

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF
DESCHUTES COUNTY, OREGON

An Order Denying the Protest Submitted by *
Energy Wise Services, Concerning the * ORDER NO. 2024-044
Notice of Intent to Award Contract for the *
Deschutes County Fair and Expo Center *
Solar PV System *

WHEREAS, on or about October 2, 2024, Deschutes County issued a Notice of Intent to Award Contract letter concerning the Deschutes County Fair and Expo Center Solar PV System to E2 Solar, LLC; and

WHEREAS, Energy Wise Services did, on October 4, 2024, submit a timely Protest; and

WHEREAS, a hearing was held on October 28, 2024, during which testimony was received, the Board openly deliberated and then voted 3-0 to deny the protest; now therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ACTING AS THE DESCHUTES COUNTY CONTRACT REVIEW BOARD hereby ORDERS as follows:

Section 1. The protest of Energy Wise Services is denied.

Section 2. The Written Disposition – Findings, attached hereto as Exhibit A are adopted as the Written Disposition/Findings in support of the denial of the protest.

Section 3. The Notice of Intent to Award Contract, Document No. 2024-811 is affirmed.

Section 4. This Order is effective upon signing.

Dated this ____ day of _____, 2024.

THE BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

PATTI ADAIR, Chair

ANTHONY DEBONE, Vice-Chair

PHIL CHANG, Commissioner

ATTEST:

Recording Secretary

EXHIBIT “A”

WRITTEN DISPOSITION – FINDINGS

General:

1. Deschutes County Code (DCC) 2.36 authorizes the Board of County Commissioners to function as the local contract review board.
2. DCC 2.37 provides that the Model Rules of Public Contract Procedure, OAR 137, divisions 46, 47, 48, and 49 “shall be the rules of the Deschutes County Contract Review Board.”

Protest – Claims/Findings:

1. Claim: Energy Wise Services was delayed in receiving the proposals after the issuance of the Notice of Intent to Award.

Finding: Energy Wise Services did not meet its burden of proof, in either its written protest document or during its presentation before the Board of Commissioners on October 28, 2024, to prove where or how the County’s decision to award the Deschutes County Fair and Expo Center Solar PV System contract to an entity other than Energy Wise Services violated any of the applicable protest criteria in ORS, OAR, or DCC. This claim is denied.

2. Claim: The Mayfield study for the bid is outdated, and the inverter and panels proposed did not meet the qualifications of the “design build” bid.

Finding: Energy Wise Services did not meet its burden of proof, in either its written protest document or during its presentation before the Board of Commissioners on October 28, 2024, to prove where or how the County’s decision to award the Deschutes County Fair and Expo Center Solar PV System contract to an entity other than Energy Wise Services violated any of the applicable protest criteria in ORS, OAR, or DCC. This claim is denied.

3. Claim: The stated goal in the RFP of maximizing the size of the new solar system for the proposed budget did not appear to be accurate since Energy Wise Services proposed the largest system and offered other benefits.

Finding: Energy Wise Services did not meet its burden of proof, in either its written protest document or during its presentation before the Board of Commissioners on October 28, 2024, to prove where or how the County’s decision to award the Deschutes County Fair and Expo Center Solar PV System contract to an entity other than Energy Wise Services violated any of the applicable protest criteria in ORS, OAR, or DCC. This claim is denied.

4. Claim: Energy Wise Services was the only bid to offer federal monetary incentives for the proposed racking in addition to the project costs through the Federal Inflation Reduction Act.

Finding: Energy Wise Services did not meet its burden of proof, in either its written protest document or during its presentation before the Board of Commissioners on October 28, 2024, to prove where or how the County's decision to award the Deschutes County Fair and Expo Center Solar PV System contract to an entity other than Energy Wise Services violated any of the applicable protest criteria in ORS, OAR, or DCC. This claim is denied.

5. Claim: The RFP sought inverters with a 25-year warranty. This can only be found in microinverters, but it is rare to use microinverters on a larger commercial project. Issues, such as proprietary designs and long-term stability of the company issuing the warranty, may arise resulting in long-term issues and expenses. Energy Wise Services' bid proposed an inverter that can easily be replaced with other brands.

Finding: Energy Wise Services did not meet its burden of proof, in either its written protest document or during its presentation before the Board of Commissioners on October 28, 2024, to prove where or how the County's decision to award the Deschutes County Fair and Expo Center Solar PV System contract to an entity other than Energy Wise Services violated any of the applicable protest criteria in ORS, OAR, or DCC. This claim is denied.

6. Claim: Energy Wise Services offered the best and longest labor and production warranty.

Finding: Energy Wise Services did not meet its burden of proof, in either its written protest document or during its presentation before the Board of Commissioners on October 28, 2024, to prove where or how the County's decision to award the Deschutes County Fair and Expo Center Solar PV System contract to an entity other than Energy Wise Services violated any of the applicable protest criteria in ORS, OAR, or DCC. This claim is denied.

7. Claim: The proposal for Energy Wise Services would provide an estimated \$346,000 in savings above the winning bid over a 25-year time period.

Finding: Energy Wise Services did not meet its burden of proof, in either its written protest document or during its presentation before the Board of Commissioners on October 28, 2024, to prove where or how the County's decision to award the Deschutes County Fair and Expo Center Solar PV System contract to an entity other than Energy Wise Services violated any of the applicable protest criteria in ORS, OAR, or DCC. This claim is denied.

8. Claim: The solar panels proposed by the winning proposal are from a company that is on the brink of bankruptcy. If they go bankrupt, the 25-year warranty would be worthless.

Finding: Energy Wise Services did not meet its burden of proof, in either its written protest document or during its presentation before the Board of Commissioners on October 28, 2024, to prove where or how the County's decision to award the Deschutes County Fair and Expo Center Solar PV System contract to an entity other than Energy Wise Services violated any of the applicable protest criteria in ORS, OAR, or DCC. This claim is denied.

9. Claim: The winner's proposal listed wages below prevailing wages.

Finding: Energy Wise Services did not meet its burden of proof, in either its written protest document or during its presentation before the Board of Commissioners on October 28, 2024, to prove where or how the County's decision to award the Deschutes County Fair and Expo Center Solar PV System contract to an entity other than Energy Wise Services violated any of the applicable protest criteria in ORS, OAR, or DCC. This claim is denied.

10. Claim: The scoring was too subjective and nonsensical. (Energy Wise Services' Claims No. 10, 11, and 12)

Finding: Energy Wise Services did not meet its burden of proof, in either its written protest document or during its presentation before the Board of Commissioners on October 28, 2024, to prove where or how the County's decision to award the Deschutes County Fair and Expo Center Solar PV System contract to an entity other than Energy Wise Services violated any of the applicable protest criteria in ORS, OAR, or DCC. This claim is denied.

11. The winning proposal's extensive use of microinverters results in additional connections and electronics, which may result in an increased risk of failing equipment.

Finding: Energy Wise Services did not meet its burden of proof, in either its written protest document or during its presentation before the Board of Commissioners on October 28, 2024, to prove where or how the County's decision to award the Deschutes County Fair and Expo Center Solar PV System contract to an entity other than Energy Wise Services violated any of the applicable protest criteria in ORS, OAR, or DCC. This claim is denied.

Additional Exhibit:

Exhibit 1: Staff Report – October 28, 2024 that includes the RFP for Deschutes County Fair and Expo Center Solar PV System, Scoring Summary, and protest filed by Energy Wise Services

EXHIBIT 1