

RESOLUTION NO. 2023- 87

A RESOLUTION AUTHORIZING EXTRAORDINARY, UNSPECIFIABLE SERVICES AGREEMENTS FOR THE PURCHASE OF NO_x, SO₂ AND CO₂ ALLOWANCES FOR THE CITY OF VINELAND ELECTRIC UTILITY.

WHEREAS, the Electric Utility has a continuing need to acquire NO_x, CO₂ and SO₂ emission allowances to remain in compliance with the State of New Jersey, Department of Environmental Protection (NJDEP) regulations, including those designed to address global warming, and/or the EPA Cross-State Air Pollution Rule (CSAPR), Acid Rain Program (ARP), or other related programs; and

WHEREAS, it has become standard for emission allowances to be acquired through open public auction and/or for the purchase and sale of allowances to be transacted through the use of brokers who determine the most cost effective sources at the time credits and allowances are needed, and the Electric Utility desires to enter into agreements through such transaction services as extraordinary, unspecifiable services; and

WHEREAS, the Local Public Contracts Law (N.J.S.A 40A:11-1 et seq.) requires that a resolution authorizing the award of contracts for “Extraordinary, Unspecifiable Services” without competitive bids, and the contract itself, must be available for public inspection; and

WHEREAS, the Business Administrator has certified that this meets the statute and regulations governing the award of said contracts because the transactions required to obtain emission allowances are specialized and immediate in nature and cannot be facilitated through the use of advance specifications and written expression; and

WHEREAS, the quantity of credits and allowances which may need to be acquired in 2023 for current and future compliance with emission trading programs is anticipated to cost up to \$1,500,000.00;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Vineland as follows:

1. THAT the Mayor or his designee are hereby authorized and directed to execute agreements as arranged by the Director of the Electric Utility with counsel of the City Solicitor for the purchase of NO_x, SO₂ and/or CO₂ allowances from the most cost effective resources available, up to a maximum total amount of \$1,500,000.00.
2. THAT contracts to cover such agreements are awarded without competitive bidding as an “Extraordinary, Unspecifiable Services” in accordance with 40A:11-5(1)(a) of the Local Public Contracts Law.
3. THAT the Purchasing Agent is hereby authorized to issue purchase orders under this contract as directed by the Director of the Electric Utility to implement the executed agreements for the purchase of emission allowances.
4. THAT a notice of this action shall be published in the Daily Journal.

Adopted:

President of Council

ATTEST:

City Clerk



MEMORANDUM

DATE: February 3, 2023
TO: Mayor Fanucci and Vineland City Council Members
FROM: Jeff Davis, Supervising Engineer
RE: Purchase of Required Emission Allowances

For many years now, VMEU has participated – as required by regulation - in various NJDEP and EPA emission trading programs, which have been an integral part of reducing air pollution in both the eastern half of the United States and the country as a whole. Under these programs, emission allowances equal to actual emissions must be acquired in order to operate the utility’s turbines. Special seasonal allowances are also additionally required for operation during the summer months when problems with ground level ozone are likely to occur (the “ozone season”). In the past, allowances primarily covered oxides of nitrogen (NOx) and sulfur dioxide (SO₂) emissions. Beginning in 2020, however, carbon dioxide (CO₂) emissions allowances were also required in New Jersey under the Regional Greenhouse Gas Initiative (RGGI) for the Northeastern states.

While some allowances are allocated by NJDEP and EPA, other allowances must be purchased to supplement those that are allocated from the State in order to comply with the regulations. Some allowance purchases in the past were made through commercial trading brokers, and this may still be required. However, CO₂ allowances for the RGGI program may also be acquired – generally at a lower cost – through auctions held and overseen by the NJDEP. The Electric Utility has successfully participated in several of these auctions, acquiring enough CO₂ allowances to cover 2020, 2021 and 2022 operations.

Allowances covering 2023 now need to be acquired. To this end, the utility is requesting authorization from City Council to purchase NOx, SO₂ and/or CO₂ allowances up to a total amount of \$1,500,000 to meet the utility’s needs in the coming year. The total amount may not be used immediately, but it is necessary to fill inventory accounts up front with sufficient allowances to cover reasonably expected emissions and prevent restrictions in operations. It is also necessary to have authorization for purchases in place now to be able to react to changing conditions and circumstances quickly, as developments in operations and pricing unfold.

If any individual contracts are needed to acquire allowances not otherwise allocated by DEP and EPA or purchased through auctions, purchase arrangements will be overseen and approved by the Director of the Utility, with the wording of purchase agreements reviewed by the City Solicitor, as necessary. Allowance purchases will be paid for through the Utility budget and kept in an inventory account. Allowances are used as the generating units operate, and the cost of allowances is factored into PJM unit costs, as prescribed by PJM.

If you have any questions, please feel free to call Jeff Davis at extension 4541.

**STANDARD CERTIFICATION DECLARATION FOR AN EXTRAORDINARY
UNSPECIFIABLE SERVICE**

TO: Members of the Governing Body
FROM: Robert Dickenson, Business Administrator
DATE: February 3, 2023
SUBJECT: This is regarding contracts for: Purchase of NOx, SO2 and CO2 Emission Allowances

This is to request your approval of a resolution authorizing contracts to be executed as follows:

Firm: To be determined through market transactions
Cost: To be determined through market transactions
Duration: 24 months
Purpose: Compliance with state and federal regulations

This is to request an award of a contract without the receipt of formal bids as an Extraordinary Unspecifiable Service [N.J.S.A. 40A:11-5(1)(a)(ii) and N.J.A.C. 5:34-2.3(b)]. I do hereby certify to the following:

1. Provide a clear description of the nature of the work to be done.

NOx, SO2 and CO2 emission allowances, as defined and determined by NJDEP, must be purchased by the Electric Utility to comply with environmental regulations. These allowances represent authorizations to emit defined amounts of NOx, SO2 and CO2.

2. Describe in detail why the contract meets the provisions of the statute and rules:

Specifications cannot be used to procure emission allowances because sales and purchases are conducted in a fluid market or State-run open buyer auction, not in a seller-bid system. Competition, however, is an inherent part of the market process governing the trade of these commodities, thus meeting the intent of the purchasing statute and rules.

3. The service(s) is of such a specialized and qualitative nature that the performance of the service(s) cannot be reasonably described by written specifications because:

The trading of emission allowances, which is conducted primarily through brokers, is governed by an instantaneous competitive market in which price and availability fluctuate continually. The process cannot accommodate the use of specifications because of the quick timing involved in transactions. The fluctuating allowance price and availability cannot be determined in advance.

4. Describe the informal solicitation of quotations:

Even though specifications are not used to obtain bids, competition is inherent in the market process. Offers to sell are communicated through brokers, or are defined by a public auction process. The lowers offers of sellers can be accepted, or the lower bids to buy can be presented to the buyer.

5. I have reviewed the rules of the Division of Local Government Services pursuant to N.J.A.C. 5:34-2.1 et seq. and certify that the proposed contract may be considered an extraordinary unspecifiable service in accordance with the requirements thereof.

Respectfully,

Name: Robert Dickenson Signature: 

Title: Business Administrator

(Original to be retained by governing body's Clerk with the affirmed copy of the resolution; signed duplicate to be kept by appropriate official.)