

# Staff Summary Report



Council Meeting Date: 1/22/09

Agenda Item Number: \_\_\_\_\_

**SUBJECT:** Request approval of addenda with C&W Sons Enterprises, Inc., ACR Contracting, Inc., and BCS Enterprises, Inc., to extend the job order contract terms for an additional twelve months to perform on-call demolition of commercial and residential property.

**DOCUMENT NAME:** 20090122PWDR01 ENGINEERING ADMINISTRATION (0803-02)

**SUPPORTING DOCS:** Yes

**COMMENTS:** Total cost for each addendum is \$1,000,000.

**PREPARED BY:** Donna Rygiel, Engineering Contract Administrator (x8520)

**REVIEWED BY:** Andy Goh, Deputy PW Manager/City Engineer (x8896)

**APPROVED BY:** Glenn Kephart, Public Works Manager (x8205)

**LEGAL REVIEW BY:** Judi Morgan, Assistant City Attorney (x8227)

**FISCAL NOTE:** Funding will be provided from the Capital Improvement Fund for which each job order is performed.

**RECOMMENDATION:** Approve addendum with each of the job order contractors.

**ADDITIONAL INFO:** The job order contracting method of construction uses an on-call contractor, who has been selected using a quality based selection method, who will perform multiple capital improvement projects. These twelve month contract extensions will be the first of two potential contract extensions under these contracts.

This demolition work is performed as a series of individual job orders. Each job order is defined cooperatively by staff and the job order contractor. A scope, schedule, and price are established for each individual job order, which will then be recommended to Mayor and Council for award of the individual job order if it exceeds \$50,000. The maximum amount of each individual job order is \$1,000,000.

C&W Sons Enterprises, Inc., ACR Contracting, Inc., and BCS Enterprises, Inc. were originally selected by a review committee from the short list of qualified firms for job order construction using a qualification based process pursuant to A.R.S. § 34-603. Total cost for each addendum is \$1,000,000, which will increase each original contract amount to \$2,000,000.



CITY OF TEMPE, ARIZONA  
PUBLIC WORKS DEPARTMENT  
DIVISION OF ENGINEERING

JOB ORDER CONTRACT  
for  
DEMOLITION OF COMMERCIAL  
AND RESIDENTIAL PROPERTY

PROJECT NO. 6704081

ADDENDUM NO. 1  
TO CONTRACT C2008-03

This Addendum made and entered into on the 22<sup>nd</sup> day of January, 2009, by and between the City of Tempe, an Arizona municipal corporation ("City"), and C&W SONS ENTERPRISES, INC., an Arizona corporation ("Contractor"), amends the original agreement made and entered into by and between the same parties on January 10, 2008, (C2008-03) ("Contract").

RECITALS:

- A. As parties hereto entered into that Contract for Demolition of Commercial and Residential Property, said Contract has proven to be an efficient and cost-effective method for City projects and City requires ongoing support services from Contractor.
- B. The parties desire to further define their respective rights and obligations with respect to the Contract price, Contract time, non-discrimination and legal compliance.
- C. The parties intend that the following sections shall be integrated into the Contract in place of the former similarly identified section, if any, and that this Addendum be given the full force and effect of law as the Contract.

Now therefore, in consideration of the mutual promises and covenants as more particularly set forth below, the parties do hereby amend the Contract to read as follows:

I. Contract Price. The maximum annual Contract Price shall be \$1,000,000.

II. Contract Time. The term of the Contract shall be extended through January 22, 2010, or until the additional \$1,000,000 has been expended by the City pursuant to the original Contract, which ever occurs first, with an option by the City to renew for a second twelve (12) month period or the balance of the maximum Contract amount or as otherwise specified.

III. Non-Discrimination and Legal Compliance. City is an equal opportunity, affirmative action employer. Contractor hereby covenants that it shall not discriminate unlawfully against any employee or applicant for employment, nor shall it deny the benefits of this Contract, to any person on the basis of race, color, national origin, physical or mental disability, age, gender or veteran status. Contractor covenants and agrees that it will comply in all respects with the applicable provisions of the Executive Order 11246, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Vietnam Era Veterans' Readjustment Assistance Act, the Rehabilitation Act, and any other applicable state and federal statutes governing equal opportunity. The Contractor agrees to post hereinafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this clause.

In addition, Contractor agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work and services pursuant to the Contract, and all applicable safety and employment laws, rules and regulations, including but not limited to, the

Fair Labor Standards Act, the Walsh-Healey Act, and the Arizona Fair and Legal Employment Act, including any amendments thereto along with all laws, rules and regulations attendant thereto. Contractor acknowledges that a breach of this warranty is a material breach of this Contract and Contractor is subject to penalties for violation(s) of this provision, including termination of this Contract. City retains the right to inspect the documents of any and all contractors, subcontractors and sub-subcontractors performing work and/or services relating to the Contract to ensure compliance with this warranty. Any and all costs associated with City inspection are the sole responsibility of Contractor. Contractor hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.

