for penstock replacement. The study concluded that composite material was the more feasible option.

Approximately 10,000 feet of the Haiwee penstock will be replaced with composite pipe in the 84 inches to 102 inches outside diameter range. Some portions of the penstock will be repaired and refurbished rather than replaced. The project will include the installation of at least two new high performance butterfly valves and a state of the art, bi-directional, ultrasonic flow measurement system which will be housed in a ventilated, non-confined space vault. Installation will also include a vacuum/air release system.

Charter Compliance

This ordinance is transmitted for your approval pursuant to Los Angeles City Charter Sections 371(b) and 674(a)(1). Pursuant to Charter Section 371(b), a vote of at least two-thirds of the City Council approving the contract selection criteria is required to award a contract using a competitive sealed proposal method. Pursuant to Charter Section 674(a)(1), the Board of Water and Power Commissioners shall have the authority, subject to approval by ordinance, to contract with any private or public corporation for the construction, ownership, operation, and maintenance of facilities for the generation, transformation, and transmission of electric energy.

CEQA Determination

This proposed project is subject to the California Environmental Quality Act (CEQA), Public Resources Code Section 2100, et seq. As such, it is important to note that the LADWP Board of Commissioners (Board) has made no final determinations regarding the proposed Project. The Board retains its full discretion to make a determination regarding the proposed Project, including the selection of no project at all. The Board will review the CEQA analysis and make a determination pursuant to law.

Bidders recognize and assume this risk. No contract shall be awarded prior to the completion of CEQA compliance.

Recommendation

The City Administrative Officer (CAO) analyzed and recommended approval of the Board resolution and Council consideration of the Ordinance. The Board resolution was approved by the Board of Water and Power Commissioners.

On that basis, we recommend the adoption by Council of the draft ordinance provided for your consideration and action.

Council Rule 38 Referral

This draft ordinance has been approved by the Board of Water and Power Commissioners pursuant to Council Rule 38.

If you have any questions regarding this matter, please contact Deputy City Attorney Eric Rosenblatt at (213) 367-4619. He or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By 

DAVID MICHAELSON
Chief Assistant City Attorney

DM:ER:pj
Transmittal

ORDINANCE NO. _____

An ordinance authorizing the Board of Water and Power Commissioners to award a contract pursuant to a competitive sealed proposal method, to permit negotiations relating to the design, engineering, procurement and construction of the Haiwee Power Plant Penstock Replacement Project (Project).

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. The Los Angeles Department of Water and Power (LADWP) may enter into a contract and make an award using a competitive sealed proposal method permitting negotiations, as provided herein, for the design, engineering, procurement and construction of the Haiwee Power Plant Penstock Replacement Project.

Sec. 2. Contract negotiations may be engaged in by LADWP after proposals have been opened to allow clarification and changes in the proposal. LADWP shall take adequate precaution to treat each proposer fairly.

Sec. 3. Any decision by LADWP to use the competitive sealed proposal method permitting negotiations for contracts shall be supported by a written finding, supported by a written statement of facts, that adherence to the rule that the contract award be made to the lowest responsive and responsible bidder is not practical or advantageous. No award may be made utilizing this method to a proposer whose final proposal is higher as to the ultimate cost to the City than any other responsive proposal submitted.

Sec. 4. Proposals shall be solicited by the issuance of a Request for Proposal (RFP) to obtain bids from qualified firms or from firms at large. The RFP shall be published in the same manner as notices for public works contracts performed by LADWP. The RFP shall state the time and place at which the proposals will be received by LADWP. Proposals received after the time and date specified shall be returned and shall not be considered. LADWP retains the right to reject all proposals.

Sec. 5. Pursuant to Sections 371(a) and (b) of the Charter of the City of Los Angeles, the following design-build criteria, approved by the Board of Water and Power Commissioners, Resolution No. 014 078 on file with the City Clerk, are hereby approved.

Sec. 6. The design-build criteria for this contract award shall be as follows:

- (a) Qualifications – Bidder's proposal shall contain at a minimum the following:
 - (i) Experience in design, fabrication and installation of large diameter fiber reinforced polymer composite piping systems. The Bidder

