



SOUTH FEATHER WATER & POWER

TO: Board of Directors

FROM: Kathy Petersen, Power Division Manager

DATE: September 21, 2005

RE: Request for Proposals for the Woodleaf Rock Slope Improvement Project
9/27/05 Board of Directors Meeting

As you recall, on April 9 we had a significant rockslide at Woodleaf Powerhouse. Since that time, PG&E engineers and their consultants have been working on a mitigation plan that will provide long-term stability to the slope. On August 8 we issued a Request for Proposals (RFP) for the project to 14 construction firms, and required bidders to attend a mandatory bid walk on August 22. Because of the volume of paper involved, I'll spare you the need to read the RFP and subsequent addenda. However, if you are interested, I can make it available to you.

Eight firms attended the bid walk and the following firms submitted bids by the deadline on September 12, 2005:

AIS Construction Company
Condon Johnson & Associates
Kiewit Pacific

Mitchell Engineering
Neil's Controlled Blasting, LP

I worked with PG&E and Cotton Shires & Associates (engineering firm) on the bid evaluations. We evaluated the firms on their proposed schedule (whether it met the mandatory milestone dates), project plan (45% of rating), qualifications (20% of rating) and bid price (35% of rating). Based on our evaluation, Neil's Controlled Blasting, LP (NCB) received the highest overall rating. We conducted a follow-up interview with them to obtain clarification of their work plan and are now satisfied that they will complete the project safely and efficiently. A copy of their pricing proposal is attached.

PG&E must now obtain authorization for the project funding. When they receive approval from the appropriate vice president, we will enter into a contract with NCB, and plan to start work on October 24, 2005, with a planned completion date of no later than July 28, 2006. The proposed form of contract is attached for your review.

The recommended form of action is:

"I move acceptance of the proposal submitted by Neil's Controlled Blasting, LP for the Woodleaf Rock Slope Improvement Project, subject to project approval by PG&E."

AGREEMENT FOR
Woodleaf Powerhouse Rock Slope Improvement Project

THIS AGREEMENT is made and entered into this ____ day of 2005, by and between South Feather Water and Power Agency (SFWPA), and *Neil's Controlled Blasting, L.P.* (CONTRACTOR).

WITNESSETH:

SFWPA desires to retain the services of CONTRACTOR for *the Woodleaf powerhouse rock slope improvement project.*

CONTRACTOR desires to perform the services requested by SFWPA on the terms and conditions set forth below.

NOW, THEREFORE, the parties agree as follows.

1. Description of Work: CONTRACTOR shall perform the work described in the "Contract Specifications" of SFWPA's Request for Proposals, Addendum 1 and Addendum 2, attached as Exhibit "A" hereto, as modified by CONTRACTOR's Proposal submitted September 12, 2005, attached as Exhibit "B" hereto. Except as otherwise expressly provided herein, in case of inconsistencies, the provisions of the Proposal shall prevail over the Request for Proposals.

This Agreement, and the work performed hereunder, shall be subject to, and in accordance with, the General Conditions attached as Exhibit "C" hereto.

CONTRACTOR shall provide all labor, equipment, material, supplies, and services required or necessary to properly, competently and completely perform the work or render the services under this Agreement. CONTRACTOR shall determine the method, details and means of doing the work or rendering the services. Except as otherwise provided in this Agreement, all materials incorporated into the work shall be new.

2. Bond: Before commencement of work, CONTRACTOR shall deliver to SFWPA a payment bond (labor and material) in an amount equal to at least one-half the contract price, issued by a surety company authorized to transact business in California and indemnifying SFWPA from liability, up to the amount of the bond, on account of claims within the scope of Civil Code Section 3248. The bond shall waive the provisions of Civil Code Sections 2819 and 2845.

3. Compensation: Contract price is a lump sum amount of \$842,559.00, with unit price adjustments per CONTRACTOR's attached Pricing Proposal (Exhibit "B").

4. Term and Time for Completion: This Agreement shall become effective on the date first above written and will continue in effect until the services provided herein have been completed. CONTRACTOR shall complete the work *no later than July 28, 2006.*

5. Payment for Services: SFWPA will make progress payments, based upon percentage of completion, according to the following schedule. Monthly invoices will be dated and mailed on or about the 30th of each month. Payments will be due net 45 days from the date of invoice:

- \$198,548.00 (less 10% retention) when *required submittals, mobilization, temporary protection, scaling and debris removal are complete.*
- \$151,521.00 (less 10% retention) when *installation of rock bolts and upper slope drains is complete.*
- \$351,523.00 (less 10% retention) when *shotcrete, soils nails and drainage panel installation is complete.*
- \$182,467.00 (less 10% retention) when *final shotcrete, horizontal drains, piezometer installation, clean-up and demobilization are complete*
- The retention invoice will be due 45 days after the project completion date and acceptance by SFWPA.

