



June 26, 2015

TO: LOCSD Board of Directors

FROM: Kathy A. Kivley, General Manager
Rob Miller, District Engineer

SUBJECT: **Agenda Item 11F – 7/9/2015 Board Meeting**

Award Bid for Rooftop PV Solar System Installation at
CAL FIRE/San Luis Obispo County Station 15-South Bay

President
R. Michael Wright

Vice President
Marshall E. Ochylski

Directors
Charles L. Cesena
Jon-Erik G. Storm
Louis G. Tornatzky

General Manager
Kathy A. Kivley

District Accountant
Michael L. Doyel

Fire Chief
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Battalion Chief
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DESCRIPTION

At the April 2, 2015 Board of Directors meeting, the Board authorized staff to issue a Request for Proposal (RFP) to design/build contractors for the installation of a rooftop solar system at Station 15-South Bay; and authorized the use of Fund 301 GL 3160 Capital Outlay Reserve funds for the project.

STAFF RECOMMENDATION

Staff recommends that the Board adopt the following motion:

Motion: I move that the Board award the agreement for the Rooftop PV Solar System Installation project at Station 15-South Bay to A.M. Sun Solar in an amount of \$44,235.00 and authorize a 15% construction contingency in the amount of \$6,635.00, 75% of the funding from Capital Outlay Reserve and 25% from Public Facility Fees; and authorize the General Manager to execute the agreement on behalf of the District.

DISCUSSION

In support of the District's sustainability and environmental guiding principles, the potential for the installation of a photovoltaic (PV) solar system for Station 15-South Bay was reviewed and the roof space available appeared to be appropriate to generate enough energy to offset all of Station 15's energy consumption. In response, the Board authorized the solicitation of proposals for the installation of a PV solar system at Station 15-South Bay using the design-build delivery method as authorized by California Government Code Section 4217.10 *et seq.*

On Friday, April 10, 2015, request for proposals (RFPs) were distributed to seven (7) local solar contractors and a pre-proposal/site walk was conducted at Station 15 on April 21, 2015. In addition, the RFP was posted on the District's website. On May 14, 2015, proposals were received from two solar contractors.

Representatives from CAL FIRE and Wallace Group met and reviewed the proposals received, as well as the use of Canadian versus American made panels. Based on comparison of the products proposed by each contractor, the proposal that provides the best value meeting the interest of the District and CAL FIRE, and meets the objectives of the project, staff recommends that the Board award the construction contract to A.M. Sun Solar with American

SolarWorld panels to produce approximately 21,370 kW (annual) in the amount of \$44,235.00. In addition, staff recommends a 15% contingency in the amount of \$6,635 for unforeseen field conditions.

FINANCIAL IMPACT

Seventy-five percent (75%) of the funding for the Rooftop PV Solar System Installation project at CAL FIRE/Station 15 - South Bay project will come from Fund 301 GL 3160 Capital Outlay Reserve funds. The remaining twenty-five percent (25%) will come from GL 3115 Fire Public Facilities Fees in March 2016 when the Certificate of Deposit (CD) matures. It is anticipated that both funds will be used to cover the cost of construction, engineering, and legal expenses. Because the District is a government agency it does not qualify for the any statewide incentives to reduce overall capital costs associated with the implementation of a PV solar system.

Attachment



A.M. Sun Solar, Inc.
8793 Plata Ln. Ste A Atascadero, CA 93422
805-772-6786 fax 805-926-3308 License #969522

THIS AGREEMENT made _____ by and between A.M. Sun Solar, Inc. hereinafter called the Contractor and Los Osos Community Services District, hereinafter called the owner(s)

Article 1. Scope of the Work

The Contractor shall furnish all of the materials and perform all of the work shown as described in the Specifications entitled Exhibit A, as annexed hereto as it pertains to work to be performed on property at: 2315 Bayview Heights Drive, Los Osos, CA 93402

Article 2. Time of Completion

The work to be performed under this contract shall commence on or before 20 days after contract sign date and shall be substantially completed on or before 120 days after contract sign date. Time is of the essence.

The following constitutes commencement and substantial completion of work pursuant to this contract:

Commencement: Plans drawn and submitted for engineering or permit applied for with local AHJ.

Substantial Completion: Inverter(s) and solar modules installed and wired. Waiting for final building inspection from local AHJ.

Timelines are contingent upon timely payment of invoices as agreed in Article 4 of contract.

Article 3. Contract Price

The Owner shall pay the Contractor for the material and labor to be performed under the Contract the sum of \$44,235, subject to additions and deductions pursuant to authorized change orders.

