



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Contract Award for Standby Generators for Water Well and Storm Drain Pumping Stations for Sites 1R, 7, 9, 11R, and 16 (\$650,000 - project estimate)

MEETING DATE: June 1, 1994

PREPARED BY: Public Works Director

RECOMMENDED ACTION: That the City Council adopt a resolution awarding the contract for the above project.

BACKGROUND INFORMATION: The City's Water Master Plan recommends that backup power be available at a minimum of one-third of the well sites. We currently have twenty-four wells (see Exhibit A for the well locations) and only three have standby generators that are operational. The three locations with auxiliary power are Wells 5, 8 and 9 and Well 9 is currently out of service. The existing generators, mostly 1940's and 50's government surplus units, are obsolete and repair and replacement parts are no longer available.

Geib Engineering was hired to provide plans and specifications for standby generators at seven well sites. Two of those sites have been removed from this project because they are wells with DBCP and have no treatment facility, thus their use would be restricted. The five remaining sites included in this project are Wells 1R, 7, 9, 11R, and 16.

Plans and specifications for this project were approved on January 19, 1994. Bids were received on March 2, 1994 and on March 19, Council rejected all the bids and authorized the Public Works Department to readvertise the project. The City received the following three bids for this project on April 27, 1994:

<u>Bidder</u>	<u>Location</u>	<u>Lump Sum Bid</u>	<u>Financing Bid (Present Worth)</u>
Engineer's Estimate		\$613,956	
Royal Electric	Sacramento, Ca.	\$456,027	\$456,000
Interstate Construction	Sacramento, Ca.	\$495,600	\$535,000
Collins Electric Co.	Stockton, Ca.	\$510,000	

APPROVED

THOMAS A. PETERSON
City Manager



recycled paper

**Contract Award for Standby Generators for Water Well and Storm Drain Pumping Stations
for Sites 1R, 7, 9, 11R, and 16 (\$650,000 - project estimate)**

June 1, 1994

Page 2

Interstate Construction's bid for the equipment to be supplied under the financing package is the only equipment that complies with the specifications. Royal Electric listed Katolight as the supplier of the engine generator sets and Interstate Construction named Caterpillar under its financing plan as the manufacturer of the engines and generators. Section 6-201.04 of the Special Provisions states that:

"All engine generator sets, housings, and accessories shall be assembled by one firm. This firm shall be authorized by Caterpillar, Kohler, or Onan to supply and service the Lodi Area."

In addition, Section 6-153 "Commonality of Equipment" states that:

"To facilitate operation, maintenance, and parts procurement, and to define the quality required, only equipment from the following suppliers will be accepted:

- A. All Automatic Transfer Switches shall be manufactured by one firm, either Russell or Zenith. Note there are physical size limitations on several of the ATS.
- B. All engine generator sets, housings, and accessories shall be assembled by one firm. This firm shall be authorized by Caterpillar, Kohler, or Onan to supply and service the Lodi Area."

Interstate Construction has sent a letter to the City indicating their intent to protest the award of the contract to Royal Electric because Royal Electric listed Katolight as its manufacturer. A copy of Interstate's letter of protest is attached.

Katolight was not listed in the specifications as they are a smaller company, and Geib Engineering was not as familiar with them. There is a company in Stockton, Energy Systems, that is authorized by Katolight to service Katolight equipment.

There are two additional areas where Royal Electric does not meet the specifications. First, the bid proposal required that the engines and generators be furnished by the same manufacturer. It was Geib Engineering's and the City's opinion that using the same manufacturer would make the maintenance of the generators easier. The generator sets being listed by Royal Electric have some John Deere and some Detroit Diesel engines.

The second area of non-conformance concerns Section 6-204 of the Special Provisions which requires that:

"The standby engine generator sets shall be supplied by a firm that has at least 5 years experience providing equipment as required in the specifications and drawings while operating under its current name and management."

Katolight's supplier is Energy Systems. Energy Systems used to be a part of E. E. Richter & Sons, Inc. which has been a supplier of standby, portable, industrial, mobile and RV generators since 1974. In 1992, Energy Systems separated from E. E. Richter & Sons and is independently owned by Don W.

Contract Award for Standby Generators for Water Well and Storm Drain Pumping Stations
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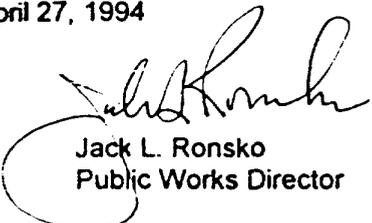
June 1, 1994

Page 3

Richter. Energy Systems has more than five years of experience but not under its current name as required by the specifications.

