

REVISED

COUNCIL ACTION FORM

SUBJECT: **UNIT 8 FEEDWATER HEATER REPLACEMENT**

BACKGROUND:

On April 11, 2012, two bids were received for the Unit 8 Feedwater Heater Replacement (high pressure heaters Nos. 84 and 85). Staff presented the bidding results along with their recommendation at the May 8, 2012 meeting for Council consideration. The bids received were as followed:

Bidder	Alternate 1: 70-30 Cu-Ni Material	Alternate 2: T-22 Material
SPX Heat Transfer, Inc., Bethlehem, PA	\$825,697	\$752,007
HOLTEC International, Inc., Marlton, NJ	Non-Responsive	

Council may recall that staff wanted to award Alternate 2: T-22 material due to lower cost and a stronger material. Electric Services staff reviewed the bids and determined that the bid submitted by HOLTEC International, Inc., was found to be non-responsive because bid security was not submitted with its bid.

As a result, only one bid remained for consideration from SPX Heat Transfer, Bethlehem, PA (SPX) in the amount of \$752,007 for the supply and installation of the Unit 8 High Pressure Heaters. Staff reviewed the bid and concluded that it was acceptable. SPX is not licensed to collect sales taxes for the State of Iowa. The City would pay applicable Iowa Sales Taxes in the amount \$44,654.89 directly to the State.

After it was presented, City Council decided to defer action on awarding a contract to SPX. Council expressed 1) concern about the SPX's exceptions to City of Ames Standard Terms & Conditions; 2) inquired on the reasons only a single bid was received; and 3) if the non-responsive bidder had also indicated exceptions to City of Ames Standard Terms & Conditions, and why they failed to include a bid bond.

1. Concern With Exceptions

SPX took numerous exceptions to the City of Ames Standard Terms & Conditions on its bid submittal. The City Attorney identified two exceptions taken that would pose the greatest risk for the City. Both exceptions dealt with liability issues. The first would subject the company's liability to the City only for acts of malicious or gross negligence. Normally, the City's liability standard is for ordinary negligence. The second involved capping the company's liability to equal the contract amount. In this case, it would be \$752,007. The City's normal practice would be to require liability coverage for \$1 million per occurrence and \$2 million in the aggregate.

Staff contacted SPX and communicated to them that the City has some major concerns regarding their exceptions. As a result of this communication, Staff was able to negotiate with SPX and they agreed to withdrawal all of the exceptions (including the gross negligence standard) taken in their bid except one.

There is now only one modified exception for City Council to consider. SPX still wants to cap their liability, but is willing to increase the cap to two times the contract amount (\$1,504,014). While this is an improvement over their original proposal, the exception still contradicts sections of the standard terms and conditions of the bidding document.

Staff has reviewed the remaining exception proposed by SPX and the exceptions presented in the non-responsive bid and have determined that it is worth the risk by agreeing to the modified SPX exception. SPX is the parent behind the brand of YUBA Feedwater Heaters which is a recognized top tier supplier of this equipment in the power industry and is manufactured in the United States.

2. Concern with a Single Responsive Bid

Council should note that the invitation to bid was written as “supply and install” approach in order to limit the risk to the City of Ames to any coordination or fit issues between the equipment and the Power Plant’s piping interconnections. Tying the supply with installation keeps the City out of the middle if issues arise at the interface. However, this risk limiting approach may have reduced the number of bids received because several of the equipment suppliers and installation contractors appeared to only be interested in one part of the project and not the total project.

3. Concern with the Non-responsive Bid

City Council should note that Purchasing reviewed the exceptions taken by the non-responsive bidder and identified similar exceptions which would pose similar / identical risks to the City. When asked why a bid bond was not included, the respondent indicated they did not know a bid bond was required but could submit one after-the-fact.

Staff believes that if the decision is made to rebid then there is a high probability that the rebid will have the same two bidders. SPX most likely will have removed their exceptions and the other bidder will have included a bid bond but continue to have their exceptions.

The Engineer’s estimate of the total contractor cost of this project for Unit 8 is \$875,000.

The 2012/13 Capital Improvements Plan includes \$980,000 for Feedwater Tube Replacement for Unit 8, while the 2014/15 CIP includes \$980,000 for the future Feedwater Tube Replacement planned for Unit 7.

ALTERNATIVES:

1. a. Agree to the single exception to the terms and conditions of the City of Ames bidding document.

- b. Award a contract to SPX Heat Transfer, Inc., Bethlehem, PA, for the Unit 8 Feedwater Heater Replacement in the amount of \$752,007 plus applicable sales taxes to be paid directly by the City of Ames to the State of Iowa.
2. Reject all bids, direct staff to rebid and thus delay the replacement of the Unit 8 feedwater heaters.

MANAGER'S RECOMMENDED ACTION:

Both the City's Risk Manager and City Attorney have reviewed the terms and find them acceptable to present to City Council for consideration. SPX has agreed to drop all exceptions except for a cap on their liability. They have however, agreed increase the cap to two times the contract amount. The City has accepted terms and conditions equal to two times the contract amount on past contracts. In this instance, two times the contract amount (\$1,504,014) does approximate the City's normal practice of requiring liability coverage for \$1 million per occurrence and \$2 million in the aggregate.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1 as stated above.