Article 4. Contract Payment

With solar financing through a third party, payments/draws will be made in accordance with the finance company otherwise payments of the Contract Price shall be paid to the Contractor in the manner following:

\$1,000	At Contract Signing
\$3,423	(8%) Upon ordering of materials
\$22,117	(50%) Due Once Construction Starts
\$13,270	(30%) Due After City/County Inspection
\$4,423	(10%) Due After PG&E Interconnection
<u>\$44,235</u>	Total Payments

Article 5. General Provisions

Any alteration or deviation from the above specifications, including but not limited to any such alteration or deviation involving additional material and/or labor costs, will be executed only upon a written order for same, signed by Owner and Contractor, and if there is any charge for such alteration or deviation, the additional charge will be added to the contract price of this contract.

If payment is not made when due, Contractor may suspend work on the job until such time as all payments due have been made. A failure to make payment for a period in excess of 30 days from the due date of the payment shall be deemed a material breach of this contract. Annual interest of 18.0% will be applied monthly on all late payments.

Owner Initial _____

Contractor Initial _____




In addition, the following general provisions apply:

1. All work shall be completed in a workman-like manner and in compliance with all building codes and other applicable laws.
2. The contractor shall furnish a plan and drawing showing the shape, size dimensions, and construction and equipment specifications for electrical improvements, a description of the work to be done and description of materials to be used and the equipment to be used or installed, and the agreed consideration for the work.
3. To the extent required by law all work shall be performed by individuals duly licensed and authorized by law to perform said work.
4. Contractor may at its discretion engage subcontractors to perform work hereunder, provided Contractor shall fully pay said subcontractor and in all instances remain responsible for the proper completion of this contract.
5. Contractor shall furnish Owner appropriate releases or waivers of lien for all work performed or materials provided at the time the next periodic payment shall be due.
6. All change orders shall be in writing and signed both by Owner and Contractor, and shall be incorporated in, and become a part of the contract.
7. Contractor warrants it is adequately insured for injury to its employees and others incurring loss or injury as a result of the acts of Contractor or its employees or subcontractors.
8. Contractor shall at its own expense obtain all permits necessary for the work to be performed.
9. Contractor agrees to remove all debris and leave the premises in broom clean condition.
10. In the event Owner shall fail to pay any periodic or installment payment due hereunder, Contractor may cease work without breach pending payment or resolution of any dispute.
11. All disputes hereunder shall be resolved by binding arbitration in accordance with rules of the American Arbitration Association.

(A) Mediation. Claims or disputes that arise shall first, before the initiation of arbitration as provided for in within this Agreement, be submitted for resolution to mediation. The mediation shall be conducted by a mediator mutually agreed to by the parties to the dispute, unless agreed to otherwise by the parties to the dispute. The mediator shall have at least 5 years of experience as a mediator in construction disputes. The mediation shall take place within ten (10) working days of either party's submission of a written request for mediation.


(B) Arbitration. All disputes arising from the performance of the work performed by Contractor under this Agreement, shall be submitted to arbitration in accordance with the Construction Industry Rules of the American Arbitration Association and before an arbitrator or panel of three (3) arbitrators mutually agreed to by the parties. Both parties shall have all rights to conduct pre-arbitration discovery under the California Code of Civil Procedure, including the right to take depositions, submit written discovery and complete expert discovery. The arbitration award shall contain findings of fact and conclusions of law. An award rendered by an arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. The decision of the arbitrator shall be final and not subject to appeal unless there is a failure to comply with California law. The dispute shall be governed by the laws of the State of California.

The parties acknowledge that they are aware of and have had the advice of counsel of their choice with respect to their rights to trial by jury, and each party does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by either party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on any matters whatsoever arising out of or in any way connected with this Agreement. The parties have specifically chosen to resolve any such dispute through arbitration as set forth above.

 (Initials of Contractor)

_____ (Initials of Owner)

Attorneys' Fees and Costs. Should either party institute any action or proceeding to enforce or interpret any provision of this Agreement, including, but not limited to any dispute pertaining to payment and/ or for damages by reason of an alleged breach of any provision of this Agreement, the prevailing party shall be entitled to recover its costs, including expert witness fees and expenses and reasonable attorneys' fees for services rendered to the prevailing party in such action or proceeding up to and including any attorney's fees and costs incurred through the conclusion of any appeal process that may be initiated. The term "prevailing party" means a party for whom a final judgment or dismissal or decree is entered in favor of that party.

Owner Initial _____ Contractor Initial 



- 12. Contractor shall not be liable for any delay due to circumstances beyond its control including strikes, casualty or general unavailability of materials.
- 13. Contractor warrants all work for a period of 144 months following completion

FAILURE BY CONTRACTOR WITHOUT LAWFUL EXCUSE TO SUBSTANTIALLY COMMENCE WORK WITHIN TWENTY (20) DAYS FROM THE APPROXIMATE DATE SPECIFIED IN THE PROPOSAL AND CONTRACT WHEN WORK WILL BEGIN IS A VIOLATION OF THE CONTRACTOR'S LICENSE LAW.

