

FOR BOARD ACTION

Agenda Item # 6.b.

Meeting Date:

4/25/06

SUBJECT:

Professional Services Agreement for MISO Evaluation

PREPARED BY:

Walt Lorber, Director of Core Services

WLF

The decision by Southern Minnesota Municipal Power Agency to join the Midwest Independent System Operator as a transmission owner (TO), thereby placing its control area (Rochester) under the control of MISO, has forced RPU to analyze its options for operating within the MISO boundary. Staff has solicited a proposal from MCR Performance Solutions, LLC. to assist in the identification and evaluation of options. MCR performed a similar evaluation for SMMPA last fall, with the result indicating TO membership was the lowest cost option.

The need for the MISO membership evaluation was not included in the 2006 budget, since staff had not anticipated SMMPA's action. While our current arrangements for MISO representation may be adequate as a long-term strategy, we believe that there are sufficient risks to justify a thorough analysis of RPU's options. We propose to pay for this expenditure from the contingency fund.

UTILITY BOARD ACTION REQUESTED:

It is requested that the Board approve a contract agreement with MCR Performance Solutions, LLC., for an amount not to exceed \$75,000, and authorize the Mayor and City Clerk to execute the agreement.

Tony Kosher

General Manager

4/21/06

Date

ROCHESTER PUBLIC UTILITIES

Background

- SMMPA will be joining MISO as a transmission owner (TO) on April 1, 2006. This has prompted MISO to compel RPU (being a member of SMMPA) to make some quick decisions regarding how RPU's generation and load will be represented in MISO
 - SMMPA will represent RPU's load within MISO up to 216MW
 - RPU will use The Energy Authority (TEA) as its agent for load above 216MW
 - TEA is currently acting as Market Participant for SMMPA and also having TEA act as RPU's agent will help to ensure that the SMP.RPU load node is well coordinated and functions properly
 - TEA will provide various services such as transmission purchases, energy market management, shadow settlement, and dispute resolution services
 - MMPA will represent RPU as the agent for all five of RPU's generation nodes and will perform required functions such as forecasting, scheduling, accounting, billing (RPU is not presently staffed to assume these functions)
 - Under these arrangements, RPU will not be a market participant, a TO, or an asset owner; under MISO rules, one cannot be an asset owner without being a market participant
- RPU's agreements with SMMPA and MMPA (preliminary) will likely expire in October 2007 and will probably require RPU to give a six-month contract termination notice (at April 30, 2007); the contract with TEA will likely expire June 1, 2007 with a 90 day termination notice
- Given this timing, and MISO's desire for lead time of several months from a April 1, 2007 modeling deadline, RPU will need to decide by fourth quarter of 2006 whether the contracts with SMMPA, TEA and MMPA will be extended or whether RPU will pursue other long-term options, such as seeking other outsourcers or staffing up, to assume the required MISO functions themselves
- In order to have sufficient time for RPU senior staff and the RPU Board to get comfortable with the outcome of the analysis (and be able to refine it), RPU senior staff would like to begin this project in late April, 2006

Professional Services Agreement

Evaluation of Midwest ISO Participation Options

THIS AGREEMENT made this 1st day of May 2006 by and between the City of Rochester, Minnesota, a Minnesota municipal corporation, acting through its Public Utility Board, hereinafter called "City", and MCR Performance Solutions, Inc., an Illinois corporation, hereinafter called "MCR".

WHEREAS, City has solicited a proposal from MCR for an evaluation of Midwest Independent System Operator (MISO) participation options; and

WHEREAS, MCR has expressed its willingness to perform said work; and

WHEREAS, City desires to engage the services of MCR according to the terms and conditions of MCR's response thereto.

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

Article I. Project Description. Identify, evaluate, and present options in accordance with MCR's March 28, 2006, proposal letter for the City to consider in its determination of the optimum means of operating within the MISO boundary created by Southern Minnesota Municipal Power Agency's decision to become a transmission owner in MISO.

Article II. Scope of Professional Services. MCR will provide the necessary trained personnel to complete the project as described in the above reference proposal letter, which is attached to and made part of this Agreement.

Article III. Payment. City agrees to pay MCR for performance of the described services, upon submission of monthly invoices for work completed. On the basis of the services outlined in this Agreement, the estimated total amount to be paid by City including hourly charges and reimbursable expenses is \$72,000.00. Payment by City under this Agreement shall not exceed said amount without prior written consent of the City.

Article IV. Term. The term of this Agreement shall commence on the date of this Agreement and shall continue until deliverables are completed and accepted by the City.

Article V. Compliance with Appropriate Regulations. MCR 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 VI. Independent Contractor. The MCR is deemed an independent contractor for purposes of this Agreement and any and all persons employed by MCR 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 or responsibility of MCR.

Article VII. Liability. MCR shall indemnify, hold harmless and defend the City, its 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 MCR, its agents, employees, or subcontractors in performing services pursuant to this Agreement.

Article VIII. Insurance. MCR shall obtain, as a minimum, the following described types and limits of insurance coverage. All policies called for herein shall become effective before MCR 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, MCR 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.
- 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 \$1,000,000 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.

Article IX. 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 MCR. Notice shall be effective upon depositing such notice in the U.S. Mail by registered mail addressed to MCR and cancellation shall take effect 7 days thereafter. If this Agreement is so terminated, City shall compensate and reimburse MCR according to the terms hereof to the date of such termination.

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

Article XI. Disposition of Documents. It is agreed that any reports, drawings, specifications, and other data compilations developed or created as a result of the services performed by MCR pursuant to this Agreement shall be and remain the sole property of City.

Article XII. Governing Law. This Agreement shall be governed by the laws of the State of Minnesota.

Article XIII Merger Clause. This agreement constitutes the final expression of the parties' agreement, and the complete and exclusive statement of the terms agreed upon. This agreement supersedes all prior negotiations, understandings, agreements and representations. There are no oral or written understandings, agreements or representations not specified herein. Furthermore, no waiver, consent, modification, or change of terms of this agreement shall bind either party unless in writing and signed by both parties."

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

MCR PERFORMANCE SOLUTIONS, INC.

CITY OF ROCHESTER



By Frank Craig

Its Partner

By _____
Its Mayor

Attest
by _____
Its City Clerk

Approved as to Form
by _____
Its City Attorney

ROCHESTER PUBLIC UTILITIES

Reviewed
by _____
Its General Manager



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, that the Board approves a contract agreement with MCR Performance Solutions, LLC, and that the Mayor and the City Clerk are authorized to execute the agreement for

Evaluation of Midwest ISO Participation Options

The amount of the contract agreement not to exceed SEVENTY-TWO THOUSAND AND 00/100 DOLLARS (\$72,000.00).

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 25th day of April 2006.

President

Secretary