



To Facilities Committee 1-6-2016

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Commission Staff Report

AGENDA ITEM NO.: _____

Date: December 28, 2015

To: NCPA Commission

Subject: **Pacific Star Chemical, LLC dba Northstar Chemical – Five Year Multi-Task Agreement for Purchase of Equipment, Materials and Supplies for Chemical Purchases; Applicable to the following projects: All Generation Services Plant Locations**

Proposal

Approve a five year Multi-Task Agreement for the Purchase of Equipment, Materials and Supplies with Pacific Star Chemical, LLC dba Northstar Chemical in an amount not-to-exceed \$1,500,000 for chemical purchases as needed at all NCPA locations and authorize the General Manager to approve the issuance of purchase orders for any amount as needed pursuant to the contract.

Background

Chemicals are needed at various NCPA locations for the operation of the plants. Pacific Star Chemical, LLC dba Northstar Chemical is a supplier of chemicals.

Selection Process

This five year contract does not commit NCPA to any purchases. In addition to Pacific Star Chemical, LLC dba Northstar Chemical, NCPA currently has entered into four other enabling agreements with suppliers for similar chemical purchases. NCPA will issue purchase orders based on cost and availability of the product(s) needed at the time of order. Chemicals are ordered on a daily, weekly, and monthly basis. The decision as to which supplier to use to provide these chemicals will be based on the supplier with the lowest cost who can meet the needed delivery schedule at the time of order.

Fiscal Impact

Total cost of the agreement is not-to-exceed \$1,500,000 over five years to be used out of NCPA approved budgets as services are rendered. Purchase orders referencing the terms and conditions of the Agreement will be issued following NCPA procurement policies and procedures. The annual cost of these chemicals exceeds the General Manager's authority of \$250,000. It is recommended that the General Manager be authorized to approve the issuance of purchase orders in any amount as needed pursuant to this contract.

SR:

Environmental Analysis

This activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a “project” for purposes of Section 21065 the California Environmental Quality Act. No environmental review is necessary.

Committee Review

The recommendation below was reviewed by the Facilities Committee on January 6, 2016 and *was recommended for Commission approval. For Facilities Committee meetings where a quorum was not present: [No formal action was taken due to the lack of a quorum, however, the [Project name] participants present at the meeting voiced their support for the recommendation below and all other meeting attendees did not have any objections.]*

The recommendation below was reviewed by the Lodi Energy Center Project Participant Committee on January 11, 2016 and *was recommended for Commission approval.*

Recommendation

Staff recommends that the NCPA Commission approve Resolution 16-XX authorizing the General Manager or his designee to enter into a Multi-Task Agreement for the Purchase of Equipment, Materials and Supplies with Pacific Star Chemical, LLC dba Northstar Chemical, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,500,000 over five years and to issue purchase orders in any amount associated with the contract.

Respectfully submitted,

Prepared by:

RANDY S. HOWARD
General Manager

KEN SPEER
Assistant General Manager
Generation Services

Attachments (2):

- Resolution
- Multi-Task Agreement for the Purchase of Equipment, Materials and Supplies with Pacific Star Chemical, LLC dba Northstar Chemical

SR:

RESOLUTION 16-XX

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY
APPROVING A MULTI-TASK AGREEMENT FOR THE PURCHASE OF EQUIPMENT,
MATERIALS AND SUPPLIES WITH PACIFIC STAR CHEMICAL, LLC dba
NORTHSTAR CHEMICAL
(reference Staff Report #xxx:16)**

WHEREAS, Northern California Power Agency (NCPA) facilities require bulk chemicals at its various locations; and

WHEREAS, Pacific Star Chemical, LLC dba Northstar Chemical is a provider of these chemicals; and

WHEREAS, on _____ the LEC Project Participant Committee approved the agreement with Pacific Star Chemical, LLC dba Northstar Chemical in an amount not to exceed \$1,500,000 over five years; and

WHEREAS, this activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a "project" for purposes of Section 21065 the California Environmental Quality Act. No environmental review is necessary; and

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into a Multi-Task Agreement for the Purchase of Equipment, Materials and Supplies with Pacific Star Chemical, LLC dba Northstar Chemical, with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$1,500,000 over five years and to issue purchase orders in any amount associated with the contract.