The Public Works Department and the consultant, Geib Engineering, feel that the Royal Electric bid would provide acceptable equipment for the City. Interstate Construction's bid meets the requirements of the specifications but they are also approximately \$78,000 higher than Royal Electric when looking at the present worth of the 60 month financing plans submitted by each company. Whether the Council awards the contract to Royal Electric or to Interstate Construction, the Public Works Department is recommending that the 60 month lease purchase arrangement (Bid Alternate B) be chosen. City Attorney McNatt is researching the legal implications of awarding to the low bidder, and will have additional comments regarding this contract award at the Council meeting.

FUNDING:	Originally Budgeted:	1993/94
	Budgeted Fund:	Water Capital Outlay
	Current Appropriation:	\$236,000 (first year of lease payment)
	Total Project Estimate:	\$650,000
	Bid Opening Date:	April 27, 1994



Jack L. Ronsko
Public Works Director

Prepared by Wesley K. Fujitani, Senior Civil Engineer

JLR/WKF/rs

Attachment

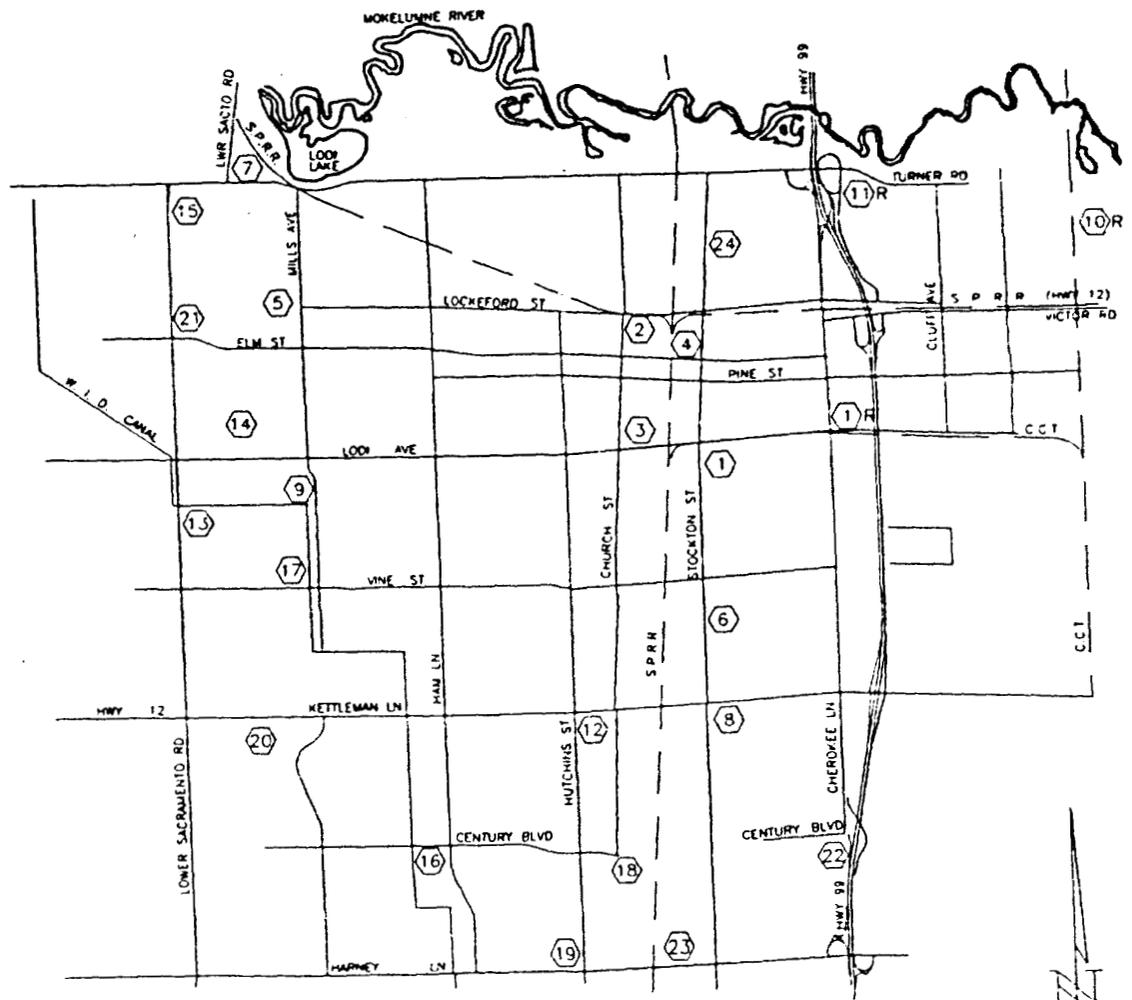
cc: City Attorney
Purchasing Officer
Water/Wastewater Superintendent
Geib Engineering
Royal Electric
Interstate Construction