- shall have 10 years minimum experience in delivering similar composite piping systems for comparable projects.
 - (ii) Experience in providing technical services to support erection and commissioning of the equipment.
 - (iii) Financial, labor, material procurement and equipment resources available for the Project.
- (b) Bidder's proposal shall provide proposed contract terms and conditions, and commercial factors for the Haiwee Power Plant Penstock Replacement Project including:
- (i) Evaluated cost, proposal prices, estimated lump sum cost, schedule of payments and the time value of money.
 - (ii) Capability and resources available to meet schedule requirements.
 - (iii) Quality assurance/control plan and program to ensure the quality of the equipment fabrication and the quality of work.
 - (iv) Insurance, performance and labor and material bond requirements to manage the risk.
 - (v) Liquidated damages for critical items such as the milestone schedule and guarantees.
 - (vi) Warranties and guarantees to make corrections due to defects and failures of components to function according to requirements.
 - (vii) Selection plan for subcontractors, including a list of prospective Minority/Women/Other Business Enterprises for use on the Project and to ensure that fair practices are used in such selection.
 - (viii) Safety and security programs to meet federal, state, and local safety and security requirements.
 - (ix) Authorized auditors to audit contractor, contractor's subcontractors and suppliers.
 - (x) Authorized inspectors to perform examinations, inspections and tests of equipment, material, and workmanship.
- (c) Bidder's proposal shall provide proposed technical factors including:
- (i) Scope of Work for the Project.
 - (ii) Critical Path Method Schedule for the Project.
 - (iii) Methods to demonstrate that the proposed equipment and materials meet all contractual requirements.
 - (iv) Fabrication plan and schedule to include qualified personnel and equipment for the Project.
 - (v) Regulatory compliance to meet all local, state and federal requirements.
 - (vi) Demonstration of ability to design and fabricate similar equipment.
 - (vii) Implementation of design and fabrication monitoring programs during all phases of the Project.

- (viii) Methods to incorporate design modifications and field changes and to provide accurate and timely drawings.
- (d) Bidders shall submit the following:
 - (i) A sealed cost proposal; and
 - (ii) A proposal security in the form of a cash deposit or proposal bond not less than 10 percent of the bid amount of the contract, as established by each proposal. Said deposit or bond shall be forfeited if a proposal is accepted but the responder fails to execute the contract; and
 - (iii) Other relevant information.
- (e) Procedures applicable to discussions and negotiations with bidders, including safeguards to preserve confidential and proprietary information supplied by bidders, and other appropriate precautions to treat each bidder fairly. Bidder's sealed cost proposal shall not be considered confidential nor proprietary information.
- (f) Procedures for indemnifying and holding harmless the City of Los Angeles acting by and through its LADWP with respect to protests relating to solicitation, negotiation or award of the Contract.
- (g) LADWP's other standard contract terms and conditions, including, but not limited to, the right to reject all bids, shall apply.

Sec. 7. For the proposed agreement described in Section 6, a Local Business Preference shall be applied. A proposer qualified as a Local Business shall be awarded additional points to the proposer's final score such that the score awarded to the proposer is increased by 8 percent of the total possible evaluation points. To be qualified as a Local Business, a proposer must satisfy all of the following criteria, as certified by the Designated Administrative Agency, the Los Angeles Department of Public Works, Bureau of Contract Administration:

- (a) The business must occupy space within the County of Los Angeles. The business must submit proof of occupancy to the City by supplying evidence of a lease, deed or other sufficient evidence demonstrating that the business is located within the County.
- (b) The business must submit proof to the LADWP demonstrating that the business is in compliance with all applicable laws relating to licensing and is not delinquent on any Los Angeles City or Los Angeles County taxes.
- (c) The business must submit proof to the LADWP demonstrating one of the following:

- (i) That at least 50 of full-time employees of the business perform work within the boundaries of the County at least 60 percent of their total, regular hours worked on an annual basis; or
- (ii) That at least half of the full-time employees of the business work within the boundaries of the County at minimum of 60 percent of their total, regular hours worked on an annual basis; or
- (iii) That the business is headquartered in the County. For purposes of the Local Business Preference, the term "headquartered" shall mean that the business physically conducts and manages all of its operations from a location in Los Angeles County.

A business that has not yet established operations in Los Angeles and therefore is unable to qualify as a Local Business may, as an alternative, qualify as a Local Business on a provisional basis if the proposer satisfies all of the following criteria, as certified by the Designated Administrative Agency:

- (a) The proposed Contract between the proposer and the LADWP involves consideration valued at no less than \$1,000,000 and has a term of no less than three (3) years;
- (b) The proposer can demonstrate that the proposer is a party to an enforceable, contractual right to occupy commercial space within the County and its occupancy will commence no later than 60 days after the date on which the Contract with the LADWP is executed. The proposer must demonstrate proof of occupancy or an enforceable right to occupancy in the County of Los Angeles by submitting to the LADWP a lease, deed or other sufficient evidence; and
- (c) The proposer can demonstrate that, before the proposer is scheduled to begin performance under the Contract with the LADWP, the proposer qualifies as a Local Business, by submitting proof to the LADWP that it meets the criteria of Subsection C of Section 10.47.2 of the Los Angeles Administrative Code. The proposer must demonstrate proof of ability to satisfy the requirements of Section 10.47.2(C) by submitting to the LADWP a business plan or other evidence deemed sufficient by the Designated Administrative Agency.

A business that does not qualify as a Local Business, but that identifies a qualifying Local Subcontractor to perform work under the Contract, shall be awarded a preference of up to 5 percent, provided the Local Subcontractor satisfies the criteria enumerated in Sections 10.47.2 and 10.47.7 of the Los Angeles Administrative Code. The score awarded to a proposer will be increased by 1 percent for every 10 percent of the total cost of the proposed work under the Contract to be performed by a Local Subcontractor, provided that each Local Subcontractor, the work of the Local Subcontractor, and the cost of the

work of the Local Subcontractor are specified clearly in the proposal. The maximum preference possible is 5 percent.