SFWPA may withhold payment of retained amounts until satisfied that CONTRACTOR has fulfilled its obligations to any subcontractors, laborers and suppliers. Acceptance of SFWPA's final payment by CONTRACTOR shall constitute a complete release and waiver of all claims of CONTRACTOR except disputed claims identified in writing by CONTRACTOR prior to final payment.

The payment schedule is a negotiated item and supersedes the payment terms stated in CONTRACTOR's Proposal dated *September 12, 2005* (Exhibit "B" hereto). The making of progress payments by SFWPA shall not constitute acceptance or approval of any work prior to final completion and acceptance.

Each invoice shall be accompanied by proof that CONTRACTOR has paid for all materials billed to SFWPA, and by CONTRACTOR's certification that all labor and services related to the project, to date, have been paid.

In accordance with Public Contract Code Section 22300, CONTRACTOR may substitute securities in lieu of retentions under this Agreement.

6. Coordination; Project Meetings: It is understood and acknowledged that SFWPA's activities will continue during the project and that SFWPA will need adequate notice from CONTRACTOR if it becomes necessary to take equipment off-line in connection with CONTRACTOR's work. CONTRACTOR and SFWPA agree to coordinate their schedules insofar as possible to minimize interference with one another. Project meetings shall be held between CONTRACTOR and SFWPA, SFWPA's Engineer and SFWPA's Representative as outlined by the Contract Specifications and Proposed Work Plan, and at the time that progress payment invoices are submitted, to discuss the status of the project and any unresolved issues. In addition, project meetings shall be held upon request of either SFWPA or CONTRACTOR provided that at least 24 hours written notice is given. The costs of project coordination and project meetings are included in the contract price.

7. General Insurance: CONTRACTOR shall, at its expense, maintain in effect at all times during the duration of this Agreement not less than the following coverage and limits of insurance.

a. Worker's Compensation. CONTRACTOR shall carry such insurance as will protect SFWPA and CONTRACTOR from claims under Worker's Compensation and Employers' Liability Acts; such insurance to be maintained as to the type and amount in strict compliance with State statutes.

b. General Liability. CONTRACTOR shall obtain and keep in full force and effect general liability insurance including provisions for contractual liability, personal injury, independent contractors and broad form property damage coverages. This insurance shall be on a comprehensive occurrence basis form with a standard cross-liability clause or endorsement. The limit for this insurance shall be no less than \$1 million per occurrence combined single limit for bodily injury and property damage.

c. Automobile Liability. CONTRACTOR shall maintain automobile liability insurance with coverage for any vehicle including those owned, leased rented or borrowed. This insurance shall have a standard cross-liability clause or endorsement. The limit amount for this insurance shall be no less than \$1 million per occurrence combined single limit for bodily injury and property damage.

d. "Builder's Risk" (All Risk). Coverage for the full insurable value of CONTRACTOR's materials and improvements at the worksite.

e. Certificate of Insurance. Promptly upon execution of this Agreement and prior to commencement of any work, CONTRACTOR shall provide SFWPA with certificates of insurance evidencing that all insurance and/or endorsements required by this Agreement have been obtained and are in full force and effect. Approval of the insurance by SFWPA shall not relieve or decrease any liability of CONTRACTOR. The certificates and policies shall provide that thirty (30) days written notice of any material change, reduction in coverage or cancellation of the insurance policies will be provided to SFWPA. In addition, in the event any change is made in the insurance carrier, policies or nature of coverage required under this Agreement, CONTRACTOR shall notify SFWPA prior to making such changes.

8. Indemnification and Hold Harmless. CONTRACTOR shall protect, indemnify, hold harmless and defend SFWPA, its Directors, officers, employees and agents, from any and all claims, fines, demands, costs, expenses (including but not limited to attorney's fees and costs of litigation or arbitration), liability, losses, penalties, causes of action, awards, suits or judgments for damages of any nature whatsoever (hereinafter collectively referred to as "Claims") to the extent arising out of the breach of this agreement in whole or in part by, or willful or fraudulent misconduct or negligent acts, errors or omissions by CONTRACTOR, its employees, agents or contractors, or the agent, employee or contractor of any one of them in the performance of their duties or in their operations under this Agreement, but not including the sole or active negligence or the willful misconduct of SFWPA.

