



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 07/11/2023

REQUESTER: Nathan Madenwald, P.E., Utilities Engineer

PRESENTER: Nathan Madenwald, P.E., Utilities Engineer

ITEM TITLE: CONSIDERATION OF APPROVAL, ACCEPTANCE, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF CONTRACT K-2324-19: BY AND BETWEEN THE NORMAN UTILITIES AUTHORITY AND BIOSTAR E LIGHT JV, LLC., IN AN AMOUNT NOT TO EXCEED \$160,000 FOR TAX ASSISTANCE SERVICES.

BACKGROUND:

On January 12, 2021, the City Council adopted Ordinance O-2021-28, which amended the City Code, Section 8-204 to allow performance-based efficiency contracts as an exception to competitive bidding requirements for City contracts. Performance-based efficiency contracts are contracts “for the design, development, financing, installation and service of any improvement, repair, alteration or betterment of any building or facility owned, operated or planned by a public entity; or any equipment, fixture or furnishing to be added or used in any such building or facility; or any maintenance or operational strategy that is designed and implemented that will reduce utility consumption or lower operating costs, result in annual cost savings, generate additional revenues or avoid capital cost incurrence” {Oklahoma Statutes, Title 62. Section 318(A)(2)}.

Performance-based Efficiency Contracts are designed for a certain type of project; primarily projects where benefit exists in the form of savings or reduction in costs that offset the cost of the contract or service. The current version of Section 318 was adopted by the State Legislature in 2018 and made these types of contracts available to political subdivisions and public trusts, operating essentially as an exception to competitive bidding requirements.

With performance-based efficiency contracts, the public entity enters into a contract with a provider deemed by the public entity to be qualified to, among other things, finance performance-based efficiency projects for the greater of 20 years or the useful life of the project. In the case of a project that produces cost savings, the qualified provider must provide a guarantee of the anticipated savings over the term of the contract. If such savings are not achieved, the public entity is made whole by the payment of the difference between anticipated and guaranteed savings and the actual savings.

The City adopted Resolutions R-1718-119 and R-1718-120 on May 22, 2018. The first resolution (R-1718-119) was brought forth adopting the Environmental Control Advisory Board’s (ECAB) updated recommendations to implement the Mayors’ Climate Agreement. One of the Mayors’

Climate Agreement recommendations focused on increasing renewable energy throughout the city and its utility enterprises with a goal of reaching 100 percent renewable energy consumption by the year 2050. This goal seemed achievable in step with OG&E efforts to replace their electric generation efforts with renewable energy as their large facilities are updated and large existing machinery is retired.

The second resolution (R-1718-120) was brought forth by the Sierra Club's "Ready for 100" Initiative. Their initiative is for the City and its utility enterprises to achieve 100 percent renewable energy by the year 2035. This initiative is more aggressive and, either way, the City of Norman is heading towards utilizing more renewable energy as we go into the future.

On March 2, 2021, the Norman Utilities Authority (NUA) received a presentation from Connor Energy of San Diego, California, and BioStar Renewables, LLC of Overland Park, Kansas, regarding a proposal to locate solar energy production facilities at the NUA's Water Treatment and Wastewater Reclamation facilities. On May 11, 2021, the NUA approved Contract K-2021-121 with BioStar E Light JV, LLC, (BioStar E Light) for the design, construction, operation and maintenance of a solar photovoltaic system to provide energy savings and production guaranty at the Wastewater Reclamation Facility (WRF) and the Water Treatment Plant (WTP). As the result of this contract, approximately 36 and 21 percent of the electrical usage will be offset at the WRF and WTP facilities, respectively.

On April 26, 2022, the NUA approved Amendment No. 1 with BioStar E Light to authorize completion of site preparation work at the WRF that was not included within the original contract but was separately budgeted by the City. As design progressed, City staff and BioStar E Light determined that including this work in BioStar E Light's scope would be the most efficient method to accomplish the work by only having one civil contractor working at the site. Costs for this work were to be excluded from the performance guaranty calculation. On June 27, 2023, Amendment 2 was approved by the NUA to reduce the scope of the project in regards to replanting of materials for erosion control and final acceptance of the project.

In August 2022, the federal government passed the Inflation Reduction Act of 2022. Included within this legislation are tax incentives for solar projects with the NUA project potentially capable of recovering an estimated 30 percent of the eligible project costs which could be in excess of \$1 million.

DISCUSSION:

Under the proposed contract, BioStar E Light will provide services to assist the NUA to obtain all available tax incentives for the completed solar project. BioStar E Light is an expert in the industry and can provide value to the NUA in this effort.

This work will be completed by BioStar E Light at risk with the exception of the third party services which are capped at \$5,000. Compensation to BioStar E Light, with the exception of the third party services, will be ten percent (10%) of the tax incentives received.

Funds for the proposed contract will be from the Solar Construction account within the Water Fund. This account (31993395-46101; Project WA0370) has an available balance of \$24,500 which is sufficient to fund the authorized work of \$5,000. The amount of \$5,000 will be the only amount initially encumbered for this work. Upon receipt of tax incentives, ten percent of the received funds will be transferred to this account for payment to BioStar E Light.

RECOMMENDATION:

Staff recommends the NUA approve Contract K-2324-19 with BioStar E Light JV, LLC in an amount not to exceed \$160,000 for tax assistance services.