Article 6. Other Terms

- 1. The following terms and conditions apply to the payment schedule in Article 4:
 - a. If the payment schedule contained in the contract provides for a down payment to be paid to Contractor by Owner before the commencement of work, such down payment shall not exceed One Thousand Dollars (\$1,000) or 10% of the contract price, excluding finance charges, whichever is the lesser.
 - b. In no event shall the payment schedule provide for Contractor to receive, nor shall Contractor actually receive, payment in excess of 100% of the value of the work performed on the project at any time, excluding finance charges, except that Contractor may receive an initial down payment authorized by condition (a) above.
 - c. A failure by Contractor without lawful excuse to substantially commence work within twenty (20) days of the approximate date specified in this Contract when work will begin shall postpone the next succeeding payment to Contractor for that period of time equivalent to the time between when substantial commencement was to have occurred and when it did occur.
 - d. The terms and conditions set forth in sub-paragraphs (a), (b), and (c) above pertaining to the payment schedule shall not apply when the contract provides for Contractor to furnish a performance and payment bond, lien and completion bond, bond equivalent, or joint control approved by the Registrar of Contractors covering full performance and completion of the contract and such bonds or joint control is or are furnished by Contractor, or when the parties agree for full payment to be made upon or for a schedule of payments to commence after satisfactory completion of the project.
 - e. If this project is being financed through a third party, this contract will be contingent upon finance approval.

Owner Initial _____

Contractor Initial _____

A handwritten signature in black ink, appearing to be "CS", is written over the Contractor Initial line.



NOTICE TO OWNER

(Section 7018.5--Contractors License Law)

THE LAW REQUIRES THAT, BEFORE A LICENSED CONTRACTOR CAN ENTER INTO A CONTRACT WITH YOU FOR A WORK OF IMPROVEMENT ON YOUR PROPERTY, HE MUST GIVE YOU A COPY OF THIS NOTICE.

Under the California Mechanics' Lien Law, any contractor, subcontractor, laborer, supplier, or other person or entity who helps to improve your property, but is not paid for his or her work or supplies, has a right to place a lien on your home, land, or property where the work was performed and to sue you in court to obtain payment.

This means that after a court hearing, your home, land, and property could be sold by a court officer and the proceeds of the sale used to satisfy what you owe. This can happen even if you have paid your contractor in full if the contractor's subcontractors, laborers, or suppliers remain unpaid.

To preserve their rights to file a claim or lien against your property, certain claimants such as subcontractors or material suppliers are each required to provide you with a document called a "Preliminary Notice." Contractors and laborers who contract with owners directly do not have to provide such notice since you are aware of their existence as an owner. A preliminary notice is not a lien against your property. Its purpose is to notify you of persons or entities that may have a right to file a lien against your property if they are not paid. In order to perfect their lien rights, a contractor, subcontractor, supplier, or laborer must file a mechanic's lien with the county recorder which then becomes a recorded lien against your property. Generally, the maximum time allowed for filing a mechanic's lien against your property is 90 days after substantial completion of your project.

TO INSURE EXTRA PROTECTION FOR YOURSELF AND YOUR PROPERTY, YOU MAY WISH TO TAKE ONE OR MORE OF THE FOLLOWING STEPS:

(1) Require that your contractor supply you with a payment and performance bond (not a license bond), which provides that the bonding company will either complete the project or pay damages up to the amount of the bond. This payment and performance bond as well as a copy of the construction contract should be filed with the county recorder for your further protection. The payment and performance bond will usually cost from 1 to 5 percent of the contract amount depending on the contractor's bonding ability.

(2) Require that payments be made directly to subcontractors and material suppliers through a joint control. Funding services may be available, for a fee, in your area which will establish voucher or other means of payment to your contractor. These services may also provide you with lien waivers and other forms of protection. Any joint control agreement should include the addendum approved by the registrar.

(3) Issue joint checks for payment, made out to both your Contractor and subcontractors or material suppliers involved in the project. The joint checks should be made payable to the persons or entities which send preliminary notices to you. Those persons or entities have indicated that they may have lien rights on your property, therefore you need to protect yourself. This will help to insure that all persons due payment are actually paid.