PASSED, ADOPTED and APPROVED this ____ day of _____, 2016 by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	_____	_____	_____
BART	_____	_____	_____
Biggs	_____	_____	_____
Gridley	_____	_____	_____
Healdsburg	_____	_____	_____
Lodi	_____	_____	_____
Lompoc	_____	_____	_____
Palo Alto	_____	_____	_____
Port of Oakland	_____	_____	_____
Redding	_____	_____	_____
Roseville	_____	_____	_____
Santa Clara	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

CAROL GARCIA
CHAIRPERSON

ATTEST:

CARY A. PADGETT
ASSISTANT SECRETARY



**MULTI-TASK
AGREEMENT FOR PURCHASE OF
EQUIPMENT, MATERIALS AND SUPPLIES
BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
PACIFIC STAR CHEMICAL, LLC dba NORTHSTAR CHEMICAL**

This Agreement for Purchase of Equipment, Materials and Supplies ("Agreement") is entered into on _____, 2016 (the "Effective Date") between the NORTHERN CALIFORNIA POWER AGENCY, ("Agency"), a public joint powers agency, with offices located at 651 Commerce Drive, Roseville, CA, 95678-6420 and Pacific Star Chemical, LLC dba Northstar Chemical, ("Supplier"), whose principal office is located at 14200 SW Tualatin Sherwood Road, Sherwood, OR 97140 (together sometimes referred to as the "Parties").

Section 1. SCOPE. In accordance with the terms and conditions set forth in this Agreement, Supplier is willing to deliver the equipment, materials and supplies ("Goods") described in Exhibit A, attached hereto and incorporated herein to Agency's Project Site, DDP, when requested by the Agency. Supplier shall be responsible at its sole expense for delivering the Goods to Agency's Project Site and title shall not pass until the Agency accepts delivery at this Site. In the event of a conflict or inconsistency between the terms of this Agreement and Exhibit A, this Agreement shall prevail.

Section 2. TERM OF AGREEMENT. This Agreement shall begin upon Effective Date and shall end on the earlier of five (5) years after the Effective Date or when Supplier has provided to Agency the Goods described in Exhibit A.

Section 3. REQUEST FOR GOODS. At such time that Agency determines to have Supplier provide Goods under this Agreement, Agency shall issue a Purchase Order. The Purchase Order shall identify the specific Goods to be provided ("Requested Goods"), may include a not-to-exceed cap or monetary cap on the Requested Goods and all related expenditures authorized by that Purchase Order, and shall include a time by which the Requested Goods shall be delivered.

Section 4. COMPENSATION. Agency hereby agrees to pay Supplier for the Goods an amount not to exceed ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00) as total compensation under this Agreement, which includes all shipping, taxes (if applicable), insurance, delivery charges, and any other fees, costs or charges.

4.1 Invoices. Supplier shall have ninety (90) days after the delivery of Goods to invoice Agency for all amounts due and outstanding under this Agreement. Supplier shall include the number of the Purchase Order which authorized the Goods for which Supplier is seeking payment. In the event Supplier fails to invoice Agency for all amounts due within such ninety (90) day period, Supplier waives its right to collect payment from Agency for such amounts. All invoices shall be submitted to:

Northern California Power Agency
651 Commerce Drive
Roseville, California 95678
Attn: Accounts Payable

- 4.2 **Payment.** Agency shall pay all invoices within thirty (30) days of the receipt of any invoice for Goods satisfactorily received.
- 4.3 **Timing for Submittal of Final Invoice.** Supplier shall have ninety (90) days after delivery of the Requested Goods to submit its final invoice for the Requested Goods. In the event Supplier fails to submit an invoice to Agency for any amounts due within the ninety (90) day period, Supplier is deemed to have waived its right to collect its final payment for the Requested Goods from Agency.