Contractor represents and warrants to City that neither Contractor nor any affiliate or representative of Contractor (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury (OFAC) pursuant to Executive Order No. 13224, 66 Fed.Reg. 49079 ("Order"); (ii) is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of OFAC or any other applicable requirements contained in any enabling legislation or other related Order(s); (iii) is engaged in activities prohibited in the Order; or (iv) has been convicted, pleaded *nolo contendere*, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering. In addition, Contractor certifies that it does not have a scrutinized business operation in either Iran or Sudan.

IV. All other provisions of the original Contract where not inconsistent with this Addendum shall remain binding on the parties hereto.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Addendum this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009.

CITY OF TEMPE, ARIZONA

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
Public Works Manager

ATTEST:

Recommended By:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Deputy PW Manager/City Engineer

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**The Contractor warrants that the person who is signing this Addendum on behalf of the Contractor is authorized to do so and to execute all other documents necessary to carry out the terms of this Addendum.**

CONTRACTOR  
C&W Sons Enterprises, Inc.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Federal I.D. No./Social Security No.

Certified to be a true and exact copy.

\_\_\_\_\_  
Karen M. Fillmore  
Records Specialist



CITY OF TEMPE, ARIZONA  
PUBLIC WORKS DEPARTMENT  
DIVISION OF ENGINEERING

JOB ORDER CONTRACT  
for  
DEMOLITION OF COMMERCIAL  
AND RESIDENTIAL PROPERTY

PROJECT NO. 6704081

ADDENDUM NO. 1  
TO CONTRACT C2008-18

This Addendum made and entered into on the 22<sup>nd</sup> day of January, 2009, by and between the City of Tempe, an Arizona municipal corporation (“City”), and ACR CONTRACTING, INC., an Arizona corporation (“Contractor”), amends the original agreement made and entered into by and between the same parties on January 10, 2008, (C2008-18) (“Contract”).

RECITALS:

- A. As parties hereto entered into that Contract for Demolition of Commercial and Residential Property, said Contract has proven to be an efficient and cost-effective method for City projects and City requires ongoing support services from Contractor.
- B. The parties desire to further define their respective rights and obligations with respect to the Contract price, Contract time, non-discrimination and legal compliance.
- C. The parties intend that the following sections shall be integrated into the Contract in place of the former similarly identified section, if any, and that this Addendum be given the full force and effect of law as the Contract.

Now therefore, in consideration of the mutual promises and covenants as more particularly set forth below, the parties do hereby amend the Contract to read as follows:

I. Contract Price. The maximum annual Contract Price shall be \$1,000,000.

II. Contract Time. The term of the Contract shall be extended through January 22, 2010, or until the additional \$1,000,000 has been expended by the City pursuant to the original Contract, which ever occurs first, with an option by the City to renew for a second twelve (12) month period or the balance of the maximum Contract amount or as otherwise specified.

III. Non-Discrimination and Legal Compliance. City is an equal opportunity, affirmative action employer. Contractor hereby covenants that it shall not discriminate unlawfully against any employee or applicant for employment, nor shall it deny the benefits of this Contract, to any person on the basis of race, color, national origin, physical or mental disability, age, gender or veteran status. Contractor covenants and agrees that it will comply in all respects with the applicable provisions of the Executive Order 11246, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Vietnam Era Veterans' Readjustment Assistance Act, the Rehabilitation Act, and any other applicable state and federal statutes governing equal opportunity. The Contractor agrees to post hereinafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this clause.

In addition, Contractor agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work and services pursuant to the Contract, and all applicable safety and employment laws, rules and regulations, including but not limited to, the

Fair Labor Standards Act, the Walsh-Healey Act, and the Arizona Fair and Legal Employment Act, including any amendments thereto along with all laws, rules and regulations attendant thereto. Contractor acknowledges that a breach of this warranty is a material breach of this Contract and Contractor is subject to penalties for violation(s) of this provision, including termination of this Contract. City retains the right to inspect the documents of any and all contractors, subcontractors and sub-subcontractors performing work and/or services relating to the Contract to ensure compliance with this warranty. Any and all costs associated with City inspection are the sole responsibility of Contractor. Contractor hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.