Neither termination of the Agreement nor completion of the acts to be performed under this Agreement shall release CONTRACTOR from its obligations to indemnify as to any Claims so long as the event upon which such Claim is predicated shall have occurred prior to the effective date of any such termination or completion and arose out of or was in any way connected with performance or operations under this Agreement by CONTRACTOR, its employees, agents or consultants, or the employee, agent or CONTRACTOR of any one of them.

Submission of insurance certificates or other proof of compliance with the insurance requirements in the Agreement does not relieve CONTRACTOR from liability under this indemnification and hold harmless clause. The obligation of this indemnity article shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

9. Warranties: CONTRACTOR warrants all work performed under this Agreement to be free from defects in materials and workmanship for a period of one (1) year from the date of acceptance. In addition, all manufacturers' warranties shall enure to SFWPA. These warranty provisions are negotiated and supersede the provisions in CONTRACTOR's Proposal attached hereto as Exhibit "B".

10. Exhibits Incorporated. Exhibits "A," "B" and "C" attached to this Agreement are incorporated by reference as though fully set forth herein.

11. Miscellaneous: This Agreement constitutes the entire agreement of the parties hereto and shall be binding on their successors and assigns. However, CONTRACTOR will not assign this Agreement without the written consent of SFWPA. No modification of this Agreement shall be binding unless in writing signed by both parties. A waiver of any term, or any breach, of this Agreement shall not be deemed a waiver of any other term or breach. If any provision of this Agreement is held to be unenforceable, the remainder shall be severable and not affected thereby. Time is of the essence of this Agreement.

12. Notices: Insofar as this Agreement requires or contemplates the giving of notices, such notices shall be deemed given when personally delivered in writing or facsimile transmission, or deposited in the United States mail, postage prepaid, as follows:

To SFWPA:

Michael C. Glaze, General Manager
South Feather Water and Power Agency
P.O. Box 581
Oroville, CA 95966
FAX: 916-533-9700

To CONTRACTOR:

Donald J. Belden, President
Neil's Controlled Blasting, LP
P.O. Box 749
Newcastle, CA 95658
FAX: (916) 663-2507

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

Attest:

South Feather Water and Power Agency

Secretary, Board of Directors

By _____
President, Board of Directors

Neil's Controlled Blasting

By _____

CALIFORNIA CONTRACTOR'S LICENSE

No. 797732 (Class ____)

EXHIBIT "C"

GENERAL CONDITIONS

1. Independent Contractor: CONTRACTOR's relationship to SFWPA is that of an independent contractor. All persons hired by CONTRACTOR and performing the work shall be Contractor's employees or agents. SFWPA shall not be obligated in any way to pay any wages or other claims by any such employees or agents or any other person by reason of this Agreement. CONTRACTOR shall be solely liable for losses, costs, damage or injuries by said employees or agents during the course of the work. CONTRACTOR shall not delegate any of the work to subcontractors without advance written approval of SFWPA.

2. Labor; Wages; Safety:
 - a. All work shall be performed by skilled trade persons qualified to perform the required work in a manner comparable with the best standards of practice.

 - b. The CONTRACTOR, and any subcontractor, shall pay not less than the general prevailing rate of wages and the general prevailing rate for holiday and overtime work in the locality in which the public work is to be performed for each craft, classification, or type of worker needed to perform the public work. The prevailing rates on wages shall be as determined by the Director of the Department of Industrial Relations of the State of California. Copies of the published prevailing rates are on file at SFWPA's main office.

 - c. The CONTRACTOR shall be subject to all applicable provisions of the Labor Code, including, but not limited to, Section 1775 (forfeitures for failure to pay prevailing wages), Section 1776 (payroll records), Section 1777.5 (apprentices), and Sections 1810-1815 (working hours).

 - d. In accordance with generally accepted practices and in accordance with California State Safety Orders, the CONTRACTOR will be solely and completely responsible for conditions of the job site, including safety of all persons and property during performance of the work. This requirement will apply continuously and not be limited to normal working hours.

3. Drug-Free Workplace: CONTRACTOR shall ensure that its employees on the work, and the employees of its subcontractors, if any, conform to SFWPA's policies regarding a drug-free workplace and comply with all state and federal laws and regulations governing maintenance of a drug-free workplace.

