

4. In February, 2012, Defendant requested proposals for the retrofit of five backup diesel generators with Diesel Oxidation Catalyst/Silencers (DOCs) in order to meet the requirements of the USEPA'S RICE-NESHAP rule. A copy of the notice requesting proposals is attached, marked "Exhibit A," and incorporated by reference.

5. On information and belief, Defendant only received three proposals in response to the initial request for proposals. One proposal was from Plaintiff. On information and belief, the other proposals were from Fairbanks Morse Engine and Farabee Mechanical, Inc.

6. Between March 5, 2013, and April 1, 2013, the Municipal Utilities Advisory Board evaluated the proposals submitted by the three offerors.

7. None of the proposals submitted by the three offerors fully met the specifications outlined in the request for proposals.

8. By email dated March 14, 2013, the Municipal Utility Advisory Board requested additional information from Plaintiff and the other two offerors.

9. By submission dated March 15, 2013, Plaintiff fully responded to the Municipal Utilities Advisory Board request for additional information.

10. By correspondence dated April 2, 2013, Defendant, advised Plaintiff that its proposal had been rejected as not conforming to the request for proposals and that Fairbanks Morse Engine's proposal had been selected for awarding of the contract.

11. By telephone, Bill Bach, the general manager for Defendant's Municipal Utilities, told Nick Barrack his bid did not conform to the specification in that the access panel shown on the drawing was ten feet high rather than ground level.

12. By telephone and letter, Mr. Barrack advised Mr. Bach that the drawing was “preliminary” and “typical” and that Plaintiff’s bid documents clearly stated no exceptions to the bid specifications in this regard. The access panel would be at ground level as specified.

COUNT I
BID PROTEST

13. Plaintiff hereby restates and incorporates by reference as if fully set forth herein the allegations contained in Paragraphs 1 through 12 of this Petition.

14. Plaintiff was at all times mentioned herein, and now remains, the lowest responsible bidder on the contract by more than Two Hundred Forty Thousand Dollars (\$240,000.00). The Defendant’s potential award of the contract to Fairbanks Morse Engine constitutes an arbitrary, capricious, and wrongful abuse of official discretion, unlawfully promotes favoritism and collusion, and is unsupported by any objective factual basis.

15. Fairbanks Morse Engine has done prior work on the Defendant’s electric plant and is apparently being given the project due to this past working relationship and not because its price was better than Plaintiff’s.

16. If Defendant awards a contract to Fairbanks Morse Engine, Plaintiff will be irreparably harmed, the integrity of the competitive procurement system will be compromised, and the Defendant could waste more than Two Hundred Forty Thousand Dollars (\$240,000.00), being the difference between Plaintiff’s bid and that of Fairbanks Morse Engine.

17. Plaintiff has no adequate legal remedy for the relief sought in this action, and will suffer immediate substantial and irreparable damage unless the award is set aside, in the following respects: Plaintiff will lose its profit from the low bid; Plaintiff's reputation will be damaged in that it has been wrongly accused of providing a non-conforming bid; and Plaintiff's reputation will be damaged in that it is not able to show this job as a successful reference for future work in a competitive field.

WHEREFORE, Plaintiff requests judgment as follows:

- (a) That the Court temporarily, preliminarily and permanently enjoin Defendant from making contract award to Fairbanks Morse Engine;
- (b) That the Court, consistent with Defendant's request for proposals, order Defendant to award the contract to Plaintiff as the lowest responsible bidder, or in the alternative, ordering Defendant to rebid the project;
- (c) That the Court grant Plaintiff its court costs and attorney fees; and,
- (d) That the Court provide Plaintiff all further relief that the Court deems appropriate.

COUNT II
PRELIMINARY INJUNCTION

COMES NOW Plaintiff, CSE Enterprises, LLC, by and through its attorneys, Kennedy, Kennedy, Robbins & Yarbrow, LC, Attorneys and Counselors at Law, and moves the Court pursuant to Rule 92.02 of the Missouri Rules of Civil Procedure for a Preliminary Injunction in the above-entitled cause enjoining the Defendant, Defendant's agents, servants, employees and attorneys and those persons in active concert or participation from awarding a contract to Fairbanks Morse Engine and further state:

18. Plaintiff restates, realleges and incorporates herein by reference Paragraphs 1-12, and all of Count I of this Petition as if more fully set forth herein.

19. Unless restrained, Defendant will immediately award the contract to Fairbanks Morse Engine and will cost the residents of the City of Poplar Bluff more than an additional Two Hundred Forty Thousand Dollars (\$240,000.00) more than is necessary.

20. Immediate and irreparable injury, loss and damage will result to the Plaintiff by reason of the threatened action of the Defendant, as more particularly appears herein.

21. The Plaintiff has no adequate remedy at law.

22. If this preliminary injunction be granted, the injury, if any, to Defendant herein, if final judgment be in Defendant's favor, will be inconsiderable and will be adequately indemnified by bond. The contract does not have to be completed until March, 2014.

WHEREFORE, Plaintiff hereby requests the Court to issue a preliminary injunction and for such further and other relief as the Court deems just and proper.

Respectfully submitted,

KENNEDY, KENNEDY, ROBBINS & YARBRO, LC



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