EXHIBIT A



CITY OF LODI
PUBLIC WORKS DEPARTMENT

WELL LOCATIONS



WELL NO

WELL - LOG



April 27, 1994

City of Lodi
Public Works Department

Attn: Wes Fujitani

Re: Standby Generators for Water Well and Storm Drain Pumping Stations
for Sites 1R, 7, 9, 11R, and 16

Dear Mr. Fujitani:

Upon review of the bid results for the above referenced project, Interstate Construction, Inc. would like to make clear their intention to protest any award to Royal Electric based on Royal's noncompliance with the specifications for this project. Specifically, the noncompliance relates to Specification paragraph 6-201.04 on page 6.30. This paragraph reads "All engine generator sets, housings, and accessories shall be assembled by one firm. *This firm shall be authorized by Caterpillar, Kohler, or Onan to supply and service the Lodi Area.*" (emphasis added). Please note that Royal Electric listed Katolight Corporation as their Standby Engine Generator Set supplier/manufacturer. Based on this noncompliance, we feel that award should be made to Interstate Construction, Inc. as we have offered either Caterpillar or Kohler as part of our bid package.

Please contact me with your response after consideration of this matter.

Sincerely,

Joel D. Leineke

3909 Security Park Drive
Rancho Cordova, CA 95742
916/357-0622

Public Works Department
Tabulation of Bids Received 4/27/94
Project: Standby Generators for Water Well & Storm Drain Pumps
Sites 1R, 7, 9, 11R, & 16.

Item Description	Engineer's Estimate	Contractors		
		Royal Electric	Interstate Construction	Collins Electrical Co.
I <i>Bid Alternate A</i> Lump Sum Price for the Equipment and Services	\$613,958.00	\$456,027.00 (KatoLight)	\$495,600.00 (Kohler)	\$510,000.00 (Kohler)
II <i>Bid Alternate B</i> The 60 Payments Shall Each Be		\$9,215.00	\$10,486.69	no bid
Interest Rate		7.850%	6.575%	
Present Worth		\$456,000 (KatoLight)	\$535,000 (Caterpillar)	
III <i>Bid Alternate C</i> The 84 Payments Shall Each Be		\$7,080.00	\$8,094.21	no bid
Interest Rate		7.870%	7.075%	
Present Worth		\$456,000 (KatoLight)	\$535,000 (Caterpillar)	
IV <i>Bid Alternate D</i> The 120 Payments Shall Each Be		\$5,530.00	\$6,512.25	no bid
Interest Rate		7.990%	8.075%	
Present Worth		\$456,000 (KatoLight)	\$535,000 (Caterpillar)	
Bid Breakdown				
Cost of each site:				
1R		\$90,339.00	\$96,790.68	\$102,000.00
7		\$89,879.00	\$88,068.12	\$96,900.00
9		\$97,995.00	\$110,518.80	\$117,300.00
11R		\$88,037.00	\$101,101.40	\$96,900.00
16		\$89,777.00	\$99,120.00	\$96,900.00
Supplier/ Manufacturer - Lump Sum Bid				
Engine / Generator Supplier		Energy System/KatoLight Corp.	Sierra Power Products: Kohler	Sierra Power Products: Kohler
Engine Manufacturer		John Deere Corp./ Detroit Diesel Corp.	John Deere Corp./ Detroit Diesel Corp.	John Deere Corp./ Detroit Diesel Corp.
Generator Manufacturer		Marathon Corp.	Kohler	Kohler
Supplier/ Manufacturer - Financing				
Engine / Generator Supplier		Energy System/KatoLight Corp.	Holt Bros.	no bid
Engine Manufacturer		John Deere Corp./ Detroit Diesel Corp.	Caterpillar	no bid
Generator Manufacturer		Marathon Corp.	Caterpillar	no bid



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Supplemental Information - Contract Award for Standby Generators for Water Well and Storm Drain Pumping Stations for Sites 1R, 7, 9, 11R, and 16

MEETING DATE: June 1, 1994

PREPARED BY: Public Works Director

RECOMMENDED ACTION: That the City Council adopt a resolution rejecting the low bid as being non-responsive and awarding the contract for the above project to Interstate Construction, Bid Alternate B (60 month lease/purchase at \$10,486.69 per month).

