

## FOR BOARD ACTION

Agenda Item # 10.b.

Meeting Date:

5/29/07

**SUBJECT:**

SLP Unit 4-4 High Pressure Feedwater Heater Retubing

**PREPARED BY:**

Rob Dunnette – Manager of Power Resources

ITEM DESCRIPTION:

The Unit 4-4 high pressure feedwater heater suffered numerous tube failures during late 2005 and early 2006. Repeated attempts by Silver Lake Plant (SLP) staff to make industry standard repairs proved ineffective. Re-tubing of the heater was approved by the Utility Board in April of 2006, but the contractor selected failed to provide adequate surety for the project, and the contract was never successfully executed. The project was re-bid, including advertisement and provision of specifications to three companies involved in this type of work. Two companies responded. Bids were opened on May 15, 2007, tabulated (see attached), and evaluated. The low, responsive bid was submitted by American Power Services, Inc, in the amount of \$237,608.13.

The project was originally to have been completed under the SLP cost center budget as a repair item, but since the project was never completed it will now be budgeted as a major maintenance project under the Power Resources capital and major maintenance allocation.

Final contract documents and attachments shall be subject to review, and approval, by the City Attorney and the RPU General Manager prior to execution.

UTILITY BOARD ACTION REQUESTED:

Staff recommends that the Utility Board recommend approval by the Common Council a contract agreement with American Power Services, Inc. in the amount of \$237,608.13 for the re-tubing of the SLP Unit 4-4 high pressure feedwater heater and that the Common Council authorize the Mayor and the City Clerk to execute the agreement.

  
General Manager

  
Date

**ROCHESTER PUBLIC UTILITIES**

Rochester Public Utilities					
High Pressure Heater No. 4-4 Retubing - 2007					5/15/2007 : 2:00PM
	American Power	Thermal Energy	Yuba		
BID BOND/Check ( Y / N )	Check	Y			
Material Price	\$ 146,725.00	NA	NQ		
State Sales Tax (6.5%)	\$ 9,537.13				
Labor & Other Services	\$ 76,346.00				
Contingency	\$ 5,000.00	\$ 5,000.00			
Total Base Bid	\$ 237,608.13				
Completion Date	10/30/2007				
Option "A"	Same as Base Bid				
Alternate No. 1					
Material Price	\$ 154,061.25	\$ 142,685.00			
State Sales Tax (6.5%)	\$ 10,013.98	\$ 9,274.53			
Labor & Other Services	\$ 78,833.00	\$ 95,552.00			
Contingency	\$ 5,000.00	\$ 5,000.00			
Total Base Bid (Alternate No. 1)	\$ 247,908.23	\$ 252,511.53			
Completion Date	4/30/2008	?			
EVALUATION IS STRICTLY PRELIMINARY, NO REVIEW PERFORMED BY RPU.					

AGREEMENT  
FOR  
SILVER LAKE PLANT  
UNIT NO. 4  
HIGH PRESSURE HEATER NO. 4-4 RETUBING

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_ 2007, by and between the City of Rochester, Minnesota, a Minnesota municipal corporation, acting through its Public Utility Board, hereinafter called "City", and American Power Services, Inc. a Kentucky corporation, hereinafter called "Contractor".

WHEREAS, City has solicited a proposal from Contractor for Silver Lake Plant High Pressure Heater No. 4-4 Retubing described herein; and

WHEREAS, City desires to engage the services of Contractor according to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the above premises and of the terms and conditions contained herein, the parties hereto agree as follows:

Article I. Scope of Services. Contractor shall furnish all labor, materials, equipment, and supervision required to retube High Pressure Heater No. 4-4 in accordance with the Contract Documents.

Article II. Payment. City agrees to pay Contractor the sum of TWO HUNDRED THIRTY-SEVEN THOUSAND SIX HUNDRED EIGHT AND 13/100 DOLLARS (\$237,608.13) for services described herein. The Contractor shall submit invoices to the City for work completed and shall be paid the invoiced amount less a five percent (5%) retainer until the project is completed. Payment shall be in accordance with City procedures.

The final payment shall not become due until the Contractor has delivered to the City a complete release of all liens arising out of the work or receipts in lieu thereof, and in either case, an affidavit stating that so far as he has knowledge or information, the release and receipts include the payment in full for all the labor and material for which a lien could be filed. The Contractor shall deliver an executed copy of a Release and Indemnify Agreement and a signed copy of an affidavit for obtaining final settlement of contract with the State of Minnesota and any of its political or governmental subdivisions, form IC-134.

Contractor shall comply with Minnesota Surety Deposits for Out-of-State Construction Contractors. Compliance requires 8% additional withholding from payments over \$50,000 or a number of other options (M.S. 290.9705 – Withholding Fact Sheet 12).

Article III. Term. The term of this agreement shall commence on the date of this Agreement and shall continue for 300 calendar days.