4. Laws and Regulations; Permits:
 - a. CONTRACTOR shall ensure compliance with all applicable federal and state laws, federal and state safety orders, local ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the project, and they will be deemed to be included in the contract the same as though herein written out in full.
 - b. Any and all permits from local government entities shall be the responsibility of the CONTRACTOR.
5. Underground Facilities: A de-energized underground circuit and ground grid are potentially located within the worksite. CONTRACTOR shall be solely responsible for locating and identifying any underground facilities before conducting any trenching or excavation, and for ensuring the protection of any such facilities during construction. Contractor shall comply with the provisions of Labor Code Section 6705 regarding trench safety.
6. Unforeseen Conditions. Contractor shall promptly, and before such conditions are disturbed, notify SFWPA in writing of (1) any hazardous waste, (2) any subsurface or latent conditions differing from those indicated, or (3) any unknown and unusual conditions not ordinarily encountered or inherent in the work.
7. Storage of Equipment and Materials; Cleanup: CONTRACTOR's equipment and materials stored in the work area must not block SFWPA's access to its facilities. CONTRACTOR shall be solely responsible for any equipment or materials wherever they may be stored, and SFWPA will bear no responsibility, nor accountability whatsoever, for any damages or losses. CONTRACTOR shall keep the worksite in a neat and orderly condition and, upon completion, shall thoroughly clean the site and remove and dispose of all debris.
8. Extra Work:
 - a. Although the work is intended to be a turn-key project, SFWPA reserves the right at any time during the course of the contract to order the CONTRACTOR to perform extra work, furnish extra material or equipment, or to make changes altering, adding to, or deducting from the work, without invalidating the contract or bonds. Changes shall not be binding upon either SFWPA or the CONTRACTOR unless made in writing in accordance with this section.
 - b. Changes shall originate with SFWPA who will transmit to the CONTRACTOR a written request for a proposal covering the requested change, setting forth the work in detail. Upon receipt of such request, the CONTRACTOR shall promptly submit in writing to SFWPA a proposal offering to perform such change, a request for any required extension of time caused by such change, and an itemized statement of the cost or credit for the proposed change. Failure of the CONTRACTOR to include a request for extension of time in the proposal shall constitute conclusive evidence that such extra work or revisions will entail no delay and that no extension of time will be required.
 - c. If the CONTRACTOR's proposal is accepted and authorized by SFWPA, a written Change Order will be issued by SFWPA stating that the extra work or change is authorized, and granting any required adjustments of contract price and of time of

completion.

- d. SFWPA may order the CONTRACTOR, by a written Change Order, to perform extra work or to make changes on a cost-plus basis. Such Change Order shall specify the estimated amount of the payment to be made and the time extension to be allowed for such work or changes. The CONTRACTOR shall perform such work and shall furnish the District with itemized bills only for the actual cost of labor, materials, equipment use, transportation, tools, necessary incidentals, and insurance, plus a charge not exceeding 15 percent (15%) of the actual cost of the foregoing items to cover all other expenses and profit of the CONTRACTOR and subcontractors for such work or changes.
 - e. The performance of extra work or changes pursuant to Change Order shall be in accordance with this Agreement (and any bonds). No extra work shall be performed and no change shall be made unless pursuant to such written Change Order, and no claim for an addition to the contract price shall be valid unless so ordered.
 - f. If CONTRACTOR has any claims for extra work, delays, disruption or damages against SFWPA, such claims shall be made in writing, with supporting data, to SFWPA within ten (10) days of the first occurrence or condition giving rise to the claim. Such claims shall be processed by SFWPA as requests for change orders under this General Condition 8. Failure of CONTRACTOR to give written notice as provided in this paragraph shall be deemed a waiver of such claim.
9. Dispute Resolution; Venue: To the extent that they are applicable, the provisions of Public Contract Code Section 20104-20104.6 shall govern the resolution of claims under this Agreement. Said provisions, which call for written claims, responses, negotiations, mediation and arbitration, are incorporated by reference as though fully set forth herein. Venue for any arbitration or action to enforce this Agreement shall be in the County of Butte, State of California.
 10. Termination: SFWPA may terminate this Agreement at any time and for any reason upon fourteen (14) days advance written notice. In the event of such termination, CONTRACTOR is to be compensated for all work performed to the date of termination based upon Article 4 of this Agreement, including non-cancelable purchases of materials and equipment, provided that such compensation shall not exceed the contract price set forth in Article 2 hereof. Compensation under this paragraph shall not include costs related to lost profit associated with the expected completion of the work or other such payments relating to the benefit of the bargain.
 11. Assignment: CONTRACTOR hereby offers and agrees to assign to SFWPA all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with Section 1670] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this Agreement. This assignment shall be made and become effective at the time the SFWPA tenders final payment to the CONTRACTOR, without further acknowledgement by the parties.
 12. Noncollusion Affidavit: In accordance with Section 7106 of the California Public Contract Code, the bidder declares under penalty of perjury that the bid is not made in the interest of,

or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any matter, directly or indirectly, sought by agreement, communication or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or of the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

13. Workers' Compensation Certificate: By signing this Agreement, CONTRACTOR certifies as follows:

“I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”