BACKGROUND INFORMATION: This memo supplements information provided in the City Council packet for the June 1 meeting and recommends award of the generator contract to Interstate Construction, the second bidder. This recommendation is made after additional consultation with the City Attorney and the receipt of his written opinion (copy attached). This was received after the original Council Communication was written and could not be included in the memo due to processing and review deadlines. This additional information is being provided to both Royal Electric, the low bidder and Interstate Construction.

Although this recommendation will result in a higher first cost to the City, staff feels there are advantages to the Interstate bid in that they are proposing Holt/Caterpillar equipment and Caterpillar Financial Services Corporation leasing. They are:

- We already have one Caterpillar unit (at the Public Safety Building) and it has performed up to our expectations. Having similar units will make routine inspection and troubleshooting more efficient.
- Holt Brothers has a solid reputation and sales base in this area. Their ability to provide service and parts exceeds that of Energy Systems.
- The Public Safety Building unit was purchased under a Caterpillar Financial Services lease and we had no problems with them. (That lease has been paid off.)
- The Interstate/Caterpillar lease interest rate is good through Dec. 31, 1994. The interest rate on the lease proposed by Royal Electric, through Saddleback Financial Corporation, was only good through May 31, 1994. Because of the other bid considerations, we have not contacted them to see if the interest rate would be held past the deadline. If it were to increase, the total cost would increase by \$13,000 for each percentage point.

APPROVED _____

THOMAS A. PETERSON
City Manager



recycled paper

**Contract Award for Standby Generators for Water Well and Storm Drain Pumping Stations
for Sites 1R, 7, 9, 11R, and 16 (\$650,000 - project estimate)**

June 1, 1994

Page 2

We do not feel that rejecting the bids and rebidding the project is to the City's advantage. After doing that once, the number of bidders has dropped from eight to three. With another rebid, no matter how we do or don't modify the specifications, we could easily receive only one bid.

With regard to the financing, the lower interest rate on the Caterpillar lease is advantageous to the City. Their rate is 6.575% and the City is presently earning 4.85% on investments. Thus, the net rate the City would be paying is only 1.725%. This results in a cost difference between Interstate and Royal Electric of approximately \$67,000. The lease allows us to purchase all the units at the same time, saving the costs of bidding and administering one contract each year and allows the City to benefit from all the installations now. It also insures similar units for ease of maintenance rather than coping with model changes in later years.

In terms of overall water system reliability and in spite of recent discussions regarding replacement of old pipes and wells, staff feels these generators are the highest priority in system rehabilitation and we urge the City Council to award the contract as recommended and move ahead with this project.

FUNDING:	Originally Budgeted:	1993/94
	Budgeted Fund:	Water Capital Outlay
	Current Appropriation:	\$236,000 (first year of lease payment)
	First year cost:	\$125,840.28 (12 payments)
	Total Project Estimate:	\$629,201.40 (total of 60 payments)
	Bid Opening Date:	April 27, 1994



Jack L. Ronsko
Public Works Director

Prepared by Richard C. Prima, Jr., City Engineer

JLR/RCP/rs

Attachment

cc: City Attorney
Purchasing Officer
Water/Wastewater Superintendent
Geib Engineering
Royal Electric
Interstate Construction

CITY OF LODI
MEMORANDUM FROM THE OFFICE OF THE CITY ATTORNEY

To: Rich Prima, City Engineer
From: Bob McNatt, City Attorney
Date: May 26, 1994
Subject: Bids for Standby Generators

I have now had the opportunity to look over the material you provided to me yesterday concerning the bids for standby generators for water well and storm drain pumping stations. For reasons discussed below, it appears that the low bid submitted by Royal Electric is irregular and cannot be accepted.

I have reached this conclusion because the plans and specifications, in Section 6-153 clearly state "all engine generator sets, housings and accessories shall be assembled by one firm. This firm shall be authorized by Caterpillar, Kohler, or Onan to supply and service the Lodi area." It is my understanding that Royal Electric bid the project based on using Katolight in lieu of the three firms specified by the City. This is also the basis of the protest letter received from Interstate Construction, dated April 27, 1994.