(4) Upon making payment on any completed phase of the project, and before making any further payments, require your contractor to provide you with unconditional "Waiver and Release" forms signed by each material supplier, subcontractor, and laborer involved in that portion of the work for which payment was made. The statutory lien releases are set forth in exact language in Section 3262 of the Civil Code. Most stationery stores will sell the "Waiver and Release" forms if your contractor does not have them. The material suppliers, subcontractors, and laborers that you obtain releases from are those persons or entities who have filed preliminary notices with you. If you are not certain of the material suppliers, subcontractors, and laborers working on your project, you may obtain a list from your contractor. On projects involving improvements to a single-family residence or a duplex owned by individuals, the persons signing these releases lose the right to file a mechanic's lien claim against your property. In other types of construction, this protection may still be important, but may not be as complete.

(a) To protect yourself under this option, you must be certain that all material suppliers, subcontractors, and laborers have signed the "Waiver and Release" form. If a mechanic's lien has been filed against your property, it can only be voluntarily released by a recorded "Release of Mechanics' Lien" signed by the person or entity that filed the mechanic's lien against your property unless the lawsuit to enforce the lien was not timely filed. You should not make any final payments until any and all such liens are removed. You should consult an attorney if a lien is filed against your property.

(b) Each contractor licensed under this chapter, prior to entering into a contract with an owner for work specified as home improvement or swimming pool construction pursuant to Section 7159, shall give a copy of this "Notice to Owner" to the owner, the owner's agent, or the payer. The failure to provide this notice as required shall constitute grounds for disciplinary action.

Contractors are required by law to be licensed and regulated by the Contractors' State License Board, which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License

Owner Initial _____

Contractor Initial

A handwritten signature in black ink, appearing to be "CJ", is written over a horizontal line.



NOTICE TO OWNER OR TENANT:
You have the right to require Contractor to have a performance and payment bond.

This agreement – The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.

Name of Owner Los Osos Community Services District

Name of Authorized Signer _____

Authorized signature _____

Date of Acceptance _____

Name of Contractor A.M. Sun Solar, Inc.

Name of Authorized Signer GLEN COVERT

Authorized signature [Signature]

Date of Acceptance 6/25/15

Owner Initial _____ Contractor Initial [Signature]



Exhibit A

As pertaining to Article 1, this section stipulates the Contractor shall furnish all of the materials and perform all of the work shown as listed below:

Solar Mounting

The solar array will be Composite mounted using an engineered mounting system.
This mounting is to be engineered to withstand the elements of its environments (wind & seismic).
This solar system be permitted by the local AHJ and engineered to support said solar array, paid for by A.M. Sun Solar.

Solar Panels and Inverter(s)

- (48) SolarWorld Protect SW 285 Mono Modules
- (1) SolarEdge Technologies SE 11400A-US (240V) Inverter(s)

Labor

All labor necessary to install said system conforming to state and local laws and regulations.

Materials

Contractor is to furnish all materials necessary to allow said solar energy system to be fully functional. This will include, but is not limited to AC and DC disconnects, junction boxes, wiring, grounding rod, conduit, fuses, applicable amendments to utility panel, and lightning arrestors.

Warranties

The manufacturer of the modules to be installed include a 25 year warranty. During the warranty period, the manufacturer (primary) is responsible for replacement of faulty equipment and A.M. Sun Solar, Inc. (secondary as design/installer) are responsible for repair or replacement of any malfunctioning module(s) at a discounted rate."

The manufacturer of the inverters to be installed include a 25 (Extended) year warranty. During the warranty period, the manufacturer (primary) is responsible for replacement of faulty equipment and A.M. Sun Solar, Inc. (secondary as design/installer) are responsible for repair or replacement of any malfunctioning inverter(s) at a discounted rate."

A.M. Sun Solar, Inc. includes a full 12-year workmanship warranty and is responsible for any leaks or broken tiles caused by the installation of the solar system.

Additional Work

- 1- Include 25 years online, module to module monitoring.
- 2- Include training for Distric and CAL FIRE staff.

Owner Initial _____

Contractor Initial _____

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NOTICE OF CANCELLATION
STATUTORILY-REQUIRED LANGUAGE

Date of Transaction _____

You may cancel this transaction, without any penalty or obligation, within three business days from the above date. If you cancel, any property traded in, any payments made by you under the contract or sale and any negotiable instrument executed by you will be returned within 10 days following receipt by A.M. Sun Solar, Inc. (Seller) of your cancellation notice, and any security interest arising out of the transaction will be canceled. If you cancel, you must make available to Seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of Seller regarding the return shipment of the goods at Seller's expense and risk. If you do make the goods available to Seller and Seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to Seller, or if you agree to return the goods to Seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice to A.M. Sun Solar, Inc., 8793 A Plata Lane, Atascadero, CA. 93422 no later than midnight of _____
[Date]

I, _____, hereby cancel this transaction on _____
[Name] [Date]

Customer Signature _____

Owner Initial _____ contractor Initial CS