Section 5. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Supplier, at its own cost and expense, shall procure the types and amounts of insurance listed below for the period covered by the Agreement.

- 5.1 **Workers' Compensation.** If Supplier employs any person, Supplier shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Supplier with limits of not less than one million dollars (\$1,000,000.00) per accident.
- 5.2 **Automobile Liability.** Supplier shall maintain automobile liability insurance for the term of this Agreement covering any loss or liability, including the cost of defense of any action, arising from the operation, maintenance or use of any vehicle, whether or not owned by the Supplier, on or off Agency premises. The policy shall provide a minimum limit of \$1,000,000 per each accident, with \$2,000,000 aggregate. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment utilized in the transport of the Goods to the Agency's Project Site.
- 5.3 **Commercial General Liability (CGL).** Supplier shall maintain commercial general liability coverage covering Goods, including product liability, covering any loss or liability, including the cost of defense of any action, for bodily injury, death, personal injury and broad form property damage which may arise out of the operations of Supplier in regard to this Agreement with not less than \$1,000,000/\$2,000,000 aggregate for bodily injury and property damage, on an occurrence basis. No endorsement shall be attached limiting the coverage.
- 5.4 **General Liability/Umbrella Insurance.** The coverage amounts set forth above may be met by a combination of underlying and umbrella policies as long as in combination the limits equal or exceed those stated.
- 5.5 **All Policies Requirements.**
- 5.5.1 **Verification of Coverage.** Prior to beginning any work under this Agreement, Supplier shall, at the sole option of the Agency, provide Agency with (1) a Certificate of Insurance that demonstrates compliance with all applicable insurance provisions contained herein and (2) policy endorsements to the automobile liability policy and the CGL policy adding the Northern California Power Agency as an Additional Insured and declaring such insurance primary in regard to

work performed pursuant to this Agreement and that Agency's insurance is excess and non-contributing.

5.5.2 **Notice of Reduction in or Cancellation of Coverage.** Supplier agrees to provide at least thirty (30) days prior written notice of any cancellation or reduction in scope or amount of the insurance required under this Agreement.

5.5.3 **Waiver of Subrogation.** Supplier agrees to waive subrogation which any insurer of Supplier may acquire from Supplier by virtue of the payment of any loss. Supplier agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation.

5.5.4 **Self-Insured Retention.** Supplier shall declare the amount of the self-insured retention to the Agency; the amount shall be not more than \$100,000.

5.6 **Hazardous Materials Transport.** In the event Supplier transports any hazardous materials it shall additionally provide, or if it utilizes a third party for transportation it shall ensure that the third party provides, all insurance and bonds required by the Federal Motor Carrier Safety Administration (including endorsements for motor carrier policies required by the Motor Carrier Act of 1980) and such insurance required by the California Department of Toxic Substances Control.

Section 6. **WARRANTY.** In addition to any and all warranties provided or implied by law or public policy, or any other warranties provided by Supplier, Supplier warrants that all Goods are free from defects in design and workmanship; comply with applicable federal, state and local laws and regulations; are new, of good quality and workmanship, and free from defects; are suitably safe and sufficient for the purpose for which they are normally used; and are not subject to any liens or encumbrances. Supplier shall provide all Goods in accordance with all applicable engineering, construction and other codes and standards, in accordance with prudent electrical utility standards, and in accordance with the terms of this Agreement applicable to such Goods, all with the degree of high quality and workmanship expected from purveyors engaged in the practice of providing materials and supplies of a similar nature. Moreover, if, during the term of this Agreement (or during the one (1) year period following the term hereof, unless Supplier's warranty is for greater than one (1) year, in which case Supplier's warranty shall be applied), the Goods provided by Supplier under this Agreement fail due to defects in material and/or workmanship or other breach of this Agreement, Supplier shall, upon any reasonable written notice from Agency, replace or repair the same to Agency's satisfaction.