Article IV. Compliance with Appropriate Regulations. Contractor shall comply with all federal, state, county, and municipal laws, ordinances, regulations and codes relating or applicable to the services to be performed under this Agreement.

Article V. Independent Contractor. Contractor is deemed an independent contractor for purposes of this Agreement and any and all persons employed by Contractor in the performance of any work or services required or provided for in this Agreement shall not be considered employees of City for any purpose whatsoever, including, but not limited to, worker's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit, and any and all such claims shall be the sole obligation and responsibility of Contractor.

Article VI. Liability. Contractor shall indemnify, hold harmless and defend the City, and the Engineer, their officers, agents, and employees from any and all claims, damages, and liability of any kind arising out of any negligent or wrongful acts, errors, or omissions of the Contractor, its agents, employees, or subcontractors in performing work in connection with this project.

Article VII. Insurance. Contractor shall obtain, as a minimum, the following described types and limits of insurance coverage. All policies called for herein shall become effective before Contractor undertakes any work under this Agreement and shall remain in full force and effect for a minimum of 1 year after closing of this Agreement. Further, Company shall furnish City with an insurance certificate, or certificates at the time the agreement is consummated between the parties, evidencing such insurance coverage prior to work commencing on said project. Each of said certificates shall provide the following:

- A. A 30-day notice of cancellation and/or non-renewal.
- B. Statutory Worker's Compensation insurance including occupational disease coverage. Employer's liability insurance with limits of not less than \$500,000 per person. Workers Compensation coverage carried by the Contractor shall include Minnesota or all state endorsement.
- C. A comprehensive general liability policy with a Combined Single Limit (CSL) of \$500,000 bodily injury and property damage liability policy. The Broad Form Endorsement covering:
  - 1. Contractual Liability
  - 2. Broad Form Property Damage
  - 3. Personal Injury
- D. A \$5,000,000 umbrella policy to cover the excess above the underlying policies requested in this insurance section.
- E. A comprehensive automobile liability policy with a Combined Single Limit of \$500,000 bodily injury and property damage liability coverage, including hired and non-owned automobiles.
- F. Certificate holder shall be listed as: City of Rochester/Rochester Public Utilities.

Article VIII. Termination. City reserves the right to terminate this agreement at any time it deems to be in the best interest of City to do so upon the giving of 7 days written notice to Contractor. Notice shall be effective upon depositing such notice in the U.S. mail by registered mail addressed to Contractor and cancellation shall take effect 7 days thereafter. If this Agreement is so terminated, City shall compensate and reimburse Contractor according to the terms hereof to the date of such termination.

Article IX. Performance and Payment Bond. The Contractor shall furnish the City a bond executed by the Contractor as principal and with such corporate surety as the City shall approve in the full amount of the contract, conditioned upon the full performance of all the work and full payment of all charges for labor and material or other charges or services rendered on, for, or in connection with the work, in accordance with Minnesota Statutes 574.26 and guaranteeing performance of the contract in accordance with its terms.

Article X. Assignability. Contractor shall not assign this Agreement or any part thereof without the prior written consent of City.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their respective names the day and year first above written.

ROCHESTER PUBLIC UTILITIES

AMERICAN POWER SERVICES, INC.

\_\_\_\_\_  
General Manager

By \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

Title \_\_\_\_\_

CITY OF ROCHESTER

\_\_\_\_\_  
Mayor

By \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

Title \_\_\_\_\_

Reviewed as to Form:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Printed Name

ATTEST:

Dated: \_\_\_\_\_

\_\_\_\_\_  
City Clerk

ACKNOWLEDGMENT OF CORPORATION  
AUTHORIZED SIGNATURE

STATE OF MINNESOTA

COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me appeared  
\_\_\_\_\_ (*name of officer*) to me personally known, who,  
being by me duly sworn did say that he/she is the \_\_\_\_\_ (*title*)  
of \_\_\_\_\_ (*name of corporation*) a corporation: and that  
said instrument was executed in behalf of said corporation by authority of its Board of  
Directors; and that said \_\_\_\_\_ (*name of officer*)  
acknowledged said instrument to be the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public \_\_\_\_\_

County \_\_\_\_\_

My Commission Expires \_\_\_\_\_

RELEASE AND INDEMNIFYING  
AGREEMENT

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_, a \_\_\_\_\_ (State) Corporation, hereinafter referred to as the Contractor, the \_\_\_\_\_ (Owner) of the \_\_\_\_\_ (City or Village and State) hereinafter referred to as the Owner, \_\_\_\_\_ (Bonding Company) a \_\_\_\_\_ (State) Corporation.