Contractor represents and warrants to City that neither Contractor nor any affiliate or representative of Contractor (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury (OFAC) pursuant to Executive Order No. 13224, 66 Fed.Reg. 49079 ("Order"); (ii) is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of OFAC or any other applicable requirements contained in any enabling legislation or other related Order(s); (iii) is engaged in activities prohibited in the Order; or (iv) has been convicted, pleaded *nolo contendere*, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering. In addition, Contractor certifies that it does not have a scrutinized business operation in either Iran or Sudan.

IV. All other provisions of the original Contract where not inconsistent with this Addendum shall remain binding on the parties hereto.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Addendum this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009.

CITY OF TEMPE, ARIZONA

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
Public Works Manager

ATTEST:

Recommended By:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Deputy PW Manager/City Engineer

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**The Contractor warrants that the person who is signing this Addendum on behalf of the Contractor is authorized to do so and to execute all other documents necessary to carry out the terms of this Addendum.**

CONTRACTOR  
ACR Contracting, Inc.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Federal I.D. No./Social Security No.

Certified to be a true and exact copy.

\_\_\_\_\_  
Karen M. Fillmore  
Records Specialist



CITY OF TEMPE, ARIZONA  
PUBLIC WORKS DEPARTMENT  
DIVISION OF ENGINEERING

JOB ORDER CONTRACT  
for  
DEMOLITION OF COMMERCIAL  
AND RESIDENTIAL PROPERTY

PROJECT NO. 6704081

ADDENDUM NO. 1  
TO CONTRACT C2008-19

This Addendum made and entered into on the 22<sup>nd</sup> day of January, 2009, by and between the City of Tempe, an Arizona municipal corporation (“City”), and BCS ENTERPRISES, INC., an Arizona corporation (“Contractor”), amends the original agreement made and entered into by and between the same parties on January 10, 2008, (C2008-19) (“Contract”).

RECITALS:

- A. As parties hereto entered into that Contract for Demolition of Commercial and Residential Property, said Contract has proven to be an efficient and cost-effective method for City projects and City requires ongoing support services from Contractor.
- B. The parties desire to further define their respective rights and obligations with respect to the Contract price, Contract time, non-discrimination and legal compliance.
- C. The parties intend that the following sections shall be integrated into the Contract in place of the former similarly identified section, if any, and that this Addendum be given the full force and effect of law as the Contract.

Now therefore, in consideration of the mutual promises and covenants as more

particularly set forth below, the parties do hereby amend the Contract to read as follows:

I. Contract Price. The maximum annual Contract Price shall be \$1,000,000.

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III. Non-Discrimination and Legal Compliance. City is an equal opportunity, affirmative action employer. Contractor hereby covenants that it shall not discriminate unlawfully against any employee or applicant for employment, nor shall it deny the benefits of this Contract, to any person on the basis of race, color, national origin, physical or mental disability, age, gender or veteran status. Contractor covenants and agrees that it will comply in all respects with the applicable provisions of the Executive Order 11246, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Vietnam Era Veterans' Readjustment Assistance Act, the Rehabilitation Act, and any other applicable state and federal statutes governing equal opportunity. The Contractor agrees to post hereinafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this clause.

In addition, Contractor agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work and services pursuant to the Contract, and all applicable safety and employment laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, and the Arizona Fair and Legal Employment

Act, including any amendments thereto along with all laws, rules and regulations attendant thereto. Contractor acknowledges that a breach of this warranty is a material breach of this Contract and Contractor is subject to penalties for violation(s) of this provision, including termination of this Contract. City retains the right to inspect the documents of any and all contractors, subcontractors and sub-subcontractors performing work and/or services relating to the Contract to ensure compliance with this warranty. Any and all costs associated with City inspection are the sole responsibility of Contractor. Contractor hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.

Contractor represents and warrants to City that neither Contractor nor any affiliate or representative of Contractor (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury (OFAC) pursuant to Executive Order No. 13224, 66 Fed.Reg. 49079 ("Order"); (ii) is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of OFAC or any other applicable requirements contained in any enabling legislation or other related Order(s); (iii) is engaged in activities prohibited in the Order; or (iv) has been convicted, pleaded *nolo contendere*, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering. In addition, Contractor certifies that it does not have a scrutinized business operation in either Iran or Sudan.

IV. All other provisions of the original Contract where not inconsistent with this Addendum shall remain binding on the parties hereto.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Addendum this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009.

CITY OF TEMPE, ARIZONA

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
Public Works Manager

ATTEST:

Recommended By:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Deputy PW Manager/City Engineer

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**The Contractor warrants that the person who is signing this Addendum on behalf of the Contractor is authorized to do so and to execute all other documents necessary to carry out the terms of this Addendum.**

CONTRACTOR  
BCS Enterprises, Inc.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Federal I.D. No./Social Security No.

Certified to be a true and exact copy.

\_\_\_\_\_  
Karen M. Fillmore  
Records Specialist