Section 7. **INDEMNIFICATION AND SUPPLIER'S RESPONSIBILITIES.**

7.1 **Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Supplier from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Supplier acknowledges and agrees to the provisions of this section and that it is a material element of consideration.

- 7.2 **Scope.** Supplier shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency, and its officials, commissioners, officers, employees, agents and volunteers from and against all losses, liabilities, claims, demands, suits, actions, damages, expenses, penalties, fines, costs (including without limitation costs and fees of litigation), judgments and causes of action of every nature arising out of or in connection with any acts or omissions by Supplier, its officers, officials, agents, and employees, except as caused by the sole or gross negligence of Agency. Notwithstanding, should this Agreement be construed as a construction agreement under Civil Code section 2783, then the exception referenced above shall also be for the active negligence of Agency.
- 7.3 **Transfer of Title.** Supplier shall be deemed to be in exclusive possession and control of the Goods and shall be responsible for any damages or injury caused thereby, including without limitation any spills, leaks, discharges or releases of any Goods, until Agency accepts delivery at its Site. For the purposes of this Agreement, such acceptance shall occur after Supplier or its agents complete transfer of the Goods into appropriate containers, machinery, storage tanks or other storage apparatus identified by NCPA. In the event a spill, leak, discharge or release requires notification to a federal, state or local regulatory agency, Supplier shall be responsible for all such notifications. Should Supplier be required to remedy or remove Goods as a result of a leak, spill, release or discharge of Goods into the environment at Agency's Site or elsewhere, Supplier agrees to remediate, remove or cleanup Agency's Site to a level sufficient to receive a "No Further Action Required" or "Closure Letter" from the appropriate regulatory authority.

Section 8. **MISCELLANEOUS PROVISIONS.**

- 8.1 **Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Supplier and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
- 8.2 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.
- 8.3 **Compliance with Applicable Law.** Supplier shall comply with all applicable federal, state, and local laws, rules and regulations in regard to this Agreement and the Goods supplied and transported hereunder, including but not limited to the Federal Motor Carrier Safety Improvement Act of 1990 and California regulations for the transportation of hazardous materials found at Health and Safety Code section 25160 *et seq.*
- 8.4 **Construction of Agreement.** The Parties agree that the usual construction of an agreement against the drafting party shall not apply here.
- 8.5 **Supplier's Status.** Supplier is an independent contractor and not an employee or agent of NCPA.

- 8.6 **Non-assignment.** Supplier may not assign this Agreement without the prior written consent of NCPA, which shall not be unreasonably withheld.
- 8.7 **Governing Law.** This Agreement and all matters pertaining to it, shall be governed by the laws of the State of California and venue shall lie in Placer County or in the county to which the Goods are delivered.
- 8.8 **Affidavit of Compliance for Contractors.** Consistent with the Conditions of Certification issued by the California Energy Commission, Supplier shall, upon the request of Agency, execute and provide to Agency Exhibit B hereto for any employees, agents or other representatives of Supplier who will be present on site at NCPA's Lodi Energy Center, Lodi, California. During the term of this Agreement, Supplier shall keep current the Certificate, a copy of which is attached hereto as Exhibit B and incorporated herein by reference.
- 8.9 **Affidavit of Compliance for Hazardous Materials Transport Vendors.** Consistent with the Conditions of Certification issued by the California Energy Commission, Supplier shall, upon the request of Agency, execute and provide to Agency Exhibit C hereto for any employees, agents or other representatives of Supplier who will be present on site at NCPA's Lodi Energy Center, Lodi, California. During the term of this Agreement, Supplier shall keep current the Certificate, a copy of which is attached here to as Exhibit C and incorporated herein by reference.

The Parties have executed this Agreement as of the date signed by the Agency.

