

COUNCIL ACTION FORM

SUBJECT: CYRIDE FUEL CONTRACT TERMINATION FOR CONVENIENCE

BACKGROUND:

Over the past ten years, CyRide has purchased fuel under contracts to reduce administrative duties associated with this frequent purchase and to gain the best possible price for this large budget expense. At the December 9, 2014 Ames City Council meeting, council members awarded the purchase of fuel during calendar year 2015 to REG Energy. This contract began on January 1, 2015 and will expire on December 31, 2015.

In May 2015, CyRide's previous vendor, Keck Energy informed CyRide that its previous fuel contract with this firm was still in effect. The original bid for this previous contract was to be for a three year period beginning January 1, 2014 and ending December 31, 2016. However, in reviewing the bids received at the end of 2013, it was decided that only the first twelve month period (calendar year 2014) was advantageous to CyRide; therefore the Transit Board of Trustees and Ames City Council approved fuel under this contract for only calendar year 2014. The intent of this action was to constrict the longer period bid proposals to calendar 2014 only; however, due to an oversight by the Purchasing Department and CyRide staff, the specific contract language did not reflect this constriction and reflected a contract through 2016. As this was not intentional and staff was unaware of this error until May of this year, CyRide entered into a new contract with REG in December of 2014. (Keck Energy also bid on this new fuel contracting opportunity, but was not the lowest bidder.) The result is that CyRide currently has two contracts for fuel purchases for calendar 2015 as follows:

- **Contract #1 (RFP #2014-100)** – Keck Energy, for calendar 2014, **2015** and 2016.
- **Contract #2 (RFP #2015-106)** – REG Energy, for calendar year **2015**

When this was brought to CyRide staff's attention in May 2015, CyRide, city purchasing and legal staff developed a plan that could be fair to both vendors as follows:

Since REG provided fuel from January – May 2015, it was decided to invoke a Federal Transit Administration (FTA) clause in their contract for "Termination for Convenience." CyRide would then purchase fuel under the previous contract with Keck Energy from June – December 2015, at which time CyRide would invoke this same clause under the Keck Energy contract, thereby terminating all fuel

contracts. CyRide will rebid fuel for delivery in calendar year 2016 at the end of 2015.

The specific federal clause in both the Keck Energy and REG contracts, which could be invoked is as follows:

Termination

a. Termination for Convenience (General Provision) Ames Transit Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Ames Transit Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to the Ames Transit Agency, the Contractor will account for the same, and dispose of it in the manner the Ames Transit Agency directs.

This approach provides benefit to both parties during calendar 2015 and allows both vendors to rebid at the end of the year for the next calendar year. CyRide staff has discussed this resolution with both parties, and while they would each prefer to abide by their full contract, the approach is acceptable to both parties.

In order to invoke this clause, both the Transit Board of Trustees and the Ames City Council will need to terminate for convenience the REG contract (in July) and Keck contract (in December), as provided for in the federal contract clause. The Transit Board of Trustees approved the termination in both contracts at their June 23, 2015 meeting. If approved by the Ames City Council, the City's Legal Department will draft written notification to REG and Keck.

ALTERNATIVES:

1. Terminate the REG Fuel Contract (RFP #2015-106) immediately and terminate the Keck Energy Fuel Contract (RFP #2014-100) effective December 31, 2015 as provided by the Termination for Convenience contract clause included in both fuel procurements. The Council approved total amount of \$1,200,506.20 budgeted for fuel remains the same.
2. Direct staff to develop an alternative approach based on direction from the Transit Board of Trustees.

MANAGER'S RECOMMENDED ACTION:

This approach fairly compensations both vendors and allows for timely delivery of fuel for daily transit service.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby terminating REG's fuel contract immediately and Keck Energy's fuel contract effective December 31, 2015.