



COUNCIL AGENDA: 2/13/24
FILE: 24-68329
ITEM: 6.1

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Lori Mitchell

**SUBJECT: LONG TERM POWER
PURCHASE AGREEMENT WITH
ZETA SOLAR, LLC**

DATE: February 12, 2024

Approved

Date

2/13/24

SUPPLEMENTAL

REASON FOR SUPPLEMENTAL

The purpose of the supplemental memorandum is to describe new language that has been added to the proposed power purchase agreement submitted by the Department of Energy for City Council approval. The language was added in response to a request by IBEW Local 332 to delay approval of the agreement. This supplemental memorandum explains that a delay in approval of the agreement would result in a need to renegotiate. Staff modified the memorandum from January 30, 2024 to reflect that Zeta Solar, LLC offered to include in the agreement a requirement that the facility be constructed subject to a project labor agreement or award the contract for construction to a union signatory entity which will employ a union workforce governed by that entity's existing labor agreements.

RECOMMENDATION

Adopt a resolution authorizing the Director of the Energy Department or her designee to negotiate and execute a long-term power purchase agreement with Zeta Solar, LLC, a subsidiary of Longroad Development Company, LLC, to buy renewable energy, renewable energy credits, resource adequacy, battery tolling rights, and attributes associated with a solar photovoltaic and battery storage facility for a term of 20 years, beginning 2027 through 2047, in an estimated annual amount of \$11,227,000 and a not-to-exceed amount of \$224,540,000 in aggregate, to be paid solely from the San José Clean Energy Operating Fund, subject to the annual appropriation of funds.

BACKGROUND

On January 30, 2024, the City Clerk posted a memorandum seeking City Council approval for the Director of the Energy Department or her designee to negotiate and execute a long-term power purchase agreement with Zeta Solar, LLC, to buy power products associated with a solar photovoltaic and battery storage facility. The attachment to the January 30, 2024 memorandum summarized key terms of the agreement. On February 12, 2024, IBEW Local 332 sent a letter to the Mayor and City Council asking for a one-week delay in approval of the agreement to allow Zeta Solar, LLC and local labor unions to complete negotiations of a project labor agreement.

On February 12, 2024, Zeta Solar, LLC added language to the proposed power purchase agreement that expressly requires Zeta Solar, LLC or its construction contractor to either enter into a project labor agreement for construction of the facility or award the contract for construction to a union signatory entity that will employ a union workforce governed by that entity's existing labor agreements. This must be done at least six months before commencement of construction. This language is included in the updated attachment included with this supplemental memorandum (**Attachment** - Summary of Material Terms for Zeta Solar, LLC.)

A one-week delay in approval of the agreement would likely result in the need to renegotiate the agreement and could result in loss of the opportunity to enter into the agreement. This is because, in order for Zeta Solar, LLC to obtain the right to provide resource adequacy from the battery storage, Zeta Solar, LLC must have a signed power purchase agreement on or before February 14, 2024. Resource adequacy ensures there are sufficient power plants available to meet load at all times. Each load serving entity, such as San José Clean Energy, must buy its share of the resource adequacy needed within the control area of the California Independent System Operator to maintain reliability.

For a battery to qualify to provide resource adequacy, the California Independent System Operator must allocate to that battery an adequate share of the available transmission capacity where the battery is connected to the electric grid as part of the battery interconnection process. After undertaking studies to evaluate whether a project can be safely connected to the electric grid, the California Independent System Operator may reserve capacity for a project seeking to interconnect. However, because transmission capacity is limited and projects are uncertain, to maintain the reservation, a project must demonstrate to the California Independent System Operator ongoing development progress. Zeta Solar, LLC has been allocated capacity upon completion of an upgrade of the Manning substation. To maintain that capacity, Zeta Solar LLC must provide an affidavit to the California Independent System Operator by February 14, 2024, stating that it has a signed power purchase agreement for the project.

As the January 30, 2024 memorandum sets forth, the Zeta Solar, LLC project is particularly valuable to provide resource adequacy because it includes both a solar component that can charge the battery and a battery. The proposed power purchase agreement requires Zeta Solar, LLC to be able to provide resource adequacy for at least 75 percent of the battery. If Zeta Solar, LLC loses the ability to provide resource adequacy, the agreement would have to be renegotiated.

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ANALYSIS

Staff recommends that the City Council authorize the Director of the Energy Department or her designee approve the proposed power purchase agreement as presented by Zeta Solar, LLC. As stated in the January 30, 2024 memorandum, there is strong competition for projects, like one presented by Zeta Solar, LLC, that include solar power and battery storage. Projects located in California are even more desirable. Accordingly, if the Energy Department is unable to contract with the Zeta Solar, LLC project, it will be challenging to identify another similar project with a similar in-service date. While ordinarily delaying approval of an agreement by a week would not be consequential, in this case, delaying approval of the agreement would result in the need to renegotiate the agreement and could result in a loss of valuable resource adequacy.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office.

/s/

LORI MITCHELL

Director, Energy Department

For questions, please contact Lori Mitchell, Director, at lori.mitchell@sanjoseca.gov or (408) 535-4880.

ATTACHMENT – Summary of Material Terms for Zeta Solar, LLC

ATTACHMENT - SUMMARY OF MATERIAL TERMS FOR ZETA SOLAR, LLC

Buyer: The City of San José.

Seller: Zeta Solar, LLC

Product: Renewable energy, capacity attributes (as defined under the agreement), which includes resource adequacy, green attributes (renewable energy certificates), the right to dispatch the battery and ancillary services.

Facility: Seller will develop, design, permit, construct, own, and operate the facility, which is a solar photovoltaic and battery energy storage system located in Merced County, California.

CAISO Scheduling Coordinator: San José Clean Energy will be the CAISO Scheduling Coordinator for the facility.

Delivery Term: The delivery term for the project is 20 years.

Pricing: \$11,227,000 Estimated Annual Cost, \$224,540,000 Maximum Total Cost.

Guaranteed Commercial Operation Date: 2027

Environmental Attributes: Portfolio Content Category 1 renewable energy.

Insurance: Consistent with the requirements approved by Risk Management.

Designated Fund and Appropriation of Funds: The agreement will include provisions that will limit the City's liability to the San José Clean Energy Operating Fund (Designated Fund). This fund is used solely for the City's costs and expenses associated with operating San José Clean Energy. The agreement will provide that payment obligations are special limited obligations of the City payable solely from the Designated Fund, and that those obligations shall not be a charge upon the revenues or General Fund of the City of San José or upon any non-San José Clean Energy moneys or other property of the Energy Department or the City of San José. The agreement will also not financially bind future governing bodies and will not constitute an obligation of future legislative bodies of the City to appropriate funds.

Prevailing Wage: To the extent applicable to the construction of the Facility, Seller shall comply with all applicable federal, state, and local laws, statutes, ordinances, rules and regulations, and orders and decrees of any courts or administrative bodies or tribunals, including without limitation employment discrimination laws and prevailing wage laws. Seller has represented that all employees hired by Seller, and its contractors and subcontractors, that will perform construction work or provide services at the Site related to construction of the Facility are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by applicable California law, if any. Seller's obligations under this Section will be satisfied upon Seller's offer to execute a project labor agreement related to construction of the Facility. Seller or its construction contractor for the Facility shall either (i) execute a project labor agreement with the appropriate building or construction trade unions for construction of the Facility, or (ii) award the contract for construction to a union signatory entity which will employ a union workforce governed by that entity's existing labor agreements, in either case, no later than the date that is six (6) months prior to the Construction Start Date.