NORTHERN CALIFORNIA POWER AGENCY

PACIFIC STAR CHEMICAL, LLC dba
NORTHSTAR CHEMICAL

Date: _____

Date: _____

RANDY S. HOWARD, General Manager

MATTHEW WERGER, General Manager

Attest:

Assistant Secretary of the Commission

Approved as to Form:

General Counsel

**EXHIBIT A
PURCHASE LIST**

Supplier deliveries shall be made by a vehicle suitably constructed to contain chemicals meeting Agency's product specifications.

All delivery vehicles shall be labeled and constructed to meet all requirements of the California State Highway Patrol, the Surface Transportation Board and any and all jurisdictions having control over said delivery truck operations.

Chemicals currently used at NCPA facilities include (but are not limited to):

Chemical	Pricing
Hydrated Lime 90%	\$ 0.50 / lb
Mag Ox 36%	\$ 5,000 / ton
Sulfuric Acid 93%	\$ 157.00 / wet ton or \$ 0.0785 / lb
Sodium Hypochlorite 12.5% (Bleach)	\$ 0.92 / gallon or \$ 0.092 / lb
Magnesium Sulfate 30%	\$ 50.00 / gallon
Sodium Bisulfite 12%	\$ 0.90 / lb
Sodium Bisulfite 40%	\$ 0.99 / lb
Sodium Hydroxide 15%	\$ 0.48 / lb

NCPA acknowledges that Supplier's chemical pricing may be subject to change every six to twelve (6 -12) months. NCPA shall compensate Supplier in accordance with such price list revisions, provided, however, that (1) Supplier shall provide NCPA with written notice of such bi-annual revisions thirty (30) days in advance; and (2) regardless of such price list revisions, total compensation for all tasks, including all chemicals delivered under this Agreement, shall not exceed the amount set forth in Section 4 (Compensation) of this Agreement.

NOTE: As a public agency, NCPA shall not reimburse Supplier for travel, food and related costs in excess of those permitted by the Internal Revenue Service.

EXHIBIT B

CERTIFICATION

Affidavit of Compliance for Contractors

I,

(Name of person signing affidavit)(Title)

do hereby certify that background investigations to ascertain the accuracy of the identity and employment history of all employees of

PACIFIC STAR CHEMICAL, LLC dba NORTHSTAR CHEMICAL

(Company name)

for contract work at

LODI ENERGY CENTER, 12745 N. Thornton Road, Lodi, CA 95242

(Project name and location)

have been conducted as required by the California Energy Commission Decision for the above-named project.

(Signature of officer or agent)

Dated this _____ day of _____, 20 ____.

THIS AFFIDAVIT OF COMPLIANCE SHALL BE APPENDED TO THE PROJECT SECURITY PLAN AND SHALL BE RETAINED AT ALL TIMES AT THE PROJECT SITE FOR REVIEW BY THE CALIFORNIA ENERGY COMMISSION COMPLIANCE PROJECT MANAGER.

EXHIBIT C

CERTIFICATION

Affidavit of Compliance for Hazardous Materials Transport Vendors

I, _____,

(Name of person signing affidavit)(Title)

do hereby certify that the below-named company has prepared and implemented security plans in conformity with 49 CFR 172, subpart I and has conducted employee background investigations in conformity with 49 CFR 172.802(a), as the same may be amended from time to time,

PACIFIC STAR CHEMICAL, LLC dba NORTHSTAR CHEMICAL

(Company name)

for hazardous materials delivery to:

LODI ENERGY CENTER, 12745 N. THORNTON ROAD, LODI, CA 95242

(Project name and location)

as required by the California Energy Commission Decision for the above-named project.

(Signature of officer or agent)

Dated this _____ day of _____, 20 __.

THIS AFFIDAVIT OF COMPLIANCE SHALL BE APPENDED TO THE PROJECT SECURITY PLAN AND SHALL BE RETAINED AT ALL TIMES AT THE PROJECT SITE FOR REVIEW BY THE CALIFORNIA ENERGY COMMISSION COMPLIANCE PROJECT MANAGER.

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