WITNESSETH: That said Contractor acknowledges receipt of the payment to him in the sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), (Total Contract Price) from the Owner in full and final payment of all sums owing to the Contractor from the Owner arising out of the certain contract entered into between the Owner and the Contractor, dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

In consideration of the above payment to the Contract and waiver by the Owner of the presentment of certain waivers of liens, it is jointly and severally covenanted and agreed by the Contractor, Owner and the \_\_\_\_\_ (Bonding Company) that the making and acceptance of the final payment shall constitute a waiver of all claims by the Owner, other than those claims arising from unsettled liens or from faulty work appearing after final payment or from the requirements of the specifications, and a waiver of all claims for payment of the contract price by the Contractor, except those previously made and still unsettled; and that the making and acceptance of the final payment shall not operate as a release from the obligations of the bond.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written:

In Present of:

_____	(Contractor)
_____	A _____ (State) Corporation
_____	By _____
	Title _____
	By _____
	Title _____
	(Bonding Company)
_____	A _____ (State) Corporation
_____	By _____
	Title _____
_____	By _____
	Title _____
	(Owner)
_____	By _____
	Title _____
_____	By _____
	Title _____

(Submit in Quadruplicate)

WAIVER AND RELEASE OF LIEN

WHEREAS, the undersigned,

\_\_\_\_\_  
NAME OF MANUFACTURER, MATERIALMAN OR SUBCONTRACTOR

has furnished to \_\_\_\_\_ the following:

NAME OF CONTRACTOR

\_\_\_\_\_ for use in the construction of a project

KIND OF MATERIAL AND SERVICES FURNISHED

belonging to \_\_\_\_\_,

as designated by the City of Rochester, Minnesota, as \_\_\_\_\_.

PROJECT DESIGNATION

NOW, THEREFORE, the undersigned,

\_\_\_\_\_  
(NAME OF MANUFACTURER, MATERIALMAN OR SUBCONTRACTOR)

has furnished for and in consideration of \$ \_\_\_\_\_ and other good and valuable consideration, the receipt whereof is hereby acknowledged, do(es) hereby waive and any and all liens, or right to or claim of lien, on the above described project and premises, under any law, common or statutory, on account of labor or materials, or both, heretofore or hereafter furnished by the undersigned to or for the account of said \_\_\_\_\_ (NAME OF CONTRACTOR) for said project.

Given under my (our) hand(s) and seal(s) this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NAME OF MANUFACTURER, MATERIALMAN OR SUBCONTRACTOR

By \_\_\_\_\_

PRESIDENT, VICE PRESIDENT, PARTNER OR OWNER, OR, IF SIGNED BY OTHER THAN ONE OF FOREGOING, ACCOMPANIED BY POWER OF ATTORNEY SIGNED BY ONE OF THE FOREGOING IN FAVOR OF THE SIGNER. (USE DESIGNATION APPLICABLE)



AFFIDAVIT

STATE OF \_\_\_\_\_

COUNTY \_\_\_\_\_

I, \_\_\_\_\_, the undersigned affiant, now being duly sworn, state on my oath that I am familiar with all the statements contained in this affidavit and that all of the statements are true.

I am employed at \_\_\_\_\_ (hereinafter referred to as "Company") in the position of \_\_\_\_\_ and further state that I am qualified and duly authorized by the Company to make and affirm the following statements:

That Company caused labor to be performed and materials and/or equipment to be furnished for construction and/or erection for the City of Rochester, MN, Public Utilities (hereinafter referred to as "Owner") at the project construction site in Olmsted County, Minnesota.

That in the affiant's opinion and to the best of the affiant's knowledge, all labor performed and all materials and/or equipment furnished was in full compliance with the requirements of the contract entitled \_\_\_\_\_.

That the final amount of the contract is \$ \_\_\_\_\_.

That the Owner has previously paid the Company \$ \_\_\_\_\_.

That the amount of the present and final application to the Owner, for payment of labor, materials and/or equipment furnished is \$ \_\_\_\_\_.

That Company has offset, by payment in full, all of its liabilities incurred in connection with the above noted contract, due to any and all labor, material and/or equipment furnished.

That Company has requested, received and has in its possession written verification from each vendor and each subcontractor that it has offset, by payment in full, al of its liabilities incurred in connection with the above noted contract, due to any and all labor, material and/or equipment furnished.

That due to the preceding affirmations and due to the verifications received, the Company will defend the Owner for all liens, from any source, against any and all labor, services, material and/or equipment furnished in connection with the referenced contract and covered by the present and/or any preceding request for contract payment.

Subscribed and sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
(Affiant's Signature)

Notary Public: \_\_\_\_\_

\_\_\_\_\_  
(Date)

My commission expires \_\_\_\_\_, 20\_\_



## RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, that the Common Council of the said City is requested to approve a contract agreement with American Power Services, Inc. and that the Common Council authorize the Mayor and the City Clerk to execute the agreement for

Re-Tubing of the Silver Lake Plant Unit 4-4 High Pressure Feedwater Heater

The amount of the contract agreement to be TWO HUNDRED THIRTY-SEVEN THOUSAND SIX HUNDRED EIGHT AND 13/100 DOLLARS (\$237,608.13.) and American Power Services, Inc. being lowest responsible bidder.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 29th day of May, 2007.

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President

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Secretary