The preferences authorized under the Local Business Preference Program shall be subject to the following additional requirements:

- (a) Preferences awarded for services shall be applied only if the services are provided directly by the Local Business or Local Subcontractor using employees whose exclusive, primary working location is in Los Angeles County;
- (b) Preferences awarded for equipment, goods or materials shall be applied only if the Local Business or Local Subcontractor substantially acts as the supplier or dealer, or substantially designs, manufactures or assembles the equipment, goods or materials, at a business location in Los Angeles County. As used in this section, "substantially" means not less than two-thirds of the work performed under the Contract must be performed, respectively, by the Local Business or Local Subcontractor;
- (c) The maximum bid or proposal preference shall not exceed \$1,000,000 for any bid or proposal;
- (d) Preferences applied pursuant to the Local Business Preference Program shall be utilized solely for the purpose of evaluating and selecting the Contractor to be awarded the corresponding Contract. Except as provided in Los Angeles Administrative Code Section 10.47.9, the preference points shall in no way lower or alter the Contract price, which shall in the case of a proposal reflect the amount proposed by the Local Business in the proposal before the application of preference points;
- (e) This section neither creates a right to receive a proposal preference, nor the duty to grant a proposal preference;
- (f) The LADWP may, at any time before the award of a contract, determine that it is not in the LADWP's best interest to grant a proposal preference and award the contract to the proposer eligible for the award without consideration of the provisions of this Section; and
- (g) This section applies only to contracts that involve the expenditure of funds entirely within the City's control and shall not apply to contracts that involve the expenditure of funds that are not entirely within the City's control, such as state and federal grant funds, that due to legal restrictions prohibit its application.

Should a Local Business fail to maintain its Local Business status:

- (a) If for any reason the Contractor fails to qualify as a Local Business for more than 60 days during the entire term of the Contract, the LADWP shall be entitled to withhold or recover funds from the Contractor in an amount that represents the value of the Proposal Preference.
- (b) If for any reason the Local Subcontractor, providing the basis for a Local Subcontractor Preference, is unable to, or does not, perform the work under the Contract, the Contractor shall, within 60 days, replace that Local Subcontractor with another Local Subcontractor. If the Contractor is unable to replace the Local Subcontractor specified in the Contract with another Local Subcontractor within 60 days, the LADWP shall be entitled to withhold or recover funds from the Contractor in an amount that represents the value of the Proposal Preference.
- (c) For purposes of determining the value of the Proposal Preference in Subsections (a) and (b), above, the LADWP may withhold or recover the difference in proposal price between the Contractor's proposal and the proposal of the next most competitive proposer that did not receive the award of the Contract by the LADWP. In addition, the LADWP may withhold or recover any other additional cost or detriment to the City from the Contractor's failure to maintain the Contractor's Local Business status for more than 60 days during the term of the Contract.
- (d) If a Contractor fails to maintain the Contractor's Local Business status for more than 60 days during the term of the Contract, as specified in Subsections (a) and (b), above, the failure is subject to the recording and reporting requirements of Articles 13 and 14, Chapter 1, Division 10 of the Los Angeles Administrative Code.
- (e) The remedies available to the LADWP under this section are cumulative to all other rights and remedies available to the LADWP.

Sec. 8. This proposed project is subject to the California Environmental Quality Act (CEQA), Public Resources Code Section 2100, et seq. As such, it is important to note that the Los Angeles Department of Water and Power Board of Commissioners (Board) has made no final determinations regarding the proposed project. The Board retains its full discretion to make a determination regarding the proposed project, including the selection of no project at all. The Board will review the CEQA analysis and make a determination pursuant to law. Bidders recognize and assume this risk. No contract shall be awarded prior to the completion of CEQA compliance.

Sec. 9. Pursuant to Charter Section 1022, the services advertised for in this Request for Proposal are for expert services which require knowledge and skills that are not available within LADWP and can be performed more economically and feasibly by independent contractors than by City employees.

Sec. 10. Notwithstanding any other ordinance, rule or law of the City of Los Angeles to the contrary, the Board of Water and Power Commissioners may award a contract or contracts using the aforementioned criteria pursuant to Sections 371(a), 371(b) and 674 of the Charter of the City of Los Angeles as to the equipment and services described in Section 1 and 6 for a term not to exceed three (3) years without further approval by the Los Angeles City Council.

Sec. 11. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting it for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located in the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, **by a vote of not less than two-thirds** of all of its members, at its meeting of _____.

HOLLY L. WOLCOTT, Interim City Clerk


By _____
Deputy

Approved _____

Mayor

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By  _____
ERIC H. ROSENBLATT
Deputy City Attorney

Date 12/9/13

File No. _____