In analyzing these situations, the starting point is Public Contracts Code §20161(c) and §20262 which require competitive bids on public projects. In order to provide a level playing field for bidders, the City retained Geib Electric to help us draft plans and specifications. The plans and specifications call for very specific information to be provided by bidders and in §2.500 states that proposals may be rejected for irregularities of any kind. It has been held that a contract made in violation of statutes on competitive bidding is illegal (Reams v. Cooley, 171 Cal. 150).

It is also been held by the California Attorney General that if an error or omission in the bid is "inconsequential" a bid award is still proper. However, if an error or omission is a "substantial deviation" the bid is invalid (47 Ops Ag 129). The basis to distinguish between an error which is inconsequential and one which is substantial is whether or not the deviation "...gives a bidder an advantage or benefit not allowed to others...." (ID, at 131). Unsuccessful bidders can obviously argue that by bidding Katolight instead of the three manufacturers called for, Royal Electric has a financial advantage not allowed to the other bidders.

I have also found a case entitled Konica Business Machines v. The Regents of the University of California 253 Cal. Rptr. 591 which says that a deviation in responding to bid specifications is "substantial" unless it is so inconsequential that it could not effect the bid amount. (Konica, supra at 594). It was also stated in the Konica case that strict adherence to standards in bidding must be observed by public agencies and that contracts awarded without strict compliance with bidding requirements will be set aside. The court even went on to state "this preventive approach is

Contract Award for Standby Generators

May 26, 1994

Page 2

applied even where it is certain there was in fact no corruption or adverse effect upon the bidding process, and the deviations would save the entity money." (Konica at 595).

I am also aware that under §6-150 of the specifications, it states "whenever any material is specified by name and/or number thereof, such reference shall be deemed to be used for the purpose of facilitating a description of the materials and establish quality, and shall be deemed or construed to be followed by the words "or approved equal". No substitution will be permitted which is not been submitted per the submittal schedule of this specification..." While this implies that the City has some discretion in determining whether a suggested alternative is acceptable, I think that the general nature of the language is overcome by the very specific language of §6-153. The language in §6-150 is "boiler plate" which we put into our specifications as a matter of routine. While it is intended to provide flexibility for the City in making decisions on certain types of products, when we further narrow it down to specify not a single brand name but to three acceptable alternatives, I feel that the general substitution language is overcome.

While I will always try to save the City money wherever possible, in this situation I believe if we tried to accept the low bid, any dissatisfied person could bring a legal challenge.

Please let me know if there are further questions.



BOB McNATT
City Attorney

BM:pn

cc: City Council
Jack Ronsko

BID.GEN/TXTA.01V

BID.GEN/TXTA.01V

RESOLUTION NO. 94-61

A RESOLUTION OF THE LODI CITY COUNCIL
REJECTING ALL BIDS FOR THE CONTRACT FOR STANDBY GENERATORS
FOR WATER WELL AND STORM DRAIN PUMPING STATIONS
FOR SITES 1R, 7, 9, 11R, AND 16

WHEREAS, in answer to notice duly published in accordance with law and the order of this City Council, sealed bids were received and publicly opened on March 2, 1994 at 11:00 a.m. for the bid for Standby Generators for Water Well and Storm Drain Pumping Stations for sites 1R, 7, 9, 11R, and 16, described in the specifications therefor approved by the City Council on January 19, 1994; and

WHEREAS, said bids have been compared, checked, and tabulated and a report thereof filed with the City Manager as follows:

<u>BIDDER</u>	<u>LOCATION</u>	<u>LUMP SUM BID</u>	<u>FINANCING BID</u> (Present Worth)
Engineer's Estimate		\$613,956	
Royal Electric	Sacramento	\$456,027	\$456,027
Interstate Construction	Sacramento	\$495,600	\$535,000
Collins Electric Co.	Stockton	\$510,000	

WHEREAS, there were disputes between the low and 2nd lowest bidder, and staff wishes to reevaluate the project in its entirety.

NOW, THEREFORE, BE IT RESOLVED by the Lodi City Council that all bids received are hereby rejected for the award of contract for the Standby Generators for Water Well and Storm Drain Pumping Stations for Sites 1R, 7, 9, 11R, and 16.

Dated: June 1, 1994

I hereby certify that Resolution No. 94-61 was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 1, 1994 by the following vote:

- Ayes: Council Members - Davenport, Mann, Pennino and Sieglock (Mayor)
- Noes: Council Members - Snider
- Absent: Council Members - None


Jennifer M. Perrin
City Clerk